TEXAS REGISTER

Volume 30 Number 8 *February 25, 2005* *Pages 945-1202*

Breanna Nicole Acevedo
2nd Grade

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

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

Texas Register, **(ISSN 0362-4781),** is published weekly, 52 times a year. Issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 78701. Subscription costs: printed, one year $200. First Class mail subscriptions are available at a cost of $300 per year. Single copies of most issues for the current year are available at $10 per copy in printed format.

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

POSTMASTER: Send address changes to the ***Texas Register,*** P.O. Box 13824, Austin, TX 78711-3824.

a section of the
Office of the Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
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THE GOVERNOR

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

Proclamation 41-2990

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, Section 411.173(b) of the Government Code of the State of Texas directs that the governor shall negotiate an agreement with any other state that provides for the issuance of a license to carry a concealed handgun under which a license issued by the other state is recognized in this state, or shall issue a proclamation that a license issued by the other state is recognized in this state, if the attorney general of the State of Texas determines that a background check of each applicant for a license issued by that state is conducted by state or local authorities or an agent of the state or local authorities before the license is issued to determine the applicants' eligibility to possess a firearm under federal law; and

WHEREAS, the governor has received a statement of finding from the attorney general that a background check of each applicant for a license issued by the State of North Dakota is conducted by state or local authorities or an agent of the state or local authorities before the license is issued to determine that applicants' eligibility to possess a firearm under federal law, pursuant to North Dakota Century Code §62.1-04-03 (1)(d)-(e); and

WHEREAS, the State of Texas is therefore authorized to recognize the validity of North Dakota concealed handgun licenses;

NOW, THEREFORE, I, Rick Perry, Governor of Texas, do hereby proclaim that the State of Texas shall give full faith and credit to valid concealed weapon permits issued by the State of North Dakota as long as North Dakota permitees comply with all laws, rules, and regulations of the State of Texas governing concealed carry, including age restrictions and types of weapons permitted.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 4th day of February, 2005.

Rick Perry, Governor

Attested by: Geoffrey S. Connor, Secretary of State

TRD-200500603

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THE ATTORNEY GENERAL

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

Request for Opinions

RQ-0313-GA

Requestor:

The Honorable Joel D. Littlefield

Hunt County Attorney

Post Office Box 1097

Greenville, Texas 75403-1097

Re: Whether the Texas Department of Housing and Community Affairs is required to revoke a "statement of ownership and location" when the statement is demonstrated to have been obtained on the basis of false information with regard to the payment of taxes (Request No. 0313-GA)

Briefs requested by March 10, 2005

RQ-0314-GA

Requestor:

Mr. Dale Burnett, Executive Director

Texas Structural Pest Control Board

Post Office Box 1927

Austin, Texas 78767-1927

Re: Whether the Structural Pest Control Board may regulate the removal of vertebrate animals from the vicinity of structures (Request No. 0314-GA)

Briefs requested by March 14, 2005

RQ-0315-GA

Requestor:

The Honorable James M. Kuboviak

Brazos County Attorney

300 East 26th, Suite 325

Bryan, Texas 77803

Re: Whether a bail bond board may aggregate a license holder's years under two separate licenses for purposes of determining financial capacity under section 1704.203(f) of the Occupation Code (Request No. 0315-GA) **Briefs requested by March 14, 2005**

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

TRD-200500720
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: February 15, 2005

♦ ♦ ♦

PROPOSED RULES

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

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

TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 1. CONSUMER CREDIT REGULATION

SUBCHAPTER R. MOTOR VEHICLE INSTALLMENT SALES CONTRACT PROVISIONS

7 TAC §1.1309

The Finance Commission of Texas (the commission) proposes an amendment to Chapter 1, Subchapter R, concerning model clauses. The purpose of the proposed amendments is to make technical changes that clarify certain provisions or correct technical errors within the rule. One amendment corrects the pronoun "your" to "my" in §1.1309. The amendment also implements a technical correction to change the itemization of amount financed in §1.1309.

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

Commissioner Pettijohn also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of the proposed amendment will be providing clarity in the model forms. There is no anticipated cost to persons who are required to comply with the amendment as proposed. There will be no adverse economic effect on small or micro businesses. There will be no effect on individuals required to comply with the section as proposed.

Comments on the proposed amendment may be submitted in writing to Leslie L. Pettijohn, Consumer Credit Commissioner, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to leslie.pettijohn@occc.state.tx.us.

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

The statutory provision (as currently in effect) affected by the proposed amendment is Texas Finance Code, Chapter 348.

§1.1309. Permissible Changes.

(a) (No change.)

(b) A sample model motor vehicle retail installment contract. Figure: 7 TAC §1.1309(b)

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

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

Filed with the Office of the Secretary of State on February 11, 2005.

TRD-200500639
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Earliest possible date of adoption: March 27, 2005
For further information, please call: (512) 936-7640

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PART 8. JOINT FINANCIAL REGULATORY AGENCIES

CHAPTER 152. REPAIR, RENOVATION, AND NEW CONSTRUCTION ON HOMESTEAD PROPERTY

7 TAC §§152.1, 152.3, 152.5 152.7, 152.15

The Finance Commission of Texas and the Texas Credit Union Commission ("Commissions") jointly propose new 7 TAC §§152.1, 152.3, 152.5 152.7, and 152.15 concerning interpretations related to a lien on a homestead for home improvement under Texas Constitution, Article XVI, §50(a)(5) (Section 50(a)(5)).

Texas Constitution, Article XVI, §50 (Section 50) limits the nature and type of liens that can be imposed on a Texas homestead by identifying and conditioning the specific purposes for which such secured financing may be used. Because of the significantly adverse consequences that can befall a lender who violates a provision of Section 50, clear and unambiguous guidance regarding the meaning of such provisions supports the stability of the credit markets and ensures that home equity loans are as widely available to Texas homeowners as possible. (Since Section 50 primarily addresses only the elements necessary to create a valid lien on a homestead, other statutes and constitutional provisions must also be consulted to fully evaluate the legality under Texas law of credit transactions involving the homestead.)

Each Commission is separately and independently authorized to issue interpretations of certain provisions in Section 50, see Texas Finance Code, §11.308 and §15.413 (as added by Acts 2003, 78th Legislature, Chapter 1207, §2), and the Texas Constitution, Article XVI, §50(u). The Commissions seek to jointly exercise their authority to interpret Section 50 in order to promote consistency and better support the confidence of homeowners and lenders transacting home equity loans in compliance with Section 50. In addition, the Commissions interpret the extent of their interpretive authority to include not only determinations of the explicit meaning of words and terms in Section 50, but also to encompass "filling in the gaps" with respect to material matters that are inadequately addressed in Section 50, including possible addition of further details to the extent the Commissions believe this to be necessary to fully implement the intent and purposes of Section 50.

Section 50(a)(5) provides exceptions from the protections from forced sale of the homestead of a family or of a single adult person for payment of the following two debts when they meet certain requirements:

(1) work and materials used in constructing new improvements on the homestead; and

(2) work and materials used to repair or renovate existing improvements on the homestead.

Section 50(a)(5) does not define any of its terms. When interpreting our state Constitution, we rely heavily on its literal text and give effect to its plain language. *Republican Party of Texas v. Deitz*, 940 S.W.2d 86, 89 (Tex. 1997). We presume the language of the Constitution was carefully selected, and we interpret words as they are generally understood. *City of Beaumont v. Boullion*, 896 S.W.2d 143 (Tex. 1995). In the case of *Aerospace Optimist Club v. Texas*, 886 S.W.2d 556, 559 (Tex. App. - Austin 1994, no writ), the court used the Webster's Dictionary definition of the word "proceeds" because it was not defined. When a term is not defined in Section 50(a)(5), we have given it its ordinary meaning.

The language of Section 50(a)(5) raises a question as to whether Section 50(a)(5)(A) - (D) apply to "work and materials used to repair and renovate existing improvements" alone or also to "work and materials used in constructing new improvements." The Texas Supreme Court held "that a plain-language reading of Texas Constitution Article XVI, Section 50(a)(5) dictates that the protections in Section 50(a)(5)(A) - (D) apply only to 'work and material used to repair or renovate existing improvements' on homestead property, and not to 'work and material used in constructing new improvements'." *Spradlin v. Jim Walters Homes*, 34 S.W.3d 578, 580 (Tex 2000).

The Texas Supreme Court followed the doctrine of last antecedent that a qualifying phrase in a statute or the Constitution must be confined to the words and phrases immediately preceding it to which it may, without impairing the meaning of the sentence, be applied. The Texas Supreme Court concluded that, "'work and material used to repair or renovate existing improvements' constitutes the entire phrase to which Section 50(a)(5)(A) - (D) apply because applying Section 50(a)(5)(A) - (D) to 'work and material used in constructing new improvements' would impermissibly impair the meaning of the provision as a whole. This reading is supported by use of the disjunctive conjunction 'or' between the two phrases, which signifies a separation between two distinct ideas." The Commissions adopt the Texas Supreme Court's holding and reasoning in reaching the holding.

Accordingly, under Section 50(a)(5), the homestead is not protected from forced sale for the payment of debts for "work and materials used in constructing new improvements" on the homestead if the work and material are contracted for in writing. Under Section 50(a)(5)(A) - (D), the homestead is not protected from forced sale for the payment of debts "for work and materials used to repair or renovate existing improvements" on the homestead if the requirements of Section 50(a)(5)(A) - (D) are complied with.

To determine whether to apply Section 50(a)(5)(A) - (D) to a debt under Section 50(a)(5), a determination must be made as to whether the work and materials used are for "constructing new improvements" on the homestead or "repairing or renovating existing improvements" on the homestead. To make this determination, the Commissions concluded that "new improvements" and "existing improvements" must be defined. The plain language of Section 50(a)(5) dictates that "new improvements" are additions to real property that do not exist on the real property prior to entering into a contract for home improvements and construction of the additions will not involve work or materials being physically attached to an existing improvement. The plain language of Section 50(a)(5) further dictates that "existing improvements" are additions to real property that are physically attached to the real property prior to entering into a contract for home improvements. For example, a pool cabana could be constructed separate from all other pre-existing improvements; this would be construed to be new improvements as the construction would not be physically attached to any pre-existing improvements. A pool cabana could also share a wall with an existing garage; this would be construed to be existing improvements as the cabana would be physically connected or attached to the pre-existing garage. The phrases "new improvements" and "existing improvements" are defined at §152.1(4) and (5) respectively.

Work and materials used to construct improvements on a homestead that already has "existing improvements" on it are considered "work and materials used in constructing new improvements" so long as work is not performed on and materials are not physically attached to the existing improvements. Work that is performed on or materials that are in any way physically attached to existing improvements are considered "work and materials used to repair or renovate existing improvements" on the homestead, and Section 50(a)(5)(A) - (D) must be complied with to establish a constitutional lien on the homestead.

The definition of "application" in §152.1(1) provides that the term means an application of credit for work and materials to repair or renovate existing improvements or to construct new improvements. The definition further clarifies that the term does not refer to the use of a previously established credit line.

Section 152.1(2) defines a "constitutional lien" as a lien created and made enforceable against a homestead by the lienholder's compliance with the appropriate section of the Texas Constitution.

The definition of "contract" in §152.1(3) is provided solely to provide a shorthand version of the phrase "contract for work and materials;" the definition allows the interpretations to use the term "contract" instead of the phrase "contract for work and materials."

The definition of "existing improvement" in §152.1(4) and the definition of "new improvement" in §152.1(5) are discussed above.

The definition of "materials" in §152.1(6) clarifies that materials become a part of improvements once physically attached to the improvement, whether in the construction of new improvements or the repair or renovation of existing improvements.

For consistency, the definition of "owner" in §152.1(7) is the same as the definition in §153.1(13).

Section 152.1(8) defines "repair or renovate" and clarifies that only existing improvements can be repaired or renovated. Section 152.1(8) describes the kind of "work and materials" that are considered repairs and renovations and provides examples.

Section 152.1(8)(A) provides that replacing materials with the same or similar materials on existing improvements is a repair or renovation. "Repair or renovation," as defined in §152.1(8)(B), includes attaching materials to existing improvements where the same or similar materials were not attached to the existing improvements when the repair or renovation began. Section 152.1(8)(C) makes it clear that the work performed does not have to physically attach materials to the homestead to be considered a repair or renovation. Section 152.1(8)(C) additionally includes in the definition of "repair or renovate" work and materials used where materials are actually removed from the homestead, but not thereafter replaced by materials of any kind.

The definition of "title company" in §152.1(9) is consistent with the definition given by the court in *Rooms with a View, Inc. v. Private National Mortgage Association, Inc.*, 7 S.W.3d 840 (Tex.App. - Austin 1999), which includes an agent of a title insurance company. This definition, along with the *Rooms with a View* decision should remove the uncertainty that precipitated the *Rooms with a View* case.

The undefined phrase "physically attach" is used in Chapter 152 as a plain language substitute for the legal term "affix." "Physically attach," when used in Chapter 152, means to attach, add to, or fasten on permanently.

Section 152.3 explains that the only requirement in Section 50(a)(5) for establishing a constitutional lien on a homestead for a debt incurred for "work and materials used in constructing of new improvements" is that the "work and materials used in constructing new improvements" be "contracted for in writing." In Texas, there may be both a constitutional and a statutory lien. The requirements to establish a statutory lien are in Property Code §§53.001 et seq.; however, this interpretation only addresses the requirements for a constitutional lien. As stated above, this interpretation is supported by the Texas Supreme Court in its decision in *Spradlin*, 34 S.W.3d at 580.

Section 152.3(b) provides that a homestead is not protected from forced sale by Section 50 once a constitutional lien is established for debt incurred for work and materials used in constructing new improvements.

Section 152.5(a) explains that Section 50(a)(5)(A) - (D) apply only to work and materials used to repair or renovate existing improvements. This interpretation is also supported by the Texas Supreme Court in *Spradlin*.

Section 152.5(b) provides that to establish a constitutional lien for a debt incurred for work and materials used to repair and renovate existing improvements, there must be compliance with Section 50(a)(5)(A) - (D).

The Commissions recognize that parties may reach an agreement to construct new improvements and repair or renovate existing improvements in the same contract. The Commissions, in §152.5(c), provide that a single contract pertaining to both must comply with Section 50(a)(5)(A) - (D) to establish a constitutional lien on the homestead.

Section 152.7 interprets the consent requirement in Section 50(a)(5)(A) as meaning the joinder requirement in Texas Property Code, §5.001 (Section 5.001). In the case of a family homestead, Section 50(a)(5)(A) requires the "consent of both spouses" to the contract for work and materials, "given in the same manner as is required in making a sale and conveyance of the homestead." The Commissions could not find a "consent" requirement with respect to the sale and conveyance of a homestead; however, Section 5.001, provides that: "Whether the homestead is the separate property of either spouse or community property, neither spouse may sell, convey, or encumber the homestead without the joinder of the other spouse except as provided in this chapter or by other rules of law." The Commissions believe that although Section 5.001 uses the term "joinder" rather than "consent," the joinder in Section 5.001 is what the drafters were most likely referring to when they required "consent of both spouses. . . in the same manner as is required in making a sale and conveyance of the homestead."

In keeping with *Spradlin*, §152.15(a) limits the requirements of Section 50(a)(5)(D) to repairs or renovations of existing improvements. Section 152.15(b) makes it clear that the requirements of Section 50(a)(5)(D) are not fulfilled by executing contracts at a mobile office of the lender, an attorney at law, or a title company, unless the mobile office is located at the permanent address of the lender, an attorney at law, or a title company.

Finally, the Commissions emphasize that the Code Construction Act (Texas Government Code, Chapter 311) applies to 7 TAC, Chapter 152. For example, words used in the singular include the plural and the plural includes the singular, the heading of a title, subtitle, chapter, subchapter, or section does not limit or expand the meaning of an interpretation, and the use of the word "include" means "including but not limited to." A reference in 7 TAC, Chapter 152 to "Section 50" refers to the Texas Constitution, Article XVI, §50, unless otherwise noted.

Harold Feeney, Credit Union Commissioner, on behalf of the Texas Credit Union Commission and Leslie L. Pettijohn, Consumer Credit Commissioner, on behalf of the Finance Commission of Texas have determined that for the first five-year period the interpretations are in effect there will be no fiscal implications for state or local government as a result of administering the interpretations.

Commissioner Feeney and Commissioner Pettijohn also have determined that for each year of the first five years the interpretations as proposed are in effect, the public benefit anticipated as a result of the proposed interpretations will be to support the stability of the credit markets and ensure that loans to construct new improvements and loans to repair or renovate existing improvements are as widely available to Texas homeowners as possible, through the creation of reliable standards and guidelines.

There is no anticipated cost to persons who are required to comply with the interpretations as proposed. There will be no adverse economic effect on small or micro businesses.

Written comments on the proposed interpretations may be submitted in to Kerri T. Galvin, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699, or to Sealy Hutchings, General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to kerri.galvin@tcud.state.tx.us or

sealy.hutchings@occc.state.tx.us. To be considered, a written comment must be received on or before the 31st day after the date the proposed sections (interpretations) are published in the *Texas Register*. At the conclusion of the 31st day after the proposed interpretations are published in the *Texas Register*, no further written comments will be considered or accepted by the Commissions.

The Credit Union Commissioner and the Consumer Credit Commissioner have been delegated the authority to conduct a public meeting on behalf of the Commissions for the purpose of receiving oral comments, views, and/or testimony concerning the proposed interpretations. A public meeting will be held in Austin on March 24, 2005, at 1:00 p.m. in the State Finance Commission Building, William F. Aldridge Hearing Room, located at 2601 North Lamar Boulevard. To be considered, an oral comment must be received at this public meeting; at the conclusion of the meeting, no further oral comments will be considered or accepted by the Commissions.

Persons with disabilities who are planning to attend the meeting and have special communication or other accommodation needs should contact Joann McAnally at the Office of Consumer Credit Commissioner at (512) 936-7640. Requests should be made as far in advance of the meeting as possible.

The interpretations are proposed pursuant to Texas Finance Code, §11.308 and §15.413 (as added by Acts 2003, 78th Legislature, Chapter 1207, §2), which separately and independently authorize each Commission to issue interpretations of the Texas Constitution, Article XVI, §50(a)(5) - (7), (e) - (p), (t), and (u), subject to Texas Government Code, Chapter 2001.

The Texas Constitution, Article XVI, §50(a)(5) is affected by the proposed interpretations.

§152.1. Definitions.

Any reference to Section 50 in this interpretation refers to Article XVI, Texas Constitution, Section 50. Words and terms have these meanings when used in this chapter, unless the context indicates otherwise:

(1) Application--A request for an extension of credit that is made in accordance with the usual procedures used by a creditor for applying for an extension of credit for constructing new improvements or repair or renovation of existing improvements. The term "application" does not include the use of an account or line of credit to obtain an amount of credit that is within a previously established credit limit.

(2) Constitutional lien--A lien created and made enforceable against a homestead by the lienholder's compliance with the appropriate section of the Texas Constitution.

(3) Contract--A contract for work and materials used to:

(A) construct new improvements;

(B) repair or renovate existing improvements; or

(C) both subparagraph (A) and (B) of this paragraph.

(4) Existing improvements--A pre-existing addition to a homestead that is physically attached to the homestead.

(5) New improvements--An addition to a homestead:

(A) that does not exist on the homestead prior to the commencement of the use of work and materials to construct the new improvements under Section 50(a)(5); and

(B) the construction of which will not involve:

(i) work on existing improvements

(ii) the use of materials on existing improvements; or

(iii) physical attachment of materials to existing improvements.

(6) Materials--Materials used in constructing new improvements or repairing or renovating existing improvements. Materials alone are not improvements. Materials used to construct new improvements become a part of the new improvements once physically attached to the new improvements. Likewise, materials used to repair or renovate existing improvements become a part of the existing improvements once physically attached to the existing improvements.

(7) Owner--A person who has the right to possess, use, and convey, individually or with the joinder of another person, all or part of the homestead.

(8) Repair or Renovate--Work and materials used to:

(A) replace materials physically attached to existing improvements whether or not the new materials are similar to or the same as the materials being replaced (examples include replacing flooring, roofing, built-in appliances, siding, windows, or other materials that are attached to existing improvements);

(B) physically attach materials to existing improvements where there are no previously attached materials being replaced that are the same as or similar to the materials being attached (examples include attaching to existing improvements a new room, a built-in cabinet, or a second story); and

(C) mend, remedy or upgrade all or a portion of existing improvements without adding or replacing materials to the existing improvements (examples include restoring wood flooring or woodwork of an existing improvement where the work does not include physically attaching materials to the existing improvements, and removing flooring to expose flooring underneath).

(9) Title company--A title insurance company or an agent of a title insurance company.

§152.3. Requirements for Construction of New Improvements: Section 50(a)(5).

(a) Except as provided in §152.5(c) of this chapter, Section 50(a)(5)(A) - (D) does not apply to the construction of new improvements on a homestead.

(b) A valid constitutional lien, under Section 50(a)(5), may be created on a homestead if the debt for the work and materials used for new improvements is contracted for in writing. This constitutional lien is not protected from forced sale for the payment of the debt by Section 50.

§152.5. Requirements for Work and Materials Used to Repair or Renovate: Section 50(a)(5)(A) - (D).

(a) Section 50(a)(5)(A) - (D) applies only to contracts and applications for work and material used to repair or renovate existing improvements.

(b) If debt is incurred for work and material used to repair or renovate existing improvements and the requirements of Section 50(a)(5)(A) - (D) have been met, a constitutional lien is established on the homestead of a family, or of a single adult person, and it is not protected by Section 50 from forced sale for the payment of the debt.

(c) If the application and contract are for both work and materials used to repair or renovate existing improvements and for work

and materials used in constructing new improvements, the entire transaction is considered a contract to repair and renovate existing improvements and compliance with the constitutional requirements of Section 50(a)(5)(A) - (D) is required to establish a constitutional lien on the homestead.

§152.7. Consent of Spouses in the Case of Family Homestead: Section 50(a)(5)(A).

(a) In the case of a family homestead, both spouses must consent in writing to the contract for repair or renovation of existing improvements, regardless of whether the spouse has a community property interest or other ownership interest in the homestead.

(b) In addition to the consent of both spouses of a family homestead, the lender or contractor, at its option, may also require all other owners and their spouses to consent to the contract.

§152.15. Place for Execution of Contract for Work and Materials: Section 50(a)(5)(D).

(a) The owner and, if married, the owner's spouse must execute the contract to repair or renovate existing improvements at the permanent physical address of:

(1) the office or branch office of the lender making the extension of credit;

(2) an attorney at law; or

(3) a title company.

(b) Execution of the contract may not occur at a mobile office located at:

(1) the homestead; or

(2) any other place not permitted by subsection (a) of this section.

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

Filed with the Office of the Secretary of State on February 11, 2005.

TRD-200500640
Leslie L. Pettijohn
Commissioner
Joint Financial Regulatory Agencies
Earliest possible date of adoption: March 27, 2005
For further information, please call: (512) 936-7640

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 80. MANUFACTURED HOUSING

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs (the "Department") proposes new §§80.57 - 80.59, 80.129, 80.240 in new Subchapter H (Tables and Figures) and 80.260 in new Subchapter I (Forms) and amendments to §§80.10, 80.11, 80.20, 80.53 - 80.56, 80.62, 80.64, 80.66, 80.119 - 80.128, 80.130 - 80.133, 80.135, 80.183, and 80.205 for the following purpose: make the rules more useful, practical and as understandable as possible; organize rules by related subjects more logically; eliminate unnecessary or redundant verbiage; and clean up areas of confusion or conflict.

There is an adoption currently pending for §80.201(e) relating to the Issuance of Statements of Ownership and Location, so the additional revisions to this rule cannot be proposed until the pending adoption is effective. Effective date of adoption is 30 days after the adopted rule is published in the *Texas Register*. The Department will propose the additional revisions for public comment as soon as adoption of §80.201(e) is effective.

Because the Department no longer employs an engineer, the drawings in proposed §80.240(b)(9), (22), and (23) have not been reviewed or approved by a Department engineer.

Section 80.10 is revised to update the rule with the current installation and construction standards.

Section 80.11 - Deleting unnecessary definitions, ones that are addressed in other rules or that exist in the State and Federal statutes, proposing new definitions and revising existing definitions for clarification.

Section 80.20 - Revised for clarification and updating of fees, and relocated fees for Statements of Ownerships and Location from §80.202 to §80.20(j).

Section 80.53 - Changed title of rule and revised for clarification.

Section 80.54 - Revised to organize in a more logical manner and eliminate unnecessary or redundant verbiage. The tables and figures are relocated to new Subchapter H (Tables and Figures).

Figure: 10 TAC §80.54(g) - Moved Site Preparation Notice to §80.260(a)(1).

Figure: 10 TAC §80.54(h)(3) - Moved footer configurations to §80.240(b)(22).

Figure: 10 TAC §80.54(h)(4) - Moved footer capacities table to §80.240(a)(8).

Figure: 10 TAC §80.54(h)(6) - Moved pier design figure to §80.240(b)(23).

Figure: 10 TAC §80.54(h)(6)(B) - Moved pier loads without perimeter supports table to §80.240(a)(9).

Figure: 10 TAC §80.54(h)(6)(C) - Moved pier loads with perimeter supports table to §80.240(a)(10) and moved perimeter pier front and side view figure to §80.240(b)(24).

Figure: 10 TAC §80.54(h)(7) - Moved typical multi-section pier layout figure to §80.240(b)(25).

Figure: 10 TAC §80.54(h)(8) - Moved typical single section pier layout figure to §80.240(b)(26).

Figure: 10 TAC §80.54(h)(9)(A) - Moved determining column load and marriage line elevation figure to §80.240(b)(27).

Figure: 10 TAC §80.54(h)(9)(D) - Moved mating line column loads table to §80.240(a)(11).

Section 80.55 - Revised to organize in a more logical manner and eliminate unnecessary or redundant verbiage. The tables and figures are relocated to new Subchapter H (Tables and Figures).

Figure: 10 TAC §80.55(a) - Moved counties Located in Wind Zone II figure to §80.240(b)(1).

Figure: 10 TAC §80.55(c)(1) - Moved anchor installation figure to §80.240(b)(2).

Figure: 10 TAC §80.55(c)(2) - Moved placement of stabilizing plates figure to §80.240(b)(3).

Figure: 10 TAC §80.55(d)(1) - Moved Wind Zone I Installation figure to §80.240(b)(4).

Figure: 10 TAC §80.55(d)(2) - Moved maximum spacing for diagonal ties table to §80.240(a)(1).

Figure: 10 TAC §80.55(d)(3) - Moved minimum number of diagonal ties table to §80.240(a)(2).

Figure: 10 TAC §80.55(e)(1) - Moved maximum spacing for diagonal ties per side table to §80.240(a)(3).

Figure: 10 TAC §80.55(e)(2)(E) - Moved diagonal strap placement figure to §80.240(b)(5).

Figure: 10 TAC §80.55(e)(2)(F) - Moved diagonal and vertical ties figure to §80.240(b)(6).

Figure: 10 TAC §80.55(f)(1) - Moved maximum centerline wall opening for column uplift brackets table to §80.240(a)(4).

Figure: 10 TAC §80.55(f)(4) - Moved the typical installation details figure to §80.240(b)(7).

Figure: 10 TAC §80.55(f)(5)(D) - Moved the anchor span figure to §80.240(b)(8).

Figure: 10 TAC §80.55(f)(6)(D) - Moved the longitudinal ties figure to §80.240(b)(10).

Section 80.56 - Revised for clarification and to relocate the tables and figures to new Subchapter H (Tables and Figures).

Figure: 10 TAC §80.56(a)(4) - Moved the mating line surfaces figure to §80.240(b)(11).

Figure: 10 TAC §80.56(b)(5) - Moved the floor connections table to §80.240(a)(5) and moved the floor connections figure to §80.240(b)(12).

Figure: 10 TAC §80.56(c)(2) - Moved the endwall connections figure to §80.240(b)(13).

Figure: 10 TAC §80.56(d)(3) - Moved the roof connections table to §80.240(a)(6).

Figure: 10 TAC §80.56(d)(4) - Moved the roof connection figure to §80.240(b)(14).

Figure: 10 TAC §80.56(e)(6) - Moved the exterior roof close up figure to §80.240(b)(15).

Figure: 10 TAC §80.56(g)(4) - Moved the HVAC crossover figure to §80.240(b)(16).

Figure: 10 TAC §80.56(h)(1) - Moved the multi-section water crossover connection figure to §80.240(b)(17).

Figure: 10 TAC §80.56(i)(2)(F) - Moved the Drain, Waste and Vent Floor Piping System figure to §80.240(b)(18).

Figure: 10 TAC §80.56(j)(2) - Moved the chassis bonding figure to §80.240(b)(19).

Figure: 10 TAC §80.56(j)(3) - Moved the electrical crossover figure to §80.240(b)(20).

Figure: 10 TAC §80.56(j)(6) - Moved the main panel box feeder conductor sizes table to §80.240(a)(7).

Figure: 10 TAC §80.56(k)(2) - Moved the fuel gas pipe crossover connections figure to §80.240(b)(21).

New §80.57 - Relocated text previously in §80.54(f) and (g) to organize and group in a more logical manner and moved the tables and figures previously included with the text to new Subchapter H (Tables and Figures).

New §80.58 - Relocated text previously in §80.54(h) to organize and group in a more logical manner and moved the tables and figures previously included with the text to new Subchapter H (Tables and Figures).

New §80.59 - The new rule identifies exceptions to the generic installation standards filed with the department by manufacturers in accordance with §80.53(g).

Section 80.62 - The Department now registers stabilizing components and systems, but no longer approves them. Also, revisions were made for clarification.

Section 80.64 - Revised alteration procedures for clarification and to remove unnecessary text.

Section 80.66 - Updated rule for clarification.

Section 80.119 - Changed wording instructing installer to certify instead of warrant the proper installation of the home and to provide the consumer with a written certification instead of an installation warranty. Also, other revisions were made for clarification.

Section 80.120 - Added the monthly shipment report rule that was previously located in repealed §80.203 and revised a rule reference.

Section 80.121 - Added text from repealed §80.200(b) relating to conveyance of a good and marketable title, 80.181 relating to providing the 162 Notice, and 80.182 relating to providing the 163 Disclosure. Other text updated for clarification and relocated disclosure forms associated with §80.181 and §80.182 to new Subchapter I (Forms).

Section 80.122 - Revised rule for clarification.

Section 80.123 - Revised rule for clarification and added a new section that explains new and renewed licenses will not be valid if all required fees are not paid.

Section 80.124 - Added new section that allows retailer to deduct fees from the deposit amount if the consumer owes for upgrades added to a home.

Section 80.125 - Updated rule for clarification and added a section requiring disclosure of license number of the person advertising.

Section 80.126 - Updated rule for consistency and clarification.

Section 80.127 - Updated rule for clarification and added new sections to include text from repealed §80.129(g) - (m).

Section 80.128 - Updated reference to "working days" to "business days."

New §80.129 - Replacing repealed rule with new rule that explains the department offers alternative dispute resolution. Moved relevant text in the repealed rule to §80.127 and moved the Enforcement Matrix figure in subsection (g) to §80.240(a)(12).

Section 80.130 - Updated rule for clarification.

Section 80.131 - Updated rule for clarification.

Section 80.132 - Updated rule for clarification.

Section 80.133 - Updated rule by changing "department" from uppercase to lowercase for consistency.

Section 80.135 - Updated rule for clarification.

Section 80.183 - Updated rule for clarification.

Section 80.205 - Updated rule by keeping the section on Inventory Finance Liens, deleted the unnecessary sections on Release of Liens and Foreclosure or Repossession and moved the section on right of survivorship to §80.201.

New §80.240 is in new Subchapter H relating to Tables and Figures. The tables from various rules are located in subsection (a) and the figures are located in subsection (b) for easier referencing.

Figure: 10 TAC §80.240(a)(1) - Maximum Spacing for Diagonal Ties.

Figure: 10 TAC §80.240(a)(2) - Minimum Number of Diagonal Ties.

Figure: 10 TAC §80.240(a)(3) - Maximum Spacing for Diagonal Ties per side of the Assembled Unit.

Figure: 10 TAC §80.240(a)(4) - Bracket Installation - Maximum Centerline Wall Opening for Column Uplift Brackets.

Figure: 10 TAC §80.240(a)(5) - Floor Connections - Wind Zone I and II.

Figure: 10 TAC §80.240(a)(6) - Roof Connections - Fastener Type and Spacing.

Figure: 10 TAC §80.240(a)(7) - Main Panel Box Feeder Conductor Sizes.

Figure: 10 TAC §80.240(a)(8) - Footer Capacities.

Figure: 10 TAC §80.240(a)(9) - Pier Loads without Perimeter Supports.

Figure: 10 TAC §80.240(a)(10) - Pier Loads with Perimeter Supports.

Figure: 10 TAC §80.240(a)(11) - Mating Line Column Loads.

Figure: 10 TAC §80.240(a)(12) - Enforcement Matrix.

Figure: 10 TAC §80.240(b)(1) - Counties Located in Wind Zone II.

Figure: 10 TAC §80.240(b)(2) - Anchor Installation.

Figure: 10 TAC §80.240(b)(3) - Placement of Stabilizing Plates.

Figure: 10 TAC §80.240(b)(4) - Wind Zone I Installation (Single & Multi-Section).

Figure: 10 TAC §80.240(b)(5) - Diagonal Strap Placement for Piers Exceeding 36 in. in Height.

Figure: 10 TAC §80.240(b)(6) - Diagonal and Vertical Ties.

Figure: 10 TAC §80.240(b)(7) - Typical Installation Details.

Figure: 10 TAC §80.240(b)(8) - Anchor Span.

Figure: 10 TAC §80.240(b)(9) - Typical Longitudinal Stabilizing Device. NOTE: Because the Department no longer employs an engineer, this proposed drawing has not been reviewed or approved by a Department engineer.

Figure: 10 TAC §80.240(b)(10) - Longitudinal Ties.

Figure: 10 TAC §80.240(b)(11) - Mating Line Surfaces.

Figure: 10 TAC §80.240(b)(12) - Floor Connections.

Figure: 10 TAC §80.240(b)(13) - Endwall Connections.

Figure: 10 TAC §80.240(b)(14) - Roof Connection.

Figure: 10 TAC §80.240(b)(15) - Exterior Roof Close Up.

Figure: 10 TAC §80.240(b)(16) - HVAC (Heat/Cooling) Duct Crossover.

Figure: 10 TAC §80.240(b)(17) - Multi-Section Water Crossover Connections.

Figure: 10 TAC §80.240(b)(18) - Drain, Waste and Vent Floor Piping System.

Figure: 10 TAC §80.240(b)(19) - Chassis Bonding.

Figure: 10 TAC §80.240(b)(20) - Electrical Crossover.

Figure: 10 TAC §80.240(b)(21) - Fuel Gas Pipe Crossover Connections.

Figure: 10 TAC §80.240(b)(22) - Footer Configurations. NOTE: Because the Department no longer employs an engineer, this proposed drawing has not been reviewed or approved by a Department engineer.

Figure: 10 TAC §80.240(b)(23) - Pier Design (Single and Multi-Section Stack). NOTE: Because the Department no longer employs an engineer, this proposed drawing has not been reviewed or approved by a Department engineer.

Figure: 10 TAC §80.240(b)(24) - Perimeter Pier Front & Side View.

Figure: 10 TAC §80.240(b)(25) - Typical Multi-Section Pier Layout.

Figure: 10 TAC §80.240(b)(26) - Typical Single Section Pier Layout.

Figure: 10 TAC §80.240(b)(27) - Determining Column Load and Marriage Line Elevation.

New §80.260 is in new Subchapter I relating to Forms. The required forms from various rules are located subsection (a) and the optional forms are located in subsection (b) for easier referencing.

Figure: 10 TAC §80.260(a)(1) - Site Preparation Notice.

Figure: 10 TAC §80.260(a)(2) - Consumer Disclosure Statement.

Figure: 10 TAC §80.260(a)(3) - 163 Disclosure - Choosing a Loan to Buy a Manufactured Home.

Figure: 10 TAC §80.260(a)(4) - Notice of Installation (Form T).

Figure: 10 TAC §80.260(a)(5) - Estimate for Reassigned Warranty Work.

Figure: 10 TAC §80.260(a)(6) - Application for Statement of Ownership and Location.

Figure: 10 TAC §80.260(a)(7) - Release or Foreclosure of Lien (Form B).

Figure: 10 TAC §80.260(a)(8) - Quick Processing Form.

Figure: 10 TAC §80.260(a)(9) - Form M.

Figure: 10 TAC §80.260(a)(10) - Affidavit of Fact for Right of Survivorship.

Figure: 10 TAC §80.260(b)(1) - Spanish Version of Consumer Disclosure Statement.

Figure: 10 TAC §80.260(b)(2) - Spanish Version of 163 Disclosure - Choosing a Loan to Buy a Manufactured Home.

Timothy K. Irvine, Executive Director of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, has determined that for the first five-year period that these new and amended sections as proposed are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering these sections.

The following is the anticipated economic costs to persons/businesses that are required to comply with the proposed rules.

Section 80.20(b)(1) increases the installation reporting fee for multi-section homes from $75 to $150. There is no increase for single section homes.

Section 80.20(j)(4) increases the fee for correction of an SOL from $25 to $55, which is the original fee before the rule changed to $25 in September 2004.

Except for the above, there are no other proposed new and amended sections expected to have material economic costs to persons/businesses that are required to comply with these sections as proposed.

Mr. Irvine also has determined that for each year of the first five years these new and amended sections as proposed are in effect the public benefit as a result of enforcing the sections will be: organize rules by related subjects more logically; eliminate unnecessary or redundant verbiage; clean up areas of confusion and conflict; make the rules more useful, practical and as understandable as possible; clarify responsibilities that will increase compliance; and assure that the rules embrace a balanced overall approach that enhances compliance for the benefit of both the industry and consumers while accommodating the needs of related industries.

Comments may be submitted to Mr. Timothy K. Irvine, Executive Director of the Manufactured Housing Division, of the Texas Department of Housing and Community Affairs, P. O. Box 12489, Austin, Texas 78711-2489 or by e-mail at the following address tim.irvine@tdhca.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

SUBCHAPTER A. CODES AND STANDARDS

10 TAC §80.10

The amended section is proposed under the Texas Manufactured Housing Standards Act, Occupations Code, Subtitle C, Chapter 1201, §1201.052, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.603, which authorizes the director to adopt rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

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

§80.10. Texas Manufactured Housing Standards Code.

The standards and requirements for the installation and construction of manufactured housing adopted by the director in accordance with §1201.251(a)(1) of the Texas Manufactured Housing Standards Act (Standards Act) are as follows:

(1) The construction standards set out in Title VI of the Housing and Community Development Act of 1974, as the same may be amended from time to time, or under any official rule, official interpretation, or adopted standard issued or adopted by the Department of Housing and Urban Development under such law;

(2) The installation standards set forth in this chapter; and

(3) Applicable standards for installation components established by

(A) Chapter 43 of the latest edition of the International Residential Code;

(B) The stabilizing component destruction test failure criteria of the FMHCSS (24 CFR, Part 3280) and the latest edition of the International Residential Code, Appendix E; and

(C) The American Wood Preserver's Association and referenced by the latest edition of the International Residential Code Preservation for treated (PT) wood components.

(4) Collectively, the foregoing, together with the Standards Act and these rules, are referred to as the Texas Manufactured Housing Standards Code ("the Code").

~~[(a) The Texas Manufactured Housing Standards Code for HUD-Code manufactured homes shall be the Federal Standards established under Title VI of the Housing and Community Development Act of 1974 and each change, amendment, or requirement shall become effective in conjunction with the effective date set by the federal program.]~~

~~[(b) The historical record of standards adopted for manufactured homes in accordance with the Standards Act, is as follows:]~~

~~[(1) Prior to December 11, 1969: none;]~~

~~[(2) December 12, 1969 - August 31, 1971: American National Standards Institute (ANSI), A119.1-1963, plumbing, heating and electrical;]~~

~~[(3) September 1, 1971 - December 15, 1971: none;]~~

~~[(4) December 15, 1971 - February 16, 1972: ANSI, A119.1-1969, plumbing, heating and electrical;]~~

~~[(5) February 17, 1972 - January 31, 1973: ANSI, A119.1-1973, plumbing, heating and electrical;]~~

~~[(6) February 1, 1973 - September 19, 1973: ANSI, A119.1-1973, plumbing, heating, electrical and construction;]~~

~~[(7) September 20, 1973 - August 31, 1974: ANSI, A119.1-1973, plumbing, heating, electrical and construction;]~~

~~[(8) September 1, 1974 - June 14, 1976: ANSI, A119.1-1974, plumbing, heating, electrical and construction; and]~~

~~[(9) June 15, 1976 - Future: HUD-Code - National Manufactured Home Construction and Safety Standards, Part 3280, promulgated by the United States Department of Housing and Urban Development (HUD), Code of Federal Regulations (CFR), Title 24.]~~

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

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

TRD-200500648

Timothy K. Irvine
Executive Director, Manufactured Housing Division
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: March 27, 2005
For further information, please call: (512) 475-2206

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SUBCHAPTER B. DEFINITIONS

10 TAC §80.11

The amended section is proposed under the Texas Manufactured Housing Standards Act, Occupations Code, Subtitle C, Chapter 1201, §1201.052, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.603, which authorizes the director to adopt rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

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

§80.11. Definitions.

Terms used herein that are defined in the Code and the Standards Act have the meanings ascribed to them therein. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

[(1) Alteration--The replacement, addition, and modification or removal of any equipment or its installation after sale by the manufacturer to a retailer, but prior to sale and installation to a purchaser which may affect the construction, fire safety, occupancy plumbing, heat-producing, or electrical system. An alteration is deemed to be prior to sale if the alteration is part of the retail sales contract. It includes any modification made in the manufactured home which may affect the compliance of the home with the standards, but it does not include the repair or replacement of a component or appliance requiring plug-in to an electrical receptacle where the replaced item is of the same configuration and rating as the one being replaced. It also does not include the addition of an appliance requiring "plug-in" to an electrical receptacle, which appliance was not provided with the manufactured home by the manufacturer, if the rating of the appliance does not exceed the rating of the receptacle to which it is connected (FMHCSS §3287.7(c)).]

(1) [(2)] Anchoring components--Any component which is attached to the manufactured home and is designed to resist the horizontal and vertical forces imposed on the manufactured home as a result of wind loading. These components include auger anchors, rock anchors, slab anchors, ground anchors, stabilizing plates, connection bolts, j-hooks, buckles, and split bolts.

(2) [(3)] Anchoring equipment--Straps, cables, turnbuckles, and chains, including tensioning devices, which are used with ties to secure a manufactured home to anchoring components or other [approved] devices.

(3) [(4)] Anchoring systems--Combination of ties, anchoring components, and anchoring equipment that will resist overturning and lateral movement of the manufactured home from wind forces.

(4) [(5)] APA--Administrative Procedure Act, Texas Government Code, Chapter 2001.

[(6) Attachment--With respect to a manufactured home, that it has been installed in accordance with the Department's rules and connected to any one or more utilities including, but not limited to, electricity, water, natural gas, propane or bottled gas, or wastewater service. For purposes of determining whether a manufactured home is attached, the presence of installation deviations or violations shall not invalidate the home's status as being attached.]

[(7) Board--Governing Board of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs.]

(5) Business days--Includes every day on the calendar except Saturday, Sunday, and federal and state holidays.

[(8) Business use--Any use other than for dwelling purposes.]

[(9) Calendar days--Includes every day on the calendar.]

(6) [(10)] Certificate of Attachment--A certificate issued by the department to the person who surrenders the Manufacturer's Certificate of Origin or document of title when the home has been permanently attached [affixed] to real estate. Certificates of Attachment are no longer issued after June 18, 2003.

(7) [(11)] Chattel Mortgage or Consumer Loan--Any loan that is not subject to the Real Estate Settlement Procedures Act (RESPA). [A loan subject to Chapter 347, Texas Finance Code, that is not a mortgage loan.]

(8) [(12)] Coastline--The shoreline that forms the boundary between the land and the Gulf of Mexico or a bay or estuary connecting to the Gulf of Mexico that is more than five miles wide.

(9) [(13)] Credit document--All [The credit sale contract or the loan instruments including all] the written agreements between the consumer and creditor that describe or are required in connection with an actual [relate to the] credit transaction.

(10) [(14)] Creditor--A person involved in a credit transaction who:

(A) extends or arranges the extension of credit; or

(B) is a retailer or broker as defined in the Standards Act and participates in arranging for the extension of credit.

[(15) Creditor-Lender--A person that is involved in extending or arranging for credit in inventory financing secured by manufactured housing.]

(11) [(16)] Custom designed stabilization system--An anchoring and support system that is not an approved method as prescribed by the state generic standards, manufacturer's installation instructions, or other systems pre-approved by the department.

(12) [(17)] DAPIA--The Design Approval Primary Inspection Agency.

[(18) Defect--A failure to comply with an applicable federal manufactured home safety and construction standard that renders the manufactured home or any part or component thereof not fit for the ordinary use for which it was intended, but does not result in an unreasonable risk of injury or death to occupants of the affected manufactured home (FMHCSS §3282.7(j)).]

[(19) Department--The Manufactured Housing Division of the Texas Department of Housing and Community Affairs (TDHCA).]

[(20) Department inspector--An inspector who is an employee of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs or an inspector who is an employee of an entity performing inspection services under contract with the department.]

(13) [~~(21)~~] Deposits--Money or other consideration given by a consumer to a retailer, salesperson, or agent of a retailer to hold a home in inventory for subsequent purchase or to special order a home for subsequent purchase.

(14) [~~(22)~~] Diagonal tie--A tie intended to primarily resist horizontal forces, but which may also be used to resist vertical forces.

[~~(23) Director--The Executive Director of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs (TDHCA).~~]

(15) [~~(24)~~] Down Payment--An amount, including the value of any property used as a trade-in, paid to a retailer to reduce the cash price of goods or services purchased in a credit sale transaction.

(16) [~~(25)~~] Dwelling unit--One or more habitable rooms which are designed to be occupied [~~by one family with facilities~~] for living[~~, sleeping, cooking and eating~~].

(17) [~~(26)~~] FMHCSS--Federal Manufactured Home Construction and Safety Standards that implement the National Manufactured Home Construction and Safety Standards Act of 1974, 42 USC 5401, et seq., as amended from time to time [~~and means a reasonable standard for the construction, design, and performance of a manufactured home which meets the needs of the public including the need for quality, durability, and safety~~].

(18) [~~(27)~~] Footing--That portion of the support system that transmits loads directly to the soil.

(19) [~~(28)~~] Ground anchor--Any device at the manufactured home site designed to transfer manufactured home anchoring loads to the ground.

[~~(29) HUD-Code manufactured home--A structure constructed on or after June 15, 1976, according to the rules of HUD, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 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. The term does not include a recreational vehicle as that term is defined by 24 CFR, §3282.8(g).~~]

[~~(30) Imminent safety hazard--A hazard that presents an imminent and unreasonable risk of death or severe personal injury that may or may not be related to failure to comply with an applicable federal manufactured home construction and safety standard (FMHCSS §3282.7(q)).~~]

(20) [~~(31)~~] Independent testing laboratory--An agency or firm that tests products for conformance to standards and employs at least one engineer or architect licensed in at least one state.

[~~(32) Installation information--A term used to describe the reports used to inform the department of information needed to perform installation inspections (includes Notice of Installation).~~]

(21) Inventory Lender--A person that is involved in extending or arranging for credit in inventory financing secured by manufactured housing.

(22) [~~(33)~~] IPIA--The Production Inspection Primary Inspection Agency which evaluates the ability of manufactured home manufacturing plants to follow approved quality control procedures and/or provides ongoing surveillance of the manufacturing process.

[~~(34) Lien--A security interest that is created by any kind of lease, conditional sales contract, deed of trust, chattel mortgage, trust receipt, reservation of title or other security agreement of whatever kind or character, if an interest, other than an absolute title, is sought to be held or given in a manufactured home, and any lien on a manufactured home that is created or given by the constitution or a statute.~~]

(23) Longitudinal ties--designed to prevent lateral movement along the length of the home.

(24) [~~(35)~~] Long-Term Lease--For the purpose of determining whether or not the owner of a manufactured home may elect to treat the home as real property, is a lease on land to which the manufactured home has been attached and which:

(A) has been approved by each lienholder for the manufactured home by placing on file with the department written consent to have the home treated as real property; or

(B) is for at least five years if the home is not financed.

(25) [~~(36)~~] Main frame--A chassis or structure serving a similar purpose[~~The structural components on which the body of the manufactured home is mounted~~].

[~~(37) Manufactured home--A HUD-Code manufactured home or a mobile home and collectively means and refers to both.~~]

(26) [~~(38)~~] Manufactured home identification numbers--For the purpose of maintaining ownership and location[~~purposes of title~~] records, the numbers shall include the HUD label number(s) and the serial number(s) imprinted or stamped on the home in accordance with HUD departmental regulations. For homes manufactured prior to June 15, 1976, the Texas seal number, as issued by the department, shall be used instead of the HUD label number. If a home manufactured prior to June 15, 1976, does not have a Texas seal, or if a home manufactured after June 15, 1976, does not have a HUD label, a Texas seal shall be purchased from the department and attached to the home in upper left corner on tongue end and used for identification in lieu of the HUD label number.

(27) [~~(39)~~] Manufactured home site--That area of a lot or tract of land on which a manufactured home is installed.

[~~(40) Mobile home--A structure that was constructed before June 15, 1976, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 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.~~]

(28) [~~(41)~~] Permanent foundation--A foundation which meets the requirements of §80.54 of this title (relating to Requirements for the Installation of Manufactured Homes) and was constructed according to drawings, as required by that section, which state that the foundation is a permanent foundation for a manufactured home. [~~A system of supports and securements, including piers, either partially or entirely below grade which is constructed or certified in accordance with the criteria outlined in §80.52(a) and (b), of this title (relating to Permanent Foundation Performance Criteria).~~]

[~~(42) Permanently affixed--Having been anchored to the real estate by attachment to a permanent foundation.~~]

[~~(43) Rebuild--To make a salvaged manufactured home habitable in accordance with §80.66 of this title (relating to Rebuilding or Repairing a "Salvaged" Manufactured Home).~~]

[~~(44) Rebuilder--Any person, within the state, who has been licensed by the department to rebuild a salvaged manufactured~~

home, as defined in §1201.461 the Standards Act, in accordance with the rules and regulations of the department.]

[(45) Refurbish--To make a nonhabitable manufactured home or section habitable by repairing, adding, replacing, modifying, or removing components.]

[(46) Serious defect--Any failure to comply with an applicable federal manufactured home construction and safety standard that renders the manufactured home or any part thereof not fit for the ordinary use for which it was intended and which results in an unreasonable risk of injury or death to occupants of the affected manufactured home (FMHCSS §3282.7(gg)).]

(29) [(47)] Shim--A wedge-shaped piece of [cedar, oak, walnut, pecan, gum, ash, hickory, elm, or other comparable] hardwood or other accepted material not to exceed one (1) inch vertical (actual) height.

(30) [(48)] Stabilizing components--All components of the anchoring and support system such as piers, footings, ties, anchoring equipment, ground anchors and any other equipment, which supports the manufactured home and secures it to the ground.

(31) Stabilization system--a combination of the anchoring and support system.

[(49) Standards Act--Texas Manufactured Housing Standards Act, Occupations Code, Subtitle C, Chapter 1201.]

[(50) Statement of Ownership and Location--means a statement, issued by the Department on the prescribed form, based on a completed application for Statement of Ownership and Location, accompanied by the required fee and all required supporting documentation.]

(32) [(51)] Support system--A combination of footings, piers, caps and shims that support the manufactured home.

(33) [(52)] TDHCA--The Manufactured Housing Division of the Texas Department of Housing and Community Affairs (department)[(Department)].

[(53) TMHSA--Texas Manufactured Housing Standards Act, Occupations Code, Subtitle C, Chapter 1201.]

(34) [(54)] Used home--Any manufactured home (or mobile home) [for] which has been installed and occupied for living[a document of title as previously been issued by an appropriate agency of any state or which has been occupied].

(35) [(55)] Vertical tie--A tie intended primarily to resist the uplifting and overturning forces.

[(56) Wind Zone I--All Texas counties not in Wind Zone II.]

[(57) Wind Zone II--Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Jefferson, Kenedy, Kleberg, Matagorda, Nueces, Orange, Refugio, San Patricio, and Willacy counties.]

[(58) Working days--Includes every day on the calendar except Saturday, Sunday, and federal and state holidays.]

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

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

TRD-200500649
Timothy K. Irvine
Executive Director, Manufactured Housing Division
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: March 27, 2005
For further information, please call: (512) 475-2206

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SUBCHAPTER C. FEE STRUCTURE

10 TAC §80.20

The amended section is proposed under the Texas Manufactured Housing Standards Act, Occupations Code, Subtitle C, Chapter 1201, §1201.052, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.603, which authorizes the director to adopt rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

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

§80.20. Fees.

(a) Annual License Fees and Renewal Fees:

(1) $425 for each manufacturer's plant license;

(2) $275 for each retailer's sales license;

(3) $275 for each rebuilder's license;

(4) $175 for each broker's license;

(5) $175 for each installer's license; and

(6) $100 for each salesperson's license, which must be submitted to the department in the form of a cashier's check or money order.

(b) Installation Fees:

(1) There is a reporting fee of $75 for the installation of a single section and $150 for a multi-section[each] manufactured home [which is not installed on a permanent foundation].

(2) The reporting fee must be submitted to the department with the completed Notice of Installation (Form T) within thirty (30) days of the original sale or within ten (10) days of a secondary move [There is a reporting fee of $150 for the installation of a manufactured home permanently affixed to real estate or on a permanent foundation].

[(3) Installation fees shall be submitted to the department as follows:]

[(A) When the installation occurs in conjunction with a title transfer, the fee must be submitted to the department along with the application for title and the Notice of Installation Affidavit; or]

[(B) For secondary moves (when there is no title transfer), the fee must be submitted to the department along with a completed Notice of Installation Affidavit within ten (10) working days following the installation date.]

(3) [(4)] Fee distributions to local governmental entities performing inspection functions pursuant to contract with the department shall be made in accordance with department procedures and the provisions of the contract.

[(c) Alteration Fee: There is a fee of $60 per hour or a minimum fee of $60 for the inspection of alterations made upon the structure, plumbing, heating, or electrical systems of manufactured homes. The fee is paid to the department by the person making the alterations. The person shall also reimburse the department for mileage and per diem incurred by department personnel to and from the place of inspection.]

(c) [(d)] Seal Fee: There is a fee of $35 for the issuance of Texas Seals. Any person who sells, exchanges, lease purchases, or offers for sale, exchange, or lease purchase a used HUD-Code manufactured home manufactured after June 15, 1976, that does not have a HUD label affixed, or a used mobile home manufactured prior to June 15, 1976, that does not have a Texas Seal affixed shall file an application to the department for a Texas Seal. The application shall be accompanied by the seal fee of $35 per section made payable to the department.

(d) [(e)] Monitoring Fee: There is a fee, as required by HUD, to be paid by each manufacturer in this state for each HUD-Code manufactured home produced. The monitoring inspection fee is established by the secretary of HUD, (pursuant to 24 CFR §3282.307) who shall distribute the fees collected from all manufacturers among the approved and conditionally approved states based on the number of new homes whose first location after leaving the manufacturing plant is on the premises of distributor, retailer, or purchaser in that state, and the extent of participation of the state in the joint monitoring program established under the National Manufactured Housing Construction and Safety Standards Act of 1974.

(e) [(f)] Homeowner's Temporary Installer's License: There is a fee of $100 for the issuance of a homeowner's temporary installer's license, which shall also include the cost of the installation inspection. The fee shall be made payable to the department.

(f) [(g)] Education Fee: Each attendee at the course of instruction in the law and consumer protection regulations for license applicants shall be assessed a fee of $250. If a manufacturer requests the training be performed at his or her facility, the manufacturer shall reimburse the department for the actual costs of the training session (educational fee plus actual cost of travel).

(g) Fees for department-provided Continuing Education: There is a fee of $100 for attending eight hours of continuing education provided by the department.

(h) Habitability Inspection:

(1) There is a fee of $150 for the inspection of a manufactured home which is to be designated for residential use[titled for use as a residence] after having[the title has] been previously designated[canceled] for business use [or to become real estate]. The purpose of the inspection is to determine if the home is habitable as defined by §1201.453[§8] of the Standards Act. The fee must accompany a written request for inspection and must be submitted either prior to or in connection with the submission of an Application for Statement of Ownership and Location. [The fee shall accompany a Form A to apply for reinstatement of the title along with those documents set forth in §80.207 of this title (relating to Reinstatement of Canceled Documents of Title). The person requesting the inspection for the use change of a manufactured home shall be charged for mileage and per diem incurred by department personnel traveling to and from the location of the manufactured home. The inspector shall advise the consumer of the charges incurred and no title shall be issued until all fees have been paid.]

(2) There is a fee of $200 for the plan review and inspection of a salvaged manufactured home which is to be rebuilt. The purpose of the inspection is to determine if the home is habitable so that it may be designated for residential use. [for reinstatement of the title. The fee shall accompany a written request for the inspection. The rebuilder shall also be charged for mileage and per diem incurred by department personnel traveling to and from the location of the home. See §80.66 of this title (relating to Rebuilding or Repairing a "Salvaged" Manufactured Home). The inspector shall advise the rebuilder of the charges incurred and no title shall be issued until all fees have been paid.]

(A) The fee and required notification shall be submitted in accordance with §80.66 of this title (relating to Rebuilding or Repairing a "Salvaged" Manufactured Home).

(B) The rebuilder shall also be charged for mileage and per diem incurred by department personnel traveling to and from the location of the home.

(C) The inspector shall advise the rebuilder of the charges incurred, and no Statement of Ownership and Location shall be issued until all fees have been paid.

(i) Consumer Complaint Inspection:

(1) There is a fee of $150 for the initial inspection of a consumer's home in accordance with a consumer complaint when requested by a license holder or party other than a consumer. The fee shall accompany a written request for the inspection.

(2) There is a fee of $150 for the reinspection of a consumer's home. The fee shall be paid by the party deemed responsible by the department.

(j) Fees Relating to Statements of Ownership and Location. Except as provided herein, all processing fees shall be submitted in the form of a cashier's check or money order payable to the Texas Department of Housing and Community Affairs or TDHCA. The fee shall accompany the required documents forwarded to the Manufactured Housing Division of the department at its principal office in Austin. [Titles: Fees relating to titles and title transactions are set forth in §80.202 of this title (relating to Fees for Title Documents).]

(1) A fee of $55 will be required for the issuance of a Statement of Ownership and Location;

(2) A fee of $1.50 will be required for certified copies requested other than one certified copy of a Statement of Ownership and Location sent to the owner and one that is sent to the lienholder;

(3) There shall be a fee of $55 for Quick Processing Service in addition to the $55 processing fee for each application for Statement of Ownership and Location.

(A) Quick Processing Service shall be defined as the processing of an Application for Statement of Ownership and Location within three (3) business days from the day the complete application is received in the Manufactured Housing Division. The department will refund the Quick Processing Service fee if the completed application is not processed within the required time.

(B) If an applicant desires Quick Processing, the Quick Processing form provided in §80.260 of this title (relating to Required and Optional Forms) must be completed and attached to the front of the application for the application to be deemed complete.

(C) If the Quick Processing form is missing or incomplete or if any other necessary documents or fees are deficient, any delays in processing caused by such will not entitle the payer to a refund of the Quick Processing fee or any other required processing fee.

(D) If Quick Processing is requested but the Quick Processing fee is not paid, the application will receive regular processing.

(E) All Quick Processing applications must be submitted by overnight service or delivered in-person.

(F) If Quick Processing is not completed within three (3) business days, as required, the Quick Processing fee only will be refunded.

(G) All Statement of Ownership and Locations will be sent via regular mail unless a pre-paid overnight envelope is provided.

(4) If a correction of a document is required as a result of a mistake by the department, the issuance of a new document shall not require a fee. However, if the error was not made by the department, a request for correction of the error must be made on a completed Application for Statement of Ownership and Location and submitted to the department along with the required fee of $55 and any necessary supporting documentation.

(5) All persons licensed with the department as a manufacturer, retailer, broker, or installer may submit company or business firm checks in payment of any fee described herein. All state or federally chartered banks, savings banks or savings institutions and all commercial lenders or mortgage bankers who extend credit for the retail purchase of manufactured homes may also pay any fees with company or business firm checks at the discretion of the department. All checks shall be made payable to the Texas Department of Housing and Community Affairs or TDHCA.

(6) When multiple applications are submitted, the Form M provided in §80.260 of this title (relating to Required and Optional Forms) must be completed and attached to the front of the applications to identify each application and reconcile the fee for each application with the total amount of the payment.

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

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

TRD-200500650
Timothy K. Irvine
Executive Director, Manufactured Housing Division
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: March 27, 2005
For further information, please call: (512) 475-2206

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SUBCHAPTER D. STANDARDS AND REQUIREMENTS

10 TAC §§80.53 - 80.59, 80.62, 80.64, 80.66

The new and amended sections are proposed under the Texas Manufactured Housing Standards Act, Occupations Code, Subtitle C, Chapter 1200, §1201.052, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.603, which authorizes the director to adopt rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

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

§80.53. Requirements for Manufacturer's Designs and Installation Instructions [~~Design Requirements~~].

(a) With each new home, the manufacturer shall provide printed instructions which at a minimum must: [~~Each new manufactured home shall be designed and constructed as a completely integrated structure capable of sustaining the design load requirements of the FMHCSS and shall be capable of transmitting the loads to anchoring systems without causing an unsafe deformation or an abnormal internal movement of the structure or its structural parts.~~]

(1) specify the location, orientation and required capacity of stabilizing components on which the design is based;

(2) be filed with the department;

(3) be approved by the manufacturer's DAPIA; and

(4) contain DAPIA approval stamps, engineer or architect approval stamps, and the installation manual effective date on each page of the installation instructions or on the cover pages of bound installation manuals, unless an equivalent method of authentication is used for electronically filed documents.

(b) A manufacturer may file an appendix to the state's generic standards as a part of the manufacturer's DAPIA-approved installation instructions if the design of one or more of its homes requires a change in the generic standards to protect the structural integrity of the home. The appendix shall specify which provision of the generic standards is being changed and clearly set forth in detail the change that is necessary. Any such appendix that is filed with the department shall be incorporated under §80.59 of this title (relating to Exception to Generic Installation Standards) as part of the state's generic standards. [~~Each new manufactured home shall have provisions for anchoring systems which, when properly designed and installed, will resist overturning and lateral movement of the manufactured home up to the respective design loads.~~]

(c) At least thirty (30) calendar days prior to the effective date of any change, modification, or update to the manufacturer's installation instructions or any appendix, the manufacturer shall file such change, modification, or update with the department and mail a copy(s) to all the manufacturer's retailers. [~~The provisions of this section shall be followed and the support and anchoring systems shall be designed by a licensed professional engineer or architect.~~]

(d) The manufacturer shall file with the department additional copies of manufacturer's installation instructions for each model in the number specified by the department. If no number is specified, one copy of each such set of instructions will suffice. [~~The manufacturer shall design homes to make provisions for the necessary support and anchoring systems, but is not required to provide the anchoring equipment. Printed installation instructions for support and anchoring systems for each model shall be filed with the department as required by the department. When the manufacturer's installation instructions provide for the main frame structure to be used as the point for connection to diagonal ties, no specific connecting devices need to be provided on the frame. Ties shall be designed and installed to prevent self disconnection when the ties are slack. For example, open end hooks shall have set screws or other mechanisms to prevent disconnection when there is slack in the strapping.~~]

(e) The department will default to the generic standards, if discrepancies exist in the manufacturer's instructions. [~~The manufacturer shall provide printed instructions with each new home specifying the location, orientation and required capacity of stabilizing components on which the design is based. The installer must use stabilizing~~

components that have the required capacity and install them according to the anchor or stabilizing component manufacturer's current installation instructions. When soil auger anchor shafts are not installed in-line with the diagonal frame ties or the combined loads of two ties, approved stabilizer plates, or other approved methods, must be used in accordance with the installation instructions for the soil auger anchors and stabilizer plates. If a difficult soil, such as mixed soil and rock or caliche (heavily weathered limestone) that is not solid rock, exists at the homesite, the installer may install a home in accordance with the generic standards and §80.55(d)(4) of this title (relating to Anchoring Systems).]

[(f) The minimum number of ties required per side shall be sufficient to resist the wind load stated in the FMHCSS §3280.305(c).]

§80.54. Requirements [Standards] for the Installation of Manufactured Homes.

(a) When they are installed, all [All] manufactured homes shall be installed by a licensed installer to resist overturning and lateral movement of the home, and the installation must be completed in accordance with instructions appropriate for the Wind Zone where the home is to be installed as per one of the following:

(1) the home manufacturer's DAPIA-approved installation instructions;

(2) the state's generic standards set forth in §§80.55, 80.56, 80.57, 80.58 and their appendix in §80.59 of this title[this section, §80.55 of this title (relating to Anchoring Systems), §80.56 of this title (relating to Multi-Section Connection Standards), and modified by any appendix filed in accordance with §80.51(a)(2) of this title (relating to Manufactured Home Installation Requirements)];

(3) the instructions for a stabilization system registered with the department in accordance with §80.62 of this title (relating to Registration of Stabilizing Components and Systems); or [a custom designed stabilization system;]

(4) the instructions for a special stabilization system which; [a stabilization system pre-approved by the department; or]

(A) may or may not be a permanent foundation;

(B) is for a particular manufactured home or an identified class of manufactured homes to be installed at a particular area with similar soil properties according to county soil survey or other geotechnical reports; and

(C) is either:

(i) a pre-existing foundation for which a professional engineer or architect licensed in Texas has issued written approval for the installation of a particular home, and the written approval shall be submitted to the department with the installation report; or

(ii) installed in accordance with a custom designed stabilization system drawing that is stamped by a Texas licensed professional engineer or architect.

(I) A copy of the stabilization system drawing must be forwarded to the department along with the installation report.

(II) If the bottoms of the footings or piers are embedded more than 24 inches below the finished natural grade or engineered fill, it must be reported on the Permanent Foundation Report form and sent to the department at least ten (10) business days prior to the date of construction, along with the required fee.

[(5) on a permanent foundation.]

(b) When a home is installed on a stabilization system registered with the department or a special stabilization system, the installer must follow the home manufacturer's DAPIA-approved installation instructions for any aspect of the installation that is not covered by the system's installation instructions or drawings.

(c) The installer must use stabilizing components that have the required capacity and install them according to the anchor or stabilizing component manufacturer's current installation instructions. All stabilizing components must be resistant to all effects of weathering including that encountered along the Texas gulf coast. Nonconcrete stabilizing components and systems for use within 1500 feet of the coastline shall be specifically certified for this use. Preservation treated (PT) wood components shall conform to the applicable standards issued by the American Wood Preserver's Association and referenced by the latest edition of the International Residential Code.

(d) [(b)] Site Preparation Responsibilities and Requirements:

(1) The purchaser of a manufactured home, new or used, is responsible for the proper preparation of the site where the manufactured home will be installed except as set forth in §80.57 of this title (relating to Generic Standards for Moisture and Ground Vapor Controls) [subsection (g) of this section]:

(A) In the case of a manufactured home that is to be installed in a manufactured home rental community (as defined in Local Government Code §232.007), the purchaser may not have the ability to control the preparation of the site. Therefore, the purchaser should confirm with the person who owns, leases, or manages the rental community that the site has been properly prepared as required by Property Code, §94.151.

(B) When a manufactured home is sold already installed it is not possible for the purchaser to prepare the site. Therefore, it is the responsibility of the seller, if the seller is a licensed retailer, to ensure that the site has been properly prepared.

(2) Whenever a licensed retailer intends to sell a manufactured home, regardless of where it is located or is to be located, the retailer is required to give the proposed purchaser the Site Preparation Notice, for signature by the consumer, in the form set forth in §80.260(a)(1) of this title (relating to Required and Optional Forms)[subsection (g) of this section] PRIOR to the execution of any binding sales agreement.

(3) Whenever a licensed installer proposes to move a used manufactured home, the installer is required to give the proposed purchaser the Site Preparation Notice, for signature by the consumer, in the form set forth in §80.260(a)(1) of this title (relating to Required and Optional Forms) [subsection (g) of this section] PRIOR to entering into a binding agreement to move that home.

(e) [(c)] If the retailer or installer provides the materials for skirting or contracts for the installation of skirting, the retailer or installer is responsible for installing [the following: The retailer or installer shall install] any required moisture and ground vapor control measures in accordance with the home installation instructions, specifications of a registered [an approved] stabilization system, or the generic standards and shall provide for the proper cross ventilation of the crawl space. If the purchaser or homeowner contracts with a person other than the retailer or installer for the skirting, the purchaser or homeowner is responsible for installing the moisture and ground vapor control measures and for providing for the proper cross ventilation of the crawl space.

(f) [(d)] Clearance: If the manufactured home is installed according to the state's generic standards, a minimum clearance of 18 inches between the ground and the bottom of the floor joists must be

maintained. In addition, the installer shall be responsible for installing the home with sufficient clearance between the I-Beams and the ground so that after the crossover duct prescribed by the manufacturer is properly installed it will not be in contact with the ground. Refer to §80.56 of this title (relating to Generic Standards for Multi-Section Connections [~~Connection~~] Standards) for additional requirements for utility connections. It is strongly recommended that the installer not install the home unless all debris, sod, tree stumps and other organic materials are removed from all areas where footings are to be located.

(g) [~~(e)~~] Drainage: The purchaser is responsible for proper site drainage where the manufactured home (new or used) is to be installed unless the home is installed in a rental community. It is strongly recommended that the installer not install the home unless the exterior grade is sloped away from the home or another generally accepted [~~approved~~] method to prohibit surface runoff from draining under the home is provided. Drainage prevents water build-up under the home. Water build-up may cause shifting or settling of the foundation, dampness in the home, damage to siding and bottom board, buckling of walls and floors, delamination of floor decking and problems with the operation of windows and doors.

~~[(f) Generic Moisture and Ground Vapor Controls:]~~

~~[(1) If the manufactured home is installed according to the state's generic standards and the space under the home is to be enclosed with skirting and/or other materials provided by the retailer and/or installer, an access opening not less than 18 inches in any dimension and not less than three square feet in area shall be provided by the installer. The access opening shall be located so that any water supply and sewer drain connections located under the home are accessible for inspections. If a clothes dryer exhaust duct, air conditioning condensation drain, or combustion air inlet is present, the installer must pass it through the skirting to the outside. In addition, crawl space ventilation must be provided at the rate of minimum 1 square foot of net free area, for every 150 square feet of floor area. At least six openings shall be provided, one at each end of the home and two on each side of the home. The openings shall be screened or otherwise covered to prevent entrance of rodents (note: screening will reduce net free area). For example, a 16'x76' single section home has 1216 square feet of floor area. This 1216 square feet divided by 150 equals 8.1 square feet or 1166 square inches of net free area crawl space ventilation.]~~

~~[(2) The retailer and/or installer must notify the purchaser that moisture and ground vapor control measures are required if the space under the home is to be enclosed. Water vapor build-up may cause dampness in the home, damage to siding and bottom board, buckling of walls and floors, delamination of floor decking and problems with the operation of windows and doors. The generic ground vapor control measure shall consist of a ground vapor retarder that is minimum 6 mil polyethylene sheeting or its equivalent, installed so that the area under the home is covered with sheeting and overlapped approximately 12 inches at all joints. Any tear larger than 18 inches long or wide must be taped using a material appropriate for the sheeting used. The laps should be weighted down to prevent movement. Any small tears and/or voids around construction (footings, anchor heads, etc.) are acceptable.]~~

~~[(g) Notice: The site preparation notice to be given to the consumer shall be as follows:]~~
~~[Figure: 10 TAC §80.54(g)]~~

~~[(h) Footers and Piers:]~~

~~[(1) Proper sizing of footings depends on the load carrying capacity of both the piers and the soil. To determine the load bearing capacity of the soil, the installer may use any of the following methods:]~~

~~[(A) Pocket penetrometer:]~~

~~*[(i)* Test a typical area adjacent to or within 10 feet of the perimeter of the unit;]~~

~~*[(ii)* Dig down to undisturbed soil. This should be a minimum of 1 square foot surface area; and]~~

~~*[(iii)* Using the pocket penetrometer take seven (7) readings, eliminate the highest and the lowest and average the remaining five (5).]~~

~~[(B) Soil surveys from the U.S. Department of Agriculture;]~~

~~[(C) Values from tables of allowable or presumptive bearing capacities given in local building codes. Such tables are commonly available from the local authority having jurisdiction; or]~~

~~[(D) Any other test data from soil analysis reports.]~~

~~[(2) The footing must be placed on firm, undisturbed soil, or fill compacted to at least 90% of its maximum relative density. Installation on loose, noncompacted fill may invalidate the home's limited warranty.]~~

~~[(3) Footer configurations:]~~
~~[Figure: 10 TAC §80.54(h)(3)]~~

~~[(4) Footer sizing and capacities: The following tables represent maximum loads and spacings based on footer size and soil bearing capacity. Other approved footers may be used if equal or greater in bearing area than those footer sizes tabulated.]~~
~~[Figure: 10 TAC §80.54(h)(4)]~~

~~[(5) Piers and pier spacings: One of the most important parts of home installation is proper pier installation. Incorrect size, location or spacing of piers may cause serious structural damage to the home. Spacing and location of piers shall be in accordance with the tables listed in these standards (Table 3B, without perimeter piers; Table 3C, with perimeter piers).]~~

~~[(A) Spacing shall be as even as practicable along each main I-Beam. Pier spacing may exceed tabulated values up to 30% so long as the total pier count remains the same. End piers are to be located within 24 inches of the end of the main frame.]~~

~~[(B) Piers shall extend at least 6 inches from the centerline of the I-Beam or be designed to prevent dislodgment due to horizontal movement of less than 4 inches.]~~

~~[(C) Load bearing supports or devices shall be listed by an independent testing laboratory, nationally recognized inspection agency, or other nationally recognized organization and approved by the department. Engineers or architects licensed in Texas may design load bearing supports or devices for a single installation. A copy of the design for this particular home and site shall be provided to the department before the home is installed, but department approval is not required.]~~

~~[(D) Sidewall openings greater than 4 feet shall have perimeter piers located under each side of the opening, i.e. patio doors, recessed porches/entries, bay windows and porch posts. Perimeter piers for openings are not required for endwalls.]~~

~~[(6) Pier design: Piers shall be constructed per the following details:]~~
~~[Figure: 10 TAC §80.54(h)(6)]~~

~~[(A) Shimming (if needed): Hardwood shims are commonly used as a means for leveling the home and filling any voids left between the bottom flange of the I-Beam and the top of the pier cap.~~

~~Wedge shaped shims must be installed from both sides of the I-Beam to provide a level bearing surface. The allowable height must not exceed 1 inch. Shims shall be a minimum of 3 inches wide and 6 inches long. Over shimming should be avoided.]~~

~~[(B) Table 3B - Pier loads (pounds) at tabulated spacings WITHOUT perimeter supports:]~~
~~[Figure: 10 TAC §80.54(h)(6)(B)]~~

~~[(C) Table 3C - Pier loads (pounds) at tabulated spacings WITH perimeter supports:]~~
~~[Figure: 10 TAC §80.54(h)(6)(C)]~~

~~[(7) Typical multi-section pier layout:]~~
~~[Figure: 10 TAC §80.54(h)(7)]~~

~~[(8) Typical single section pier layout:]~~
~~[Figure: 10 TAC §80.54(h)(8)]~~

~~[(9) Multi-section units mating line column supports:]~~

~~[(A) On multi-section units, openings larger than 4 feet must have piers installed at each end of the opening. To determine the pier loads, refer to Table 3D in subparagraph (D) of this paragraph.]~~
~~[Figure: 10 TAC §80.54(h)(9)(A)]~~

~~[(B) Column loads for each section may be combined when the columns are opposite each other. The footer must be sized for the combined loading.]~~

~~[(C) Additional piers are required under marriage walls (see wall between column #3 and #4 in the Marriage Line Elevation drawing in subparagraph (A) of this paragraph). The maximum spacing is the same as the spacing at the main I-Beams, without perimeter piers, and one half the spacing of the perimeter piers, with perimeter piers installed.]~~

~~[(D) Table 3D: Mating line column loads (pounds).]~~
~~[Figure: 10 TAC §80.54(h)(9)(D)]~~

§80.55. Generic Standards for Anchoring Systems.

(a) General Requirements: For units built on or after September 1, 1997, the installer must verify that the unit is designed for the Wind Zone in which it is to be installed and must follow all applicable installation instructions for that Wind Zone as set forth herein. See figure in §80.240(b)(1) of this title for counties located in Wind Zone II. Note: A Wind Zone I unit, built on or after September 1, 1997, may not be installed in a Wind Zone II area. However, a Wind Zone II unit may be installed in a Wind Zone I area.
[~~Figure: 10 TAC §80.55(a)~~]

(b) Material Specifications:

(1) Strapping shall be Type 1, Finish B, Grade 1 steel strapping, 1.25 inches wide and 0.035 inches in thickness, certified by a licensed professional engineer or architect as conforming with the American Society for Testing and Materials (ASTM) Standard Specification D3953 91, Standard Specification for Strapping, Flat Steel, and Seals. [~~Tie materials shall be capable of resisting an allowable working load of 3,150 pounds with no more than 2% elongating and shall withstand a 50% overload (4,725 pounds total). Ties shall have a resistance to weather deterioration at least equivalent to that provided by coating of zinc on steel of not less than 0.30 ounces per square foot on each side of the surface coated (0.0005 inches thick), as determined by ASTM Standards Methods of Test for Weight of Coating on Zinc-coated (galvanized) Iron or Steel Articles (ASTM A 90-81). Slit or cut edges of zinc-coated steel strapping are not required to be zinc coated.~~] Strapping shall be marked at least every five feet with the marking described by the certifying engineer or architect.

(2) Tie materials shall be capable of resisting an allowable working load of 3,150 pounds with no more than 2% elongating and shall withstand a 50% overload (4,725 pounds total). Ties shall have a resistance to weather deterioration at least equivalent to that provided by coating of zinc on steel of not less than 0.30 ounces per square foot on each side of the surface coated (0.0005 inches thick), as determined by ASTM Standards Methods of Test for Weight of Coating on Zinc-coated (galvanized) Iron or Steel Articles (ASTM A 90-81). Slit or cut edges of zinc-coated steel strapping are not required to be zinc coated. Ties shall be designed and installed to prevent self disconnection when the ties are slack. For example, open end hooks shall have set screws or other mechanisms to prevent disconnection when there is slack in the strapping. [~~All anchoring components must be approved by the department. Installers shall only use approved anchoring components. An installer may obtain a list of approved anchoring components from the department, anchor manufacturer and/or supplier of anchoring components.~~]

(3) Anchor spacing ONLY applies to units with roof pitch of 20 degrees or less. For anything over 20 degrees, it must be designed by a professional engineer or architect.

(c) Anchors shall be installed per the figures in §80.240(b)(2) and (3) of this title. [~~following details:~~]

(1) in direction of load, see the Anchor Installation figure in §80.240(b)(2) of this title.
[~~Figure: 10 TAC §80.55(c)(1)~~]

(2) installed against direction of load (vertical and/or angled), a stabilizer plate must be installed. See Placement of Stabilizing Plates figure in §80.240(b)(3) of this title.
[~~Figure: 10 TAC §80.55(c)(2)~~]

(d) WIND ZONE I Installation:

(1) See the Wind Zone I Installation figure in §80.240(b)(4) of this title for the typical [~~Typical~~] anchor layout, single and multi-section units (WIND ZONE I ONLY).[~~:~~]
[~~Figure: 10 TAC §80.55(d)(1)~~]

(2) [~~Table 4A:~~]The [~~following~~] table in §80.240(a)(1) of this title describes the maximum spacing for diagonal ties along each side of the unit.
[~~Figure: 10 TAC §80.55(d)(2)~~]

(3) The table in §80.240(a)(2) of this title describes the minimum [~~Table 4B: Minimum~~] number of diagonal ties required per side, per unit length. Table based on 2 feet inset of anchors at each end.
[~~Figure: 10 TAC §80.55(d)(3)~~]

(4) When [~~approved~~] auger anchors cannot be inserted into a difficult soil after moistening, such as mixed soil and rock or caliche (heavily weathered limestone) that is not solid rock, [~~approved~~] cross drive rock anchors may be used in accordance with the values and notes for the table in §80.240(a)(1) of this title [~~Table 4A in paragraph (2) of this subsection~~] modified as follows:

(A) Since the ultimate anchor pull out in the difficult soil will be reduced, the maximum spacing for diagonal ties per side is one half the spacing allowed by the table in §80.240(a)(1) of this title [~~Table 4A~~] which will require adding one additional cross drive rock anchor for each anchor specified for the sides and ends;

(B) The rods of the [~~approved~~] cross drive rock anchors must be fully inserted, have at least 24 inches of the rod lengths embedded in the difficult soil, and be restrained from horizontal movement, when feasible, by a stabilizer plate between the rods and the home; and

(C) Each cross drive rock anchor is connected to one diagonal tie and is not connected to a vertical tie.

(e) WIND ZONE II Installation:

(1) In place of the requirements as shown in subsection (d) of this section, units designed for Wind Zone I and built prior to September 1, 1997, and units designed for Wind Zone II and built prior to July 13, 1994, require diagonal ties as set forth in the table in §80.240(a)(3) of this title [~~Table 5A~~] when these units are installed in Wind Zone II. See also §1201.256 of the Standards Act [~~§80.50 of this title (relating to Wind Zone Regulations)~~]. Items not specifically addressed in this section are the same as for Wind Zone I installations. [~~Figure: 10 TAC §80.55(e)(1)~~]

(2) Units built to Wind Zone II on or after July 13, 1994.

(A) Units built to Wind Zone II on or after July 13, 1994, should have either built-in, or provisions for connecting, vertical ties along the sidewall(s) of each unit(s). A diagonal tie must be installed at each vertical tie location (except for designated shearwall tie). Built-in vertical ties shall be connected to anchors. If there are brackets or other provisions for connecting vertical ties, vertical ties shall be added at the brackets or provisions and connected to anchors.

(B) Only factory installed vertical ties may be closer than 4 feet from each other.

(C) Where tie locations are clearly marked as a shear wall strap, a perimeter pier must be installed at that location. [~~See subsection §80.54(d) of this title (relating to Standards for the Installation of Manufactured Homes) for perimeter pier construction.~~] Diagonal tie is not required.

(D) Where the vertical tie spacing exceeds 8'-0" on-center (see also note 6 in the table in §80.240(a)(3) of this title [~~table 5A~~] for exception), the anchoring system must be approved by the home manufacturer's installation manual, or designed by a professional engineer or architect licensed in the state of Texas.

(E) Where pier heights exceed 36 inches in height, the diagonal strap shall be connected to the opposite I-Beam [~~(see Figure 1)~~]. See the Diagonal Strap Placement for Piers Exceeding 36 inches in Height figure in §80.240(b)(5) of this title.
[~~Figure: 10 TAC §80.55(e)(2)(E)~~]

(F) Where vertical tie locations are not easily discernable, the vertical ties may be connected to the main I-Beam rails and the anchor installed directly below that connection point. The diagonal tie must be connected to the opposite main I-Beam. In no case shall the distance between those ties exceed 5'-4" on-center [~~(see Figure 2)~~]. See the Diagonal and Vertical Ties figure in §80.240(b)(6) of this title.
[~~Figure: 10 TAC §80.55(e)(2)(F)~~]

(3) Multi-section centerline anchoring requirements (Wind Zone II only):

(A) Centerline anchor ties are required for ALL Wind Zone II installations, regardless of the date the unit was manufactured, when installation occurs on or after the effective date of these rules.

(B) Factory installed centerline vertical ties, brackets, buckles or any other connecting devices must be connected to a ground anchor. No additional anchors as described in subparagraph (D) of this paragraph are required.

(C) To avoid obstructions and/or piers and footers, the anchor may be offset up to 12 inches perpendicular to the centerline.

(D) Where factory preparations do not exist, install anchors and angle iron brackets at each side of mating line openings wider than 48 inches per the table in §80.240(a)(4) of this title [~~table 5B (see Figure 5B for detail)~~]. See the Typical Installation Details figure in §80.240(b)(7) of this title for detail.

(i) Where equal spans exist opposite each other (i.e., each section), a double bracket assembly may be used. The maximum opening is per the table in §80.240(a)(4) of this title [~~table 5B~~]. Total uplift load may not exceed the anchor and/or strap capacity (i.e., 3150 pounds).

(ii) The angle iron bracket is minimum 11 gauge. The holes for the lag screws are a maximum of 4 inches apart.

(iii) Lag screws/bolts are minimum 5/16 x 3 inches, full thread.

(4) For openings separated by a wall or post 16 inches or less in width, the opening span is the total of the spans on each side of the wall/post.

(f) Bracket Installation.

(1) See the table in §80.240(a)(4) of this title concerning the maximum centerline [~~Table 5B: Maximum Centerline~~] wall opening for column uplift brackets (see §80.240(b)(7) of this title [~~figure 5B~~] for typical installation details).
[~~Figure: 10 TAC §80.55(f)(1)~~]

(2) Section 80.240(b)(7) of this title [~~Figure 5B~~] shows both single and double bracket assemblies for illustration purposes only. Use a single bracket for openings which exist on one section only. Use double bracket where openings are opposite each other on two sections of the home.

(3) When only one bracket assembly is required, it may be installed on either side of the column/opening stud(s), but no more than 12 inches from the column or opening stud(s). See the Anchor Span figure in §80.240(b)(8) of this title for examples. [~~(See examples in figure 5C.)~~]

(4) When two bracket assemblies are required, they must be installed on each side of the column/opening stud(s), but no more than 12 inches from the column/opening stud(s) [~~(see examples in figure 5C)~~], and they must be angled away from each other a minimum of 12 inches. See the Anchor Span figure in §80.240(b)(8) of this title for examples.
[~~Figure: 10 TAC §80.55(f)(4)~~]

(5) Example: A double section unit with each section being 14 feet wide;

(A) Span "A" is 18'-0", matching span both sections;

(B) Span "B" is 14'-8", matching span both sections;

(C) Span "C" is 6'-8", matching span both sections; and

(D) Span "D" is 13'-4", one side only. (See the Anchor Span figure in §80.240(b)(8) of this title.)
[~~Figure: 10 TAC §80.55(f)(5)(D)~~]

(6) Longitudinal ties:

(A) Longitudinal ties are required for ALL wind zone installations, regardless of the date of manufacture, when installation occurs after the effective date of these rules.

(B) Longitudinal ties are designed to prevent lateral movement along the length of the home.

(C) When conventional anchors and straps are used, install the required number of ties per the table in §80.240(a)(1) of this title [~~Table 4A~~] or the table in §80.240(a)(3) of this title [~~Table 5A~~] as

appropriate. The strap(s) may be connected or wrapped around front or rear chassis header members, around existing cross members or spring hangers. A strap must be within 3 inches of where the cross member attaches to the main I-beam. Alternatively, brackets to receive the strap(s) may be welded to the bottom flange of the main I-beams. The location of the connection points along the length of the I-beams are not critical, as long as the number of longitudinal ties required for each end of each home section are installed with their pull in opposite directions. No two anchors shall be within 4 ft of each other. No two ties shall be attached to the same structural member of the home, other than a main longitudinal frame member or a front or rear chassis header member.

(D) Anchors require stabilizer plates when the anchor shaft is not in line with strap (plus or minus 10 degrees).
[~~Figure: 10 TAC §80.55(f)(6)(D)~~]

§80.56. Generic Standards for Multi-Section Connections ~~[Connection]~~ Standards.

(a) Air infiltration and water vapor migration at mating surfaces: Before positioning additional sections, the mating line surfaces along the floor, endwall and ceiling, require material or procedures to limit air infiltration and water vapor migration. See the Mating Line Surfaces figure in §80.240(b)(11) of this title. The following are acceptable materials and/or procedures:

(1) Expanding Foam: Foam may be used along surfaces that are accessible after the units have been joined. Where mating line walls line up between sections, non-porous materials must be installed prior to joining the units.

(2) Caulking: Caulking may be used along surfaces that are accessible after the units have been joined. Where mating line walls line up between sections, non-porous materials must be installed prior to joining the units.

(3) Non-porous gasket installed along the perimeter of all mating lines.

(4) Insulation, carpet, carpet pad or other porous materials are not acceptable.
[~~Figure: 10 TAC §80.56(a)(4)~~]

(b) Floor Connections:

(1) Gaps between floors up to 1-1/2 inches maximum which do not extend the full length of the floor may be filled with lumber, plywood or other suitable shimming materials. Fastener lengths in shimmed areas may need to be increased to provide minimum 1-1/4 inches penetration into opposite floor rim joist.

(2) Gaps less than 1/2 inch width need not be shimmed.

(3) The floor assemblies of multi-section units must be fastened together. Fastener options and maximum spacings are listed in the floor connections table in §80.240(a)(5) of this title [~~table 6A in paragraph (5) of this subsection~~].

(4) Any tears or damages to the bottom board due to fastener installation must be repaired.

(5) See the floor connections table in §80.240(a)(5) of this title. [~~Table 6A: Floor connections - Wind Zone I and II:~~]
[~~Figure: 10 TAC §80.56(b)(5)~~]

(c) Endwall Connections:

(1) Endwalls must be fastened together at the mating line with minimum #8x4 inch wood screws or 16d nails at maximum 8 inches on-center or 12 inches on-center maximum for 5/16 lags; toed or driven straight; and

(2) Fastener length may need to be adjusted for gaps and/or toeing, to provide minimum 1-1/2 inch penetration into opposite endwall stud.
[~~Figure: 10 TAC §80.56(c)(2)~~]

(d) Roof Connection: (Note: Fasteners must not be used to pull the sections together.)

(1) Roof shall be connected with the fasteners and spacings specified in the table in §80.240(a)(6) of this title [~~Table 56(d)(3)~~].

(2) Gaps between the roof sections (at ridge beam and/or open beam ledgers) of up to 1-1/2 inches wide maximum which do not extend the full length of the roof must be filled with lumber and/or plywood shims. Gaps up to 1/2 inch need not be shimmed. The fastener length used in the shimmed area may need to be increased to provide a minimum 1-1/4 inch penetration into the adjacent roof structural member.

(3) See the roof connections table in §80.240(a)(6) of this title. [~~Table 56(d)(3): Roof Connection - Fastener type and spacing:~~]
[~~Figure: 10 TAC §80.56(d)(3)~~]

(4) See the Roof Connection figure in §80.240(b)(14) of this title [~~Figure 56(d)(4)~~].
[~~Figure: 10 TAC §80.56(d)(4)~~]

(e) Exterior Roof Close Up (see the figure in §80.240(b)(15) of this title):

(1) Ensure that shingles are installed to edge of roof decking at peak. Follow nailing instructions on the shingle wrapper. Note: Wind Zone II (high wind) installations require additional fasteners.

(2) Before installing ridge cap shingles, a minimum 6 inch wide piece of 30 gauge galvanized flashing must be installed the length of the roof.

(3) When flashing is not continuous, lap individual pieces a minimum of 6 inches.

(4) Fasten flashing into roof sheathing with minimum 16 gauge staples with 1 inch crown or roofing nails of sufficient length to penetrate roof decking. Maximum fastener spacing is 6 inches on-center each roof section. Place fasteners a minimum of 3/4 inches along edge of flashing.

(5) Install ridge shingles directly on top of flashing.

(6) Check remainder of roof for any damaged or lose shingles, remove any shipping plastic or netting, wind deflectors, etc. Make sure to seal any fastener holes with roofing cement.
[~~Figure: 10 TAC §80.56(e)(6)~~]

(f) Exterior Endwall Close Up: Cut closure material to the shape and size required and secure in place, starting from the bottom up, *i.e.:* [~~i.e.:~~] bottom starter, vertical or horizontal siding, then roof overhang, soffit and fascia. All closure material should be fitted and sealed as required to protect the structure or interior from the elements.

(g) HVAC (heat/cooling) Duct Crossover (see the figure in §80.240(b)(16) of this title):

(1) Crossover duct must be listed for EXTERIOR use.

(2) Duct R-value shall be a minimum of R-4.

(3) The duct must be supported 48 inches on-center (maximum) and must not be allowed to touch the ground. Either strapping (minimum 1 inch wide), to hang the duct from the floor, or non-continuous pads to support it off the ground are acceptable.

(4) The duct to the collar or plenum connections must be secured with bands or straps designed [approved] for such use. Keep duct as straight as possible to avoid kinks or bends that may restrict the airflow. Extra length must be cut off.
[Figure: 10 TAC §80.56(g)(4)]

(h) Multi-Section Water Crossover Connection (see figure in §80.240(b)(17) of this title [(multi-sections only)]:

(1) If there is water service to other sections, connect the water supply crossover lines as shown in the applicable detail.
[Figure: 10 TAC §80.56(h)(1)]

(2) If the water crossover connection is not within the insulated floor envelopes, wrap the exposed water lines in insulation and secure with a good pressure sensitive tape or nonabrasive strap, or enclose the exposed portion with an insulated box.

(3) If water piping at the inlet is exposed, a heat tape should be installed to prevent freezing. A heat tape receptacle has been provided near the water inlet. When purchasing a heat tape, it must be listed for manufactured home use, and it must be installed per manufacturer's instructions.

(i) Drain, Waste and Vent System (DWV):

(1) Portions of the DWV system which are below the floor may not have been installed, to prevent damage to the piping during transport. Typically, the DWV layout is designed to terminate at a single connection point to connect to the on-site sewer system. For a new home where on-site DWV connections are not assembled per the manufacturer's instructions, the DWV system must be assembled in accordance with Part 3280 of the FMHCSS. See the Drain, Waste and Vent Floor Piping System figure in §80.240(b)(18) of this title.

(2) The following guidelines apply:

(A) All portions of the DWV system shall be installed to provide a minimum of 1/4 inch slope per foot, in the direction of the flow.

(B) Changes in direction from vertical to horizontal, and horizontal to horizontal, shall be made using long sweep elbows and/or tees.

(C) All drain piping shall be supported at intervals not to exceed 4 feet on-center. The support may be either blocking or strapping. When strapping is used, it should be nonabrasive.

(D) Piping must be assembled with the appropriate cleaners, primers and solvents (note: both ABS and PVC systems are common, but require different adhesives). Be sure to follow the instructions of the product used.

(E) A cleanout must be installed at the upper (most remote) end of the floor piping system (see diagrams in the Drain, Waste and Vent Floor Piping System figure in §80.240(b)(18) of this title [subparagraph (F) in this paragraph]).

[(F) Typical details:]
[Figure: 10 TAC §80.56(i)(2)(F)]

(j) Electrical Connections: Depending on the model and/or manufacturer of the home, electrical crossovers may be located in either the front end and/or rear end of the home. Check along mating line for other labeled access panels.

(1) Crossover connections may be one of the following:

(A) [approved] snap or plug-in type;

(B) junction boxes inside floor cavity (note: crossover wiring routed outside the floor cavity must be enclosed in conduit). If the boxes and/or covers are metal, they must be grounded by the use of the ground wire; or

(C) pigtail between receptacles/switches between sections (one circuit only).

(2) Chassis Bonding: Each chassis shall be bonded to the adjacent chassis with a solid or stranded, green insulated or bare, number 8 copper conductor. The conductor is connected to the steel chassis with a solderless lug. See the Chassis Bonding figure in §80.240(b)(19) of this title. *Alternate bonding: A 4 inch wide by 30 gauge continuous metal strap may be used as an alternate, when attached to the chassis members with two #8x 3/4 inch self tapping metal screws each end of the strap.* [Alternate bonding: A 4 inch wide by 30 gauge continuous metal strap may be used as an alternate, when attached to the chassis members with two #8x 3/4 inch self tapping metal screws each end of the strap.]
[Figure: 10 TAC §80.56(j)(2)]

(3) See the Electrical Crossover figure in §80.240(b)(20) of this title for typical crossover details.[:]
[Figure: 10 TAC §80.56(j)(3)]

(4) Shipped loose equipment:

(A) Electrical equipment such as ceiling fans, chandeliers, exterior lights, etc., which may have been shipped loose, must be installed in accordance with the adopted National Electric Code (NEC). Connect all corresponding color coded or otherwise marked conductors per the applicable sections of the NEC.

(B) Bonding strap removal: 240 volt appliances (range, dryer, etc.) shall have the bonding strap removed between the ground and the neutral conductors. Cords used to connect those appliances shall be four conductor, four prong.

(5) Electrical testing: At the time of installation, the following tests must be performed:

(A) All site installed or shipped loose fixtures shall be subjected to a polarity test to determine that the connections have been properly made.

(B) All grounding and bonding conductors installed or connected during the home installation shall be tested for continuity, and

(C) All electrical lights, equipment, ground fault circuit interrupters and appliances shall be subjected to an operational test to demonstrate that all equipment is connected and functioning properly.

(6) Main panel box feeder connection: The main panel box is wired with the grounding system separated from the neutral system (4-wire feeder). The grounding bus in the panel must be connected through a properly sized green colored insulated conductor to the service entrance equipment (meter base) located on or adjacent to the home. Refer to the [following] table in §80.240(a)(7) of this title for proper feeder conductor sizes.
[Figure: 10 TAC §80.56(j)(6)]

(k) Fuel Gas Piping Systems:

(1) Crossover Connections: All underfloor fuel gas pipe crossover connections shall be accessible and be made with the connectors supplied by the home manufacturer, or, if not available, with flexible connectors listed for exterior use and a listed quick disconnect (Method A), or a shut-off valve (Method B). When shut-off valve is used, it must be installed on the supply side of the gas piping system. The crossover connector must have a capacity rating (BTUH) of at least the total BTUH's of all appliances it serves.

(2) Testing: The fuel gas piping system shall be subjected to an air pressure test of no less than 6 ounces and no more than 8 ounces. While the gas piping system is pressurized with air, the appliance and crossover connections shall be tested for leakage with soapy water or bubble solution. This test is required of the person connecting the gas supply to the home, but may also be performed by the gas utility or supply company. See the Fuel Gas Pipe Crossover Connections figure in §80.240(b)(21) of this title.
[~~Figure: 10 TAC §80.56(k)(2)~~]

§80.57. Generic Standards for Moisture and Ground Vapor Controls.

(a) If the manufactured home is installed according to the state's generic standards and the space under the home is to be enclosed with skirting and/or other materials provided by the retailer and/or installer, an access opening not less than 18 inches in any dimension and not less than three square feet in area shall be provided by the installer. The access opening shall be located so that any water supply and sewer drain connections located under the home are accessible for inspections. If a clothes dryer exhaust duct, air conditioning condensation drain, or combustion air inlet is present, the installer must pass it through the skirting to the outside. In addition, crawl space ventilation must be provided at the rate of minimum 1 square foot of net free area, for every 150 square feet of floor area. At least six openings shall be provided, one at each end of the home and two on each side of the home. The openings shall be screened or otherwise covered to prevent entrance of rodents (note: screening will reduce net free area). For example, a 16'x76' single section home has 1216 square feet of floor area. This 1216 square feet divided by 150 equals 8.1 square feet or 1166 square inches of net free area crawl space ventilation.

(b) The retailer and/or installer must notify the purchaser that moisture and ground vapor control measures are required if the space under the home is to be enclosed. Water vapor build-up may cause dampness in the home, damage to siding and bottom board, buckling of walls and floors, delamination of floor decking and problems with the operation of windows and doors. The generic ground vapor control measure shall consist of a ground vapor retarder that is minimum 6 mil polyethylene sheeting or its equivalent, installed so that the area under the home is covered with sheeting and overlapped approximately 12 inches at all joints. Any tear larger than 18 inches long or wide must be taped using a material appropriate for the sheeting used. The laps should be weighted down to prevent movement. Any small tears and/or voids around construction (footings, anchor heads, etc.) are acceptable.

(c) Notice: The Site Preparation Notice form to be given to the consumer is located in §80.260(a)(1) of this title.

§80.58. Generic Standards for Footers and Piers.

(a) Proper sizing of footings depends on the load carrying capacity of both the piers and the soil. To determine the load bearing capacity of the soil, the installer may use any of the following methods:

(1) Pocket penetrometer:

(A) Test a typical area adjacent to or within 10 feet of the perimeter of the unit;

(B) Dig down to undisturbed soil. Each hole should be a minimum of 1 square foot surface area; and

(C) Using the pocket penetrometer take seven (7) readings, eliminate the highest and the lowest and average the remaining five (5).

(2) Soil surveys from the U.S. Department of Agriculture;

(3) Values from tables of allowable or presumptive bearing capacities given in local building codes. Such tables are commonly available from the local authority having jurisdiction; or

(4) Any other test data from soil analysis reports.

(b) The footing must be placed on firm, undisturbed soil, or fill compacted to at least 90% of its maximum relative density. Installation on loose, noncompacted fill may invalidate the home's limited warranty.

(c) See the Footer Configurations figure in §80.240(b)(22) of this title.

(d) Footer sizing and capacities: The Footer Capacities table in §80.240(a)(8) of this title represent maximum loads and spacings based on footer size and soil bearing capacity. Other footers may be used if equal or greater in bearing area than those footer sizes tabulated.

(e) Piers and pier spacings: One of the most important parts of home installation is proper pier installation. Incorrect size, location or spacing of piers may cause serious structural damage to the home. Spacing and location of piers shall be in accordance with the tables listed in §80.240(a)(9) and (10) of this title.

(1) Spacing shall be as even as practicable along each main I-Beam. Pier spacing may exceed tabulated values up to 30% so long as the total pier count remains the same. End piers are to be located within 24 inches of the end of the main frame.

(2) Piers shall extend at least 6 inches from the centerline of the I-Beam or be designed to prevent dislodgment due to horizontal movement of less than 4 inches.

(3) Load bearing supports or devices shall be registered with the department in accordance with §80.62 of this title (relating to Registration of Stabilizing Components and Systems).

(4) Sidewall openings greater than 4 feet shall have perimeter piers located under each side of the opening, i.e. patio doors, recessed porches/entries, bay windows and porch posts. Perimeter piers for openings are not required for endwalls.

(f) Pier design: Piers shall be constructed per the details in the Pier Design figure in §80.240(b)(23) of this title.

(1) Shimming (if needed): Shims are commonly used as a means for leveling the home and filling any voids left between the bottom flange of the I-Beam and the top of the pier cap. Wedge shaped shims must be installed from both sides of the I-Beam to provide a level bearing surface. The allowable height must not exceed 1 inch. Shims shall be a minimum of 3 inches wide and 6 inches long.

(2) See the table in §80.240(a)(9) of this title for the pier loads (pounds) at tabulated spacings WITHOUT perimeter supports.

(3) See the table in §80.240(a)(10) of this title for pier loads (pounds) at tabulated spacings WITH perimeter supports and the Perimeter Pier Front and Side View figure in §80.240(b)(24) of this title.

(g) See the Typical Multi-Section Pier Layout figure in §80.240(b)(25) of this title.

(h) See the Typical Single Section Pier Layout figure in §80.240(b)(26) of this title.

(i) Multi-section units mating line column supports:

(1) On multi-section units, openings larger than 4 feet must have piers installed at each end of the opening. To determine the pier loads, refer to the table in §80.240(a)(11) of this title. See

the Determining Column Load and Marriage Line Elevation figure in §80.240(b)(27) of this title.

(2) Column loads for each section may be combined when the columns are opposite each other. The footer must be sized for the combined loading.

(3) Additional piers are required under marriage walls (see wall between column #3 and #4 in the Marriage Line Elevation figure in §80.240(b)(27) of this title. The maximum spacing is the same as the spacing at the main I-Beams, without perimeter piers, and one half the spacing of the perimeter piers, with perimeter piers installed.

(4) See the table in §80.240(a)(11) of this title for the mating line column loads.

§80.59. Exception to Generic Installation Standards.

When installing a manufactured home in accordance with the generic standards, installers must follow any applicable details of change set forth in this section as filed with the department in accordance with §80.53(g) of this title (relating to Requirements for Manufacturer's Designs and Installation Instructions).

(1) The Town & Country Homes' design requires a change to the standard set forth in §80.55(e)(2)(C) of this title (relating to Generic Standards for Anchoring Systems). All Town & Country Homes designed for 30#, 40#, and 60# roof loads or built with 2x6 exterior walls must have perimeter blocking.

(2) The Town & Country Homes' design requires a change to the standard set forth in §80.58(e)(4) of this title (Generic Standards for Footers and Piers). Town & Country Homes additionally require all exterior door locations to have perimeter piers.

(3) The Town & Country Homes' design requires a change to the standards set forth in §80.55(e)(2)(A) of this title (relating to Generic Standards for Anchoring Systems). All Town & Country Homes additionally require a pier and strap at the free end location of all interior shearwalls.

§80.62. Registration [~~Approval~~] of Stabilizing Components and Systems.

(a) Installers shall use only prefabricated or site built stabilizing components and systems which are:

(1) registered with the department,

(2) specified by the home manufacturer's DAPIA approved installation instructions, or

(3) specified for one or more homes in a particular area by a Texas licensed engineer or architect.

(b) [~~(a) Installers shall use only prefabricated or site built stabilizing components and systems approved by the department, specified by the home manufacturer's DAPIA approved installation instructions, or specified for one or more homes in a particular area by a Texas licensed engineer or architect.~~] Before accepting a registration of [~~granting approval for~~] any prefabricated stabilizing component or system that will be used for more than one home or granting renewal of such, the department will require the component or system to be certified by an engineer, architect, or independent testing laboratory. The engineer or architect may be licensed in any state. The independent testing laboratory must have at least one engineer or architect licensed in at least one state. The producer or vendor of the component or system [~~seeking department approval~~] must send a request letter to the department with at least two copies of the certification report. The department may accept certification reports in electronic formats. The certification report copies must have letter size (8.5 inch by 11 inch) or smaller pages. The [~~In the request letter, the~~] producer or vendor must provide written permission to [~~grant~~] the department [~~the right~~] to reproduce the certification report. If the department accepts the registration of [~~approves~~] the certification report, the department shall place a registration stamp [~~of approval~~] on the copies, keep one copy, and return all other stamped copies to the producer or vendor. The registration stamp [~~of approval~~] will include [~~have~~] the following information:

(1) the title "Texas Department of Housing and Community Affairs" Manufactured Housing Division;

(2) the phrase "Registered [~~Approved~~] stabilizing component or system"; and

(3) the date of registration [~~approval~~].

(c) [~~(b)~~] The department will maintain a list of stabilizing components and systems that have been registered with [~~approved by~~] the department for use in Texas.

(d) [~~(c)~~] A report that certifies a stabilizing component or system shall contain, at the minimum, the following:

(1) the name, address, phone number, facsimile number, and trademark of the agency issuing the certification report or the name, signature, license number, state where licensed, address, phone number, facsimile number, and seal of the engineer or architect;

(2) date of certification report;

(3) the name, address, phone number, and facsimile number of the vendor or producer of the component or system;

(4) drawing or photograph of component or system;

(5) a description of the vendor's or producer's method for identifying the component or system;

(6) at least a 2 inch by 4 inch blank space for the department registration [~~approval~~] stamp on each page or the cover page of a bound document;

(7) a unique number or other identification for the certification report;

(8) the initial qualifying test report or information about how the report can be obtained;

(9) a description of the continuing validation system and the time period of the certification;

(10) installation instructions for the component or system that are shipped to each purchaser;

(11) a description of the working load capacity for the component or system. If the component is a ground anchor, the anchor shall be certified by a professional engineer, architect or nationally recognized testing laboratory as to its resistance, based on the maximum angle of diagonal tie and/or vertical tie loading and angle of anchor installation, and type of soil in which the anchor is to be installed;

(12) a description of all allowable conditions for use of the component or system such as (but not limited to) types of soil, weather exposure, atmospheric environment (rural, industrial, coastal), and characteristics of other associated components; and

(13) a statement that the certifying independent testing laboratory, certifying engineer, or certifying architect certifies the component or system to be in conformance with all applicable standards [~~a specific standard~~] adopted by the department. This statement shall be on each page or shall be on the cover sheet of a bound document.

(e) [~~(d)~~] The department adopts the applicable standards and publications set forth in Chapter 43 of the International Code Council, latest edition of the [~~2000~~] International Residential Code for materials

used to fabricate stabilizing components and systems. The department adopts the stabilizing component destruction test failure criteria of the FMHCSS (24 CFR, Part 3280) or latest edition of [and] the [2000] International Residential Code, Appendix E.

(f) [(e)] Applicable reports of the following organizations are acceptable as certification reports: National Evaluation Service, Inc.; International Conference of Building Officials (ICBO) Evaluation Service, Inc.; Southern Building Code Congress International (SBCCI) Public Safety Testing and Evaluation Services, Inc.; Building Officials and Code Administrators International (BOCA) Evaluation Reports, Inc.; the International Code Council (ICC); or a successor of any of these organizations.

(g) [(f)] The department may deny registration [withhold approval] if the certification information:

(1) is incomplete;

(2) does not conform to the rules of the department;

(3) contradicts the qualifying tests; or

(4) has contradictory statements.

(h) [(g)] Conditions that may cause the executive director to issue an administrative order that withdraws registration [approval (or a renewal of approval)] from a stabilizing component or system may include but are not limited to:

(1) the engineer, architect, or independent testing laboratory withdraws the certification;

(2) the engineer, architect, or independent testing laboratory improperly certified the component or system;

(3) a significant characteristic of a device or system has been changed without a revision of the original certification;

(4) the producer distributes installation instructions that are substantively different from those in the certification or original qualifying tests;

(5) changes in the law, rules, or standards;

(6) the continuing validation system for a component has been changed without a revision of the original certification;

(7) information provided by the original certification is obsolete;

(8) the department receives evidence that the component or system often fails to anchor or support the home, or [and]

(9) the producer fails to provide test results after the department directs the producer to test the component or system. The test will be performed by a recognized independent testing laboratory under the observation of a qualified representative or designee of the department.

(i) [(h)] Notice of withdrawal of registration [approval] of a component or system must be given to the producer and to all licensed installers, retailers, and manufacturers [all license holders].

(j) [(i)] The department's registration of a [approval letters for] stabilizing component or system is [components and systems are] valid for a period of ten (10) years or for the time period of certification, whichever is less. The registration [approval letter] expires at the end of the shorter period.

(1) If the time period for certification exceeds the ten (10) year registration [approval] period, the producer of the stabilizing component or system [components and systems] may apply for a renewal of the registration [approval letter]. The renewal shall be valid for an additional period:

(A) of ten (10) years; or

(B) if the time period of certification expires prior to the end of the ten (10) year period, for a lesser period ending with the expiration of the time period of certification.

(2) All department approval letters issued prior to November 3, 1998, [the effective date of this section] remain valid for a period of ten (10) years [and expire ten (10) years] following the original effective date of this section and expire on November 3, 2008, or upon any previously assigned expiration date if that date is earlier.

(k) [(j)] A registration renewal request must be received from the [The] vendor or producer of the component or system [must apply for a renewal letter] at least ninety (90) calendar days prior to the date the certification or registration [approval letter] expires. The request must[and] supply the information necessary for the department to issue a registration renewal [letter]. [The department may issue a temporary renewal letter for a period of not more than six (6) months in order to have time to review all the information submitted by a producer or vendor. The contents of a renewal letter issued by the department are as follows:]

[(1) conditions of the renewal with a description of the department approval stamp that will appear on the document shipped by the producer or vendor to purchasers;]

[(2) a unique number or other identification for the renewal letter;]

[(3) the name, address, phone and facsimile number of the producer or vendor of the device or system;]

[(4) a description of the continuing validation system and the time period of the renewal;]

[(5) a reference to the document (single sheet or bound document) attached to the renewal letter which is shipped to each purchaser by the producer or vendor which includes:]

[(A) the name, address, phone and facsimile number of the vendor of the component or system;]

[(B) a description of the vendor's method of marking the component or system;]

[(C) drawing or photograph of component or system with a reference to the detailed drawing stamped by an engineer or architect;]

[(D) installation instructions;]

[(E) reference to the initial qualifying test report;]

[(F) reference to a previous Texas approval letter;]

[(G) at least a 2 inch by 4 inch blank space for the department approval stamp on each page or a cover page for a bound document;]

[(H) description of method for identifying the soil for ground anchors and footings;]

[(I) a description of the working load capacity for the component or system;]

[(J) if the component is a ground anchor, a certification by a professional engineer, architect, or nationally recognized testing laboratory as to its resistance, based on the maximum angle of diagonal tie and/or vertical tie loading and angle of anchor installation, and type of soil in which the anchor is to be installed; and]

[(K) a description of all allowable conditions for use of the component or system such as (but not limited to) types of soil,

weather exposure, atmospheric environment (rural, industrial, coastal), and characteristics of other associated devices.]

(l) [(k)] Registered [Approved] components and systems sold to retailers or installers prior to the expiration of the applicable registration [approval letter] or renewal [letter] may be used and installed for a period of not more than ninety (90) calendar days following the date of expiration of their [the] approval, registration, or renewal [letter].

(m) [(l)] In December of each year, the department shall mail to all licensed installers, retailers, and manufacturers a list of all registered [approved] components and systems and the date on which the registration [approval letter] for each component or system expires.

(n) Advertisements and instructions may not express or imply that the component or system has department approval.

§80.64. Procedures for Alterations.

(a) No alteration shall be made by a retailer or installer without prior written approval of the department. A written request for any alteration approval shall be filed with the department, except for the alterations which are pre-approved as described in this section. Approval will be granted upon evidence that Federal standards are met. If the alteration is approved, the alteration shall be completed in accordance with the department's approval and any requirements made as a condition of the approval. Following completion of an approved alteration, the retailer shall notify the department in writing, and the department may accept the certification of the retailer that the alteration was made as approved. The department may inspect the home, as altered, to assure compliance with the applicable standards.

[(1) If the alteration is not approved, the department will notify the retailer in writing of the reason for the denial. If additional information is necessary to complete the evaluation of the request for approval, the retailer shall furnish any additional information deemed necessary by the department.]

[(2) If the alteration is approved, the alteration shall be completed in accordance with the department's approval and any requirements made as a condition of the approval. Following completion of an approved alteration, the retailer shall notify the department in writing, and the department may accept the certification of the retailer that the alteration was made as approved. The department may inspect the home, as altered, to assure compliance with the applicable standards.]

(b) The installation of self-contained or split system ("A" coil) comfort cooling equipment and devices shall not be considered an alteration, if the installation is performed by a person holding the appropriate license in accordance with [the] specific written instructions, including specified tonnage, provided by one of the following: [of the manufacturer of the home as approved by the manufacturer's DAPIA, and if the specific equipment and devices used have been expressly approved by the manufacturer's DAPIA.]

(1) the manufacturer of the home, as approved by the manufacturer's DAPIA;

(2) a licensed professional engineer; or

(3) a licensed air conditioning contractor.

[(c) Other than as set forth in subsection (b) of this section, the installation of self-contained or split system ("A" coil) comfort cooling equipment and devices is an alteration and is pre-approved if done by a state licensed air conditioning contractor.]

(c) [(d)] If the sale of a home includes air conditioning, the selling retailer shall maintain in the sales file a copy of the installation instructions that were followed as well as a record of the name and license number of the air conditioning contractor which installed the air conditioning system.

§80.66. Rebuilding or Repairing a "Salvaged" Manufactured Home.

(a) Any home which has sustained sufficient damage to be declared salvage as defined in §1201.461 of the Standards Act, may be rebuilt/repaired for purposes of issuance of a manufactured Statement of Ownership and Location [home document of title] at the option of the department after inspection in accordance with department procedures. Notification in writing to the department at its Austin headquarter's office shall be required before rebuilding/repair begins.

(b) The rebuilder must:

(1) notify the department in writing ten (10) business [working] days before rebuilding (or monthly for continuous activity) and provide the following, if available:

(A) HUD or Texas Seal number;

(B) data plate and comfort cooling certificate information (applicable wind and roof load zones, manufacturer's name and address, home model, list of appliance models, home production date, thermal zones, transmission coefficients, furnace certification temperatures, and duct capacity for cooling);

(C) copy of salvage declaration report;

(D) description of damage;

(E) description of cause of damage (water, wind, impact, fire, etc.); and

(F) location of home during rebuilding.

(2) provide a plan for rebuilding, sealed by a licensed professional engineer, that contains the following:

(A) drawings and specifications that describe the rebuilding;

(B) if more than one home is rebuilt in any one (1) month period, then a quality assurance manual that describes the following:

(i) system testing;

(ii) inspection process of cavities before concealment; and

(iii) record keeping.

(C) list of new parts and appliances;

(D) list of reused or salvaged parts and appliances; and

(E) rebuilder's data plate (if applicable).

(3) notify the department when concealed cavities will be exposed for department inspectors;

(4) remove damaged material and equipment;

(5) add new or used materials and equipment;

(6) repair all defects; and

(7) repair and test all systems.

(c) The department may schedule inspections of the home during the rebuilding process.

[(d) Any person who purchased a rebuilt manufactured home and received a salvage title as evidence of ownership after June 18, 1987, may be issued a document of title upon application to the department.]

(d) [(e)] A manufactured home which has not sustained sufficient damage to be declared salvage may be refurbished to its original structural configuration so that it is habitable as defined by §1201.453 of the Standards Act.

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

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

TRD-200500651
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Texas Department of Housing and Community Affairs
Earliest possible date of adoption: March 27, 2005
For further information, please call: (512) 475-2206

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SUBCHAPTER E. GENERAL REQUIREMENTS

10 TAC §§80.119 - 80.133, 80.135

The new and amended sections are proposed under the Texas Manufactured Housing Standards Act, Occupations Code, Subtitle C, Chapter 1201, §1201.052, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.603, which authorizes the director to adopt rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

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

§80.119. Installation Responsibilities.

(a) For new manufactured homes, the retailer is the installer and must certify [warrant] the proper installation of the home. If the retailer subcontracts with an independent licensed installer, then the subcontractor is jointly and severally liable for the portion of the installation that the subcontractor performed.

(b) For used manufactured homes, the person contracting with the consumer for the installation of the home is the installer and must certify [warrant] the proper installation of the home. If the contracting installer subcontracts with an independent licensed installer, then the subcontractor is jointly and severally liable for the portion of the installation that the subcontractor performed. The contracting installer is responsible to furnish the consumer with a written certification [the installation warranty] and site preparation notice. All verification and copies of the written certification [installation warranty] and site preparation notice must be maintained in the installer's installation file for a period of no fewer than six (6) years from the date of installation.

(1) The person contracting directly with the consumer for only the transportation of the used home to a manufactured home site is not an installer if the person does not perform or contract to perform any installation functions. In this case, the installer is the person that contracts for the construction of the stabilization [foundation] systems, whether temporary or permanent, and the placement and erection of the used home and its components on the stabilization [foundation] system.

(2) The selling retailer may sell a used home and deliver possession to the consumer at the sales location (*e.g.* [e.g.], F.O.B. the sales location). In this case, the retailer shall not perform any installation functions nor transport the home to the home site.

(c) The installer is fully responsible for the complete installation in accordance with all applicable requirements set forth in this chapter even though the installer may subcontract certain installation functions to independent contractors pursuant to §1201.102(b) of the Standards Act. It is unlawful for a subcontractor who is acting as an agent for a licensed installer to advertise and/or offer installation services to any person unless the licensed installer's name appears prominently in the advertisement.

(d) The sale of a new or used home by a retailer which includes an agreement to deliver the home and install the home at the home site is complete when installation is complete and the home is made available [not completed until possession of the home is tendered] to the consumer for possession at the home site.

(e) The completed Notice of Installation (Form T) must be filed separately within thirty (30) days of the original sale or within ten (10) days of a secondary move.

(f) [(e)] Electrical, fuel, mechanical, and plumbing system crossover connections for multi-section homes, and completion [completions] of drain lines underneath all homes in accordance with the requirements of this chapter [DAPIA approved on-site assembly drawings] are installer responsibilities and cannot be excluded by wording of the installation contract. The installation of air conditioning at the home site must be performed by a licensed air conditioning contractor. The installation and ventilation of skirting or other material that encloses the crawl space underneath a manufactured home is an installer responsibility, if it is part of the sales or installation contract.

[(f) For all secondary moves (where there is no title transfer) the Notice of Installation and the required fee must be submitted to the department within ten (10) working days after the installation is completed.]

[(g) When the installer selects the department to inspect the permanent foundation before concealment, the installer shall file an application to install a manufactured home on a permanent foundation on a form approved by the department. The required fee for the permanent foundation installation report shall be forwarded with the application. After the department inspects the permanent foundation and indicates acceptance of the permanent foundation on the form, the title company, attorney, retailer, or retailer's agent later files the Notice of Installation, including a copy of the form, with the public land records of the county and forwards a copy to the department. The reporting fee does not have to be paid to the department again.]

[(1) Unless the retailer/installer follows the home installation manual or a department pre-approved foundation systems, a copy of the foundation system drawing as stamped and signed by the licensed engineer or architect must be filed with the application.]

[(2) The application must be received by the department at least ten (10) calendar days prior to the date on which construction of the permanent foundation system is scheduled to begin.]

[(3) Installers shall provide a copy of the application and the foundation system drawing to the department inspector at the time an inspection is performed.]

[(4) If the permanent foundation system design is approved by the authorized local government official and if the applicable building inspection fees are paid to the local government, the provisions of this section do not apply. The installer must, however, file a sworn statement of these facts with the Notice of Installation.]

[(5) If the permanent foundation for a home acquired and installed before January 1, 2002 is certified by the consumer/mortgagor and the lender/mortgagee in a real estate transaction, or is certified by the owner if there is no lien or the lien has been released, as having permanently affixed the structure to the real estate, the provisions of this section do not apply. The installation reporting fee must be paid and sent to the department along with the certification.]

[(6) When specifically requested in writing by the department with a Department Real Estate Inspection Request Form, a contracting local government shall make and perform inspection and enforcement activities related to the construction of the foundation that permanently affixes a manufactured home to real estate. If the permanent foundation system and other site improvements are inspected and accepted by a contracting local government official before concealment, the local government records may be the verification required by §1201.222(c) of the Standards Act. The retailer/installer must file a Notice of Installation, including a copy of the local government inspection report, with the public land records of the county and forward a copy of the Notice of Installation to the department with the reporting fee.]

[(7) If the site suitability, site preparation, site improvement, foundation construction, and installation for a home acquired on or after January 1, 2002 are verified by a retailer or installer, the provisions of this section do not apply, but the title company, attorney, retailer, or retailer's agent must file a Notice of Installation with the public land records of the county and forward a copy of the Notice of Installation to the department with the reporting fee.]

§80.120. Manufacturer's Responsibilities.

Manufacturers licensed with the department shall:

(1) Submit a monthly shipment report to the department of all manufactured homes produced during the preceding month for shipment to any point in Texas. [Submit the reports required by §80.203 of this title (relating to Manufacturer's Monthly Shipment Report);]

(A) The report shall contain the following information:

(i) the complete HUD label number(s);

(ii) the complete serial number(s);

(iii) the license number of the retailer as assigned by the department;

(iv) a designation as to single or multiple sections; and

(v) the name and address of the purchaser, consignee, or person to whom it was shipped.

(B) The manufacturer's monthly shipment report shall be filed with the department by the 15th day of the month following the manufacture of the home and/or shipment.

(C) If a manufacturer has no sales, consignments, or shipments to any person or place during any month, the report must be filed stating such fact.

(2) Use the Manufacturer's Certificate of Origin (MCO) prescribed by the department for homes shipped to retailers in Texas; and

(3) Supply to the department current and revised copies of approved installation manuals as required by §80.53 [§80.51] of this title (relating to [Manufactured Home Installation] Requirements for Manufacturer's Designs and Installation Instructions).

§80.121. Retailer's Responsibilities.

(a) Manufactured housing retailers shall retain as part of each sales record and make available for copying and review by department personnel, upon request during normal business hours, the following information:

(1) For all manufactured homes as applicable:

(A) name and address of the purchaser and the date of purchase;

(B) verification that the purchaser received the Formaldehyde Health Notice required by §1201.153 of the Standards Act;

(C) verification that the purchaser was advised of the Wind Zone, thermal zone, and roof load zone for which the home was constructed. If this information is not available for a used home, the purchaser will be advised of this fact and the used home will be disclosed as being constructed to Wind Zone I, thermal zone 1, and the roof load design for the South;

(D) verification that the purchaser received the Wind Zone notice as required by §1201.256 of the Standards Act [§80.50 of this title (relating to Wind Zone Regulations)];

(E) verification that the purchaser received the site preparation notice;

(F) verification that the purchaser received written notice of the two (2) year limitation of notice for filing a claim with the department;

(G) verification that the Disclosure required in subsection (e) of this section [by §80.181 of this title (relating to Section 162 Notice)] was provided to the purchaser prior to completing a credit application;

(H) verification that the disclosure required in subsection (f) of this section [by §80.182 (relating to 163 Disclosure)] be delivered to the consumer at least 24 hours before execution of the contract in a chattel mortgage or consumer loan transaction;

(I) copies of the Notice of Installation (Form T) and attached documents;

(J) if the sale of a home includes air conditioning, the name and license number of the air conditioning contractor which installed the air conditioning system in accordance with §80.64(c)[(d)] of this title (relating to Procedures for Alterations); [and]

(K) complete records of all alterations, in accordance with 24 CFR §3282.254; and[.]

(L) copies of the completed application and all supporting documentation as evidence that it conveyed good and marketable title to the manufactured home to the transferee. A contract to convey title after completion of an extended payout, as opposed to a financed extended payout secured by a lien on the manufactured home, does not constitute a conveyance of good and marketable title. An extended payout is any repayment involving more than one installment or any finance charge.

(2) For all new manufactured homes:

(A) verification that a copy or the general description of the manufacturer's new home warranty and installation warranty were given to the consumer prior to the retailer's signing of any binding retail installment sales contract or other mutually binding agreement.

(B) verification that the manufacturer's new home warranty, consumer's manual, and retailer's installation warranty were delivered to the purchaser pursuant to §1201.352(c) of the Standards Act (does not apply to damage caused by a move);

(C) verification of the date that the manufactured home information card was mailed to the manufacturer; and

[(D) verification of delivery of conspicuous notice relating to defect or damage under the new home warranty as required by §1201.359(b) of the Standards Act.]

(3) For used manufactured homes:

(A) verification that the purchaser received the written 60-day habitability warranty; and

(B) if the retailer contracted for the installation as a part of the sales agreement, verification that a copy or the general description of the retailer's installation warranty was [were] given to the consumer prior to signing of any binding retail installment sales contract or other mutually binding agreement.[, if the retailer contracted for the installation as a part of the sales agreement; and]

[(C) verification that the purchaser received the retailer's installation warranty if the retailer contracted for the installation as a part of the sales agreement.]

(b) All verifications and copies of notices required by this chapter must be maintained in the retailer's sales file, and the sales file must be maintained for a period of not less than six (6) years from the date of sale. If a retailer has more than one sales location and wishes to maintain all of its records at a central location, it may do so provided that the retailer notifies the department more than sixty (60) calendar days in advance that its records are being maintained at a central location by providing the address of such location. Absent such notice the records of a particular home must be maintained at the address where the home is in inventory and from which it was sold. If the retailer wishes to discontinue the centralization of its records or to change the address where its records are kept, the retailer must notify the department more than sixty (60) calendar days in advance of the change of the location and the address and effective date of the new location.

(c) For [new homes or used] homes manufactured on or after September 1, 1997, a manufactured housing license holder shall not contract for sale or installation of any home [under which the home would be] installed in a wind zone, thermal zone, or roof load zone other than that allowed on the data plate.

(d) In a joint purchase, one purchaser's signature is sufficient on the disclosure statement as long as the purchaser is on the loan documents.

(e) Section 162 Notice. Before accepting a completed credit application from a consumer, a retailer (or any salesperson or other agent acting on behalf of a retailer) shall provide the disclosure form in §80.260(a)(2) or (b)(1) of this title.

(1) The English version of Section 162 Notice form is located in §80.260(a)(2) of this title.

(2) The Spanish version of Section 162 Notice form is located in §80.260(b)(1) of this title. The retailer is not required to provide the form in Spanish; however, the consumer may request a copy in Spanish from the retailer or from the department.

(f) 163 Disclosure. In a chattel mortgage or consumer loan transaction in which the retailer is participating in anyway, the retailer shall deliver to the consumer, at least 24 hours before the execution of the contract, the disclosure form set forth in §80.260(a)(3) of this title and a copy of the contract to be executed with all information included, signed by the retailer.

(1) The English version of the 163 disclosure form is located in §80.260(a)(3) of this title.

(2) The Spanish version of the 163 disclosure form is located in §80.260(b)(2) of this title. The retailer is not required to provide the form in Spanish; however, the consumer may request a copy in Spanish from the retailer or from the department.

(3) The disclosure must be given in writing in at least 12 point type. It may not be attached to any other disclosure or document. The consumer must sign and date a copy of the disclosure to acknowledge that it was provided.

(g) A retailer may not represent to a consumer that is purchasing a manufactured home with interim financing that the consumer will qualify for permanent financing if the retailer has any reason to believe that the consumer will not qualify for such permanent financing.

(h) A retailer may not increase the advertised price or the agreed price at which a manufactured home is to be sold based on the consumer's decision to make the purchase with or without financing provided by or arranged through the retailer.

(i) If a retailer is also acting as a creditor or an arranger of credit and will receive compensation for such services, this must be disclosed to the consumer in writing.

(j) If a retailer is acting as a creditor or arranger of credit, the retailer may not require that a consumer obtain financing from or through them.

(k) If a retailer makes any material representation about a manufactured home that goes beyond the terms of written warranties to be provided, the retailer must confirm such representations in writing.

(l) If a retailer relies on a third party, such as a title company or closing attorney, to file with the Department the required forms necessary to enable the Department to issue a Statement of Ownership and Location to a consumer, the retailer must provide an instruction letter to that third party, advising them of their responsibilities to make such filings and the required timeframes therefore. The retailer must retain with their sale records a copy of that instruction letter and all documentation provided to such third party to enable them to make such filings.

(m) If a retailer, acting as a broker, negotiates the sale of a manufactured home that is not reflected on the records of the Department as being in the name of the seller, the retailer must disclose, in writing, the identity of the actual owner to any purchaser of such a home.

(n) If any goods or services being provided by a retailer in connection with the sale and/or installation of a manufactured home are to be provided at a date after the installation, the retailer must disclose, in writing, the goods and/or services to be provided and a good faith estimate as to when they will be provided.

(o) If any goods with a retail value of more than $250 are to be provided in connection with the sale of a manufactured home and they are not specified on the data plate for the home, the retailer must describe them in the retail installment contract, purchase memorandum, or other sale document in sufficient detail to enable a third party to provide them under the responsibility of the retailer's surety bond should the retailer fail to provide them as agreed.

(p) A retailer may not request or accept any document that is executed in blank or allow any alteration to a completed documented without the consumer's initialing and dating such changes to indicate agreement to them.

(q) A retailer may not knowingly accept or issue any check or other form of payment appearing on its face to be a *bona fide* payment but known not to represent good funds.

(r) A retailer accepting a deposit or down payment must give the consumer a written statement setting forth:

(1) The amount of such deposit or down payment;

(2) A statement whether the deposit or down payment is refundable or not and, if it is refundable, in whole or in part, a statement of any requirements to obtain or limitations on any such refund;

(3) The name and business address of the person receiving such down payment or deposit; and

(4) The HUD label number(s), Texas seal number(s), or serial number(s) of the manufactured home to which such down payment or deposit relates.

(s) A retailer may not negotiate or offer a refund of less than is required by the Act. However, a retailer may, by written agreement with the consumer retain the amount of the deposit used to pay legitimate third party costs actually incurred, such as credit report fees or courier fees.

(t) Prior to requiring a purchase to accept delivery of a manufactured home, the retailer must give them an opportunity to inspect the home to make sure that it conforms to their contract. When the purchaser signs a document acknowledging that the home which has been delivered conforms to their contract, the sale becomes final, but this in no way affects the operation of any warranty required by law or granted contractually or affects or abridges any rights or obligations of either of the parties to the transaction.

(u) On the sale of a used home, the retailer or broker must provide the purchaser with a disclosure advising the consumer either that they will be responsible for the installation (which will have a written warranty) or, if they will not be installing the home, a statement that they will not be installing the home and therefore will not be providing any warranty as to installation.

§80.122. Security Requirements.

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

(d) To be exempt from the additional security as required by §1201.106(b) of the Standards Act, a manufacturer who does not have a manufacturing plant in this state must have a *bona fide* [~~bona fide~~] service facility.

(1) (No change.)

(2) The service facility shall be capable of compliance with the provisions of Sub-part I of the Manufactured Housing Improvement Act (latest edition) [~~procedural and enforcement regulations promulgated by HUD,~~] and capable of providing warranty service within the reasonable time requirements set by the department in §80.132 of this title (relating to Procedures for Handling Consumer Complaints), and shall be subject to periodic review and inspection by department personnel.

(3) (No change.)

§80.123. License Requirements.

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

(c) Broker.

(1) Any person engaged by one or more other persons to negotiate or offer to negotiate bargains or contracts for the sale, exchange, or lease purchase of a manufactured home to which a Statement of Ownership and Location [~~certificate or document of title~~] has been issued and is outstanding shall be licensed as a manufactured housing broker. An application for license shall be submitted on the form required by the department and be completed giving all the requested information. The application shall be accompanied by the required security, Articles of Incorporation or Assumed Name Certificate, and payment of the license fee. Each office location of the broker shall be licensed and proper security posted unless an office is on property which is contiguous to or located within 300 feet of an office licensed with the department.

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

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

(f) Homeowner's Temporary Installation.

(1) (No change.)

(2) The application must be accompanied by a certificate of insurance issued by the insurance carrier or its authorized agent to prove insurance coverage for the installation of the home as follows: public liability insurance coverage including completed operations in an amount of not less than $300,000 for bodily injury each occurrence and property damage insurance in an amount of not less than $100,000 each occurrence, for which a combined single limit of $300,000 will be considered to be in compliance with this section; and motor vehicle liability insurance coverage of not less than $250,000 bodily injury each person, $500,000 bodily injury each occurrence and $100,000 property damage each occurrence, for which a combined single limit of $500,000 will be considered to be in compliance with this section. [~~A copy of the home manufacturer's installation instructions, custom designed installation instructions stamped by a Texas licensed professional engineer or architect, or an installation plan with details and specifications conforming to the state's generic standards shall accompany the application.~~]

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

(g) - (h) (No change.)

(i) Education Requirements. Effective September 1, 1987, all applicants for license[~~, except salespersons,~~] shall attend and complete 20 hours of educational instruction as required by the Standards Act and this chapter. A manufacturer may request a one-day in-plant training session be presented by the department in lieu of completing the instruction requirement. The license will not be issued until the owner, partner, corporate officer, or other person who will personally have the day-to-day management responsibility for the business location, or the salesperson to be licensed, attends and completes this educational requirement. Except as provided in §80.123(o)of this title (relating to License Requirements), this section shall not apply to the renewal of licenses, nor to the license of additional business locations.

(j) - (n) (No change.)

(o) Continuing Education Requirements. For applications received on or after January 1, 2005, all persons engaged in sales of manufactured housing must be certified as having completed eight (8) hours of approved continuing education each year in order to renew any license as a retailer, broker, or salesperson or to apply for a new license as such when the person is so licensed or has been at any time in the preceding year.

(1) Covered persons. The following persons are deemed to be engaged in sales of manufactured housing and must meet the continuing education requirements [~~and, therefore, must be certified as having completed eight (8) hours of approved continuing education each year in order to renew any license as a retailer, broker, or salesperson on or after January 1, 2005~~]:

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

(2) Approval of courses and providers. In order to be considered for approval by the Board to provide continuing education courses a party wishing to be considered for such approval must submit, for each course for which approval is sought, a letter application, accompanied by a nonrefundable processing fee of $300, and the following:

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

(F) Such other information as the department [~~Department~~] may require.

(3) Once the staff determines that a request for approval is complete, that request will be placed on the next regularly scheduled meeting of the board of Directors for consideration. The staff will provide the board with a written recommendation on each such request. The staff will advise the applicant of the board's action within ten (10) business [~~working~~] days of the date of the board meeting, including a written statement as to any limitations, conditions, or other requirements imposed.

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

(4) Eight hours of approved training provided by the department will meet the continuing education requirement for license renewal. This may be in the form of attending eight hours of one of the department's quarterly licensing schools or by attending any other eight hour training class the department may offer. The department is under no obligation to offer any such classes (other than its regular quarterly licensing classes) and will do so only if it has sufficient resources to do so.

(p) Application and Appeals.

(1) Initial application processing.

(A) It is the policy of the department to issue the license within seven (7) business [~~working~~] days after receipt of all required information and the following conditions have been met:

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

(B) License applications and accompanying documents received shall be processed and issued within seven (7) business [~~working~~] days if all conditions for license have been met.

(C) License applications and accompanying documents found to be incomplete or not properly executed shall be returned to the applicant with an explanation of the specific reason and what information is required to complete license. Upon receipt of all required information, the license will be issued within seven (7) business [~~working~~] days.

(D) (No change.)

(2) (No change.)

(q) Payment of license fees.

(1) All required fees must be paid in order to obtain a valid license, including a renewal license, from the department.

(2) Any license issued by the department is void and of no effect if based upon a check that is later returned for insufficient funds, closed account, or other reason, regardless of whether the department notifies the applicant of the insufficiency of payment or the invalidity of the license.

(3) It is the applicant's responsibility to ensure that all licensing fees are paid in valid U.S. funds.

§80.124. Deposits and Down Payments.

(a) - (j) (No change.)

(k) Advancement/upgrade charges are not refundable if consumer agrees to reimburse retailer. If the consumer does not reimburse, the retailer has the right to deduct fees from the deposit amount.

§80.125. Advertising Regulations.

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

(c) Any advertisement must comply with applicable federal laws. [~~A retailer or broker must not advertise any interest rate or finance charge which is not expressed as an annual percentage rate and must comply with the disclosure requirements of the federal Truth-in-Lending Act.~~]

(d) Any advertisement by a retailer, broker, salesperson, or installer (other than a sign/display advertisement at a licensed location, point of sale literature, or a price tag) must disclose the license number of the person who is advertising. If the person who is advertising is a salesperson, the advertisement must also indicate the license number of the retailer or broker on whose behalf the salesperson is advertising. The director may approve exceptions to the requirements of this subsection where no consumer protection purposes would be served by requiring the number to be disclosed.

§80.126. Rules for Hearings.

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

(e) Pursuant to the Administrative Procedures Act, each party has the right to file exceptions to the Proposal for Decision and present a brief with respect to the exceptions. All exceptions must be filed with the department within ten (10) business [~~working~~] days of the Proposal for Decision, with replies to be filed ten (10) business [~~working~~] days after the filing of exceptions.

(f) When an administrative hearing is held for any matter in which the department [~~Department~~] seeks to take action against a licensee for violating the Standards Act or these rules, whether such action is an action to assess administrative penalties, to require corrective action, to require cessation of improper activities, to suspend or revoke a license, or any combination thereof, the department [~~Department~~] shall assess the costs of the proceeding against any party that fails to appear at a duly noticed administrative hearing. The costs assessed shall be the greater of $100 or the actual costs charged to the department [~~Department~~] by the State Office of Administrative Hearings, the Office of the Attorney General, any court reporter, or any other third party providing services in connection with such hearing.

(g) The department [~~Department~~] will seek the recovery of its costs from any party against whom it initiates an action if that action results in the entry of a final order taking any administrative action against that party, including the assessment of administrative penalties, requiring corrective action, requiring cessation of improper activities, suspension or revocation of a license, or any combination thereof.

§80.127. Sanctions and Penalties.

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

(d) When a licensee first receives written notification of a claim for warranty service, the licensee must respond timely to the request. A failure to do so shall constitute a violation of these rules.

(1) It is presumed that a response was timely if the required warranty service is provided within forty (40) calendar days from the date of the request; provided, however, immediate corrective action is required [~~that~~] if the matter involves an imminent safety hazard[~~, it must be addressed as quickly as is reasonably possible~~].

(2) (No change.)

(3) If, after reasonable investigation, the licensee disputes whether warranty service is required and the licensee is unable to resolve the matter by agreement with the consumer, the licensee may request that the department [~~Department~~] perform an inspection of the home. The running of the time to respond to the request for warranty service will be suspended from the time the request for inspection is received until the department [~~Department~~] performs the inspection and issues its findings. When the department [~~Department~~] concludes its review it will work with the affected licensee(s) and consumer(s) to agree upon a reasonable time to address its findings. In the event the parties cannot agree on a reasonable time, the Director shall issue a revised order assigning a time for compliance. Any such order shall be subject to appeal and a hearing. Any such hearing shall be a contested case under Tex.Gov.Code, Chapter 2001.

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

(g) When the department has reason to believe that a violation of the Standards Act, these Rules, or an administrative order has occurred, the department shall determine what, if any, administrative action or actions may be appropriate to see that the purposes of the Standards Act are carried out. In that regard, in order to promote the uniform application of the Standards Act, the department will follow these guidelines. The only time that the department will deviate from these guidelines is when either the Director or the Board determines, for documented *bona fide* reasons, that some other course of action, consistent with the Standards Act and any other applicable legal requirements would be more appropriate.

(h) As used herein, "dangerous conditions" means any condition which, if present, would constitute an imminent threat to health or safety, and "loss" means actual financial loss or damage, not including exemplary, punitive, special, or consequential damages. "Significant" means significant in relationship to the financial resources of the person who incurs a loss. "Promptly" means within the time prescribed by the Standards Act, these Rules, and any administrative order (including any properly granted extension) or, in the case of a matter that constitutes an imminent threat to health or safety, as quickly as reasonably possible.

(i) Any exceptionally flagrant, willful violation that constitutes an imminent threat to health or safety may be a basis for pursuit of maximum statutory penalties and/or suspension or revocation of licenses.

(j) Anytime the record indicates that there is a high likelihood that a licensee's violation is a direct result of a systemic problem, it is appropriate to request the licensee to develop a plan to prevent future occurrences. Undertaking to develop such a system is an appropriate factor to be taken into account in determining what penalty to pursue.

(k) Any and all penalties are IN ADDITION to full compliance with the Standards Act and Rules (*i.e.*, full, prompt corrective action, restitution, or whatever else the Standards Act and rules would have required in the first place). Failure to provide such compliance on a timely basis, as specified in the applicable order, will be deemed to be a violation of the order and serve as a basis for pursuing additional administrative action, including the assessing of additional penalties and the pursuit of suspension or revocation of licenses.

(l) In determining the appropriate amount of a penalty or other action, all relevant factors shall be considered, including, but not limited to: the resources of the licensee and their ability to pay fines, efforts to achieve compliance, the nature and frequency of recurring violations, and monetary impact on consumers.

(m) The Enforcement Matrix is located in §80.240(a)(12) of this title.

§80.128. Arbitration Rules.

(a) - (i) (No change.)

(j) Arbitration Using SOAH. The provisions of this subsection relate only to arbitrations for which the parties have agreed to use the services of SOAH. Subject to the provisions of subsections (a) - (h) of this section, the parties shall follow these additional rules.

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

(5) Filing and Service of Documents.

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

(C) If any document is sent to the SOAH clerk by certified mail or first class mail in an envelope or wrapper properly addressed and stamped and is deposited in the mail on or before the last day for filing same, and it is received within three (3) business [~~working~~] days of the filing date, it shall be deemed properly filed.

(D) (No change.)

(6) - (26) (No change.)

§80.129. Alternative Dispute Resolution.

The department offers alternative dispute resolution as an inexpensive and informal way of attempting to resolve any claim or dispute. Depending on the parties, this may involve informal meetings or nonbinding mediation. Alternative dispute resolution is available upon request. In the event that a disputed matter cannot be resolved in this manner, the department reserves the right to pursue all other lawful means of resolution including, but not limited to, pursuit of administrative remedies.

§80.130. Delivery of Warranty.

(a) The written warranty that the used manufactured home is habitable as per §1201.455 of the Standards Act, shall have been timely delivered if given to the homeowner at or prior to possession by the consumer or availability for possession [~~the time the contract for sale is signed~~].

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

§80.131. Correction Requirements.

(a) (No change.)

(b) Except as provided in subsection (a) of this section, manufacturers, retailers, and installers shall perform their obligations in accordance with their respective written warranty within a reasonable period of time. A reasonable period of time is deemed to be forty (40) calendar days following receipt of the consumer's written notification unless there is good cause requiring more time. The consumer's written notification must be given within [~~received by the manufacturer, retailer, or installer within forty (40) calendar days following the end of~~] the one (1) year warranty period for new homes and for used homes within sixty (60) calendar days after the date of the sale or such longer time as may be provided for in the terms and conditions of the warranty documents.

(c) (No change.)

§80.132. Procedures for Handling Consumer Complaints.

In order to comply with §1201.002 of the Standards Act, to provide for the protection of the citizens who purchase manufactured housing and to provide fair and effective consumer remedies, the following procedures will be followed:

(1) On initial written contact by a consumer, the department will attempt to verify if the consumer has a valid complaint that

is subject to the department's authority. If the department determines that the department has jurisdiction:

(A) If the consumer has not previously notified the manufacturer, retailer or installer [~~in writing~~], the department will forward the [~~instruct the consumer to provide~~] written notification to the manufacturer, retailer, or installer and give the license holder a reasonable amount of time to make repairs.

(B) If the consumer has previously provided written notification to the manufacturer, retailer or installer of the need for warranty service or repairs, but believes such has not been completed in a satisfactory manner, the department shall mail a complaint form to the consumer with instructions to complete it and return it to the department. On receipt of the complaint form, the department will make a determination regarding whether or not to open a consumer complaint. If a consumer complaint is opened, the department shall forward copies of the complaint form to the manufacturer, retailer and/or installer, as appropriate[~~, by certified mail, return receipt requested~~]. The department shall also include in the certified mail the "Manufacturer's Response Form" or "Retailer's Response Form," as appropriate, which must be completed and returned to the department within ten (10) business [~~working~~] days. The department shall perform a home inspection, if required. If a home inspection is performed, the department will assign responsibilities for repair, and notify the manufacturer, retailer, installer, and consumer of their responsibilities to complete such warranty or service repair in accordance with §80.131(b) of this title (relating to Correction Requirements).

(2) The department shall make a consumer complaint home inspection if a consumer, manufacturer, or retailer requests such inspection.

(A) Consumer Request. The consumer may, at any time, request that the department perform a consumer complaint home inspection. A written complaint regarding failure to provide warranty work is deemed to be a request for a consumer complaint inspection. No written complaint form is required if a possible imminent safety hazard exists. [~~if the consumer has not been provided proper warranty service. The department may require that the request be in writing on a form provided by the department. If the department has reason to believe that the consumer complaint is covered by a warranty of a license holder, the department shall conduct a home inspection. There is no fee for an inspection performed at the request of the consumer when the department determines that a home inspection is warranted.~~]

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

(D) Within ten (10) business [~~working~~] days following the consumer complaint home inspection, the department shall mail its written report and orders (includes amended reports and orders), if any, to the consumer, manufacturer, retailer, and installer by certified mail, return receipt requested.

(E) If the consumer refuses to allow admission for inspection or service, the department will close the complaint. Also, any party denied access will not be held responsible for repairs deemed to be their responsibility.

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

(5) If service or repairs cannot be made within the specified time frame, the license holder shall notify the department in writing prior to the expiration of the specified time frame by certified mail. The notice shall list those items which have been, or will be, completed within the time frame and shall show good cause why the remainder of the service or repairs cannot be made within the specified time frame. The license holder shall request an extension for a specific time. If the department fails to respond in writing to the request within five (5) business [~~working~~] days of the date of receipt of the notice of request for extension, the extension has been granted.

(6) - (7) (No change.)

§80.133. Administration of Claims under the Manufactured Homeowners' Recovery Trust Fund.

(a) (No change.)

(b) Documentation of a claim by a Licensee who is deemed to be a "consumer" under §1201.358(d) of the Standards Act - When either a manufacturer or a retailer has their license revoked or goes out of business and the party that went out of business or had its license revoked has failed to perform required warranty work on a timely basis, the Director may direct a licensee that is still in business to perform the warranty work. A licensee so directed will be deemed to be a "consumer" under §1201.358(d) of the Standards Act and entitled to be reimbursed from the Fund for the costs of performing such re-assigned warranty work.

(1) The Director, before authorizing any party performing re-assigned warranty work to proceed, will require that an estimate be submitted, itemizing the hourly cost of labor required, the estimated time to complete the work, the itemized costs of any material, equipment, and supplies, and such additional out-of-pocket expenses as the licensee believes it will incur. Overhead costs may be included, not to exceed 20% of the cost of labor and materials. If the required estimate is not submitted and approved prior to the commencement of re-assigned warranty work, the party performing the work may not be reimbursed for that work until the Director has been provided with evidence establishing that the amount billed was justifiable in all respects. The estimate must be on the form prescribed by the department [~~Department~~], properly completed and executed.

(2) An order by the Director authorizing re-assigned warranty work to be performed will specify that:

(A) (No change.)

(B) the licensee should keep complete records, subject to audit by the department [~~Department~~] for three years;

(C) (No change.)

(D) the required evidence that the re-assigned warranty work was performed should be supplied to the department [~~Department~~] within ten (10) days of completion; and

(E) (No change.)

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

(5) Claims made by a consumer who is not a licensee and documentation of Fund claims--when a consumer has a covered claim against a licensee and the licensee has not satisfied the claim, the department [~~Department~~] shall take appropriate steps to make sure that the claim is proper and that all reasonable steps to satisfy the claim have been exhausted. In that regard:

(A) The department [~~Department~~], working with the consumer, shall identify the specific section(s) of law or rule that gave rise to the damages;

(B) (No change.)

(c) Attorneys' fees are subject to reimbursement from the Fund, subject to certain limitations. Before reimbursing a consumer for attorneys' fees, the department [~~Department~~] shall review the fee statement(s), which must indicate the specific services performed, the amount of work required, and the hourly rate(s) charged. Fees not directly relating to efforts to recover the unsatisfied claims are not reimbursable.

(d) The department [~~Department~~] shall require reasonable proof of efforts to collect the damages for which reimbursement from the Fund is sought.

(e) The department [~~Department~~] may require the assignment of claims against licensees for any amounts for which payments are made from the Fund. The department [~~Department~~] may re-assign any and all such claims to any bonding company or other surety that reimburses the Fund for such payments.

(f) If there is no licensee that can be assigned responsibility for warranty work or corrective action, the department [~~Department~~] may enter into agreements with one or more licensees to perform such work after requesting bids from the qualified licensee(s) in the immediate area where the work is to be performed or if, because of the scope and nature of the work, there are no qualified local licensees, with such other licensees as may possess the resources and expertise to submit bids and perform the work. If the only acceptable remedy is the replacement of a home, the department [~~Department~~] may negotiate with qualified manufacturers to identify the lowest cost acceptable resolution.

(g) Notification of warranty work orders, inspections, and re-assigned warranty work

(1) When an inspection is to be conducted, other than an initial installation inspection, such as a follow-up installation inspection or a complaint inspection, the department [~~Department~~] shall notify each licensee that has been assigned responsibility for warranty items, provided that the licensee still holds an active license, by notifying the licensee, by regular mail to their address of record, as on file with department [~~Department~~]. If a party to be notified of an inspection is no longer licensed but has left a mailing address on file with the department [~~Department~~], such party shall be given notice of any such inspection by first class mail to that address.

(2) When warranty work orders are issued, they will be sent to each licensee to whom responsibility has been assigned. They shall be sent to the licensee by regular mail to their address of record, as on file with department [~~Department~~].

(3) If a licensee who has been assigned warranty responsibilities is no longer in business, the department [~~Department~~] will, in addition to notifying their surety, notify them of the time and place of the inspection. Such notification to the out-of-business licensee shall be sent to them at their latest business address of record on file with the department [~~Department~~]. Unless the out-of-business licensee advises the department [~~Department~~], in writing, on or before the date of the inspection or actually attends the inspection, the department [~~Department~~] will re-assign the warranty work, if any, arising from the findings of the inspection to the retailer or manufacturer who is not out-of-business. The party to whom the warranty work is re-assigned shall perform the warranty work and shall be a consumer, as provided for in §1201.358(d) of the Standards Act, entitled to be reimbursed from the Fund.

(4) - (5) (No change.)

(6) Once a payment is made from the Fund, the department [~~Department~~] shall file a claim under the bond of the party primarily responsible for the unsatisfied claim. In the case of re-assigned warranty work reimbursed by the Fund, the claim shall be against the bond of the party that is no longer in business or whose license has been revoked.

(7) (No change.)

§80.135. Manufactured Housing Auctions.

(a) Auction of Manufactured Housing to Texas Consumers.

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

(5) A manufactured home that has been salvaged or is not habitable may not be sold, conveyed, or transferred to a consumer as a manufactured home for dwelling purposes. [~~The seller must surrender the title and HUD label or Texas Seal, or a statement that there was no label or seal, to the department along with the required fee and an application to cancel the title to business use, before the home is auctioned.~~]

(6) - (7) (No change.)

(b) (No change.)

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

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

TRD-200500652
Timothy K. Irvine
Executive Director, Manufactured Housing Division
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: March 27, 2005
For further information, please call: (512) 475-2206

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SUBCHAPTER F. CONSUMER NOTICE REQUIREMENTS

10 TAC §80.183

The amended section is proposed under the Texas Manufactured Housing Standards Act, Occupations Code, Subtitle C, Chapter 1201, §1201.052, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.603, which authorizes the director to adopt rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

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

§80.183. Three Day Right of Rescission.

(a) The first calendar day after the day on which the applicable contract is executed is the first day, and the three day right of rescission expires unless notice has been given prior to midnight on the third calendar day following the date of execution of the applicable contract.

(b) The three day right of rescission may not be waived.

(c) Although a licensee is not required to obtain a signed acknowledgment, a [~~A~~] licensee may rely on a signed acknowledgement from a consumer, executed after the right of rescission has expired, confirming that the right expired without being exercised.

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

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

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SUBCHAPTER G. STATEMENTS OF OWNERSHIP AND LOCATION

10 TAC §80.205

The amended section is proposed under the Texas Manufactured Housing Standards Act, Occupations Code, Subtitle C, Chapter 1201, §1201.052, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.603, which authorizes the director to adopt rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

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

§80.205. Inventory Finance Liens [~~Lien Information~~].

[~~(a) Inventory Financing Liens.~~]

(a) [~~(1)~~] A lien and security interest on manufactured homes in the inventory of a retailer, as well as to any proceeds of the sale of those homes, is perfected by filing an inventory finance security form approved by the department and in compliance with these sections.

(b) [~~(2)~~] The creditor-lender financing the inventory and the retailer must execute a security agreement which expressly sets forth the rights and obligations of the two parties in the inventory finance arrangement.

(c) [~~(3)~~] The inventory finance security form shall contain the following:

(1) [~~(A)~~] signatures of both the retailer and the creditor-lender;

(2) [~~(B)~~] the name, sales location, address, and license number of the retailer; and

(3) [~~(C)~~] the name and address of the creditor-lender.

(d) [~~(4)~~] A separate form must be filed for each licensed sales location.

(e) [~~(5)~~] For manufactured homes for which no Statement of Ownership and Location or Document of Title has been issued, the filing of the inventory-finance security form perfects a security interest in all manufactured homes, whether then owned or thereafter acquired, as well as to any proceeds of the sale of those homes, provided that:

(1) [~~(A)~~] the home is financed by the creditor-lender;

(2) [~~(B)~~] the creditor-lender has advanced any funds for the home; or

(3) [~~(C)~~] the creditor-lender has incurred any obligation for the home.

(f) [~~(6)~~] This security interest attaches to a particular manufactured home only when the act described in either subsection (e)(1), (2), or (3) of this section [~~paragraph (5)(A), (B), or (C) of this subsection~~] would either:

(1) [~~(A)~~] enable the retailer to acquire the manufactured home;

(2) [~~(B)~~] pay the existing balance of a creditor-lender for funds secured by a security interest in the manufactured home;

(3) [~~(C)~~] in the event that the retailer and manufacturer are the same entity, pay funds to the manufacturer-retailer after completion of the manufacture of the manufactured home; or

(4) [~~(D)~~] in the event that the retailer has no debt owed against the inventory, enable the retailer to use the manufactured home as security for a new debt.

(g) [~~(7)~~] No provision in the security agreement between the parties to an inventory financing arrangement shall in any way modify, change, or supersede the requirements of this section for the perfection of security interests in manufactured homes in the inventory of a retailer.

[~~(b) Release of Liens.~~]

[~~(1) The lienholder of a lien recorded on a Statement of Ownership and Location shall deliver a properly executed release of lien form prescribed by the department to the owner of record within thirty (30) calendar days of the satisfaction of the debt or obligation secured by the lien.~~]

[~~(2) The lien recorded on a Statement of Ownership and Location shall be released by the department upon receipt of a release of lien form properly executed by the lienholder of record, and a new Statement of Ownership and Location shall be issued.~~]

[~~(c) Foreclosure or Repossession.~~]

[~~(1) In the event of sale after either foreclosure or repossession of a manufactured home that is not real property, the department shall issue a new Statement of Ownership and Location upon receipt of a properly executed application containing the following information:~~]

[~~(A) The description of the home along with an indication of whether the home is a foreclosure or repossession;~~]

[~~(B) The name and address of the lienholder and name of the person authorized to sign for the lienholder;~~]

[~~(C) An indication of whether the home was repossessed by judicial order or sequestration. A true copy of the order or bill of sale shall be attached; and~~]

[~~(D) A certification that:~~]

[~~(i)~~ the home will be sold from a licensed retailer's location; or]

[~~(ii)~~ the seller is not required to be licensed under Subchapter C of the Standards Act.]

[~~(2) In the event of foreclosure or repossession of a manufactured home that is not real property, the department will not issue a new Statement of Ownership and Location until receipt of release of lien.~~]

[~~(d) Right of Survivorship: If two or more eligible persons are shown as purchasers or transferees, they may execute the right of survivorship election on an application for a Statement of Ownership and Location. Such election constitutes an agreement for the right of survivorship. If the survivorship election is taken, then the department will issue a new Statement of Ownership and Location to the surviving person(s) upon receipt of a copy of the death certificate of the deceased person(s), and a properly executed application for Statement of Ownership and Location, and the applicable fee.~~]

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

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

TRD-200500654
Timothy K. Irvine
Executive Director, Manufactured Housing Division
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: March 27, 2005
For further information, please call: (512) 475-2206

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SUBCHAPTER H. TABLES AND FIGURES

10 TAC §80.240

The new section is proposed under the Texas Manufactured Housing Standards Act, Occupations Code, Subtitle C, Chapter 1201, §1201.052, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.603, which authorizes the director to adopt rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

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

§80.240. Tables and Figures.

(a) Tables.

(1) Maximum Spacing for Diagonal Ties.
Figure: 10 TAC §80.240(a)(1)

(2) Minimum Number of Diagonal Ties.
Figure: 10 TAC §80.240(a)(2)

(3) Maximum Spacing for Diagonal Ties (Wind Zone II) per side of the Assembled Unit.
Figure: 10 TAC §80.240(a)(3)

(4) Bracket Installation--Maximum Centerline Wall Opening for Column Uplift Brackets.
Figure: 10 TAC §80.240(a)(4)

(5) Floor Connections--Wind Zone I and II.
Figure: 10 TAC §80.240(a)(5)

(6) Roof Connection--Fastener Type and Spacing.
Figure: 10 TAC §80.240(a)(6)

(7) Main Panel Box Feeder Conductor Sizes.
Figure: 10 TAC §80.240(a)(7)

(8) Footer Capacities.
Figure: 10 TAC §80.240(a)(8)

(9) Pier Loads without Perimeter Supports.
Figure: 10 TAC §80.240(a)(9)

(10) Pier Loads with Perimeter Supports.
Figure: 10 TAC §80.240(a)(10)

(11) Mating Line Column Loads.
Figure: 10 TAC §80.240(a)(11)

(12) Enforcement Matrix.
Figure: 10 TAC §80.240(a)(12)

(b) Figures.

(1) Counties Located in Wind Zone II.
Figure: 10 TAC §80.240(b)(1)

(2) Anchor Installation.
Figure: 10 TAC §80.240(b)(2)

(3) Placement of Stabilizing Plates.
Figure: 10 TAC §80.240(b)(3)

(4) Wind Zone I Installation (Single & Multi-Section).
Figure: 10 TAC §80.240(b)(4)

(5) Diagonal Strap Placement for Piers Exceeding 36 in. in Height.
Figure: 10 TAC §80.240(b)(5)

(6) Diagonal and Vertical Ties.
Figure: 10 TAC §80.240(b)(6)

(7) Typical Installation Details.
Figure: 10 TAC §80.240(b)(7)

(8) Anchor Span.
Figure: 10 TAC §80.240(b)(8)

(9) Typical Longitudinal Stabilizing Device.
Figure: 10 TAC §80.240(b)(9)

(10) Longitudinal Ties.
Figure: 10 TAC §80.240(b)(10)

(11) Mating Line Surfaces.
Figure: 10 TAC §80.240(b)(11)

(12) Floor Connections.
Figure: 10 TAC §80.240(b)(12)

(13) Endwall Connections.
Figure: 10 TAC §80.240(b)(13)

(14) Roof Connection.
Figure: 10 TAC §80.240(b)(14)

(15) Exterior Roof Close Up.
Figure: 10 TAC §80.240(b)(15)

(16) HVAC (Heat/Cooling) Duct Crossover.
Figure: 10 TAC §80.240(b)(16)

(17) Multi-Section Water Crossover Connections.
Figure: 10 TAC §80.240(b)(17)

(18) Drain, Waste and Vent Floor Piping System.
Figure: 10 TAC §80.240(b)(18)

(19) Chassis Bonding.
Figure: 10 TAC §80.240(b)(19)

(20) Electrical Crossover.
Figure: 10 TAC §80.240(b)(20)

(21) Fuel Gas Pipe Crossover Connections.
Figure: 10 TAC §80.240(b)(21)

(22) Footer Configurations.
Figure: 10 TAC §80.240(b)(22)

(23) Pier Design (Single and Multi-Section Stack).
Figure: 10 TAC §80.240(b)(23)

(24) Perimeter Pier Front & Side View.
Figure: 10 TAC §80.240(b)(24)

(25) Typical Multi-Section Pier Layout.
Figure: 10 TAC §80.240(b)(25)

(26) Typical Single Section Pier Layout.
Figure: 10 TAC §80.240(b)(26)

(27) Determining Column Load and Marriage Line Elevation.
Figure: 10 TAC §80.240(b)(27)

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

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

TRD-200500655
Timothy K. Irvine
Executive Director, Manufactured Housing Division
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: March 27, 2005
For further information, please call: (512) 475-2206

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SUBCHAPTER I. FORMS

10 TAC §80.260

The new section is proposed under the Texas Manufactured Housing Standards Act, Occupations Code, Subtitle C, Chapter 1201, §1201.052, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.603, which authorizes the director to adopt rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

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

§80.260. Required and Optional Forms.

(a) Required Forms. Any alternative form or any modification of any of the following forms may be accepted by the department if the director determines that all information necessary to the administration of the Standards Act has been provided and that in all other respects the alternative form or modified form is acceptable AND the director has evidenced such approval in writing prior to the acceptance of any such alternative or modified form. The director may require a legal opinion from counsel for the person seeking to use an alternative or modified form that it complies with the Standards Act and addressing such other legal issues as the director may determine. The director may place limitations or conditions on the approval of any alternative or modified form.

(1) Site Preparation Notice.
Figure: 10 TAC §80.260(a)(1)

(2) Consumer Disclosure Statement.
Figure: 10 TAC §80.260(a)(2)

(3) 163 Disclosure--Choosing a Loan to Buy a Manufactured Home.
Figure: 10 TAC §80.260(a)(3)

(4) Notice of Installation (Form T).
Figure: 10 TAC §80.260(a)(4)

(5) Estimate for Reassigned Warranty Work.
Figure: 10 TAC §80.260(a)(5)

(6) Application for Statement of Ownership and Location.
Figure: 10 TAC §80.260(a)(6)

(7) Release or Foreclosure of Lien (Form B).
Figure: 10 TAC §80.260(a)(7)

(8) Quick Processing Form.
Figure: 10 TAC §80.260(a)(8)

(9) Form M.
Figure: 10 TAC §80.260(a)(9)

(10) Affidavit of Fact for Right of Survivorship.
Figure: 10 TAC §80.260(a)(10)

(b) Optional Forms.

(1) Spanish Version of Consumer Disclosure Statement.
Figure: 10 TAC §80.260(b)(1)

(2) Spanish Version of 163 Disclosure--Choosing a Loan to Buy a Manufactured Home.
Figure: 10 TAC §80.260(b)(2)

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

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

TRD-200500656
Timothy K. Irvine
Executive Director, Manufactured Housing Division
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: March 27, 2005
For further information, please call: (512) 475-2206

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CHAPTER 80. MANUFACTURED HOUSING

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs (Department) proposes repeal of §§80.50 - 80.52, 80.63, 80.129, 80.134, 80.136, 80.137, 80.181, 80.182, 80.200, 80.202 - 80.204, and 80.206 - 80.209. The repeals are necessary to remove unnecessary text, move text to more appropriate sections, or to propose a new rule to replace the repeal.

Section 80.50 - the rule is not necessary since the Wind Zone regulations are stated in the Standards Act.

Section 80.51 - relocated to various sections in proposed revisions to §80.53 and §80.54.

Section 80.52 - clarifications are made in proposed revisions in §80.54 and the definition of Permanent Foundation that make this rule unnecessary. Also, the certification form is eliminated since it is not required that a home be on a permanent foundation to be treated as real property.

Section 80.63 - all matters are now appropriately addressed in §80.54 and §80.62.

Section 80.129 - proposing a new §80.129 and moving the previous text to §80.127 (Sanctions and Penalties) and the Enforcement Matrix to new Subchapter H (Tables and Figures).

Figure: 10 TAC §80.129(g) - Moved Enforcement Matrix to new §80.240(a)(12).

Section 80.134 - relocated portions of the text to §80.121 (Retailer's Responsibilities) and deleted text that is no longer necessary.

Section 80.136 - supporting documentation relating to permanent foundations is no longer required and the closing requirements are clearly set forth in the statute.

Section 80.137 - relocated subsection (b) and forms to new Subchapter I (Forms).

Figure: 10 TAC §80.137(a)(1) - Moved Notice of Installation (Form T) to new §80.260(a)(4).

Figure: 10 TAC §80.137(a)(2) -The Down Payment Verification Affidavit is deleted.

Figure: 10 TAC §80.137(a)(3) - Moved Estimate for Reassigned Warranty Work form to new §80.260(a)(5).

Section 80.181 - relocated necessary text to §80.121(e) and forms to new Subchapter I (Forms).

Figure: 10 TAC §80.181(1) - Moved the Consumer Disclosure Statement form to new §80.260(a)(2).

Figure: 10 TAC §80.181(2) - Moved the Spanish version of the Consumer Disclosure Statement form to new §80.260(b)(1).

Section 80.182 - relocated necessary text to §80.121(f) and forms to new Subchapter I (Forms).

Figure: 10 TAC §80.182(1) - Moved the 163 Disclosure form to new §80.260(a)(3).

Figure: 10 TAC §80.182(2) - Moved the Spanish version of the 163 Disclosure form to new §80.260(b)(2).

Section 80.200 - deleted subsection (a) and relocated (b) to §80.121(a)(1)(L) (Retailer's Responsibilities).

Section 80.202 - relocated fees to §80.20(j).

Section 80.203 - relocated to §80.120 (Manufacturer's Responsibilities).

Section 80.204 - the Notice of Installation (Form T) is no longer filed with the Application for Statement of Ownership and Location.

Section 80.206 - the rule is no longer necessary.

Section 80.207 - a habitability inspection is no longer required for changes in election from real to personal property, and habitability inspection requirements for converting business use and salvage homes to residential use are already set forth in §80.201.

Section 80.208 - the rule is no longer necessary.

Section 80.209 - relocated forms to new Subchapter I (Forms).

Figure: 10 TAC §80.209(a) - Moved the Application for Statement of Ownership and Location form to new §80.260(a)(6).

Figure: 10 TAC §80.209(b) - Moved the Release or Foreclosure of Lien form to new §80.260(a)(7).

Timothy K. Irvine, Executive Director of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, has determined that for the first five-year period the repeal is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Irvine also has determined that for each year of the first five years the repeal is in effect the public benefit as a result of enforcing the repeal will be to eliminate unnecessary or redundant verbiage and to propose new rules and revisions that organize the rules by grouping in related subjects that are more logical. The repeal is expected to have no material economic costs to persons/businesses that are required to comply with the repeal as proposed. There are expected to be no fiscal implications for units of local government as a result of enforcing or administering the repeal.

Comments may be submitted to Mr. Timothy K. Irvine, Executive Director of the Manufactured Housing Division, of the Texas Department of Housing and Community Affairs, P. O. Box 12489, Austin, Texas 78711-2489 or by e-mail at the following address tirvine@tdhca.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

SUBCHAPTER D. STANDARDS AND REQUIREMENTS

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

10 TAC §§80.50 - 80.52, 80.63

The repeal is proposed under the Texas Manufactured Housing Standards Act, Occupations Code, Subtitle C, Chapter 1201.052, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.603, which authorizes the director to adopt rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

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

§80.50. Wind Zone Regulations.

§80.51. Manufactured Home Installation Requirements.

§80.52. Permanent Foundation Criteria.

§80.63. Other Materials and Methods for Manufactured Homes.

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

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

TRD-200500643
Timothy K. Irvine
Executive Director, Manufactured Housing Division
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: March 27, 2005
For further information, please call: (512) 475-2206

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SUBCHAPTER E. GENERAL REQUIREMENTS

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Housing and Community Affairs or in the Texas

Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

10 TAC §§80.129, 80.134, 80.136, 80.137

The repeal is proposed under the Texas Manufactured Housing Standards Act, Occupations Code, Subtitle C, Chapter 1201.052, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.603, which authorizes the director to adopt rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

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

§80.129. Determinations Regarding the Pursuit of Administrative Penalties and Enforcement Actions.

§80.134. Deceptive Practices.

§80.136. Homes Acquired on or after January 1, 2002.

§80.137. Required Forms.

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

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

TRD-200500644
Timothy K. Irvine
Executive Director, Manufactured Housing Division
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: March 27, 2005
For further information, please call: (512) 475-2206

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SUBCHAPTER F. CONSUMER NOTICE REQUIREMENTS

10 TAC §80.181, §80.182

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

The repeal is proposed under the Texas Manufactured Housing Standards Act, Occupations Code, Subtitle C, Chapter 1201.052, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.603, which authorizes the director to adopt rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

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

§80.181. Section 162 Notice.

§80.182. 163 Disclosure.

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

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

TRD-200500645
Timothy K. Irvine
Executive Director, Manufactured Housing Division
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: March 27, 2005
For further information, please call: (512) 475-2206

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SUBCHAPTER G. STATEMENTS OF OWNERSHIP AND LOCATION

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

10 TAC §§80.200, 80.202 - 80.204, 80.206 - 80.209

The repeal is proposed under the Texas Manufactured Housing Standards Act, Occupations Code, Subtitle C, Chapter 1201.052, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.603, which authorizes the director to adopt rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

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

§80.200. Responsibility for Completion and Filing of an Application for a Statement of Ownership and Location.

§80.202. Fees for Title Documents.

§80.203. Manufacturer's Monthly Shipment Report.

§80.204. Installation Information.

§80.206. Assignment of Lien.

§80.207. Reinstatement of Canceled Documents of Title.

§80.208. Recording Tax Lien on Manufactured Homes.

§80.209. Statement of Ownership and Location Forms.

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

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

TRD-200500646
Timothy K. Irvine
Executive Director, Manufactured Housing Division
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: March 27, 2005
For further information, please call: (512) 475-2206

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 8. PIPELINE SAFETY REGULATIONS

The Commission proposes amendments to §8.1, relating to General Applicability and Standards, §8.201, relating to Pipeline Safety Program Fees, and §8.210, relating to Reports.

Section 8.1(b) concerns minimum safety standards and adopts by reference the United States Department of Transportation's (USDOT) pipeline safety standards found in 49 U.S.C. §§60101, *et seq.*; 49 Code of Federal Regulations (CFR) Part 191, Transportation of Natural and Other Gas by Pipeline; Annual Reports, Incident Reports, and Safety-Related Condition Reports; 49 CFR Part 192, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards; 49 CFR Part 193, Liquefied Natural Gas Facilities: Federal Safety Standards; 49 U.S.C. §§60101, *et seq.*; 49 CFR Part 195, Transportation of Hazardous Liquids by Pipeline; and 49 CFR Part 199, Drug and Alcohol Testing. The current rule adopts the federal pipeline safety standards as of April 9, 2004; the proposed amendment will show this date as September 14, 2004. The federal safety rule amendments that will be captured are summarized in the following paragraphs.

USDOT's Amendment No. 192-96, published at 69 Federal Register (FR) 27861, referred to a final rule published by the Research and Special Programs Administration (RSPA) on September 15, 2003, concerning the operation and capacity of existing pressure limiting and regulating stations on gas pipelines. The rule inadvertently established a pressure limit that could require a reduction in the operating pressure of some pipelines and be impracticable for others to meet. This direct final rule establishes an appropriate pressure limit to avoid these unintended results. The effective date for the direct final rule was September 14, 2004.

USDOT's Amendment No. 192-97, published at 29 FR 36024, concerned a regulation published by RSPA requiring that new gas transmission lines and sections of existing transmission lines in which pipe or components are replaced be designed and constructed to accommodate the passage of instrumented internal inspection devices. Responding to petitions for reconsideration, RSPA stayed enforcement on some facilities and invited comments on proposed changes to the regulation. The present action concludes RSPA's consideration of the petitions and comments. For existing onshore transmission lines, this action restricts the regulation to replacements of pipe or components. For offshore transmission lines, the regulation is restricted to certain new lines that run between platforms or from platforms to shore. The action aligns the regulation with the supporting congressional directive and a related Marine Board recommendation. The effective date was July 28, 2004; however, offshore transmission lines covered by revised §192.150 are those on which construction begins after December 28, 2005.

Amendment Nos. 192-98 and 195-82, published at 69 FR 48400, amended the pipeline safety regulations to require operators of gas and hazardous liquid pipelines to prepare and follow procedures for periodic inspections of pipeline facilities located in the Gulf of Mexico and its inlets in waters less than 15 feet deep. These inspections will inform the operator if the pipeline is exposed or a hazard to navigation. The effective date was September 9, 2004.

Amendment Nos. 195-81 and 199-22, published at 69 FR 32886, were part of a RSPA final rule incorporating the most recent editions of the voluntary consensus standards and specifications referenced in the federal pipeline safety regulations to enable pipeline operators to utilize the most current technology, materials, and industry practices in the design, construction, and operation of their pipelines. This rule also increased the design pressure limitation for new thermoplastic pipe, allowed the use of plastic pipe for certain bridge applications, increased the time period for revision of maximum allowable operating pressure after a change in class location, clarified welding requirements, and made various other editorial clarifications and corrections. The final rule does not require pipeline operators to undertake any significant new pipeline safety initiatives. The effective date was July 14, 2004. After this effective date, RSPA published a correction to Amendment 195-81 at 69 FR 54591; the original final rule included an inadvertent error in the definition of "transmission line" in §192.3, failed to properly amend Appendix B to part 192, inadvertently reversed a recent amendment to a welder qualification requirement in §195.222, and contained several typographical errors. The correction revises the relevant sections. The effective date remained July 14, 2004.

In a previous adoption of updated USDOT changes, the Commission inadvertently left out USDOT Amendment No. 21 to 49 CFR Part 199. That amendment, published at 68 FR 75455, concerned USDOT's drug and alcohol testing rules and included requirements for select employers to submit drug and alcohol testing data to five DOT agencies. In the past, these employers have been required to use agency-specific Management Information System (MIS) forms for this purpose, 21 different forms in all. USDOT published a final rule revising these MIS forms into a single one-page form for use through all the DOT agencies. The requirement for use of the form is now in 49 CFR Part 40. By this action, the DOT agencies endorsed the use of this single form within their regulated industries, provided their regulated employers with guidance for submission of the form, and amended their rules accordingly. The DOT agencies are the Federal Motor Carrier Safety Administration (FMCSA), the Federal Aviation Administration (FAA), the Federal Transit Administration (FTA), the Federal Railroad Administration (FRA), and the Research and Special Programs Administration (RSPA). The effective date of that action was December 31, 2003. The Commission includes this amendment in this proposal for clarification purposes; pipeline operators were already required to comply with the amendment as of December 31, 2003.

The proposed amendments in §8.201(a) correct a typographical error; in subsection (b)(1) and (2) change the calendar year from 2003 to 2004 and the deadline by which the annual pipeline safety program fee is to be filed from March 15, 2004, to March 15, 2005; and in subsection (b)(3)(E) add wording that state agencies, as defined in Texas Utilities Code, §101.003, shall not be billed this fee. This exemption is being proposed as part of the resolution of litigation brought by the Office of the Attorney General challenging the Commission's authority to charge the pipeline safety fee to state agency customers of gas utilities. The fee remains at $0.37.

The proposed amendment in §8.210(a)(4)(A) corrects an internal citation.

Mary McDaniel, Director, Safety Division, has determined that for the first five years the amendments will be in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the proposed amendments. Specifically with regard to the proposed amendments in §8.201, Ms. McDaniel has determined that the $0.37 per service line

pipeline safety fee will continue to generate sufficient revenue to the Commission for the pipeline safety program even with the exemption of state agency customers.

Ms. McDaniel has determined that for each year of the first five years that the amendments will be in effect, the primary public benefit will be the continuation of the Commission's Pipeline Safety program to ensure public safety with regard to pipeline operations and accurate reference to federal pipeline safety standards enforced by the Commission.

The Commission anticipates that there will be no additional cost to individuals, small businesses, or micro-businesses of complying with the proposed amendments. The proposed amendment to §8.1 would simply change the date as of which the Railroad Commission has adopted by reference the federal pipeline safety rules. Texas pipelines are already required to comply with the federal rules. Under 49 U.S.C. §§60101, *et seq.*, the Railroad Commission is authorized to enforce pipeline safety laws so long as the state's scheme of regulation is as strict as or stricter than the federal system. In order to be considered "as strict as or stricter than" the federal scheme of regulation, the state must adopt every federal rule; there are no exceptions for rules of limited application. Therefore, even though the rules already apply in Texas, the Railroad Commission must also adopt the rules for its own system. The proposed amendments to §8.201 correct typographical errors; amend the dates on which operators of natural gas distribution systems and master meter systems are obligated to file reports and/or remit pipeline safety fee assessments to the Commission; and explicitly exempt state agency customers from payment of the fee. These changes do not impose a greater burden on any affected person or state agency; to the extent that a state agency is affected by the proposed explicit exemption, it is a benefit of $0.37 per service line per year. Finally, the proposed amendment to §8.210(a)(4)(A) corrects an internal citation, but does not change the scope or application of the rule.

The public benefit anticipated as a result of the enforcement of these amendments will be enhanced public safety and increased awareness of safety requirements in the transportation of natural gas, carbon dioxide, and hazardous liquids because the rules will be correctly stated.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.html; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept comments for 30 days after publication in the *Texas Register*; comments should refer to Docket No. 9566. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Ms. McDaniel at (512) 463-7166. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.html.

SUBCHAPTER A. GENERAL REQUIREMENTS AND DEFINITIONS

16 TAC §8.1

The Commission proposes the amendments under Texas Natural Resources Code, §81.051 and §81.052, which give the Commission jurisdiction over all common carrier pipelines in Texas, persons owning or operating pipelines in Texas, and their pipelines and oil and gas wells, and authorize the Commission to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission as set forth in §81.051, including such rules as the Commission may consider necessary and appropriate to implement state responsibility under any federal law or rules governing such persons and their operations; Texas Utilities Code, §§121.201 - 121.210, which authorize the Commission to adopt safety standards and practices applicable to the transportation of gas and to associated pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated, §§60101, *et seq.*; and Texas Utilities Code, §121.211, authorizes the Railroad Commission to adopt, by rule, an inspection fee to be assessed annually against operators of natural gas distribution pipelines and their pipeline facilities and natural gas master metered pipelines and their pipeline facilities.

Texas Natural Resources Code, §81.051 and §81.052; Texas Utilities Code, §§121.201 - 121.211; and 49 United States Code Annotated, §§60101, *et seq.*, are affected by the proposed amendments.

Statutory authority: Texas Natural Resources Code, §81.051 and §81.052; Texas Utilities Code, §§121.201 - 121.211; and 49 United States Code Annotated, §§60101, *et seq*.

Cross-reference to statute: Texas Natural Resources Code, Chapter 81; Texas Utilities Code, Chapter 121; and 49 United States Code Annotated, Chapter 601.

Issued in Austin, Texas, on February 8, 2005.

§8.1. General Applicability and Standards.

(a) (No change.)

(b) Minimum safety standards. The Commission adopts by reference the following provisions, as modified in this chapter, effective September 14, 2004 [~~April 9, 2004~~].

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

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

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

Filed with the Office of the Secretary of State on February 8, 2005.

TRD-200500586
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Earliest possible date of adoption: March 27, 2005
For further information, please call: (512) 475-1295

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SUBCHAPTER C. REQUIREMENTS FOR NATURAL GAS PIPELINES ONLY

16 TAC §8.201, §8.210

The Commission proposes the amendments under Texas Natural Resources Code, §81.051 and §81.052, which give the Commission jurisdiction over all common carrier pipelines in Texas, persons owning or operating pipelines in Texas, and their

pipelines and oil and gas wells, and authorize the Commission to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission as set forth in §81.051, including such rules as the Commission may consider necessary and appropriate to implement state responsibility under any federal law or rules governing such persons and their operations; Texas Utilities Code, §§121.201 - 121.210, which authorize the Commission to adopt safety standards and practices applicable to the transportation of gas and to associated pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated, §§60101, *et seq.*; and Texas Utilities Code, §121.211, authorizes the Railroad Commission to adopt, by rule, an inspection fee to be assessed annually against operators of natural gas distribution pipelines and their pipeline facilities and natural gas master metered pipelines and their pipeline facilities.

Texas Natural Resources Code, §81.051 and §81.052; Texas Utilities Code, §§121.201 - 121.211; and 49 United States Code Annotated, §§60101, *et seq.*, are affected by the proposed amendments.

Statutory authority: Texas Natural Resources Code, §81.051 and §81.052; Texas Utilities Code, §§121.201 - 121.211; and 49 United States Code Annotated, §§60101, *et seq*.

Cross-reference to statute: Texas Natural Resources Code, Chapter 81; Texas Utilities Code, Chapter 121; and 49 United States Code Annotated, Chapter 601.

Issued in Austin, Texas, on February 8, 2005.

§8.201. Pipeline Safety Program Fees.

(a) Pursuant to Texas Utilities Code, §121.211, the Commission establishes a pipeline safety inspection fee, to be assessed annually against operators of natural gas distribution pipelines and pipeline facilities and natural gas master metered pipelines and pipeline facilities subject to the Commission's pipeline safety jurisdiction under Texas Utilities Code, Chapter 121. The total amount of revenue estimated to be collected under this section does not exceed the amount the Commission estimates to be necessary to recover the costs of administering the pipeline safety program under Texas Utilities Code, Chapter 121, excluding costs that are fully funded by federal sources for[~~, or~~] any fiscal year.

(b) The Commission hereby assesses each investor-owned natural gas distribution system and each municipally owned natural gas distribution system an annual pipeline safety program fee of $0.37 for each service (service line) reported to be in service at the end of calendar year 2004 [~~2003~~] by each system operator on the Distribution Annual Report, Form F7100.1-1, to be filed on March 15, 2005 [~~2004~~].

(1) Each operator of an investor-owned natural gas distribution system and each operator of a municipally-owned natural gas distribution system shall calculate the total amount of the annual pipeline safety program fee to be paid to the Commission by multiplying the number of services listed in Part B, Section 3, of Department of Transportation (DOT) Distribution Annual Report, Form F7100.1-1, due to be filed on March 15, 2005 [~~2004~~], by $0.37.

(2) Each operator of an investor-owned natural gas distribution system and each operator of a municipally-owned natural gas distribution system shall remit to the Commission on March 15, 2005 [~~2004~~], the amount calculated under paragraph (1) of this subsection.

(3) Each operator of an investor-owned natural gas distribution system and each operator of a municipally-owned natural gas distribution system shall recover, by a surcharge to its existing rates, the amount the operator paid to the Commission under paragraph (1) of this subsection. The surcharge:

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

(C) shall be applied in the billing cycle or cycles immediately following the date on which the operator paid the Commission; [~~and~~]

(D) shall not exceed $0.50 per service or service line; and[~~.~~]

(E) shall not be billed to a state agency, as that term is defined in Texas Utilities Code, §101.003.

(4) - (6) (No change.)

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

§8.210. Reports.

(a) Accident, leak, or incident report.

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

(4) Written report.

(A) Following the initial telephonic report for accidents, leaks, or incidents described in paragraph (1) [~~(1)(A) and (E)~~] of this subsection, the operator who made the telephonic report shall submit to the Commission a written report summarizing the accident or incident. The report shall be submitted as soon as practicable within 30 calendar days after the date of the telephonic report. The written report shall be made in duplicate on forms supplied by the Department of Transportation. The Division shall forward one copy to the Department of Transportation.

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

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

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

Filed with the Office of the Secretary of State on February 8, 2005.

TRD-200500587
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Earliest possible date of adoption: March 27, 2005
For further information, please call: (512) 475-1295

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PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

SUBCHAPTER C. QUALITY OF SERVICE

16 TAC §26.54

The Public Utility Commission of Texas (commission) proposes an amendment to §26.54, specifically §26.54(c)(2) and (c)(6)(A) relating to service quality objectives, such as operator-handled

calls and customer trouble report rates. The proposed amendment is intended to alter performance benchmarks for dominant carriers in order to have a meaningful and attainable standard in changing telecommunications market conditions. Project Number 29897 is assigned to this proceeding.

Katherine Farrell, Staff Attorney, Legal and Enforcement Division, and Nara Srinivasa, Director of the Network Analysis Section, Telecommunications Division, have determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Farrell and Mr. Srinivasa have determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be to ensure that the customers are provided a reasonable level of service in an evolving competitive environment.

Ms. Farrell and Mr. Srinivasa have determined that for each year of the first five years the proposed section is in effect there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. There may be economic costs to persons who are required to comply with the proposed section. These costs are the result of altering internal company guidelines, are likely to vary from business to business, and are difficult to ascertain. However, Staff believes that the benefits accruing from implementation of the proposed section will outweigh these costs.

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

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Friday, April 1, 2005. The request for a public hearing must be received within 30 days after publication.

Comments on the proposed amendment may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Sixteen copies of comments to the proposed amendment are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted within 45 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rule(s). The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 29897.

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2005) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 55.001, 55.002, and 55.003.

§26.54. Service Objectives and Performance Benchmarks.

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

(c) The DCTU shall comply with the service quality objectives established below in providing the basic telecommunications service to its end-use customers. The DCTU shall file its service quality performance report on a quarterly basis. The report shall include its monthly performance for each category of performance objective and a summary of its corrective action plan for each exchange in which the performance falls below the benchmark. Additionally, the corrective action plan shall include, at a minimum, details outlining how the needed improvements will be implemented within three months and result in performance at or above the applicable benchmark.

(1) (No change.)

(2) Operator-handled calls. DCTUs shall maintain adequate personnel to provide an average operator answering performance as follows for each exchange on a monthly basis:

(A) Eighty-five percent of toll and assistance operator calls answered within ten seconds, or average answer time shall not exceed 3.3 seconds. Benchmark for Corrective Action: If the performance is either below 85% within ten seconds, [~~(~~]or if the average exceeds 3.3 seconds[~~)~~] at any answering location in [~~for a period of four days within~~] any given month, the DCTU shall provide a detailed corrective action plan for such exchange or wirecenter.

(B) Ninety percent of repair service calls[~~, calls to the business office, and other calls~~] shall be answered within 20 seconds or average answer time shall not exceed 5.9 seconds. Benchmark for Corrective Action: If the performance is either below 90% within 20 seconds, or if the average answer time exceeds 5.9 seconds at any answering location for a period of five days within any given month, the DCTU shall provide a detailed corrective action plan for such exchange or wirecenter.

(C) Eighty-five percent of directory assistance calls shall be answered within ten seconds or the average answer time shall not exceed 5.9 seconds. Benchmark for Corrective Action: If the performance is either below 85% within ten seconds, or if the average answer time exceeds 5.9 seconds at any answering location in [~~for a period of four days within~~] any given month, the DCTU shall provide a detailed corrective action plan for such exchange or wirecenter.

(D) - (E) (No change.)

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

(6) Customer trouble reports.

(A) The DCTU shall maintain its network service in a manner that it receives no more than three customer trouble reports on a company-wide basis, excluding customer premises equipment (CPE) reports, per 100 customer access lines per month (on average). Performance Benchmark Applicable for Corrective Action: If the customer trouble report exceeds 3.0% (three per 100 access lines) for a large exchange or 6.0% (6 per 100 access lines) for a smaller exchange for three consecutive months [~~three per 100 access lines per month per exchange for a period of three consecutive months~~], the DCTU shall provide a detailed corrective action plan for such exchange or wirecenter. For purposes of this section, a large exchange is defined as serving 10,000 or more access lines and a small exchange is defined as serving less than 10,000 access lines.

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

(7) (No change.)

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

Filed with the Office of the Secretary of State on February 10, 2005.

TRD-200500604
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: March 27, 2005
For further information, please call: (512) 936-7223

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PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 66. REGISTRATION OF PROPERTY TAX CONSULTANTS

16 TAC §66.80, §66.82

The Texas Department of Licensing and Regulation ("Department") proposes amendments to 16 Texas Administrative Code §66.80 and §66.82, regarding fees in the registration of property tax consultants program.

The amendment to §66.80 proposes to lower the original application fee for a property tax consultant from $100 to $50 and the original application fee for a senior property tax consultant from $150 to $75. The amendment to §66.82 proposes to lower the fee for issuing a duplicate registration from $50 to $25. Texas Occupations Code, §51.202 requires the Department to set fees in amounts reasonable and necessary to cover the costs of administering programs under its jurisdiction. The Department conducted its annual fee review pursuant to §51.202 and recommended to the Texas Commission of Licensing and Regulation ("Commission") that the referenced fees be reduced as indicated. The revenue generated by current fees exceeds the amount required by the Department to cover costs of administering the property tax consultants program. On August 9, 2004, the Commission directed the Department to initiate the recommended fee reductions.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed amendments are in effect there will be no cost to state or local government as a result of enforcing or administering the amended sections.

Mr. Kuntz also has determined that for each year of the first five-year period the amendments are in effect, the public benefit will be lower application fees.

The Department anticipates decreased economic costs to licensees, small businesses, micro-businesses, or other persons who are required to comply with the amendments as proposed because of the proposed fee reductions.

Comments on the proposal may be submitted to William H. Kuntz, Jr., Executive Director, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-3032, or electronically: whkuntz@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, Chapter 1152 and Chapter 51, §§51.201, 51.202, and 51.203 which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department and which requires the Commission to set fees in amounts reasonable and necessary to cover the costs of administering Department programs.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapter 1152 and Chapter 51. No other statutes, articles, or codes are affected by the proposal.

§66.80. Fees.

(a) The non-refundable original application fee for a property tax consultant is $50 [~~$100~~].

(b) The non-refundable original application fee for a senior property tax consultant is $75 [~~$150~~].

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

§66.82. Fees--Duplicate Registration.

A $25 [~~$50~~] fee will be charged for issuing a duplicate registration.

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

Filed with the Office of the Secretary of State on February 7, 2005.

TRD-200500570
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: March 27, 2005
For further information, please call: (512) 463-7348

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CHAPTER 70. INDUSTRIALIZED HOUSING AND BUILDINGS

16 TAC §§70.10, 70.70, 70.74, 70.101, 70.102

The Texas Department of Licensing and Regulation ("Department") proposes amendments to existing rules at 16 Texas Administrative Code, §§70.10, 70.70, 70.74, 70.101, and 70.102 regarding industrialized buildings. The rules as proposed were approved by the Texas Industrialized Building Code Council. The rules are necessary to provide clarification in terminology, update references to various codes, and update the recertification process for industrialized buildings.

The amendment to §70.10 is necessary to add the definition of "construction documents," which is a term that will be used in the rules for greater consistency and clarity.

The amendment to §70.70(c)(9) is necessary to refer to the correct article of the National Electrical Code.

The term "plans and specifications" has been replaced with the term "construction documents" throughout rule §70.74. The amendment to §70.74(c) clarifies that "ordinary" repairs shall not be considered alterations. The amendment to §70.74(d) clarifies that alteration decals are used to recertify industrialized buildings designed to be moved from one commercial site to another commercial site. The amendment to §70.74(e)(1) does not permit an industrialized builder or installation permit holder to change the design review agency (DRA) used to review and approve alteration construction documents without approval from the Department and sets record retention requirements for all records pertinent to the alterations.

The amendments to §70.74(f) accomplish the following: clarify that only industrialized buildings designed to be moved and that were previously certified under the Texas Industrialized Housing and Building (IHB) program may be recertified, require that a copy of the original data plate be submitted to the DRA with the alteration construction documents submitted for review and approval, clarify that repairs other than ordinary repairs are considered alterations, specify that the industrialized builder purchases alteration decals from the Department to affix to recertified modules, and specify that the alteration decals shall only be released to the third party inspection agency responsible for the alteration inspections. Additional amendments to §70.74(f) define the types of industrialized buildings that may be recertified and the approval and inspection process for recertifying these buildings. The amendments to §70.74(f)(1) specify the requirements for recertification class 1, which applies to buildings that have not been previously altered and for which original approved construction documents exist. Section 70.74(f)(2) specifies the requirements for recertification class 2 buildings where original approved construction documents do not exist. Section 70.74(f)(3) specifies the requirements for recertification class 3 buildings where original approved construction documents exist, but the building has been altered from those documents. Section 70.74(f)(4) specifies the requirements for recertification class 4 buildings that have been previously recertified. Section 70.74(f)(5) specifies the requirements for recertifying a building where emergency repairs (that do not qualify as ordinary repairs) to the building are necessary. Section 70.74(f)(6) specifies the plan approval requirements for recertification construction documents and requires the use of the Council's stamp of approval for altered or recertified buildings. Section 70.74(f)(7) sets the inspection requirements for recertifying industrialized buildings. The amendments to §70.74(g) clarify that the data plate is for recertification and alterations of industrialized housing and buildings.

The amendments to §70.101(d) amend section 101.2 of the International Building Code (IBC) to require that alterations be reviewed for compliance with the International Existing Building Code (IEBC). Section 70.101(i) amends the 2003 IEBC to replace the accessibility standards referenced in this code with the Texas Accessibility Standards, to delete chapter 10 (Historic Buildings) as not relevant, and to amend section 1201.2 to apply to structures existing prior to July 1, 2004 (adoption date of 2003 codes).

The amendments to §70.102 require compliance with the mandatory building codes for new buildings for a building that has not been previously occupied or used for its intended purpose and compliance with the 2003 IEBC for recertification of existing industrialized buildings.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed amendments are in effect there may be some additional costs to the Department in implementing and enforcing the rules. The Department may be required to conduct additional plan reviews, inspections, and builder audits. It is anticipated that any additional costs will not be substantial and can be absorbed within existing budget constraints. It is not anticipated that there will be any fiscal implications to local government.

Mr. Kuntz also has determined that for each year of the first five-year period the amendments are in effect, the public benefit will be increased safety of industrialized buildings. In addition, the incorporation of the IEBC into the rules likely will encourage greater use of existing industrialized buildings, without compromising public safety.

Mr. Kuntz also has determined that for each year of the first five-year period the amendments are in effect, there may be some economic costs to persons required to comply with the amended rules. This is because the rules are likely to increase the number of recertifications of existing buildings, and there would be a cost to the builder to go through the recertification process. Under current rules, recertification has been a little-used procedure. For the same reason, there could also be some additional costs to small or micro-businesses in the industrialized building industry. However, it is anticipated that the rules will lower compliance costs, including costs to small and micro-businesses, from the incorporation of the IEBC into the rules. The IEBC is designed to encourage the use and re-use of existing buildings by setting reasonable requirements for alterations of existing buildings that are more predictable and consistent than the requirements of the IBC. The Department is unable to provide a precise estimate of these economic effects.

Comments on the proposal may be submitted to William H. Kuntz, Jr., Executive Director, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile 512/475-3032, or electronically: whkuntz@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, Chapter 51, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department, and Texas Occupations Code, Chapter 1202.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapter 51 and Chapter 1202. No other statutes, articles, or codes are affected by the proposal.

§70.10. Definitions.

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

(1) Alteration--Any construction, other than ordinary repairs of the house or building, to an existing industrialized house or building after affixing of the decal by the manufacturer. Industrialized housing or buildings that have not been maintained shall be considered altered.

(2) Alteration decal--The approved form of certification issued by the department to an industrialized builder to be permanently affixed to a module indicating that alterations to the industrialized building module have been constructed to meet or exceed the code requirements and in compliance with this chapter.

(3) Building site--A lot, the entire tract, subdivision, or parcel of land on which industrialized housing or buildings are sited.

(4) Building system--The design and/or method of assembly of modules or modular components represented in the plans, specifications, and other documentation which may include structural, electrical, mechanical, plumbing, fire protection, and other systems affecting health and safety.

(5) Chapter 1202--Texas Occupations Code, Chapter 1202, Industrialized Housing and Buildings.

(6) Closed construction--That condition where any industrialized housing or building, modular component, or portion thereof

is manufactured in such a manner that all portions cannot be readily inspected at the site without disassembly or destruction thereof.

(7) Commercial structure--An industrialized building classified by the mandatory building codes for occupancy and use groups other than residential for one or more families. The term shall not include a structure that is not installed on a permanent foundation and either is not open to the public or is less than 1,500 square feet in total area and not used as a school or place of religious worship.

(8) Compliance Control Program--The manufacturer's system, documentation, and methods of assuring that industrialized housing, buildings, and modular components, including their manufacture, storage, handling, and transportation conform with Chapter 1202 and this chapter.

(9) Construction documents--The aggregate of all plans, specifications, calculations, and other documentation required to be submitted to the design review agency for compliance review to the mandatory building code.

(10) [~~(9)~~] Component--A sub-assembly, subsystem, or combination of elements for use as a part of a building system or part of a modular component that is not structurally independent, but may be part of structural, plumbing, mechanical, electrical, fire protection, or other systems affecting life safety.

(11) [~~(10)~~] Decal--The approved form of certification issued by the department to the manufacturer to be permanently affixed to the module indicating that it has been constructed to meet or exceed the code requirements and in compliance with this chapter.

(12) [~~(11)~~] Design package--The aggregate of all plans, designs, specifications, and documentation required by these sections to be submitted by the manufacturer to the design review agency, or required by the design review agency for compliance review, including the compliance control manual and the on-site construction documentation. Unique or site specific foundation drawings and special on-site construction details prepared for specific projects are not a part of the design package except as expressly set forth in §70.74.

(13) [~~(12)~~] Design review agency--An approved organization, private or public, determined by the council to be qualified by reason of facilities, personnel, experience, demonstrated reliability to review designs, plans, specifications, and building systems documentation, and to certify compliance to these sections evidenced by affixing the council's stamp. Chapter 1202 designates the department as a design review agency.

(14) [~~(13)~~] ICC--International Code Council, Inc., 5203 Leesburg Pike, Suite 708, Falls Church, Virginia 22041-3401.

(15) [~~(14)~~] Industrialized builder--A person who is engaged in the assembly, connection, and on-site construction and erection of modules or modular components at the building site or who is engaged in the purchase of industrialized housing or buildings or of modules or modular components from a manufacturer for sale or lease to the public; a subcontractor of an industrialized builder is not a builder for purposes of this chapter.

(16) [~~(15)~~] Insignia--The approved form of certification issued by the department to the manufacturer to be permanently affixed to the modular component indicating that it has been constructed to meet or exceed the code requirements and in compliance with the sections in this chapter.

(17) [~~(16)~~] Installation--On-site construction (see paragraph (26) of this section).

(18) [~~(17)~~] Installation permit--A registration issued by the department to a person who purchases an industrialized house or building for his/her own use and who assumes responsibility for the installation of the industrialized house or building. A person who applies for an installation permit may not be engaged in the purchase of industrialized housing or buildings or of modules or modular components for sale or lease to the public. A subcontractor of an installation permit holder is not an industrialized builder for the purposes of this chapter.

(19) [~~(18)~~] Lease, or offer to lease--A contract or other instrument by which a person grants to another the right to possess and use industrialized housing or buildings for a specified period of time in exchange for payment of a stipulated price.

(20) [~~(19)~~] Local building official--The agency or department of a municipality or other local political subdivision with authority to make inspections and to enforce the laws, ordinances, and regulations applicable to the construction, alteration, or repair of residential and commercial structures.

(21) [~~(20)~~] Manufacturer--A person who constructs or assembles modules or modular components at a manufacturing facility which are offered for sale or lease, sold or leased, or otherwise used.

(22) [~~(21)~~] Manufacturing facility--The place other than the building site, at which machinery, equipment, and other capital goods are assembled and operated for the purpose of making, fabricating, constructing, forming, or assembly of industrialized housing, buildings, modules, or modular components.

(23) [~~(22)~~] Model--A specific design of an industrialized house, building, or modular component which is based on size, room arrangement, method of construction, location, arrangement, or size of plumbing, mechanical, or electrical equipment and systems therein in accordance with an approved design package.

(24) [~~(23)~~] Module--A three dimensional section of industrialized housing or buildings, designed and approved to be transported as a single section independent of other sections, to a site for on-site construction with or without other modules or modular components.

(25) [~~(24)~~] NFPA--National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269.

(26) [~~(25)~~] Nonsite specific building--An industrialized house or building for which the permanent site location is unknown at the time of construction.

(27) [~~(26)~~] On-site construction--Preparation of the site, foundation construction, assembly and connection of the modules or modular components, affixing the structure to the permanent foundation, connecting the structures together, completing all site-related construction in accordance with designs, plans, specifications, and on-site construction documentation.

(28) [~~(27)~~] Open construction--That condition where any house, building, or portion thereof is constructed in such a manner that all parts or processes of manufacture can be readily inspected at the building site without disassembly, damage to, or destruction thereof.

(29) [~~(28)~~] Permanent foundation system--A foundation system for industrialized housing or buildings designed to meet the applicable building code as set forth in §§70.100, 70.101, and 70.102.

(30) [~~(29)~~] Permanent industrialized building--An industrialized building that is not designed to be transported from one commercial site to another commercial site.

(31) [~~(30)~~] Person--An individual, partnership, company, corporation, association, or any other legal entity, however organized.

(32) [~~(31)~~] Price--The quantity of an item that is exchanged or demanded in the sale or lease for another.

(33) [~~(32)~~] Public--The people of the state as a whole to include individuals, companies, corporations, associations or other groups, however organized, and governmental agencies.

(34) [~~(33)~~] Registrant--A person who, or which, is registered with the department pursuant to the rules of this chapter as a manufacturer, builder, design review agency, third party inspection agency, or third party inspector.

(35) [~~(34)~~] Residential structure--Industrialized housing designed for occupancy and use as a residence by one or more families.

(36) [~~(35)~~] Sale, sell, offer to sell, or offer for sale--Includes any contract of sale or other instrument of transfer of ownership of property, or solicitation to offer to sell or otherwise transfer ownership of property.

(37) [~~(36)~~] Site or building site--A lot, the entire tract, subdivision, or parcel of land on which industrialized housing or buildings are sited.

(38) [~~(37)~~] Special conditions and/or limitations--On-site construction documentation which alerts the local building official of items, such as handicapped accessibility or placement of the building on the property, which may need to be verified by the local building official for conformance to the mandatory building codes.

(39) [~~(38)~~] Structure--An industrialized house or building that results from the complete assemblage of the modules or modular components designed to be used together to form a completed unit.

(40) [~~(39)~~] Third party inspector--An approved person or agency, private or public, determined by the council to be qualified by reason of facilities, personnel, experience, demonstrated reliability, and independence of judgment to inspect industrialized housing, buildings, and portions thereof for compliance with the approved plans, documentation, compliance control program, and applicable code.

(b) Other definitions may be set forth in the text of the sections in this chapter. For purposes of these sections, the singular means the plural, and the plural means the singular.

(c) Where terms are not defined in this section or in other sections in this chapter and are defined in the mandatory building codes as referenced in §70.100, such terms shall have the meanings ascribed to them in these codes unless the context as the term is used clearly indicates otherwise. Where terms are not defined in this section or other sections in this title or in the mandatory building codes, such terms shall have ordinarily accepted meanings such as the context implies.

§70.70. Responsibilities of the Registrants--Manufacturer's Design Package.

(a) Review and approval. The manufacturer's design package must be reviewed and approved in accordance with the following.

(1) The manufacturer must select a council approved design review agency (DRA) to perform all required review and evaluation of plans, designs, specifications, compliance control, and on-site construction documentation, etc. This selection shall be made in writing to the executive director and will state the name, address, and registration number of the design review agency selected.

(2) An approved DRA shall review all designs, plans, specifications, calculations, compliance control programs, on-site construction documentation or specifications, and other documents as necessary to assure compliance with the mandatory building codes in accordance with the interpretations, instructions, and determinations of the council. The reviews are to be performed or directly supervised by the DRA's certified plans reviewers for the discipline (electrical, plumbing, mechanical, structural, building planning, or fire safety) as listed and approved in the agency's organizational chart. A DRA's plans reviewers must be certified pursuant to the criteria established by the council as set forth in §70.22. The department or DRA will obtain from the manufacturer such information as is necessary to assure that the manufacturer's designs and procedures are in compliance with the mandatory building codes and the sections in this chapter.

(3) All documents shall have all pages numbered and arranged in accordance with a table of contents. The floor plans shall have no scale smaller than 1/8th inch equals one foot. All documents shall be identified to indicate the manufacturer's name and address.

(4) The DRA will signify approval of a drawing, specification, calculation, or any other document in the manufacturer's design package by applying the council's stamp to each page. An alternate council stamp as approved by the council may be used on all designs, plans, specifications, calculations, and other documentation with the exception of the first or cover page and the table of contents or index pages of the design package. The original council stamp with original signature will be required on these pages. The signature on the original council stamp must be the signature of the manager or chief executive officer of the DRA. The manager or chief executive officer of the DRA must be licensed in the State of Texas as a professional engineer or architect in accordance with the criteria for approval of DRA's established by the council. The stamp shall not be placed on any designs, plans, or specifications which do not meet the requirements of the applicable mandatory building codes or the requirements of these sections. The manufacturer and the DRA shall keep copies of the approved documents. The manufacturer shall keep a copy of all approved documents for a minimum of ten years from the date the last unit constructed from the documents is shipped and make a copy of these documents available to the Department upon request. The DRA shall keep a copy on file of all approved documents for a minimum of five years from the date that these documents are superseded by adoption of later editions of the mandatory building codes and make a copy of these documents available to the Department upon request. The manufacturer shall make a copy available to the person performing in-plant inspections. A DRA will forward one approved copy of the design package, including additions and revisions, to the department within five days of approval and will return one approved copy to the manufacturer.

(5) Approvals dated before the effective date of the adoption of the codes in §70.100 are not valid for industrialized housing, buildings, modules, and modular components constructed after the effective date of adoption unless steps are taken to transition the approval to the new code editions in accordance with subparagraphs (B) and (C) of this paragraph. Manufacturers will be notified of the change in code editions 180 days before the effective date of the change. Manufacturers who wish to continue building to previously approved documents must resubmit these documents to their DRA for review and approval to the new code editions. Approval of these documents will be evidenced by application of a new approval date and the council's stamp of approval to each document. The manufacturer may make the transition from current code edition to new code edition in any of the following ways.

(A) The approval date on all documents in the manufacturer's design package will be on or after the effective date of adoption of the new edition of the codes in §70.100.

(B) The manufacturer may transition approval of documents in his design package any time within the 180 days prior to the effective date of the adoption of the new editions of the codes. The manufacturer must notify the department in writing of the effective date of transition. All documents approved on or after that date shall be to

the new editions of the codes. All previously approved supporting documentation, such as compliance control manuals, system calculations, etc., must be resubmitted to the DRA for review and approval to the new code editions and must be approved as of the effective date of transition specified by the manufacturer.

(C) The manufacturer may submit a written description of any other method of transition to the department for approval.

(6) A DRA may withdraw the approval of any document whenever the approval is later found to be in violation of code requirements or the rules and regulations in this chapter. Notice of the withdrawal of the approval shall be in writing and shall set forth the reasons for the withdrawal. Any withdrawal of approval shall have prospective effect only, except for life safety items.

(7) The DRA shall reimburse the department an hourly monitoring fee for expenses incurred outside headquarters in monitoring the performance of the DRA.

(8) DRAs or the department acting as a DRA may make red ink corrections to documents provided the corrections meet all of the following criteria:

(A) limited to corrections of minor deviations;

(B) the corrected items can be verified by reference to prescriptive code requirements;

(C) the change does not involve any change of design or require design;

(D) the red ink correction is valid for 10 working days and may not be extended; and

(E) the corrections must be numbered and initialed by the DRA and the statement, "As noted with (number) corrections" shall appear near the stamp of the council with the number of corrections entered.

(b) In-plant documentation. The manufacturer shall provide the DRA in-plant documentation that must, at the minimum, contain the following:

(1) specifications or detail drawings for all materials, devices, appliances, equipment, and fasteners used in construction;

(2) detailed drawings of all assemblies and components (with cross-sections as necessary to identify major building components);

(3) floor plans for all models and options;

(4) electrical schematics for all models and options;

(5) water system and drain-waste-vent system drawings for all models and options;

(6) gas piping system drawings for all models and options;

(7) mechanical system drawings for all models and options;

(8) fire protection, fire safety, and exit details;

(9) thermal resistance details;

(10) heating, ventilation, and air conditioning details;

(11) structural, thermal, and electrical load calculations;

(12) weather resistance details;

(13) condensation protection details;

(14) decay protection details;

(15) insect and vermin protection details;

(16) fastening schedule;

(17) assembly and connection instructions for all components, materials, devices, equipment, and appliances;

(18) on the floor plan or on the cover or title sheet for each model or project in a title block format:

(A) name and date of applicable codes;

(B) identification of permissible type of gas for appliances;

(C) maximum snow load (roof)(psf);

(D) maximum wind speed (mph) and exposure;

(E) seismic design criteria;

(F) occupancy/use group type;

(G) construction type;

(H) special conditions and/or limitations;

(I) the location of the data plate on the building or dwelling unit; and

(J) the location of the decal or insignia on each module or modular component;

(19) compliance control manual (reference subsection (c) of this section); and

(20) on-site construction documentation (reference subsection (d) of this section).

(c) Compliance control program. The utilization of mass production techniques and assembly line methods in the construction of industrialized housing, buildings, modules, and modular components along with the fact that a large part of such construction cannot be inspected at the ultimate building site, requires manufacturers to develop an adequate compliance control program to assure that these structures meet or exceed mandatory code requirements and are in compliance with the rules and regulations of this chapter. The compliance control program shall be documented in the form of a manual that must be approved by the design review agency or the department. The council may waive the compliance control program as set forth in the rules upon written request from the manufacturer. Waiver of the compliance control program shall require that each module or modular component be individually inspected at each and every stage of the manufacturing process. The manufacturer shall provide the design review agency a compliance control manual that must, at the minimum, contain the following:

(1) a table of contents;

(2) a chart indicating the manufacturer's organizational structure to assure compliance and to assure that the compliance control staff shall maintain independence from the production personnel;

(3) a statement that defines the obligation, responsibility, and authority for the manufacturer's compliance control program;

(4) identification of compliance control personnel, their accountability by position, responsibility for inspections, method of marking nonconformances observed, and system for assuring corrections are made;

(5) materials handling methods, including inspection checklists, for receiving materials and methods for marking and removing rejected materials both upon receipt and from the production

line. The area for rejected materials must be clearly indicated to assure that such material is not used;

(6) a description of an identification system to mark each individual module, or modular component, at the first stage of production to assure appropriate inspection and rechecking of any deviation corrections;

(7) a diagram of the manufacturing sequence with the plant layout, including a description of the activities to be performed along with a listing of those that may be performed at one or more stations;

(8) an inspection checklist including:

(A) a list of inspections to be made at each production station; and

(B) accept/reject criteria (each significant dimension and component should be given tolerances);

(C) an energy compliance checklist that enumerates the energy code-compliance features of the module or modules and includes a signature space for the compliance control inspector or manager. A copy of this checklist shall be shipped with the module or modules.

(9) step-by-step test procedures, a description of the station at which each production test is performed, a description of required testing equipment, and procedures for periodic checking, recalibration, and readjustment of test equipment. Procedures shall be included for, but not limited to, electrical tests as specified in the National Electrical Code, Article [~~550-12~~] 550.17, gas supply pressure tests, water supply pressure tests, drain-waste-vent system tests, concrete slump tests, and concrete strength tests;

(10) storage procedures for completed structures at the plant and for any other locations prior to installation;

(11) a statement indicating the person who is responsible for compliance control at each manufacturing facility and who will assume responsibility for decals and insignia, application of the decals and insignia, and the reporting procedure;

(12) a procedure for maintaining reliable, retrievable records of the inspections performed, decal and insignia numbers assigned, the deficiencies and how they were corrected, and the site to which the modules or modular components were transported;

(13) procedures and information to demonstrate how the modules and modular components are to be transported to the building site so that damage will not occur or that compliance deviations will not result (actual transportation without damage or deviation is evidence sufficient to justify the method); and

(14) procedures that assure that the compliance control procedures are complied with on all regulated structures. As a minimum, regulated structures must be identified prior to commencing construction.

(d) On-site construction specifications or documentation. All work to be performed on the building site shall be specifically identified and distinguished from construction to be performed in the manufacturing facility, e.g., assembly and connection of all modules, modular components, systems, equipment, and appliances and attachment to the foundation system. The work to be performed on-site shall be described in detail in documents (architectural sheets, specifications, instructions, etc.) which shall be made available to the builder for use at the site and provided as required for review and inspection to the agency having local authority. The manufacturer shall provide the design review agency on-site construction documentation which must, at the minimum, contain the following:

(1) foundation system designs for all models in accordance with the applicable mandatory building code;

(2) details for module to module or modular component assembly and connection;

(3) details for connection and attachment of all modules and modular components to the foundation system;

(4) firestopping and draftstopping details;

(5) details for fire exits, balconies, walkways, and other site-built attachments;

(6) exterior weatherproofing details;

(7) details for thermal, condensation, decay, corrosion, and insect protection;

(8) electrical, mechanical, heating, cooling, and plumbing system completion details;

(9) electrical, mechanical, heating, cooling, and plumbing system test procedures;

(10) fire safety provisions; and

(11) specifications and instructions for cooling equipment, and complete information necessary to calculate sensible heat gain along with information on the sizing of the air distribution system, if applicable, and the R values of insulation in the ceiling, walls, and floors.

(e) Unique on-site details. If the typical foundation drawing in the on-site construction documentation is not suitable for a specific site, or if the structure is only partially constructed of modular components, or if the industrialized builder will add unique on-site details, a licensed Texas professional engineer (or architect for one and two family dwellings or buildings having one story and total floor area of 5,000 square feet or less) shall design and stamp the unique foundation drawings or on-site details and review by a DRA is not needed or required.

(f) Non-site specific buildings. Whenever the manufacturer does not know, at the time of construction, where the building is to be placed, in lieu of providing the site specific construction details or typical site construction details as required in subsection (d) of this section, the manufacturer may provide special conditions and/or limitations on the placement of the building. These special conditions and/or limitations will serve to alert the local building official of items, such as handicapped accessibility and placement of the building on the property, which the local building official may need to verify for conformance to the mandatory building codes. Certain site-related details, such as module to module connections, must still be provided by the manufacturer. It is the responsibility of the DRA to verify that such site-related details are included in the manufacturer's approved design package.

§70.74. Responsibilities of the Registrants--Alterations.

(a) The manufacturer shall not alter construction of the industrialized house or building from the approved design package. Industrialized builders or installation permit holders shall not alter construction performed at the installation site from the approved on-site construction documentation except in accordance with this section or §70.70(e). Alterations of industrialized housing or buildings shall be as specified in this section.

(b) An alteration of an industrialized house or building prior to, or during installation, that results in a structure that does not comply with the mandatory building codes is prohibited. An alteration after installation of an industrialized building that is designed to be moved

from one commercial site to another commercial site that does not comply with the mandatory building codes is prohibited. Alterations after installation of industrialized housing or permanent industrialized buildings shall be in accordance with the requirements of the local building code authorities.

(c) Ordinary repairs [~~Repairs~~] and work exempt from permit requirements as specified in the mandatory building codes referenced in §70.100 and §70.101 shall not be considered alterations. Ordinary repairs shall include the removal and replacement of the covering of existing materials, elements, equipment, or fixtures using like or the same new materials, elements, equipment, or fixtures that serve the same purpose.

(d) Alteration decals are used to recertify [~~certify alterations of~~] industrialized buildings designed to be moved from one commercial site to another commercial site. Each decal is assigned to a specific module or modular component. The control of the decals shall remain with the department. The department will issue alteration decals to the third party inspection agency responsible for the inspections of the alterations upon application and payment of the fee for the decal by the industrialized builder. By affixing the decal the industrialized builder and third party inspection agency certify that the module has been altered and inspected in accordance with the mandatory building codes and this section. The third party inspector shall not affix the decal to any module where inspection reveals that the building [~~alteration~~] does not comply with the approved recertification or alteration construction documents [~~plans and specifications~~] or the mandatory building codes.

(e) Alterations of industrialized housing and permanent industrialized buildings.

(1) *Prior to, or during, installation outside the jurisdiction of a municipality*. The industrialized builder, or installation permit holder, shall submit the original approved construction documents [~~plans and specifications~~] for the house or building, as reference, along with a complete set of construction documents [~~plans and specifications~~] describing a proposed alteration to a design review agency for approval prior to construction in accordance with the procedures established by the Texas Industrialized Building Code Council. The design review agency responsible for review and approval of alteration construction documents for a project, industrialized house, or permanent industrialized building may not be changed without the written approval of the department. Alterations on the house or building shall not begin prior to approval of the construction documents [~~plans and specifications~~] and shall be performed only by persons licensed to perform this work. Inspections of alterations shall be performed by a third party inspector in accordance with procedures established by the Texas Industrialized Building Code Council. The third party inspection agency responsible for inspections for a project may not be changed without the written approval of the department. An alteration data plate shall be affixed to any house or building where the alteration results in a reclassification of the occupancy group or construction type, a change in the permissible type of gas required for appliances, or a change in the wind speed and exposure, maximum snow (roof) load, seismic design criteria, or special conditions or limitations. The data plate shall contain such information as specified in subsection (g). All records pertinent to the alteration, including a copy of the alteration data plate, shall be retained by the industrialized builder or installation permit holder for a minimum of 10 [~~5~~] years from the date of successful completion of the final inspection and be made available to the department upon request . All records pertinent to the review and approval of the alteration construction documents shall be retained by the DRA for a minimum of 5 years from the date of approval and shall be made available to the Department upon request. All records pertinent to the alteration inspections shall be retained by the TPIA for a minimum of 5 years from the completion of the alteration construction and inspections and shall be made available to the department upon request. [~~;~~]

(2) *Prior to installation within the jurisdiction of a municipality*. Alterations prior to installation within a jurisdiction shall be in accordance with paragraph (1) of this subsection. [~~;~~]

(3) *During, or after, installation within the jurisdiction of a municipality*. Approval of plans and inspection of alterations shall be in accordance with the permitting and inspection procedures of the municipality.

(f) Recertification [~~Alterations~~] of industrialized buildings designed to be moved from one commercial site to another commercial site. An industrialized building that has been certified by application of a Texas decal in accordance with §70.77 and that is designed to be moved from one commercial site to another commercial site [~~, that is altered,~~] may be recertified in accordance with this section. A copy of the data plate on each building to be recertified shall be submitted to the DRA responsible for the plan review and approval of recertification and alteration documents. Repairs, other than ordinary repairs as defined by the mandatory building codes, shall be considered alterations. The industrialized builder shall purchase an alteration decal from the Department to affix to each module that is recertified or altered. The alteration decal shall be released only to the third party inspection agency responsible for the alteration inspections.

(1) Recertification class 1: to recertify a building that is to be altered where original approved construction documents exist and the building has not been previously altered. The [~~To recertify the building the~~] industrialized builder shall:

(A) provide the design review agency the current value of the building and a cost estimate for the alteration. With knowledge of the penalties for false statements the industrialized builder shall certify that the current value of the building and the cost estimate are true and accurate;

(B) submit a copy of the original approved construction documents for the building to the design review agency for reference purposes;

(C) submit a copy of the construction documents [~~plans and specifications~~] for alteration of the building to the design review agency for review and approval in accordance with the requirements established by the Texas Industrialized Building Code Council and subsection (f)(6) of this section. The construction documents [~~plans and specifications~~] shall include the serial number assigned by the manufacturer and the Texas decal number or insignia number of each module or modular component;

(D) not begin construction of the alteration of the building prior to the approval of the construction documents [~~alteration plans and specifications~~] by the design review agency. Construction [~~The alteration~~] shall be performed only by persons licensed to perform this work; and

(E) have the construction [~~alteration~~] inspected by a third-party inspector in accordance with the procedures established by the Texas Industrialized Building Code Council and subsection (f)(7) of this section. [~~The industrialized builder may not change the third party inspector for a project once started without the written approval of the department.~~] A minimum of one rough in inspection and a final inspection of the alteration construction shall be required [~~;~~]

[~~(F) maintain all records pertinent to the alteration and make these records available to the Department upon request; and~~]

~~[(G) purchase a decal from the Department to affix to each module. The alteration decal shall be released only to the third party inspection agency responsible for the alteration inspections].~~

(2) Recertification class 2: to recertify a building where original approved construction documents do not exist. The industrialized builder shall:

(A) have a structural analysis of the existing building made by an engineer licensed to practice in Texas to determine the adequacy of the structural systems in accordance with Chapter 16 of the current edition of the International Building Code adopted in §70.100. The industrialized builder shall submit a copy of this analysis and a set of plans depicting the as built construction of the building to the design review agency for review and approval in accordance with the requirements established by the Texas Industrialized Building Code Council and with subsection (f)(6) of this section. These documents shall include the serial number assigned by the manufacturer and the Texas decal or insignia number of each module or modular component contained in the building;

(B) bring into compliance those areas of the building identified by the structural analysis and the design review agency as not in compliance with the mandatory building code. The industrialized builder shall submit construction documents to bring the building into compliance to the design review agency for review and approval in accordance with the requirements established by the Texas Industrialized Building Code Council and with subsection (f)(6) of this section;

(C) if alterations are planned, then provide the DRA the current value of the building and a cost estimate in accordance with subsection (f)(1)(A) of this section and submit a copy of the construction documents for alteration of the building to the DRA in accordance with subsection (f)(1)(C) of this section;

(D) have the building inspected by a third party inspector in accordance with the procedures established by the Texas Industrialized Building Code Council and subsection (f)(7) of this section to verify that the building complies with the approved as built construction documents;

(E) not begin construction to bring the building into compliance, or to alter the building, prior to approval of the construction documents. The construction shall be performed only by persons licensed to perform this work; and

(F) have the construction to bring the building into compliance, and to alter the building, inspected by a third-party inspector in accordance with the procedures established by the Texas Industrialized Building Code Council and subsection (f)(7) of this section. A minimum of one rough in inspection and a final inspection of the construction shall be required.

(3) Recertification class 3: to recertify a building where original approved construction documents exist, but the building has been altered from those plans and the building has not been recertified in accordance with other paragraphs in this section. The industrialized builder shall:

(A) submit a copy of the original approved construction documents for the building to the design review agency for reference;

(B) submit a copy of construction documents that depict the alterations or repairs to the building to the DRA for review and approval in accordance with the requirements established by the Texas Industrialized Building Code Council and with subsection (f)(6) of this section. Where structural elements have been altered, a structural analysis of the existing building made by an engineer licensed to practice in Texas to determine the adequacy of the structural systems in accordance with Chapter 16 of the current edition of the International Building Code adopted in §70.100 shall also be submitted. The construction documents shall include the serial number assigned by the manufacturer and the Texas decal or insignia number of each module or modular component contained in the building;

(C) if additional alterations are planned, then provide the DRA the current value of the building and a cost estimate in accordance with subsection (f)(1)(A) of this section and submit a copy of the construction documents for alteration of the building to the DRA in accordance with subsection (f)(1)(C) of this section;

(D) bring into compliance those areas of the building identified by the structural analysis or the design review agency as not in compliance with the mandatory building codes. The industrialized builder shall submit construction documents to bring the building into compliance to the design review agency for review and approval in accordance with the requirements established by the Texas Industrialized Building Code Council and with subsection (f)(6) of this section;

(E) have the building inspected by a third party inspector in accordance with the procedures established by the Texas Industrialized Building Code Council and subsection (f)(7) of this section to verify that the building complies with the approved as built construction documents;

(F) not begin construction to bring the building into compliance, or to alter the building, prior to approval of the construction documents. The construction shall be performed only by persons licensed to perform this work; and

(G) have the construction to bring the building into compliance, and to alter the building, inspected by a third-party inspector in accordance with the procedures established by the Texas Industrialized Building Code Council and subsection (f)(7) of this section. A minimum of one rough in inspection and a final inspection of the construction shall be required.

(4) Recertification class 4: buildings that are to be altered again after recertification. The industrialized builder shall:

(A) submit a copy of all previous recertification construction documents, including original and as built construction documents where applicable, to the design review agency in accordance with the requirements established by the Texas Industrialized Building Code Council and subsection (f)(6) of this section;

(B) include the alteration decal numbers from previous recertifications on the construction documents for altering the building; and

(C) comply with subsections (f)(1)(A) and (f)(1)(C) through (f)(1)(E) of this section.

(5) Emergency repairs. Equipment replacement and repairs, which do not qualify as ordinary repairs in accordance with the mandatory building codes, that must be performed in an emergency situation may be performed prior to recertification of the building. The industrialized builder shall submit documents as necessary to recertify the building in accordance with the requirements of subsections (f)(1) through (f)(3) within the next working business day with the following exceptions.

(A) The industrialized builder shall have 10 working days to submit as built construction documents for the entire building where required by the recertification requirements of subsections (f)(1) through (f)(4).

(B) The industrialized builder shall have 10 working days to submit a structural analysis performed by an engineer licensed

to work in Texas where required by the recertification requirements of subsection (f)(1) through (f)(4).

(6) The industrialized builder shall choose an approved DRA to perform the review and evaluation of all construction documents for the recertification of an industrialized building. The builder may choose a different DRA for different projects or buildings, but may not change DRA's for a project or building once the plan review has begun without prior written approval from the department. Construction documents submitted to the DRA shall include all information pertinent to assuring compliance with the mandatory building code and shall include structural, thermal, and electrical load calculations. As built construction documents shall be reviewed to determine the existence of any potential nonconformance with the provisions of the mandatory building codes. The review and approval of construction documents to recertify a building shall comply with the requirements of §§70.70(a)(2) through 70.70(a)(4) and 70.70(a)(6) through 70.70(a)(8) with the following exceptions.

(A) Based on the engineering analysis and the DRA's review of the as built construction documents, the DRA will prepare a report to the industrialized builder that describes the nonconformances of the building to be recertified.

(B) The DRA will signify approval of a drawing, specification, calculation, or any other document submitted for review and approval by the application of the council's stamp of approval for altered or recertified buildings.

(C) The design review agency shall complete a recertification transmittal form in accordance with the requirements of the Texas Industrialized Building Code Council and forward a completed copy of the form to the department. A copy of all documents pertinent to the recertification of the building shall be supplied to the department upon request.

(D) The design review agency shall forward a completed copy of the recertification transmittal form and one approved copy of the construction documents to the industrialized builder.

(E) The design review agency shall keep a copy on file of the original approved documents, the engineering analysis, and approved construction documents for recertification of the building for 5 years from the latest date of approval of the recertification or alteration construction documents.

(7) [~~(2)~~] The third party inspector shall affix the alteration decal to [~~the~~] each industrialized building module or modular component upon completion of the construction and successful completion of all required inspections in accordance with this section and the requirements of the Texas Industrialized Building Code Council. The decal shall be affixed in the vicinity of the original decal or insignia on the module or modular component as depicted on the approved construction documents. The industrialized builder may not change the third party inspection agency for a project or building once started without prior written approval of the department.

(A) All plans pertinent to the alteration or recertification shall be available for use by the third party inspector during the inspection. A copy of the mandatory building codes shall be available for the inspector's use during the inspection.

(B) A rough-in inspection shall be scheduled by the industrialized builder while construction is still open to inspection. The inspector shall begin the inspection by verifying that the units to be inspected are those depicted in the original approved, the approved as built, or the previously approved recertification construction documents and shall verify the original decal and serial number of each unit to be inspected. The third party inspector may require the industrialized builder to uncover portions of the building as necessary to verify compliance. The inspection shall be terminated and the alteration decals returned to the department if inspection reveals that the units have been altered from the original approved, the approved as built, or the previously approved recertification construction documents. The inspection shall be terminated and the alteration decals returned to the department if inspection reveals that the units are not those identified by serial number and decal number in the approved construction documents.

(C) A final inspection shall be scheduled by the owner or industrialized builder after construction is completed.

(D) Inspection of system testing shall be scheduled by the industrialized builder as necessary to assure that tests required by the mandatory building code are witnessed by the third party inspector.

(E) The industrialized builder shall schedule a reinspection with the third party inspector wherever a deviation from the approved plans is identified that cannot be corrected and inspected during the rough-in or final inspection.

(F) The inspector shall complete a recertification inspection report on the forms and in the format required by the department and the Texas Industrialized Building Code Council. A copy of the inspection report shall be provided to the industrialized builder for his records and submitted to the department upon request. The third party inspection agency shall maintain records of all recertification inspection reports for five years from the date of successful completion of inspections for a building or project.

(G) Only one inspection shall be required where a building is recertified in accordance with subsection (f)(2) or (f)(3) of this section and no construction is required to bring the building into compliance or to complete alterations on the building. The inspector shall verify that the units to be inspected are those depicted in the approved construction documents and shall verify the original decal and serial number of each unit to be inspected. The third party inspector may require the industrialized builder to uncover portions of the building as necessary to verify compliance. The inspection shall be terminated, and the alteration decals returned to the department, if inspection reveals that the units have been altered from the approved construction documents.

(H) Only one inspection shall be required where emergency repairs are performed in accordance with subsection (f)(5) of this section and where further construction is not required to bring the building into compliance with the mandatory building code. The inspector shall verify that the units to be inspected are those depicted in the approved construction documents and shall verify the original decal and serial number of each unit to be inspected. The third party inspector may require the industrialized builder to uncover portions of the building as necessary to verify compliance. The inspection shall be terminated, and the alteration decals returned to the department, if inspection reveals that the units have been altered from the approved construction documents. The inspection shall be terminated and the alteration decals returned to the department if inspection reveals that the units are not those identified by serial number and decal number in the approved construction documents.

(8) [~~(3)~~] An alteration data plate shall be affixed to any building, in the vicinity of the original data plate on the building, and as depicted on the approved construction documents, where the alteration or recertification results in a reclassification of the occupancy group or construction type, a change in the type of gas required for appliances, or a change in the wind speed and exposure, maximum snow (roof) load, seismic design criteria, or special conditions or limitations. The

data plate shall contain such information as specified in subsection (g) of this section. A copy of the data plate shall be retained by the industrialized builder and be made available to the Department upon request.

(9) The industrialized builder shall maintain all records pertinent to the recertification and make these records available to the Department upon request. Records shall be maintained for as long as the building remains a part of the inventory for that builder.

(10) Buildings constructed on or after July 1, 2004 may only be recertified in accordance with subsections (f)(1) or (f)4) without prior written authorization from the department.

(g) A recertification or [~~An~~] alteration data plate shall be placed by the third party inspector on each altered or recertified house or building as required by this section. The data plate shall be supplied by the industrialized builder or installation permit holder. An alteration data plate shall be made of a material that will not deteriorate over time and shall be permanently placed so that it cannot be removed without destruction. The data plate shall be placed adjacent to the original data plate in an easily accessible location as designated in the alteration plans, but shall not be located on any readily removable item such as a cabinet door or similar component. Location of the data plate on the cover of the electrical distribution panel is acceptable. An alteration data plate shall contain, as a minimum, the information required on a manufacturer's data plate as required by §70.71(b)(2-11) plus the following information:

(1) the name, address, and registration number assigned by the department of the industrialized builder, or the name, address, and installation permit number assigned by the department of the owner of the house or building; and

(2) the Texas alteration decal numbers.

§70.101. Amendments to Mandatory Building Codes.

(a) The council shall consider and review all amendments to these codes which are approved and recommended by ICC, and if they are determined to be in the public interest, the amendments shall be effective 180 days following the date of the council's determination or at a later date as set by the council.

(b) Any amendment proposed by a local building official, and determined by the council following a public hearing to be essential to the health and safety of the public on a statewide basis, shall become effective 180 days following the date of the council's determination or at such a later date as set by the council.

(c) The National Electrical Code shall be amended as follows.

(1) Add to Article 310.1 the following statement: "Aluminum and copper-clad aluminum shall not be used for branch circuits in buildings classified as a residential occupancy; aluminum and copper-clad aluminum conductors, of size number 4 AWG or larger, may be used in branch circuits in buildings classified as occupancies other than residential."

(2) Add to Article 110.14 the following statement: "Aluminum and copper-clad aluminum conductors shall be terminated using approved compression-type crimp lugs with approved inhibitors."

(d) The International Building Code shall be amended as follows.

(1) Revise §101.1 to read "These regulations shall be known as the Building Code of the Texas Industrialized Housing and Buildings program, hereinafter referred to as 'this code.'"

(2) Delete Chapter 11 and replace with the Texas Accessibility Standards (TAS) of Texas Government Code, Chapter 469, Elimination of Architectural Barriers, dated April 1, 1994. Buildings subject to the requirements of the Texas Accessibility Standards are described in Administrative Rules of the Texas Department of Licensing and Regulation, 16 Texas Administrative Code, Chapter 68, §68.21.

(3) Revise Chapter 35, Referenced Standards, as follows.

(A) Delete ICC/ ANSI A117.1-98, Accessible and Usable Buildings and Facilities.

(B) Add Texas Accessibility Standards (TAS) dated April 1, 1994.

(4) Wherever reference elsewhere in the code is made to ICC/ANSI A177.1, the Texas Accessibility Standards (TAS) shall be substituted.

(5) Revise §101.2, Exception 2, to read "Existing buildings that are undergoing repair, alterations or additions and change of occupancy shall comply with the *International Existing Building Code."*

(e) Section 101.1 of the International Fuel Gas Code shall read as follows: "These regulations shall be known as the Fuel Gas Code of the Texas Industrialized Housing and Buildings program, hereinafter referred to as 'this code.'"

(f) Section 101.1 of the International Plumbing Code shall read as follows: "These regulations shall be known as the Plumbing Code of the Texas Industrialized Housing and Buildings program, hereinafter referred to as 'this code.'"

(g) Section 101.1 of the International Mechanical Code shall read as follows: "These regulations shall be known as the Mechanical Code of the Texas Industrialized Housing and Buildings program, hereinafter referred to as 'this code.'"

(h) Section R101.1 of the International Residential Code shall read as follows: "These provisions shall be known as the Residential Code for One- and Two-Family Dwellings of the Texas Industrialized Housing and Buildings program, and shall be cited as such and will be referred to herein as 'this code.'"

(i) The *International Existing Building Code* shall be amended as follows.

(1) Section 101.1 shall read as follows: "These regulations shall be known as the *Existing Building Code* of the Texas Industrialized Housing and Buildings program, hereinafter referred to as 'this code.'"

(2) Revise Chapter 14, Referenced Standards, as follows:

(A) Delete ICC/ANSI A117.1-98, Guidelines for Accessible and Usable Buildings and Facilities.

(B) Add Texas Accessibility Standards (TAS) dated April 1, 1994.

(3) Wherever reference elsewhere in the code is made to ICC/ANSI A117.1, the Texas Accessibility Standards (TAS) shall be substituted.

(4) Wherever reference elsewhere in the code is made to chapter 11, or portions of chapter 11, of the *International Building Code* , the Texas Accessibility Standards (TAS) shall be substituted.

(5) Delete Chapter 10, Historic Buildings.

(6) Section 1201.2 shall read as follows: "Structures existing prior to July 1, 2004 in which there is work involving additions, alterations, or changes of occupancy shall be made to conform to the requirements of this chapter or the provisions of Chapters 4 through 9."

§70.102. Use and Construction of Codes.

(a) Industrialized housing or buildings shall be constructed to meet or exceed the mandatory building code standards and requirements referenced in §70.100 and §70.101 in effect at the time of construction. A building that has not been previously occupied or used for its intended purpose shall comply with the provisions of the mandatory building codes referenced in §70.100 and §70.101 for new construction. Industrialized housing and buildings shall be installed in accordance with the mandatory building code standards and requirements referenced in §70.100 and §70.101.

(b) Alterations of industrialized housing and permanent industrialized buildings shall be [~~in accordance with the mandatory building code standards and requirements referenced in §§70.100 and 70.101 and~~] in accordance with §70.74 and shall comply with the provisions of the codes referenced in §70.100 and §70.101 for new structures.

(c) Industrialized buildings designed to be moved from one commercial site to another commercial site shall be recertified or altered in accordance with the mandatory building code standards and requirements referenced in §70.100 and §70.101 and in accordance with §70.74. Alterations of buildings shall comply with the standards and requirements of the following codes for each type of recertification class.

(1) Recertification class 1 and class 4: Alterations shall comply with the International Existing Building Code as referenced in §70.101. Alterations of buildings that have not been previously occupied or used for their intended purpose shall comply with the provisions of the codes referenced in §70.100 and §70.101 for new construction.

(2) Recertification class 2 and class 3: The existing building as altered, and additional alterations to the building, shall comply with the provisions of the International Existing Building Code as referenced in §70.101.

(d) [~~(b)~~] The codes adopted in §70.100 and §70.101 shall be construed to conform to the intent of Chapter 1202 and these rules and regulations. For example, where reference is made in any of the codes to the building official, the plumbing or mechanical official, or the administrative authority or enforcement official, such reference shall be construed pursuant to Chapter 1202 and the sections in this chapter to mean, where applicable, the council, the local building official, or the department.

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

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

TRD-200500675
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: March 27, 2005
For further information, please call: (512) 463-7348

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CHAPTER 75. AIR CONDITIONING AND REFRIGERATION CONTRACTOR LICENSE LAW

16 TAC §75.25

The Texas Department of Licensing and Regulation ("Department") proposes new 16 Texas Administrative Code §75.25, concerning continuing education requirements in the air conditioning and refrigeration contractor program.

Under Texas Occupations Code, §51.405, The Texas Commission of Licensing and Regulation is required to recognize, prepare, or administer continuing education programs for license holders, and a license holder must participate in the programs to the extent required by the Commission to keep the person's license. The new rule implements that statutory requirement in the air conditioning and refrigeration contractor program. General requirements for continuing education providers and courses are contained in 16 Texas Administrative Code, Chapter 59. The new §75.25 establishes requirements that are specific to the air conditioning and refrigeration contractor program, for licensees, providers, and courses.

The new rule requires a licensee to complete six hours of continuing education in Department-approved courses to renew a license. The continuing education hours must include two hours of instruction in Texas state law and rules that regulate the conduct of licensees. The continuing education hours must be completed during the term of the current license or, in the case of a late renewal, within the one-year period prior to the date of renewal. A licensee may not receive credit for attending the same course more than once. Under Chapter 59 of the Department's rules, a course is approved for a one year period and then must be re-approved annually as a new course. A licensee is required to retain a copy of the certificate of completion for one year after the date of completion of the course. The rule requires that, to be approved by the department, a provider's course must cover one or more specified topics. The rule applies to providers and courses upon the effective date of the rule. The rule applies to air conditioning and refrigeration contractor licenses that expire on or after January 1, 2006.

This rule is necessary to implement Texas Occupations Code, §51.405, which requires the Texas Commission of Licensing and Regulation ("Commission") to recognize, prepare, or administer continuing education programs for license holders.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the new rule is in effect there will be some additional costs to the Department in approving courses and enforcing requirements of the rule. It is anticipated that revenue from additional fees established in 16 Texas Administrative Code Chapter 59 would be sufficient to offset additional costs to the state. Because the number of potential continuing education providers is unknown, the Department is unable to estimate the additional costs or revenue. There will be no cost to local government as a result of enforcing or administering the new rule.

Mr. Kuntz also has determined that for each year of the first five-year period the new rule is in effect, the public benefit will be that continuing education taken by air conditioning and refrigeration contractors will be subject to minimum standards. The public will benefit from standards that serve to increase or maintain the skills and competence of licensees, who in turn provide services to the public.

Mr. Kuntz has determined that for each year of the first five years that the rule will be in effect, there will be some economic cost to persons who are required to comply with the proposed rule, including some cost to small and micro-businesses. Providers of continuing education courses likely will charge a fee to participants, and this will result in some cost to licensees and their

companies. Because the fees charged by providers may vary widely, we are unable to provide a precise estimate of the costs to licensees. Costs of complying with the rule are anticipated to be reasonably low in comparison with the benefits of the rule.

Comments on the proposal may be submitted to William H. Kuntz, Jr., Executive Director, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-3032, or electronically: whkuntz@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The new rule is proposed under Texas Occupations Code, Chapter 1302 and Chapter 51, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department. In particular, the rule implements Texas Occupations Code, §51.405.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 1302. No other statutes, articles, or codes are affected by the proposal.

§75.25. Continuing Education.

(a) Terms used in this section have the meanings assigned by Chapter 59 of this title, unless the context indicates otherwise.

(b) To renew a license as an air conditioning and refrigeration contractor under Texas Occupations Code, Chapter 1302, Subchapter F, a licensee must complete eight hours of continuing education in courses approved by the department, including two hours of instruction in Texas state law and rules that regulate the conduct of licensees.

(c) The continuing education hours must have been completed within the term of the current license, in the case of a timely renewal. For a late renewal, the continuing education hours must have been completed within the one year period immediately prior to the date of renewal.

(d) A licensee may not receive continuing education credit for attending the same course more than once.

(e) A licensee shall retain a copy of the certificate of completion for a course for one year after the date of completion. In conducting any inspection or investigation of the licensee, the department may examine the licensee's records to determine compliance with this subsection.

(f) To be approved under Chapter 59 of this title, a provider's course must be dedicated to instruction in one or more of the following topics:

(1) Texas Occupations Code, Chapter 1302, Air Conditioning and Refrigeration Contractors;

(2) Title 16, Texas Administrative Code, Chapter 75, Air Conditioning and Refrigeration Administrative Rules;

(3) the International Mechanical Code, the Uniform Mechanical Code, or other applicable codes;

(4) ethics;

(5) business practices; or

(6) technical requirements.

(g) This section shall apply to providers and courses for air conditioning and refrigeration contractors upon the effective date of this section.

(h) This section shall apply to air conditioning and refrigeration contractor licenses issued under Texas Occupations Code, Chapter 1302, Subchapter F that expire on or after January 1, 2006.

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

Filed with the Office of the Secretary of State on February 7, 2005.

TRD-200500571
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: March 27, 2005
For further information, please call: (512) 463-7348

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 25. ENVIRONMENTAL TESTING LABORATORY ACCREDITATION AND CERTIFICATION

The Texas Commission on Environmental Quality (commission or TCEQ) proposes amendments to §§25.2, 25.6, and 25.9.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED AMENDMENTS

The purpose of the proposed amendments is to conform the existing rules with statutory changes made by Senate Bill (SB) 934, 78th Legislature, 2003, and to refer to more recent laboratory accreditation standards adopted by the National Environmental Laboratory Accreditation Conference (NELAC).

SECTION BY SECTION DISCUSSION

Proposed §25.2, Definitions, adds new paragraph (20) to define same site as all structures, other appurtenances, and improvements located on one or more contiguous properties. The definition of same site clarifies which on-site or in-house environmental laboratories may provide data to the commission without obtaining accreditation. Existing paragraph (20) is proposed to be renumbered as paragraph (21) to accommodate the proposed new definition.

Proposed §25.6, Conditions Under Which the Commission May Accept Analytical Data, amends paragraph (1) to revise subparagraph (B) concerning on-site and in-house environmental laboratories located in other states and accredited or periodically inspected by those states and adds subparagraph (C) concerning on-site and in-house environmental laboratories performing work for companies with units located at the same site and on-site and in-house environmental laboratories performing work without compensation for governmental agencies or charitable organizations. These changes incorporate statutory changes made by SB 934.

Proposed §25.9, Standards for Environmental Testing Laboratory Accreditation, replaces the phrase "approved May 2001" with "Chapters 3, 4, and 5, adopted July 2002, and Chapters

1, 2, and 6, adopted June 2003" to refer to the most recent laboratory accreditation standards adopted by NELAC.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeffrey Horvath, Analyst, Strategic Planning and Appropriations Section, determined that for the first five-year period the proposed amendments are in effect, no significant fiscal implications are expected for the agency or other units of state and local government as a result of administration or enforcement of the proposed amendments.

The proposed amendments implement SB 934, 78th Legislature, 2003, and update NELAC standards currently referenced in existing rules.

Portions of the proposed amendments that implement SB 934 allow the agency to: 1) accept tests and analyses from an unaccredited in-house or on-site laboratory located in another state, if the laboratory is periodically inspected or accredited by that state; 2) accept tests and analyses from an unaccredited in-house or on-site laboratory, if the laboratory is performing the work for another company with a unit located on the same site; and 3) accept tests and analyses from an unaccredited in-house or on-site laboratory that provides results without compensation for governmental agencies or charitable organizations, as long as the laboratory is periodically inspected by the agency. These changes are anticipated to result in less fee revenue collected by the agency to support the laboratory accreditation program, due to fewer laboratories that would be subject to the accreditation criteria.

Current §25.9, Standards for Environmental Testing Laboratory Accreditation, was adopted September 2001 and refers to standards approved by NELAC during May 2001. The reference to NELAC standards adopted May 2001 is out of date. The proposed change brings the reference to NELAC standards up to date. There are no fiscal implications anticipated from this proposed change. Further, the change is necessary for the agency's accreditation program to be consistent with National Environmental Laboratory Accreditation Program standards, as required by Texas Water Code (TWC), §5.802.

House Bill 2912, 77th Legislature, 2001, transferred authority for environmental laboratory accreditation from the Texas Department of Health to the TCEQ and required the agency to implement a laboratory accreditation program consistent with standards adopted by NELAC. The bill further required that all data used by the agency for decisions regarding permits or authorizations, compliance matters, enforcement actions, or corrective actions come from an accredited environmental testing laboratory unless the laboratory is an in-house or on-site lab periodically inspected by the agency, a laboratory accredited under federal law, or the data was for emergency response activities and was not available from an accredited lab.

For the five-year period the proposed amendments are in effect, revenue to the agency is expected to decrease an estimated $25,000 per year beginning three years after a laboratory accreditation program is operational. House Bill 2912 provided a three-year period for laboratories to become accredited once TCEQ publishes notice in the *Texas Register* that the agency's environmental laboratory accreditation program has met NELAC standards. Once the program is operational, fee revenue would be used to support the program operations. The estimated loss of future revenue is not expected to have a significant impact on program operations. Any laboratories owned or operated by state or local governments that meet the proposed criteria are expected to realize cost savings from not having to pay accreditation fees, though these cost savings are not expected to be significant.

There are an estimated 12 laboratories (three out-of-state, five on-site or in-house on the site of another company performing work for that company, and four working without compensation for governmental agencies or charities periodically inspected by the agency) that would be affected by the proposed amendments. These laboratories would have been expected to pay administrative and category fees for the type of analyses (such as nonpotable water, solid and chemical materials, metals, and poly-chlorinated biphenyls (PCBs), etc.) performed by the laboratories. The proposed amendments affecting the three out-of-state laboratories are anticipated to result in an estimated revenue loss of $6,150 per year, proposed amendments affecting the on-site or in-house laboratories working for another company are anticipated to result in an estimated revenue loss of $15,250 per year, and proposed amendments affecting the laboratories working without compensation for governmental entities an estimated revenue loss of $3,200 each year.

PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated from the enforcement of and compliance with the proposed amendments would be compliance with state law.

Cost savings, which are not expected to be significant, are anticipated for businesses or individuals that own or operate certain environmental laboratories as a result of the implementation or enforcement of the proposed amendments. Cost savings would be realized three years after the environmental laboratory accreditation program meets NELAC standards.

There are an estimated 12 laboratories (three out-of-state, five on-site or in-house laboratories on the site of another company performing work for that company, and four working without compensation for governmental agencies or charities periodically inspected by the agency) that would be affected by the proposed amendments. These laboratories would have been expected to pay administrative and category fees for the type of analyses (such as on nonpotable water, solid and chemical materials, metals, and PCBs, etc.) performed by the laboratories. The three out-of-state laboratories are anticipated to save an estimated $6,150 in accreditation fees each year, the on-site or in-house laboratories working for another company are anticipated to save an estimated $15,250 in accreditation fees each year, and the laboratories working without compensation for governmental entities may save an estimated $3,200 in accreditation fees each year.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated as a result of implementation of the proposed amendments for small or micro-businesses. Small or micro-businesses that own or operate environmental laboratories, if any, are expected to realize cost savings due to the implementation of the proposed amendments. Any cost savings are expected to be the same as those estimated for businesses and individuals.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed amendments do not adversely affect a

local economy in a material way for the first five years that the proposed amendments are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, Chapter 2001, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a major environmental rule. 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. This rulemaking has two major components. First, it will authorize the commission to accept data from an on-site or in-house environmental testing laboratory that: is located in another state, provided the laboratory is either accredited or inspected by the state; prepares data for another company with a unit located on the same site; or prepares the data without compensation for a governmental or charitable organization. Thus, these rules do not meet the definition of a "major environmental rule."

The proposed rules implement SB 934, 78th Legislature, 2003. These rules are not a major environmental rule and do not meet any of the four applicability requirements that apply to a major environmental rule. Under Texas Government Code, Chapter 2001, §2001.0225, these proposed rules do not exceed a standard set by federal law or 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. The United States Environmental Protection Agency does not have a federal program for laboratory accreditation nor does it establish requirements for states implementing their own laboratory accreditation program. The proposed rules do not exceed a standard set by federal law nor exceed the requirement of a delegation agreement because there is no federal authority regarding laboratory accreditation.

These revisions do not adopt a rule solely under the general powers of the commission and do not exceed an express requirement of state law. The requirements that would be implemented through these rules are expressly defined under TWC, Chapter 5, Subchapter R, which requires the commission to enact rules governing the accreditation of environmental laboratories.

TAKINGS IMPACT STATEMENT ASSESSMENT

The commission's preliminary assessment indicates that Texas Government Code, Chapter 2007, does not apply to these proposed amendments because the proposed amendments are not a taking as defined in Chapter 2007, nor are they a constitutional taking of private real property. The purpose of the proposed amendments is to implement SB 934, 78th Legislature, 2003, and update NELAC standards currently referenced in existing rules.

Promulgation and enforcement of these proposed rules will not affect private real property which is the subject of the rules because the proposed amendments will neither restrict or limit the owner's right to the property, nor cause a reduction of 25% or more in the market value of the property. The proposed rules only apply to environmental testing laboratories that submit data to the commission for use in its decisions. Property values will not be decreased, because the proposed amendments will not limit the use of real property. Thus, these proposed rules will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed this rulemaking and found that the proposal is not a rulemaking subject to the Texas Coastal Management Program (CMP) because the rulemaking is neither identified in 31 TAC §505.11, nor will it affect any action or authorization identified in §505.11. Therefore, the proposal is not subject to the CMP.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Comments must be received by 5:00 p.m., March 28, 2005, and should reference Rule Project Number 2004-018-025-AD. For further information, please contact Michael Bame, Policy and Regulations Division, at (512) 239-5658.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §25.2, §25.6

STATUTORY AUTHORITY

The amendments are proposed under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC; §5.802 and §5.805, which require the agency to adopt rules for the administration of the laboratory accreditation program; and SB 934, 78th Legislature, 2003.

The proposed amendments implement TWC, §5.127.

§25.2. Definitions.

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

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

(4) Certification--An authorization granted by the executive director to an environmental testing laboratory that [~~which~~] analyzes drinking water and which meets requirements of this subchapter and Subchapter C of this chapter (relating to Environmental Testing Laboratory Certification).

(5) (No change.)

(6) Environmental testing laboratory assessment--The process used by an accrediting or certifying authority to measure the performance, effectiveness, and conformity of an environmental testing laboratory to the National Environmental Laboratory Accreditation Conference (NELAC) accreditation or United States Environmental Protection Agency [~~EPA~~] certification standards and this chapter. An environmental testing laboratory assessment may include a physical inspection of a laboratory and its operations.

(7) - (19) (No change.)

(20) Same site--All structures, other appurtenances, and improvements located on one or more contiguous properties.

(21) [~~(20)~~] Secondary accreditation--Accreditation granted by the executive director to an environmental testing laboratory that

has been granted primary accreditation by another NELAP accrediting authority.

§25.6. Conditions Under Which the Commission May Accept Analytical Data.

The commission may accept analytical data provided by an environmental testing laboratory, for any matter under the commission's jurisdiction relating to permits or other authorizations, compliance matters, enforcement actions, or corrective actions, that is not accredited according to this chapter if the laboratory:

(1) is an on-site or in-house environmental testing laboratory that is:

(A) [~~is~~] inspected at least every three years by the executive director; [~~and~~]

(B) located in another state and accredited or periodically inspected by that state [~~prepares the data for a permit, registration, or other authorization, and the permit, registration, or other authorization was issued by the commission to the operator of the laboratory~~]; or

(C) inspected at least every three years by the executive director and is performing work:

(i) for another company with a unit located on the same site; or

(ii) without compensation for a governmental agency or a charitable organization.

(2) is accredited under federal law, including certification by the United States Environmental Protection Agency [~~EPA~~] to provide analytical data for decisions relating to compliance with the Safe Drinking Water Act;

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

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

Filed with the Office of the Secretary of State on February 11, 2005.

TRD-200500627
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: March 27, 2005
For further information, please call: (512) 239-0348

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SUBCHAPTER B. ENVIRONMENTAL TESTING LABORATORY ACCREDITATION

30 TAC §25.9

STATUTORY AUTHORITY

The amendment is proposed under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC; §5.802 and §5.805, which require the agency to adopt rules for the administration of the laboratory accreditation program; and SB 934, 78th Legislature, 2003.

The proposed amendment implements TWC, §5.127.

§25.9. Standards for Environmental Testing Laboratory Accreditation.

Accreditation must [~~shall~~] be based on an environmental testing laboratory's conformance to National Environmental Laboratory Accreditation Conference standards, Chapters 3, 4, and 5, adopted July 2002, and Chapters 1, 2, and 6, adopted June 2003 [~~approved May 2001~~] and the requirements of this chapter.

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

Filed with the Office of the Secretary of State on February 11, 2005.

TRD-200500628
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: March 27, 2005
For further information, please call: (512) 239-0348

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CHAPTER 101. GENERAL AIR QUALITY RULES

SUBCHAPTER A. GENERAL RULES

30 TAC §101.1

The Texas Commission on Environmental Quality (commission) proposes an amendment to §101.1.

If adopted, the amendment will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

After adoption of the Federal Clean Air Act (FCAA) Amendments of 1990, the EPA classified the designated four areas of Texas that failed to meet the one-hour national ambient air quality standard (NAAQS) for the air contaminant ozone. Each area was classified by the EPA based on the amount by which it exceeded the ozone NAAQS of 0.12 parts per million (ppm) based on a peak one-hour concentration of ozone. Eight counties in the Houston/Galveston/Brazoria (HGB) area (Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller) were classified as Severe and El Paso County was classified as Serious. Four counties in the Dallas/Fort Worth (DFW) area (Collin, Dallas, Denton, and Tarrant) were originally classified as Moderate and then reclassified to Serious. Three counties in the Beaumont/Port Arthur (BPA) area (Hardin, Jefferson, and Orange) were originally classified as Serious, then reclassified to Moderate, and reclassified again, in 2004, to Serious.

Effective June 15, 2004, EPA designated and classified four areas in Texas as nonattainment for the eight-hour ozone standard (69 FR 23858). The HGB area was classified as Moderate and contains the same eight counties that were classified as Severe under the one- hour standard: Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller. The DFW

area was also classified as Moderate and consists of the counties classified as Serious under the one-hour standard: Dallas, Tarrant, Denton, and Collin Counties, plus five additional counties: Ellis, Johnson, Kaufman, Parker, and Rockwall. The BPA area was classified as Marginal and consists of the three counties classified as Serious under the one- hour standard: Hardin, Jefferson, and Orange. The El Paso area consisting of El Paso County is now designated as attainment. In addition, the San Antonio area, consisting of Bexar, Comal, and Guadalupe Counties, was also designated as nonattainment under the FCAA, Title I, Part D, Subpart 1 (42 United States Code (USC), §7402), but with a deferred effective date of September 30, 2005, due to its status as an early action compact (EAC) area. EPA noted in the eight-hour ozone designation and classification rulemaking that EAC areas will continue to remain eligible for deferred effective dates as long as they remain in compliance with their compact agreements. The classification of nonattainment areas was codified in 40 Code of Federal Regulations (CFR), and this amendment will update the commission rules to match the new federal classifications.

On November 29, 2004, EPA added five volatile organic compounds (VOC) to the list of compounds in 40 CFR §51.100(s) that, for lack of reactivity, are excluded from the definition of VOC. The definition of VOC is based on compound reactivity and the compound's tendency to produce ozone. The compounds include 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane (known as HFE-7000); 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane (known as HFE-7500, HFE-s702, T-7145, and L-15381); 1,1,1,2,3,3,3-heptafluoropropane (known as HFC 227ea); methyl formate; and t-butyl acetate (also known as tertiary butyl acetate, TBAC, or TBAc). EPA revised the definition of VOC to say that TBAC will not be a VOC for purposes of VOC emissions limitations or VOC content requirement, but will continue to be a VOC for purposes of all recordkeeping, emissions reporting, and inventory requirements that apply to a VOC. The commission is proposing to delete the list of compounds from the commission definition and to refer to the federal definition in 40 CFR §51.100 as amended on November 29, 2004 (69 FR 69290 - 69304).

SECTION DISCUSSION

§101.1, Definitions

The commission proposes to amend the definition of nonattainment area in paragraph (67) to reflect the classifications under the existing one-hour standard, and to add the classifications under the new eight-hour ozone standard. The classifications under the new standard are the Moderate classification for the HGB and DFW areas, including five additional counties, and the Marginal classification for the BPA area. The San Antonio area is designated as nonattainment under the FCAA, Title I, Part D, Subpart 1 (42 USC, §7402), but with a deferred effective date of September 30, 2005, due to its status as an EAC area. The El Paso area is in attainment for the eight-hour ozone standard and therefore is not listed under new subparagraph (F). Existing subparagraph (F) is proposed to be relettered as subparagraph (G).

The commission also proposes to amend the definition of VOC in paragraph (111) by deleting the existing list of compounds and by referring to the federal definition in 40 CFR §51.100(s), except paragraphs (2) - (4), as amended on November 29, 2004 (69 FR 69290 - 69304). The federal definition includes a special case for the compound t-butyl acetate, which will not be considered a VOC for emission limitation or content purposes but will be considered a VOC for emissions reporting and inventories and photochemical modeling.

The commission proposes to make administrative changes for readability, conformity with the drafting standards in the *Texas Legislative Council Drafting Manual*, October 2002, and consistency with other commission rules.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Grants Management Section, determined that for the first five-year period the proposed rule is in effect, no fiscal implications are anticipated for the agency or other units of state or local governments as a result of administration or enforcement of the proposed rule. The proposed rulemaking would change the definitions of nonattainment area and VOC, along with administrative changes for readability, conformity with drafting standards, and consistency.

EPA's implementation of the eight-hour ozone standard on June 15, 2004, designated El Paso County as an attainment area and designated the HGB nonattainment area as Moderate. The BPA nonattainment area is classified as Serious for the one-hour standards and as Marginal for the eight-hour standard. The DFW nonattainment area, which included Dallas, Tarrant, Denton, and Collin Counties, is classified as Serious under the one-hour ozone standard. When implementing the eight-hour ozone standard, EPA added five counties (Ellis, Johnson, Kaufman, Parker, and Rockwall) to the DFW nonattainment area and designated the entire area as Moderate. EPA also designated a new area under the eight-hour standard, San Antonio, as nonattainment under the FCAA, Title I, Part D, Subpart 1 (42 USC, §7402), with a deferred effective date of September 30, 2005. The proposed rulemaking would amend the definition of nonattainment area to include EPA's new eight-hour classifications for the BPA, DFW, and HGB areas; add the five newly designated counties to the DFW area; and add the San Antonio area.

PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the changes seen in the proposed rule would be compliance with federal standards.

The proposed amendment results from EPA's nonattainment designations under the eight- hour ozone standard, and EPA's anticipated revocation of the one-hour standard. This amendment will not change the level of emission control in the counties that were classified as nonattainment under the one-hour standard. Adoption of the designations under the eight- hour standard does result in the addition of Ellis, Johnson, Kaufman, Parker, and Rockwall Counties to the four counties already in the DFW nonattainment area and the addition of the San Antonio area as nonattainment areas for ozone. Major sources located in the counties added to the DFW nonattainment area and the San Antonio area could have significant costs if required to upgrade their emission control equipment from best available control technology (BACT) to lowest achievable emission rate (LAER). The designation of the counties as nonattainment does not in itself mean that emission controls must be immediately upgraded or additional controls installed. Sources that undergo major modifications would be subject to LAER, but the commission does not have information indicating which, if any, sources are going to be affected. Because San Antonio is participating in the Early Action Compact Program, its designation may never become effective. The commission expects cost increases

to be mostly limited to large combustion sources because of the limited industrialization of the new nonattainment counties. The change to the federal definition for VOC removed five compounds from the list because they were minimally reactive toward the formation of ozone. These compounds will also be removed from the commission's definition of VOC, since the commission only regulates VOC based on its reactivity. The commission will now reference the EPA definition of VOC in its rules.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses. Small or micro-businesses are less likely to operate activities generating major sources of emissions. If small or micro-businesses do own or operate a major source of air contaminants, they will experience the same types of cost increases as those experienced by large businesses that are major sources of emissions.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rulemaking does not meet the definition of a "major environmental rule." Furthermore, it does not meet any of the four applicability requirements listed in §2001.0225(a). 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. The proposed amendment revises the definition of nonattainment area to reflect the new classifications under the eight-hour standard for the BPA, DFW, and HGB areas; adds the five newly designated counties in the DFW area; and adds the San Antonio area. The proposed amendment would also incorporate a change to the federal definition for VOC, which became effective November 29, 2004. The proposed amendment will not 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.

In addition, Texas Government Code, §2001.0225, only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed amendment does not exceed a standard set by federal law or exceed an express requirement of state law. There is no contract or delegation agreement that covers the topic that is the subject of this rulemaking. Finally, this rulemaking was not developed solely under the general powers of the agency, but is authorized by specific sections of the Texas Health and Safety Code and Texas Water Code, which are cited in the STATUTORY AUTHORITY section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because the proposed amendment does not meet any of the four applicability requirements.

The commission invites public comment regarding the draft regulatory impact analysis determination during the public comment period.

TAKINGS IMPACT ASSESSMENT

The commission completed a takings impact analysis for the proposed amendment. The specific purpose of this rulemaking is to amend the definition of nonattainment area to reflect the new classifications for the BPA, DFW, and HGB areas; add the five newly designated counties in the DFW area; and add the San Antonio area. The EPA has indicated that the one- hour standard will be revoked on June 15, 2005. The proposed amendment would also incorporate a change to the federal definition for VOC, which became effective November 29, 2004. Promulgation and enforcement of the proposed amendment would be neither a statutory nor a constitutional taking because it does not affect private real property. Specifically, the proposed amendment does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Therefore, the proposed amendment does not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq.*), and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the CMP. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). No new sources of air contaminants will be authorized and the proposed revisions will maintain the same level of emissions control as the existing rules. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with federal regulations in 40 CFR, to protect and enhance air quality in the coastal areas (31 TAC §501.14(q)). This rulemaking action complies with 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

The commission solicits comments on the consistency of the proposed rulemaking with the CMP during the public comment period.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Section 101.1 is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits. Upon the effective date of this rulemaking, owners or operators subject to the Federal Operating Permit Program will be required to certify compliance with amended §101.1.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on March 17, 2005, at 10:00 a.m. in Building F, Room 2210, 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 before the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Comments must be received by 5:00 p.m., March 28, 2005, and should reference Rule Project Number 2005-009-116-AI. Copies of the proposed rule can be obtained from the commission's Web site at *http://www.tnrcc.state.tx.us/oprd/rules/propadop.html*. For further information, please contact Beecher Cameron, Air Permits Division, at (512) 239-1495 or Michael Bame, Policy and Regulations Division, at (512) 239-5658.

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state air; and §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits and adopt rules necessary for permits issued under Texas Health and Safety Code, Chapter 382.

The proposed amendment implements Texas Health and Safety Code, §§382.002, 382.011, 382.012, and 382.051.

§101.1. Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA) [~~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 [~~which~~] are defined by the TCAA, the following terms, when used in this chapter, [~~shall~~] 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), all sources that [~~which~~] 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) - (6) (No change.)

(7) Carbon adsorber--An add-on control device that [~~which~~] uses activated carbon to adsorb volatile organic compounds from a gas stream.

(8) - (11) (No change.)

(12) 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 [~~which~~] disposes only waste generated on-site or a facility that accepts waste only from other facilities owned or effectively controlled by the same person.

(13) - (14) (No change.)

(15) Component--A piece of equipment, including, but not limited to, pumps, valves, compressors, and pressure relief valves, that [~~which~~] has the potential to leak volatile organic compounds.

(16) - (21) (No change.)

(22) *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 [~~which~~] has undergone a major modification, which does not exceed the following specified amounts.
Figure: 30 TAC §101.1(22) (No change.)

(23) - (25) (No change.)

(26) Emissions reduction credit--Any stationary source emissions reduction that [~~which~~] has been banked in accordance with Chapter 101, Subchapter H, Division 1 of this title (relating to Emission Credit Banking and Trading).

(27) Emissions reduction credit certificate--The certificate issued by the executive director that [~~which~~] indicates the amount of qualified reduction available for use as offsets and the length of time the reduction is eligible for use.

(28) Emissions unit--Any part of a stationary source that [~~which~~] emits, or would have the potential to emit, any pollutant subject to regulation under the Federal Clean Air Act [~~FCAA~~].

(29) Exempt solvent--Those carbon compounds or mixtures of carbon compounds used as solvents that [~~which~~] have been excluded from the definition of volatile organic compound.

(30) External floating roof--A cover or roof in an open top tank that [~~which~~] 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.

(31) (No change.)

(32) Federally enforceable--All limitations and conditions that [~~which~~] are enforceable by the United States Environmental Protection Agency [~~EPA~~] 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.

(33) - (34) (No change.)

(35) Fugitive emission--Any gaseous or particulate contaminant entering the atmosphere that [~~which~~] could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening designed to direct or control its flow.

(36) - (42) (No change.)

(43) High-volume low-pressure spray guns--Equipment used to apply coatings by means of a spray gun that [~~which~~] operates between 0.1 and 10.0 pounds per square inch gauge air pressure.

(44) Incinerator--An enclosed combustion apparatus and attachments that [~~which~~] 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 [~~which~~] is equipped with a flue for conducting products of combustion to the atmosphere. Any combustion device that [~~which~~] burns 10% or more of solid waste on a total British thermal unit (Btu) heat input basis averaged over any one-hour period is [~~shall be~~] 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 [~~shall~~] also [~~be~~] 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 regulations within this title provided they are installed and operated in compliance with the condition of all applicable permits.

(45) (No change.)

(46) 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.

(47) (No change.)

(48) Internal floating cover--A cover or floating roof in a fixed roof tank that [~~which~~] 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.

(49) - (51) (No change.)

(52) Maintenance area--A geographic region of the state previously designated nonattainment under the Federal Clean Air Act (FCAA) [~~FCAA~~] Amendments of 1990 and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under 42 United States Code, §7505a [~~FCAA, §175A, as amended~~]. The following are the maintenance areas within the state:

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

(53) Maintenance plan--A revision to the applicable state implementation plan, meeting the requirements of 42 United States Code, §7505a [~~FCAA, §175A~~].

(54) (No change.)

(55) Mechanical shoe seal--A metal sheet that [~~which~~] 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.

(56) Medical waste--Waste materials identified by the Department of State Health Services [~~Texas Department of Health~~] as "special waste from health care-related facilities" and those waste materials commingled and discarded with special waste from health care-related facilities.

(57) - (63) (No change.)

(64) National ambient air quality standard--Those standards established under 42 United States Code, §7409 [~~FCAA, §109~~], including standards for carbon monoxide, lead, nitrogen dioxide, ozone, inhalable particulate matter, and sulfur dioxide.

(65) - (66) (No change.)

(67) Nonattainment area--A defined region within the state that [~~which~~] is designated by the United States Environmental Protection Agency (EPA) [~~EPA~~] as failing to meet the national ambient air quality standard for a pollutant for which a standard exists. The EPA designates [~~will designate~~] the area as nonattainment under the provisions of 42 United States Code, §7407(d) [~~FCAA, §107(d)~~]. For the official list and boundaries of nonattainment areas, see 40 Code of Federal Regulations Part 81 and pertinent *Federal Register* (FR) notices. The following areas comprise the nonattainment areas within the state for all national ambient air quality standards (NAAQS). EPA has indicated that it will revoke the one-hour ozone standard in full, including the associated designations and classifications, on June 15, 2005, which is one year following the effective date of the designations for the eight-hour NAAQS of June 15, 2004.

(A) - (D) (No change.)

(E) Ozone (one-hour).

(i) Houston/Galveston/Brazoria one-hour [~~Houston/Galveston~~] ozone nonattainment area (56 FR 56694)--Classified as a Severe-17 ozone nonattainment area. Consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties.

(ii) El Paso one-hour ozone nonattainment area (56 FR 56694)--Classified as a Serious ozone nonattainment area. Consists of El Paso County.

(iii) Beaumont/Port Arthur one-hour ozone nonattainment area (69 FR 16483) [~~(61 FR 14496)~~]--Classified as a Serious [~~Moderate~~] ozone nonattainment area. Consists of Hardin, Jefferson, and Orange Counties.

(iv) Dallas/Fort Worth one-hour ozone nonattainment area (63 FR 8128)--Classified as a Serious ozone nonattainment area. Consists of Collin, Dallas, Denton, and Tarrant Counties.

(F) Ozone (eight-hour).

(i) Houston/Galveston/Brazoria eight-hour ozone nonattainment area (69 FR 23936)--Classified as a Moderate ozone nonattainment area. Consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties.

(ii) Beaumont/Port Arthur eight-hour ozone nonattainment area (69 FR 23936)--Classified as a Marginal ozone nonattainment area. Consists of Hardin, Jefferson, and Orange Counties.

(iii) Dallas/Fort Worth eight-hour ozone nonattainment area (69 FR 23936)--Classified as a Moderate ozone nonattainment area. Consists of Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties.

(iv) San Antonio eight-hour ozone nonattainment area (69 FR 23936)--Classified under the Federal Clean Air Act, Title I, Part D, Subpart 1 (42 United States Code, §7502), nonattainment deferred to September 30, 2005, or as extended by EPA.

(G) [~~(F)~~] Sulfur dioxide. No designated nonattainment areas.

(68) - (69) (No change.)

(70) Open-top vapor degreasing--A batch solvent cleaning process that is open to the air and that [~~which~~] uses boiling solvent to create solvent vapor used to clean or dry metal parts through condensation of the hot solvent vapors on the colder metal parts.

(71) Outdoor burning--Any fire or smoke-producing process that [~~which~~] is not conducted in a combustion unit.

(72) (No change.)

(73) Particulate matter emissions--All finely divided [~~finely-divided~~] solid or liquid material, other than uncombined water, emitted to the ambient air as measured by United States Environmental Protection Agency [~~EPA~~] 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.

(74) (No change.)

(75) 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.

(76) PM_{10} emissions--Finely divided [~~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.

(77) - (78) (No change.)

(79) Process weight per hour--"Process weight" is the total weight of all materials introduced or recirculated into any specific process that [~~which~~] 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 which 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.

(80) (No change.)

(81) Reasonable further progress--Annual incremental reductions in emissions of the applicable air contaminant that [~~which~~] 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.

(82) - (83) (No change.)

(84) Reportable quantity (RQ)--Is as follows:

(A) for individual air contaminant compounds and specifically listed mixtures, either:

(i) the lowest of the quantities:

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

(III) listed as follows:

(-a-) (No change.)

(-b-) butenes (any isomer, except 1,3-butadiene)--5,000 pounds, except in the Houston/Galveston/Brazoria (HGB) [~~Houston/Galveston (HGA)~~] and Beaumont/Port Arthur (BPA) ozone nonattainment areas as defined in paragraph (67)(E)(i) and (iii) of this section, where the RQ shall be 100 pounds;

(-c-) ethylene--5,000 pounds, except in the HGB [~~HGA~~] and BPA ozone nonattainment areas as defined in paragraph (67)(E)(i) and (iii) of this section, where the RQ shall be 100 pounds;

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

(-g-) propylene--5,000 pounds, except in the HGB [~~HGA~~] and BPA ozone nonattainment areas as defined in paragraph (67)(E)(i) and (iii) of this section, where the RQ shall be 100 pounds;

(-h-) - (-m-) (No change.)

(-n-) acetaldehyde--1,000 pounds, except in the HGB [~~HGA~~] and BPA ozone nonattainment areas as defined in paragraph (67)(E)(i) and (iii) of this section, where the RQ shall be 100 pounds;

(-o-) toluene--1,000 pounds, except in the HGB [~~HGA~~] and BPA ozone nonattainment areas as defined in paragraph (67)(E)(i) and (iii) of this section, where the RQ shall be 100 pounds;

(-p-) - (-q-) (No change.)

(ii) (No change.)

(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 [~~which~~] 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 [~~which~~] 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) - *(iv)* (No change.)

(C) - (D) (No change.)

(85) 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 [~~which~~] will not burn at ordinary incinerator temperatures (1,600 degrees Fahrenheit to 1,800 degrees Fahrenheit).

(86) Scheduled maintenance, startup, or shutdown activity--For activities with unauthorized emissions that [~~which~~] are expected to exceed a reportable quantity (RQ), a scheduled maintenance, startup, or shutdown activity is an activity for which the owner or operator of the facility provides timely 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. For activities with unauthorized emissions that [~~which~~] 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.

(87) Site--For the purposes of Subchapter F of this chapter, means [~~shall mean~~] all regulated units, facilities, equipment, structures, or sources at one street address or location that are owned or operated by the same person. Site includes any property identified in the permit or used in connection with the regulated activity at the same street address or location.

(88) - (90) (No change.)

(91) Sour crude--A crude oil that [~~which~~] will emit a sour gas when in equilibrium at atmospheric pressure.

(92) - (93) (No change.)

(94) Special waste from health care-related [~~care related~~] facilities--A solid waste that [~~which~~] if improperly treated or handled, may serve to transmit infectious disease(s) and which is comprised of the following: animal waste, bulk blood and blood products, microbiological waste, pathological waste, and sharps.

(95) (No change.)

(96) Standard metropolitan statistical area--An area consisting of a county or one or more contiguous counties that [~~which~~] is officially so designated by the United States Bureau of the Budget.

(97) 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 [~~which~~] 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.

(98) - (103) (No change.)

(104) Unauthorized emissions--Emissions of any air contaminant except carbon dioxide, water, nitrogen, methane, ethane, noble gases, hydrogen, and oxygen that exceed [~~which exceeds~~] any air emission limitation in a permit, rule, or order of the commission or as authorized by Texas Clean Air Act [~~TCAA~~], §382.0518(g).

(105) - (109) (No change.)

(110) Visible emissions--Particulate or gaseous matter that [~~which~~] can be detected by the human eye. The radiant energy from an open flame is [~~shall~~] not [~~be~~] considered to be a visible emission under this definition.

(111) Volatile organic compound--As defined in 40 Code of Federal Regulations §51.100(s), except §51.100(s)(2) - (4), as amended on November 29, 2004 (69 FR 69290 - 69304). [~~Any compound of carbon or mixture of carbon compounds excluding methane; ethane; 1,1,1-trichloroethane (methyl chloroform); methylene chloride (dichloromethane); perchloroethylene (tetrachloroethylene); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113); 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro-2,2-dichloroethane (HCFC-123); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro-1-fluoroethane (HCFC-141b); 1-chloro-1,1-difluoroethane (HCFC-142b); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; acetone; 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca); 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb); 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee); difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3-pentafluoropropane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1-chloro-1-fluoroethane (HCFC-151a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxybutane; 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane; 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane; 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane; methyl acetate; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides or carbonates; ammonium carbonate; and perfluorocarbon compounds which fall into these classes:~~]

[~~(A) cyclic, branched, or linear, completely fluorinated alkanes;~~]

[~~(B) cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;~~]

[~~(C) cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and~~]

[~~(D) sulfur-containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.~~]

(112) (No change.)

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

Filed with the Office of the Secretary of State on February 11, 2005.

TRD-200500624
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: March 27, 2005
For further information, please call: (512) 239-0348

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CHAPTER 116. CONTROL OF AIR POLLUTION BY PERMITS FOR NEW CONSTRUCTION OR MODIFICATION

The Texas Commission on Environmental Quality (commission) proposes amendments to §116.12 and §116.150.

If adopted, these amendments will 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 AMENDMENTS

After adoption of the Federal Clean Air Act (FCAA) Amendments of 1990, the EPA classified the designated four areas of Texas that failed to meet the one-hour national ambient air quality standard (NAAQS) for the air contaminant ozone. Each area was classified by the EPA based on the amount by which it exceeded the ozone NAAQS of 0.12 parts per million (ppm) based on a peak one-hour concentration of ozone. Eight counties in the Houston/Galveston/Brazoria (HGB) area (Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller) were classified as Severe and El Paso County was classified as Serious. Four counties in the Dallas/Fort Worth (DFW) area (Collin, Dallas, Denton, and Tarrant) were originally classified as Moderate and then reclassified to Serious. Three counties in the Beaumont/Port Arthur (BPA) area (Hardin, Jefferson, and Orange) were originally classified as Serious, then reclassified to Moderate, and reclassified again, in 2004, to Serious. The classification of an area has specific effects on sources of air contaminants within the area including what will be considered a major source of contaminants. In the case of ozone, the contaminants of concern are volatile organic compounds (VOC) and nitrogen oxides (NO_x), referred to as ozone precursers.

If a proposed project (modification of existing facilities or new construction) is determined to be a major modification, the project is subject to federal nonattainment new source review (NNSR) and specific levels of pollution control, which generally mean that the source will be required to meet the lowest achievable emission rate (LAER) and offset the emissions increase.

To determine if a modification at a major source results in an emission increase that would make the project a major modification, the source owner performs a netting exercise if the project emission increase is greater than the netting trigger (five tons per year (tpy) under current commission rules). Netting is an accounting procedure used to determine the amount of increase in emissions by a source over a specified period of time. Under the commission's existing rules, the netting period, defined as the contemporaneous period in 30 TAC §116.12(7), begins on the date of the emission increase and goes back to November 15, 1992, for major sources that emit 250 tpy or more, and goes back five years for major sources emitting less than 250 tpy. All emission increases and decreases at a source over the specified time (netting period) are added or subtracted and, if the resulting figure is at or above the major modification threshold, the source becomes subject to NNSR. This major modification threshold is determined by an area's classification (Severe, Serious, Moderate). The netting trigger and netting period are the principal subjects of this rulemaking action.

The commission's current netting triggers and periods are different than the corresponding federal rules, but are considered equivalent by the EPA and are approved as part of the SIP. The federal rule, adopted after the FCAA Amendments of 1990 and classifications of the areas, required that any increase in emissions would trigger the netting exercise in areas classified as Serious or Severe. To reduce the number of netting exercises, the commission adopted a netting exercise that would not be required when the project resulted in a small increase of emissions resulting from such activities as valve changes or other minor maintenance or facility upgrades and proposed a five tpy trigger. The EPA agreed to the change provided that the netting period was extended to go back to November 15, 1992, for the larger major sources instead of the five-year netting period in the federal rule.

On April 30, 2004, the EPA adopted the Phase I Implementation Rule (69 FR 23951), implementing a new eight-hour ozone NAAQS, effective June 15, 2004. On the same date, the EPA designated and classified areas that were not in attainment of the eight-hour standard (69 FR 23858). In the Phase I Implementation Rule, the EPA stated that it plans to issue a second final rule, Phase 2, which will address many of the planning and control obligations under FCAA, §172 and §182 that will apply for purposes of implementing the eight-hour ozone NAAQS. These rules include, among other things, new source review (NSR). The EPA designated four areas of Texas as nonattainment for the eight-hour ozone standard, and classifications under the new standard are different from the classifications under the one-hour ozone standard. Specifically, HGB and DFW are classified as Moderate, BPA is classified as Marginal, and El Paso is in attainment of the eight-hour standard. In addition to the four counties in the DFW area classified under the one-hour standard, five additional counties (Ellis, Johnson, Kaufman, Parker, and Rockwall) were designated as Moderate nonattainment. The San Antonio area, consisting of Bexar, Comal, and Guadalupe Counties, was designated nonattainment under FCAA, Title I, Part D, Subpart 1 (42 United States Code (USC), §7502) with a deferred effective date, due to its participation in the Early Action Compact Program. In the Phase I Implementation Rule, the EPA also adopted a rule that provides that the EPA will revoke the one-hour standard in full, including designations and classifications, one year following the effective date of the designations for the eight-hour NAAQS. One year after the effective date of the designations for the eight-hour ozone standard is June 15, 2005.

The new EPA rules make no changes to the netting procedure or thresholds. The new designations and classifications allow the commission an opportunity to limit the number of netting exercises by revising its rule. The commission is proposing to adopt the federal model concerning netting triggers and periods with the exception of the netting trigger in a Serious or Severe nonattainment area where the commission would retain its existing five tpy trigger. The commission would eliminate the netting period for larger major sources that requires netting going back to 1992. This period is now too long to be useful and would not be justified for the sources in the five new nonattainment counties in the DFW area. Under the new eight-hour ozone standard, there are no areas currently classified as Serious or Severe. The proposed netting triggers for all eight-hour ozone nonattainment areas would be 40 tpy and all netting periods would be five years.

Application of the eight-hour ozone standard for NNSR becomes effective June 15, 2005, and the commission is updating its rules to implement the necessary changes. On September 24, 2004, in response to a petition by Earthjustice and other environmental groups, the EPA granted a partial reconsideration of the Phase I Implementation Rule adopted April 30, 2004, allowing states to apply federal NNSR based on an eight-hour classification. The result of this reconsideration could be a return to the one-hour

ozone standard for application of federal NNSR. The result of the EPA reconsideration may not be known until after the commission adopts these amendments. Therefore, the commission is including contingency language in §116.150, New Major Source or Major Modification in Ozone Nonattainment Areas, and in the footnotes of the definition of major modification in §116.12. This contingency language would go into effect if the EPA decided to require states to return to a one-hour standard for federal NNSR determination.

NO_x Netting and Mass Emission Cap and Trade

Concurrent with the effective date of the new five-year contemporaneous period, the commission will allow the reductions required by the HGB NO_x mass emission cap and trade program (MECT) in 30 TAC Chapter 101, Subchapter H, to be creditable for netting purposes. This will apply only to NO_x sources subject to MECT in HGB for netting exercises only and will not apply to NO_x credits or offsets. This determination for sites subject to HGB MECT and NO_x netting will not impact the MECT or the SIP because the MECT cap is ultimately the governing factor in the amount of NO_x emitted. Furthermore, the moving five-year netting period will ensure that emission reduction strategies driven by MECT compliance that are used to "net out" emission increases from increases at a site will have to occur within the netting period. MECT allows for trading of a fixed number of emission allowances so the emission reductions are not binding on any specific unit or site but it ensures that area-wide emission reductions are made, regardless of changes at any particular site.

SECTION BY SECTION DISCUSSION

The commission proposes to make administrative changes for better readability, conformity with the drafting standards in the *Texas Legislative Council Drafting Manual*, October 2002, and consistency with other commission rules.

The commission also proposes to make corrections to citations of federal and state law and to add USC references to citations of sections of the FCAA.

§116.12, Nonattainment Review Definitions

The commission proposes to amend the definition of contemporaneous period in paragraph (7) to require that netting be performed from the date of a modification going back a period of 60 months for all netting exercises. This period is more representative of recent activity as compared to a period that goes back to 1992.

The commission proposes to add new footnotes 6 and 7 in the figure located in the definition of major modification in paragraph (11)(A) that would require sources in areas that were classified nonattainment for ozone under a one-hour ozone standard to return to the major source thresholds, major modification thresholds, and offset ratios for the one-hour standard for federal NNSR applicability if the EPA requires states to use the one-hour standard after reconsideration of the rule implementing the new eight-hour standard.

Footnote 7 would require applications submitted for facilities that would be located in areas designated under FCAA, Title I, Part D, Subpart 1 (42 USC, §7502), be evaluated as if the area was classified as Marginal under FCAA, Title I, Part D, Subpart 2 (42 USC, §7502). The evaluation includes both the threshold for determining if there is a major modification as well as the ratio of offsets required along with any other applicable requirement that depends upon an area's nonattainment classification. Currently, only San Antonio is designated under Subpart 1.

The commission also proposes to delete subparagraphs (E) and (F) from the definition of net emissions increase in paragraph (13). The subparagraphs contain references to a contemporaneous period going back to November 15, 1992.

§116.150, New Major Source or Major Modification in Ozone Nonattainment Areas

For ease of understanding, the commission proposes to reformat the lengthy existing subsection (a) into additional subsections and add new language to address the eight-hour netting procedures.

The commission proposes to amend subsection (a) to apply major modification procedures to all NSR authorizations issued or claimed. In addition to aligning the date with the efffective date of the new designations, the commission is proposing this addition because netting procedures apply to sources authorized under standard permit or permit by rule to demonstrate that modifications under those authorizations are not major.

Proposed new subsection (b) contains language from existing subsection (a) and addresses the control requirements applicable to major sources or major modifications. The rule citation where the control requirements may be found is proposed to be changed to read "subsection (e)(1) - (4) of this section." The commission also proposes to change the citation concerning the exception for NO_x sources in El Paso County from subsection (b) to subsection (f). A reference to a subsection (c) would be deleted as it is obsolete.

The commission proposes new subsection (c), which would contain language from existing subsection (a) that would be amended to contain a new netting trigger of 40 tpy for areas classified as Marginal or Moderate ozone nonattainment. The commission would retain the five tpy netting trigger for areas classified as Serious or Severe.

The commission proposes to add new subsection (d), which would contain contingency language that would go into effect if the EPA, after reconsideration of the eight-hour standard, requires states to use the area's one-hour standard classification for determining applicability of NNSR. The contingency language would require sources in areas that were classified nonattainment for ozone under a one-hour ozone standard to return to a netting trigger of five tpy, which is based on a one-hour ozone standard for the applicability of federal NNSR.

Proposed new subsection (e) contains language from existing subsection (a) concerning emission standards and offsets for sources and modifications classified as major sources and modifications.

Existing subsection (b), which exempts sources located in El Paso County from the requirements of this section concerning NO_x emissions, is proposed to be relettered as subsection (f).

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Grants Management Section, determined that for the first five-year period the proposed amendments are in effect, no fiscal implications are anticipated as a result of administration or enforcement for units of state or local governments. State or local governments that own or operate major sources of air contaminants could realize a cost savings resulting from the reduction in the number of netting exercises.

Currently, NNSR is implemented under EPA's one-hour ozone NAAQS. EPA's implementation of an eight-hour ozone NAAQS designated attainment areas under the eight-hour standard, added five new counties to the DFW ozone nonattainment area, and designated the San Antonio area as nonattainment with a deferred effective date.

Major sources, including those operated by state or local government, located in the counties added to the DFW nonattainment area and the San Antonio area, could have significant costs if required to upgrade their emission control equipment from best available control technology (BACT) to LAER. The new designation of the counties as nonattainment does not in itself mean that emission controls must be immediately upgraded or additional controls installed. Also, because San Antonio is participating in the Early Action Compact Program, its designation may never become effective. Sources that undergo major modifications would be subject to LAER, but the commission does not have information indicating which, if any, sources are going to be affected. The commission expects cost increases to be mostly limited to large combustion sources because of the limited industrialization of the new nonattainment counties.

The proposed rulemaking seeks to: 1) implement EPA netting triggers and periods for nonattainment areas classified as Moderate or Marginal to 40 tpy and five years; 2) retain the five tpy netting trigger for Serious or Severe nonattainment areas but reduce the netting period to five years; and 3) include contingency language for a possible return to a one-hour standard for NNSR determinations of new major source or major modification in nonattainment areas if EPA decides to reapply the one-hour standard at a later date after reconsidering implementation of the eight-hour standard.

Under the proposed rules, state or local governments with major sources of air contaminants in nonattainment areas classified as Serious or Severe under the one-hour standard may see a decrease in costs because of the classification to Moderate and Marginal under the eight-hour standard. This new classification carries with it a new netting trigger for emissions associated with a new project or certain changes in operations. The higher netting trigger of 40 tpy for Moderate, Marginal, and FCAA, Title I, Part D, Subpart 1 areas will mean that fewer netting exercises will be required and will reduce the chance that an emission increase associated with these activities would trigger requirements to offset emissions because of new projects or operational changes. The commission is unable to estimate savings for individual sources because of the inability to anticipate which sources will be subject to future modification. However, if the EPA decides to require eight-hour nonattainment areas to continue NNSR under its one-hour designation, then no cost savings would be realized.

PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated from the changes seen in the proposed rules will be implementation of current federal regulations for NAAQS.

Under the proposed rules, businesses with major sources of air contaminants in nonattainment areas classified as Serious or Severe under the one-hour standard may see a decrease in costs because of the classification under the eight-hour standard of Moderate and Marginal. The higher netting trigger of 40 tpy for Moderate, Marginal, and FCAA, Title I, Part D, Subpart 1 areas will mean that fewer netting exercises will be required and will reduce the probability that an emission increase associated with these activities would trigger requirements to offset emissions because of new projects or operational changes. Sources in the El Paso area would realize a cost savings because it would no longer be subject to NNSR. The commission is unable to estimate savings for individual sources because of the inability to anticipate which sources will be subject to future modification.

Major sources located in the counties added to the DFW nonattainment area and the San Antonio area could have significant costs if required to upgrade their emission control equipment from BACT to LAER. The designation of the counties as nonattainment does not in itself mean that emission controls must be immediately upgraded or additional controls installed. Because San Antonio is participating in the Early Action Compact Program, its designation may never become effective. Sources that undergo major modifications would be subject to LAER, but the commission does not have information indicating which, if any, sources are going to be affected. The commission expects cost increases to be mostly limited to large combustion sources because of the limited industrialization of the new nonattainment counties.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses. Small or micro-businesses are less likely to operate major sources of air contaminants. Small or micro-businesses that do operate major sources will see the same reduction in probability that a source modification will trigger a major modification under federal NNSR, and they will experience the same types of costs savings or increases as those experienced by large businesses that generate major sources of contamination under the eight-hour ozone standard. Small businesses operating sources of air contaminants in the new DFW nonattainment counties that do undergo major modifications would be subject to the same NNSR requirements and potential expense as larger businesses.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed amendments do not adversely affect a local economy in a material way for the first five years that the proposed amendments are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rulemaking does not meet the definition of a "major environmental rule." Furthermore, it does not meet any of the four applicability requirements listed in §2001.0225(a). 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. The proposed amendments revise the netting trigger and netting period for projects that are a major modification and are therefore subject to federal NNSR for air quality permitting and specific levels of pollution control. The proposed amendments also make applicable to the San Antonio area and the five additional counties in the DFW area NNSR requirements. Because San Antonio is an early action compact area, it has a deferred effective date of September 30, 2005, and

will continue to be deferred as it remains in compliance with the compact agreements. The amendments also make changes to the definition of contemporaneous period and net emissions increase as well as changes to the figure in the definition of major modification, and nonsubstantive organizational changes. The proposed amendments will not 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.

In addition, Texas Government Code, §2001.0225, only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed amendments do not exceed a standard set by federal law or exceed an express requirement of state law. There is no contract or delegation agreement that covers the topic that is the subject of this rulemaking. Finally, this rulemaking was not developed solely under the general powers of the agency, but is authorized by specific sections of the Texas Health and Safety Code and Texas Water Code, which are cited in the STATUTORY AUTHORITY section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because the proposed amendments do not meet any of the four applicability requirements.

The commission invites public comment regarding the draft regulatory impact analysis determination during the public comment period.

TAKINGS IMPACT ASSESSMENT

The commission completed a takings impact analysis for the proposed amendments. The specific purpose of this rulemaking is to revise the netting trigger and netting period for projects that are a major modification and are therefore subject to federal NNSR for air quality permitting and specific levels of pollution control. The amendments implement NNSR requirements for the newly designated San Antonio area and the five additional counties in the DFW area. The amendments also make nonsubstantive organizational changes. Promulgation and enforcement of the proposed amendments would be neither a statutory nor a constitutional taking because they do not affect private real property. Specifically, the proposed amendments do not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Therefore, the proposed amendments do not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq.*), and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the CMP. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). No new sources of air contaminants will be authorized and the proposed revisions will maintain the same level of emissions control as the existing rules. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with federal regulations in 40 Code of Federal Regulations, to protect and enhance air quality in the coastal areas (31 TAC §501.14(q)). This rulemaking action complies with 40 Code of Federal Regulations Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

The commission solicits comments on the consistency of the proposed rulemaking with the CMP during the public comment period.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Section 116.12 and §116.150 are applicable requirements under 30 TAC Chapter 122, Federal Operating Permits Program. Upon the effective date of this rulemaking, owners or operators subject to the Federal Operating Permit Program that modify any NSR authorized sources at their sites will be subject to the amended requirements of §116.12 and §116.150.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on March 17, 2005, at 10:00 a.m. in Building F, Room 2210, 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 before the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Comments must be received by 5:00 p.m., March 28, 2005, and should reference Rule Project Number 2005-009-116-AI. Copies of the proposed rule can be obtained from the commission's Web site at *http://www.tnrcc.state.tx.us/oprd/rules/propadop.html*. For further information, please contact Beecher Cameron, Air Permits Division, at (512) 239-1495 or Michael Bame, Policy and Regulations Division, at (512) 239-5658.

SUBCHAPTER A. DEFINITIONS

30 TAC §116.12

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state air; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits and adopt rules necessary for permits issued under Texas Health and Safety Code, Chapter 382; and §382.0518, concerning Preconstruction Permit, which requires that a permit be obtained from the commission prior to new construction or modification of an existing facility.

The proposed amendment implements Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.051, and 382.0518.

§116.12. Nonattainment Review Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA) [~~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. The terms in this section are applicable to permit review for major source construction and major source modification in nonattainment areas. In addition to the terms that [~~which~~] are defined by the TCAA, and in §101.1 of this title (relating to Definitions), the following words and terms, when used in §116.150 and §116.151 of this title (relating to Nonattainment Review), [~~shall~~] have the following meanings, unless the context clearly indicates otherwise.

(1) Actual emissions--Actual emissions as of a particular date are [~~shall~~] equal to the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period that [~~which~~] precedes the particular date and that [~~which~~] is representative of normal source operation. The executive director shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period. The executive director may presume that the source-specific allowable emissions for the unit are equivalent to the actual emissions, e.g., when the allowable limit is reflective of actual emissions. For any emissions unit that [~~which~~] has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(2) Allowable emissions--The emissions rate of a stationary source, calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits that [~~which~~] restrict the operating rate, or hours of operation, or both), and the most stringent of the following:

(A) the applicable standards specified [~~set forth~~] in [~~Title~~] 40 Code of Federal Regulations, Part 60 or 61;

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

(3) Begin actual construction--In general, initiation of physical on-site construction activities on an emissions unit that [~~which~~] are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities that [~~which~~] mark the initiation of the change.

(4) Building, structure, facility, or installation--All of the pollutant-emitting activities that [~~which~~] belong to the same industrial grouping, are located in one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities are [~~shall be~~] considered to be [~~as~~] part of the same industrial grouping if they belong to the same "major group" (i.e., that [~~which~~] have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 supplement.

(5) (No change.)

(6) Construction--Any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that [~~which~~] would result in a change in actual emissions.

(7) Contemporaneous period--[~~As follows.~~]

[~~(A)~~] For major sources [~~with the potential to emit 250 tons per year (tpy) or more of a nonattainment pollutant,~~] the period between:

(A) the date that the increase from the particular change occurs; and

~~*[(i)* November 15, 1992; and]~~

(B) [~~(ii)~~] 60 months prior to the date that construction on [~~the increase from~~] the particular change commences [~~occurs~~].

~~[(B) For major sources with the potential to emit less than 250 tpy of a nonattainment pollutant, the period between:]~~

~~*[(i)* the date five years before construction on the particular change commences; and]~~

~~*[(ii)* the date that the increase from the particular change occurs.]~~

~~[(C) Notwithstanding subparagraphs (A) and (B) of this definition, for major sources of nitrogen oxides as a precursor to ozone in ozone nonattainment areas, the contemporaneous period shall begin no earlier than November 15, 1992.]~~

(8) *De minimis* [~~De minimis~~] threshold test (netting)--A method of determining if a proposed emission increase will trigger nonattainment review. The summation of the proposed increase in tons per year with all other creditable source emission increases and decreases during the contemporaneous period is compared to the MAJOR MODIFICATION column of Table I located in the definition of major modification in this section [~~(in tons per year)~~] for that specific nonattainment area. If the major modification level is exceeded, then nonattainment review is required.

(9) Lowest achievable emission rate--For any emitting facility, that rate of emissions of a contaminant that [~~which~~] does not exceed the amount allowable under applicable new source performance standards [~~New Source Performance Standards~~] promulgated by the United States Environmental Protection Agency [~~EPA~~] under

42 United States Code, §7411 [~~the FCAA, §111~~], and that [~~which~~] reflects the following:

(A) the most stringent emission limitation that [~~which~~] is contained in the rules and regulations of any approved state implementation plan for a specific class or category of facility, unless the owner or operator of the proposed facility demonstrates that such limitations are not achievable; or

(B) the most stringent emission limitation that [~~which~~] is achieved in practice by a specific class or category of facilities, whichever is more stringent.

(10) Major facility/stationary source--Any facility/stationary source that [~~which~~] emits, or has the potential to emit, the amount specified in the MAJOR SOURCE column of Table I of this section or more of any air contaminant (including volatile organic compounds (VOCs)) for which a national ambient air quality standard [~~National Ambient Air Quality Standard (NAAQS)~~] has been issued. Any physical change that would occur at a stationary source not qualifying as a major stationary source in Table I of this section, if the change would constitute a major stationary source by itself. A major stationary source that is major for VOCs or nitrogen oxides is [~~shall be~~] considered to be major for ozone. The fugitive emissions of a stationary source may [~~shall~~] not be included in determining for any of the purposes of this definition whether it is a major stationary source, unless the source belongs to one of the categories of stationary sources listed in 40 Code of Federal Regulations §51.165(a)(1)(iv)(C).

(11) Major modification--As follows.

(A) Any physical change in, or change in the method of operation of a facility/stationary source that causes a significant net emissions increase for any air contaminant for which a national ambient air quality standard [~~National Ambient Air Quality Standard~~] (NAAQS) has been issued. At a facility/stationary source that is not major prior to the increase, the increase by itself must equal or exceed that specified in the MAJOR SOURCE column of Table I of this section. At an existing major facility/stationary source, the increase must equal or exceed that specified in the MAJOR MODIFICATION column of Table I.
Figure: 30 TAC §116.12(11)(A)

(B) A physical change or change in the method of operation may [~~shall~~] not include:

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

(iii) use of an alternative fuel by reason of an order or rule of 42 United States Code, §7425 [~~the FCAA, §125~~];

(iv) (No change.)

(v) use of an alternative fuel or raw material by a stationary source that [~~which~~] the source was capable of accommodating before December 21, 1976 (unless such change would be prohibited under any federally enforceable permit condition established after December 21, 1976) or the source is approved to use under any permit issued under regulations approved under this chapter;

(vi) an increase in the hours of operation or in the production rate (unless the change is prohibited under any federally enforceable permit condition that [~~which~~] was established after December 21, 1976); or

(vii) (No change.)

(12) Necessary preconstruction approvals or permits--Those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations that [~~which~~] are part of the applicable state implementation plan.

(13) Net emissions increase--The amount by which the sum of the following exceeds zero: the total increase in actual emissions from a particular physical change or change in the method of operation at a stationary source, plus any sourcewide creditable contemporaneous emission increases, minus any sourcewide creditable contemporaneous emission decreases.

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

(C) A decrease in actual emissions is creditable only to the extent that all of the following conditions are met:

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

(iii) the reviewing authority has not relied on it in issuing a prevention of significant deterioration [~~Prevention of Significant Deterioration~~] or a nonattainment permit, or the state has not relied on the decrease to demonstrate [~~it in demonstrating~~] attainment or reasonable further progress; and

(iv) the decrease [~~it~~] has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(D) (No change.)

~~[(E) At major sources with the potential to emit 250 tons per year or more of a nonattainment pollutant:]~~

~~*[(i)* increases and decreases of such pollutant resulting from authorizations or applications received before November 15, 1992, are creditable to the extent that the increases or decreases occur within the period five years prior to the date construction on a particular change commences and meet all other creditability criteria; and]~~

~~*[(ii)* increases and decreases of such pollutant resulting from authorizations or applications received on or after November 15, 1992, are creditable indefinitely to the extent that all other creditability criteria are met.]~~

~~[(F) For all major sources of nitrogen oxides (NO_x) in ozone nonattainment areas, increases and decreases of NO_x are creditable only if they resulted from authorizations or applications received on or after November 15, 1992.]~~

(14) Offset ratio--For the purpose of satisfying the emissions offset reduction requirements of 42 United States Code, §7503(a)(1)(A) [~~the FCAA, §173(a)(1)(A)~~], the emissions offset ratio is the ratio of total actual reductions of emissions to total allowable emissions increases of such pollutants. The minimum offset ratios are included in Table I [~~of this section~~] under the definition of major modification of this section. In order for a reduction to qualify as an offset, it must be certified as an emission credit under Chapter 101, Subchapter H, Division 1 or 4 of this title (relating to Emission Credit Banking or Trading; or Discrete Emission Credit Banking and Trading), except as provided for in §116.170(b) of this title (relating to Applicability of Emission Reductions as Offsets). The reduction must not have been relied on in the issuance of a previous nonattainment or prevention of significant deterioration permit.

(15) Potential to emit--The maximum capacity of a facility/stationary source to emit a pollutant under its physical and operational design. Any physical or enforceable operational limitation on the capacity of the facility/stationary source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, may [~~shall~~] be treated as part of its design only if the limitation or the effect

it would have on emissions is federally enforceable. Secondary emissions, as defined in 40 Code of Federal Regulations §51.165(a)(1)(viii), do not count in determining the potential to emit for a stationary source.

(16) Project net--The sum of the following: the total proposed increase in emissions resulting from a physical change or change in the method of operation at a stationary source, minus any sourcewide creditable actual emission decreases proposed at the source between the date of application for the modification and the date the resultant modification begins emitting. Increases and decreases must meet the creditability criteria listed under the definition of net emissions increase in [~~paragraph (13) of~~] this section.

(17) Secondary emissions--Emissions that [~~which~~] would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the source or modification itself. Secondary emissions must be specific, well-defined, quantifiable, and impact the same general area as the stationary source or modification that [~~which~~] causes the secondary emissions. Secondary emissions include emissions from any off-site support facility that [~~which~~] would not be constructed or increase its emissions, except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions that [~~which~~] come directly from a mobile source such as emissions from the tail pipe of a motor vehicle, from a train, or from a vessel.

(18) Stationary source--Any building, structure, facility, or installation that [~~which~~] emits or may emit any air pollutant subject to regulation under 42 United States Code, §§7401 *et seq* [~~the FCAA~~].

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

Filed with the Office of the Secretary of State on February 11, 2005.

TRD-200500625
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: March 27, 2005
For further information, please call: (512) 239-0348

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SUBCHAPTER B. NEW SOURCE REVIEW PERMITS
DIVISION 5. NONATTAINMENT REVIEW

30 TAC §116.150

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state air; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits and adopt rules necessary for permits issued under Texas Health and Safety Code, Chapter 382; and §382.0518, concerning Preconstruction Permit, which requires that a permit be obtained from the commission prior to new construction or modification of an existing facility.

The proposed amendment implements Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.051, 382.0518.

§116.150. New Major Source or Major Modification in Ozone Nonattainment Areas.

(a) This section applies to all new source review authorizations which are administratively complete after June 15, 2004, [~~administratively complete applications submitted on or after November 15, 1992~~] for new construction or modification of facilities located in any area designated as nonattainment for ozone in accordance with 42 United States Code (USC), §7407 [~~the FCAA, §107~~].

(b) The owner or operator of a proposed new or modified facility that [~~which~~] will be a new major stationary source of volatile organic compound (VOC) emissions or nitrogen oxides (NO_x) emissions, or the owner or operator of an existing major stationary source of VOC or NO_x emissions that will undergo a major modification with respect to VOC or NO_x, shall meet the requirements of subsection (e)(1) - (4) of this section [~~paragraphs (1) - (4) of this subsection~~], except as provided in subsection (f) [~~subsections (b) and (c)~~] of this section. Table I of §116.12 of this title (relating to Nonattainment Review Definitions) specifies the various classifications of nonattainment along with the associated emission levels that [~~which~~] designate a major stationary source or major modification for those classifications.

(c) Except as noted in subsection (f) [~~(b)~~] of this section regarding NO_x, the *de minimis* [~~de minimis~~] threshold test (netting) is [~~shall be~~] required for all modifications to existing major sources of VOC or NO_x, unless at least one of the following conditions are met:

(1) the proposed emissions increases associated with a project, without regard to decreases, is less than five tons per year (tpy) of the individual nonattainment pollutant in areas classified under Federal Clean Air Act (FCAA), Title I, Part D, Subpart 2 (42 USC, §7511) classified as Serious or Severe;

(2) the proposed emissions increases associated with a project, without regard to decreases, is less than 40 tpy of the individual nonattainment pollutant in areas classified under FCAA, Title I, Part D, Subpart 1 (42 USC, §7502) and for those under FCAA, Title I, Part D, Subpart 2 (42 USC, §7511) classified as Marginal or Moderate; or[~~, the~~]

(3) the project emissions increases coupled with project actual emissions decreases for the same pollutant, summed as the project net, are less than or equal to zero tpy [~~tons per year~~].

(d) For the Houston/Galveston/Brazoria, Dallas/Fort Worth, and Beaumont/Port Arthur eight-hour ozone nonattainment areas, if the United States Environmental Protection Agency promulgates rules requiring new source review permit applications in these areas to be evaluated for nonattainment new source review according to that area's one-hour standard classification, except as noted in subsection (b) of this section regarding NO_x, the *de minimis* threshold test (netting) is required for all modifications to existing major sources of VOC or NO_x in that area, unless at least one of the following conditions is met:

(1) the proposed emissions increases associated with a project, without regard to decreases, is less than five tpy of the individual nonattainment pollutant; or

(2) the project emissions increases coupled with project actual emissions decreases for the same pollutant, summed as the project net, are less than or equal to zero tpy.

(e) In applying the *de minimis* [de minimis] threshold test, if the net emissions increases, aggregated over the contemporaneous period, are greater than the major modification levels stated in Table I in §116.12 of this title, then the following requirements apply.

(1) The proposed facility shall comply with the lowest achievable emission rate (LAER) as defined in §116.12 of this title for the nonattainment pollutants for which the facility is a new major source or major modification except as provided in paragraph (3)(B) of this subsection and except for existing major stationary sources that have a potential to emit (PTE) of less than 100 tpy [tons per year] of the applicable nonattainment pollutant. For these sources, best available control technology [Best Available Control Technology] (BACT) can be substituted for LAER. LAER shall otherwise be applied to each new emission unit and to each existing emission unit at which the net emissions increase will occur as a result of a physical change or change in method of operation of the unit.

(2) All major stationary sources owned or operated by the applicant (or by any person controlling, controlled by, or under common control with the applicant) in the state must [shall] be in compliance or on a schedule for compliance with all applicable state and federal emission limitations and standards.

(3) At the time the new or modified facility or facilities commence operation, the emissions increases from the new or modified facility or facilities must [shall] be offset. The proposed facility shall use the offset ratio for the appropriate nonattainment classification as defined in §116.12 of this title and shown in Table I of §116.12 of this title. Internal offsets that [which] are generated at the source and that [which] otherwise meet all creditability criteria can be applied as follows.

(A) Major stationary sources with a PTE of less than 100 tpy [tons per year] of an applicable nonattainment pollutant are not required to undergo nonattainment new source review [Nonattainment New Source Review] under this section, if the project increases are offset with internal offsets at a ratio of at least 1.3 to 1.

(B) Major stationary sources with a PTE of greater than or equal to 100 tpy [tons per year] of an applicable nonattainment pollutant can substitute BACT for LAER, if the project increases are offset with internal offsets at a ratio of at least 1.3 to 1. Internal offsets used in this manner can also be applied to satisfy the offset requirement.

(4) In accordance with the FCAA, the permit application must [shall] contain an analysis of alternative sites, sizes, production processes, and control techniques for the proposed source. The analysis must [shall] demonstrate that the benefits of the proposed location and source configuration significantly outweigh the environmental and social costs of that location.

(f) [(b)] For sources located in the El Paso ozone nonattainment area as defined in §101.1 of this title (relating to Definitions) [(El Paso County)], the requirements of this section do not apply to NO_x emissions.

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

Filed with the Office of the Secretary of State on February 11, 2005.

TRD-200500626
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: March 27, 2005
For further information, please call: (512) 239-0348

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 57. FISHERIES

The Texas Parks and Wildlife Department proposes the repeal of §57.383, concerning Permit Fee, amendments to §§57.111, 57.113, 57.114, 57.117, 57.134, and 57.135, concerning Harmful or Potentially Harmful Exotic Fish, Shellfish and Aquatic Plants; §57.156, concerning Mussels and Clams; §57.500, concerning Marking of Vehicles; §57.921, concerning Scientific Areas; and §§57.930, 57.932 and 57.934, concerning Aquatic Vegetation Management. The amendments are necessary as a result of the department's review process under the provisions of Government Code, §2001.039, which requires each state agency to perform a review of all regulations not less than every four years and to either readopt, amend, or repeal each rule as necessary and appropriate. As a result of the review, the department has determined that rulemaking is necessary to correct outdated references, naming conventions, citations, and terminology, as well as to make existing provision clearer and more user friendly.

The proposed repeal of §57.383, concerning Permit Fee, is necessary because a previous rulemaking consolidated all provisions that establish fees in Chapter 53, concerning Finance.

The proposed amendment to §57.111, concerning Definitions, amends the definition of penaeid shrimp family members by adding the genera Fenneropenaeus, Marsupenaeus, and Melicertus; and amends the definition of oyster family members by adding all species of Ostreidae except Crassostrea virginica and Ostrea equestris, and removing Crassostrea gigas because of changing naming conventions, and the addition of exotic species that are not currently being used in Texas mariculture but known to produce problems in other states. No impact is expected to Texas mariculture from this change. Also, reference to the Texas Natural Resource Conservation Commission is being changed to reflect the current name of that agency, the Texas Commission on Environmental Quality.

The proposed amendment to §57.113, concerning Exceptions, clarifies that the rules are not intended to be applied to individually shucked oysters of exotic species. The proposed amendment also would add water spinach the list of species that may be grown under permit. Water spinach (Ipomoea aquatica) was originally included on the list of harmful or potentially harmful species because of its rapid growth rate and consequent potential for invasiveness. However, the department recently became

aware that it is a very highly prized food item in some communities and has been cultivated in Texas for at least 15 years without incident. Investigations indicated it has not escaped cultivation. The proposed amendment also removes language authorizing the department to stock planktivorous fish. The proposed amendment is necessary because the program has been completed. Similarly, the proposed amendment eliminates provisions that grandfather certain exotic species permits, which is necessary because the permits no longer exist.

The proposed amendment to §57.114, concerning Health Certification of Exotic Shell Fish, clarifies that inspections are required before the harvesting of shellfish and any discharge of water because the two activities often occur at the same time. With respect to facility inspections, the proposed amendment would allow for inspections of portions of a facility when inspection of every pond in a facility is not necessary. The proposed amendment also would lengthen the mandatory notification period from 72 hours to 14 days. The change is necessary to better facilitate and better coordinate inspections for all concerned parties. Requirements for third-party samples of ponds submitted for analysis would change from 10 days to 14 days in order to maintain consistency with sampling protocols.

The proposed amendment to §57.117, concerning Exotic Species Permit: Fee and Application Requirements, would remove the provisions that establish fees. The amendment is necessary because an earlier rulemaking consolidated all provisions establishing fees in Chapter 53, concerning Finance. Also, outdated references to the precursor agency of the Texas Commission on Environmental Quality are updated.

The proposed amendments to §57.134, concerning Wastewater Discharge Authority, and §57.135, concerning Memorandum of Understanding between the Texas Parks and Wildlife Department, the Texas Natural Resource Conservation Commission and the Texas Department of Agriculture, also update references to the precursor agency of the Texas Commission on Environmental Quality.

The proposed amendment to §57.156, concerning Definitions, adds the definitions of 'Prohibited Area' and 'Restricted Area.' The new definitions are restated definitions taken from Texas Department of State Health Services rules relating to oyster harvest. The amendment is necessary for the convenience of the public, as these definitions are the subject of frequent questions. The addition of the definitions to the department's rules should simplify searches.

The proposed amendment to §57.500, concerning Marking of Vehicles, is amended to more accurately reflect the intent of Parks and Wildlife Code, §66.014, which provides the authority for rule making in this area. The department wishes to stipulate that vehicles used to transport aquatic products for commercial purposes must be marked, not just those that transport "fish," as stated in the current rule. The amendment is necessary to assure that the department is able to enforce statutes and regulations concerning the transport of aquatic products.

The proposed amendment to §57.921, concerning Scientific Areas, extends the termination date for the Redfish Bay Scientific Area from June 30, 2005 to June 30, 2010 and more accurately defines the area intended to be included in this area. The amendment is necessary because the department has determined that additional time is needed to study the impacts of propeller scarring on seagrass communities, and because technological advances have made it possible to more accurately delineate the boundaries of the scientific area.

The proposed amendments to §57.930, concerning Definitions, §57.932, concerning State Aquatic Vegetation Plan and §57.934, concerning Local Aquatic Vegetation Plan, update references to the precursor agency of the Texas Commission on Environmental Quality.

Robin Riechers, Director of Science and Policy, has determined that for each of the first five years that the proposed repeal and amendments are in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the proposed rules and repeal.

Mr. Riechers also has determined that for each of the first five years the repeal and amendments as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the repeal and amendments as proposed will be rules that are clearer, more concise, more accurate, and more user friendly.

There will be no adverse economic effect on small businesses, microbusinesses, or persons required to comply with the repeal and amendments as proposed.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the repeal and amendments as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed repeal and amendments.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed repeal and amendments.

Comments on the proposal may be submitted to Jerry L. Cooke, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4492; e-mail: jerry.cooke@tpwd.state.tx.us.

SUBCHAPTER A. HARMFUL OR POTENTIALLY HARMFUL EXOTIC FISH, SHELLFISH AND AQUATIC PLANTS

31 TAC §§57.111, 57.113, 57.114, 57.117, 57.134, 57.135

The amendments are proposed under the authority of Parks and Wildlife Code (PWC), Chapter 66, which provides authority to regulate harmful or potentially harmful exotic fish, shellfish, and aquatic plants, to prescribe identification standards for vehicles transporting aquatic products, and rules governing the introduction of fish, shellfish, and aquatic plants.

The proposed amendments affect Parks and Wildlife Code, Chapter 66.

§57.111. Definitions.

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

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

(15) Harmful or potentially harmful exotic shellfish--

(A) - (D) (No change.)

(E) Penaeid Shrimp Family: Penaeidae--all species of genus Penaeus, Litopenaeus, [and] Farfantepenaeus, Fenneropenaeus, Marsupenaeus, and Melicertus except L. setiferus, F. aztecus and F. duorarum.

(F) [Pacific] Oyster Family: Ostreidae--all species except Crassostrea virginica and Ostrea equestris [Crassostrea gigas].

(G) (No change.)

(16) - (32) (No change.)

(33) Wastewater treatment facility--All contiguous land and fixtures, structures or appurtenances used for treating wastewater pursuant to a valid permit issued by the Texas Commission on Environmental Quality [Texas Natural Resource Conservation Commission].

§57.113. Exceptions.

(a) (No change.)

(b) A person may possess exotic harmful or potentially harmful fish or shellfish, exclusive of grass carp, without a permit, if the intestines of the fish or shellfish have been removed, or in the case of oysters, if the oysters have been shucked or otherwise removed from their shells.

(c) (No change.)

(d) A fish farmer who holds a valid exotic species permit issued by the department may possess, propagate, transport or sell triploid grass carp (Ctenopharyngodon idella), silver carp (Hypophthalmicthys molitrix), triploid black carp (Mylophryngogon piceus, also commonly known as snail carp), bighead carp (Aristichthys/Hypophthalmicthys nobilis), blue tilapia (Tilapia aurea), Mozambique tilapia (Tilapia mossambica), Nile tilapia (Tilapia nilotica), water spinach (Ipomoea aquatica), or hybrids between the three tilapia species, unless otherwise provided by conditions of the permit or these rules.

(e) - (i) (No change.)

[(j) The department is authorized to stock planktivorous fish including silver carp (Hypophthalmichthys molitrix) and bighead carp ristichthys/Hypophthalmichthys nobilis) if necessary in Lake Rita Blanca, Hartley County, in order to investigate their utility as biological agents to improve water quality and enhance fishery management.]

(j) [(k)] The department is authorized to stock triploid grass carp into public waters in situations where the department has determined that there is a legitimate need, and when stocking will not affect threatened or endangered species, coastal wetlands, or specific management objectives for other important species.

(k) [(l)] A fish farmer who holds a valid exotic species permit issued by the department may possess, propagate, transport and sell Pacific blue shrimp (Litopenaeus stylirostris) provided the exotic shellfish are cultured under quarantine conditions in private facilities located outside the harmful or potentially harmful exotic species exclusion zone, and meet disease free certification requirements listed in §57.114 of this title (relating to Health Certification of Exotic Shellfish) and as provided by conditions of the permit and these rules.

[(m) Any person who, as of the effective date of these rules, holds a valid exotic species permit issued by the department to possess, propagate, transport or sell Anguilla japonicus may continue to conduct such activities as authorized by the conditions of the permit. The permit may not be transferred to any other person, site or entity.]

(l) [(n)] An operator of a mechanical plant harvester in possession of a valid exotic species permit issued by the department may remove and dispose of prohibited plant species from public or private waters only by means authorized in the permit.

§57.114. Health Certification of Exotic Shellfish.

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

(f) Before harvesting ponds or discharging any waste for the first time in any calendar year into or adjacent to water in the state, the permittee shall:

(1) have a department approved examiner inspect the [entire] facility and examine samples of the shellfish from the [each] pond or other structure containing exotic shellfish no more than 14 days [72 hours] prior to the first discharge or harvest and shall submit the results of the examination to the department on the department approved clinical analysis checklist; or

(2) submit samples of the shellfish from the [each] pond or other structure containing exotic shellfish to a department approved shellfish disease specialist for analysis no more than 14 [ten]days prior to the first discharge or harvest and submit the results of such analyses to the department immediately upon receipt.

(g) - (j) (No change.)

§57.117. Exotic Species Permit: Fee and Application Requirements.

[(a) The department shall charge a nonrefundable exotic species permit application fee as follows:]

[(1) application for new, renewed, or amended exotic species permit which requires facility inspection--$250;]

[(2) application for renewed or amended exotic species permit requiring no facility inspection--$25;]

[(3) renewal applications received more than one year after the renewal date will require an additional inspection and cost $250.]

(a) [(b)] To be considered for an Exotic Species Permit, the applicant shall:

(1) meet one or more of the following criteria:

(A) possess a valid Aquaculture License;

(B) possess a valid permit from the Texas Commission on Environmental Quality [Texas Natural Resource Conservation Commission] authorizing operation of a wastewater treatment facility;

(C) possess a department approved research proposal involving use of harmful or potentially harmful exotic fish, shellfish or aquatic plants; or

(D) operate a public aquarium approved for display of harmful or potentially harmful exotic fish, shellfish or aquatic plants;

(2) complete and submit an initial exotic species permit application on a form provided by the department;

(3) submit an accurate-to-scale plat of the facility specifically including, but not limited to, location of:

(A) all private facilities and owner's name and physical address including a designation on the plat of all private facilities which will be used for possession of harmful or potentially harmful exotic species;

(B) all structures which drain private facilities;

(C) all points at which private facility effluent is discharged from the private facilities or the fish farm;

(D) all structures designed to prevent escapement of harmful or potentially harmful species from the fish farm;

(E) any vats, raceways, or other structures to be used in holding harmful or potentially harmful exotic species;

(4) demonstrate to the department that an existing fish farm, private facility or wastewater treatment facility meets requirements of §57.129 of this title (relating to Exotic Species Permit: Private Facility Criteria);

(5) remit to the department all applicable fees.

(b) [~~(c)~~] Applicants for an exotic species permit for culture of harmful or potentially harmful exotic shellfish must meet all exotic species permit application requirements and requirements for disease free certification as listed in §57.114 of this title (relating to Health Certification of Exotic Shellfish).

(c) [~~(d)~~] An applicant for an exotic species permit shall provide upon request from the department documentation necessary to identify any harmful or potentially harmful exotic species and confirm the source of origin for the species for which a permit is sought.

(d) [~~(e)~~] An applicant for an Exotic Species Permit whose facility is located within the harmful or potentially harmful exotic species exclusion zone as defined in §57.111 of this title (relating to Definitions) must submit an Emergency Plan to the department for review and approval. The plan shall include measures sufficient to prevent release or escapement of permitted harmful or potentially harmful exotic species into public water during a natural catastrophe (such as a hurricane or flood).

§57.134. Wastewater Discharge Authority.

(a) An applicant for an initial exotic species permit must provide the following:

(1) written documentation demonstrating that the applicant possesses the appropriate valid wastewater discharge authorization or has received an exemption from the Texas Commission on Environmental Quality [~~Texas Natural Resource Conservation Commission~~] if the fish farm, fish farm complex or private facility is designed such that a discharge of waste into or adjacent to water in the state will, or is likely to occur; or

(2) adequate documentation to demonstrate that the facility is designed and will be operated in a manner such that no discharge of waste into or adjacent to water in the state will, or is likely to occur.

(b) An applicant for an amendment or a renewal of an exotic species permit must provide the following:

(1) written documentation demonstrating that the applicant possesses or has timely applied for and is diligently pursuing the appropriate wastewater discharge authorization or exemption from the Texas Commission on Environmental Quality [~~Texas Natural Resource Conservation Commission~~] in accordance with 30 TAC Chapter 321, Subchapter O, if the fish farm, fish farm complex or private facility is designed such that a discharge of waste into or adjacent to water in the state will, or is likely to occur; or

(2) adequate documentation to demonstrate that the facility is designed and will be operated in a manner such that no discharge of waste into or adjacent to water in the state will, or is likely to occur.

(c) An exotic species permittee whose wastewater discharge authorization or exemption is revoked, suspended or annulled by the Texas Commission on Environmental Quality [~~Texas Natural Resource Conservation Commission~~] will be treated as an applicant for an initial permit under subsection (a) of this section.

§57.135. Memorandum of Understanding between the Texas Parks and Wildlife Department, the Texas Commission on Environmental Quality [~~Texas Natural Resource Conservation Commission~~], and the Texas Department of Agriculture.

The provisions of 30 TAC §7.103 (relating to Memorandum of Understanding (MOU) between the Texas Commission on Environmental Quality [~~Texas Natural Resource Conservation Commission~~] (Commission), the Texas Parks and Wildlife Department (TPWD), and the Texas Department of Agriculture (TDA), which were adopted by the Commission [~~TNRCC~~] to take effect January 9, 2001, are adopted by reference.

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

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

TRD-200500669
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Earliest possible date of adoption: March 27, 2005
For further information, please call: (512) 389-4775

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SUBCHAPTER B. MUSSELS AND CLAMS

31 TAC §57.156

The amendments are proposed under the authority of Parks and Wildlife Code (PWC), Chapter 61, which provides the commission with authority to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life and the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life; and under Chapter 78, which provides authority to regulate the taking, possession, purchase, and sale of mussels, clams, and crabs.

The proposed amendments affect Parks and Wildlife Code, Chapters 61 and 78.

§57.156. Definitions.

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

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

(4) Prohibited area--The classification of a shellfish growing area determined by the Texas Department of State Health Services to be unacceptable for the transplanting, gathering for depuration, or harvesting of shellfish. The only shellfish removal permitted from a prohibited area is for the purpose of depletion, as defined in the Control of Harvesting Section of Part 1 of the National Shellfish Sanitation Program (NSSP).

(5) Restricted area--The classification of a shellfish growing area determined by the Texas Department of State Health Services (DSHS) to be unacceptable for harvesting shellfish for direct marketing, but which is acceptable for transplanting or gathering for depuration. A restricted area may be closed for transplanting or gathering for depuration when the DSHS determines that the area does not meet the restricted area criteria established in the NSSP.

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

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

TRD-200500670
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Earliest possible date of adoption: March 27, 2005
For further information, please call: (512) 389-4775

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SUBCHAPTER E. PERMITS TO SELL NONGAME FISH TAKEN FROM PUBLIC FRESH WATER

31 TAC §57.383

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

The repeal is proposed under the authority of Parks and Wildlife Code, Chapter 67, which authorizes the commission to establish a fee for permits for the taking, possession, propagation, transportation, sale, importation, or exportation of a nongame species of fish or wildlife.

The proposed repeal affects Parks and Wildlife Code, Chapter 67.

§57.383. Permit Fee.

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

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

TRD-200500671
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Earliest possible date of adoption: March 27, 2005
For further information, please call: (512) 389-4775

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SUBCHAPTER G. MARKING OF VEHICLES

31 TAC §57.500

The amendments are proposed under the authority of Parks and Wildlife Code, Chapter 66, which provides the commission with authority to prescribe requirements for identification of vehicles transporting aquatic products.

The proposed amendment affects Parks and Wildlife Code, Chapter 66.

§57.500. Marking of Vehicles.

[~~(a)~~] All motor vehicles, trailers, or semitrailers transporting aquatic products [~~fish~~] for commercial purposes shall:

(1) exhibit the inscription "fish" on the rear of the vehicle. The inscription shall read from left to right and shall be plainly visible at all times while transporting aquatic products [~~fish~~]. The inscription "fish" shall be attached to or painted on the vehicle, trailer, or semitrailer in block arabic letters of good proportion in contrasting color to the background and be at least six inches in height; or [~~.~~]

(2) [~~(b) Motor vehicles, trailers, or semitrailers transporting fish for commercial purposes shall~~] exhibit a single decal on the lower left rear portion of the vehicle. The decal shall be in the form designated in this proclamation and be at least six inches square with an image of the State of Texas, white in color against a dark background in contrasting color to the vehicle or trailer. The decal shall be plainly visible at all times while transporting aquatic products [~~fish~~].
Figure: 31 TAC §57.500(2)[~~(b)~~]

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

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

TRD-200500672
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Earliest possible date of adoption: March 27, 2005
For further information, please call: (512) 389-4775

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SUBCHAPTER K. SCIENTIFIC AREAS

31 TAC §57.921

The amendments are proposed under the authority of Parks and Wildlife Code, Chapter 81, which provides the authority to promote and establish a state system of scientific areas for the purposes of education, scientific research, and preservation of flora and fauna of scientific or educational value.

The proposed amendment affects Parks and Wildlife Code, Chapter 81.

§57.921. Redfish Bay State Scientific Area.

(a) (No change.)

(b) Term: July 1, 2005 [~~2000~~] through June 30, 2010 [~~2005~~].

(c) Boundaries:

(1) 27 59.538N; 097 3.858W [~~27 59.29 N; 097 4.03 W~~] (Northern extremity of island forming northern boundary of Estes Cove);

(2) 27 59.232N; 097 4.434W (Intersection of Gulf Intracoastal Waterway (GIWW) and Mouth of Cove Harbor);

(3) 27 55.986N; 097 6.804W (GIWW at Rocky Ridge);

(4) [~~(2)~~] 27 53.88N; 097 8.088W [~~27 53.51 N; 097 8.02 W~~] (intersection of GIWW and Aransas Pass Shrimp Boat Channel);

(5) 27 53.058N; 097 8.502W (Intersection of GIWW and Brown and Root Channel);

(6) 27 52.32N; 097 9.486W (Intersection of GIWW and mouth of Redfish Bay Terminal);

(7) [~~(3)~~] 27 49.092N; 097 11.46W [~~27 49.12 N; 097 11.27 W~~] (Near the southern [~~Southern~~] extremity of Dagger Island where the Corpus Christi Ship Channel and the GIWW intersect);

(8) [~~(4)~~] 27 50.40 N; 097 3.32 W (Intersection of Lydia Ann Channel and Corpus Christi Ship Channel);

(9) [~~(5)~~] 27 52.42 N; 097 2.47 W (A point in Lydia Ann Channel);

(10) [~~(6)~~] 27 55.02 N; 097 03.46 W (East of the mouth [~~Mouth~~] of Corpus Christi Bayou).

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

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

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

TRD-200500673
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Earliest possible date of adoption: March 27, 2005
For further information, please call: (512) 389-4775

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SUBCHAPTER L. AQUATIC VEGETATION MANAGEMENT

31 TAC §§57.930, 57.932, 57.934

The amendments are proposed under the authority of Parks and Wildlife Code, Chapter 12, which provides authority to create a noxious vegetation program and regulate fish, shellfish, and aquatic plants.

The proposed amendments affect Parks and Wildlife Code, Chapter 12.

§57.930. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms in this subchapter shall have the meanings assigned in the Texas Parks and Wildlife Code.

(1) - (11) (No change.)

(12) TCEQ--Texas Commission on Environmental Quality.

(13) [~~(12)~~] TDA--the Texas Department of Agriculture.

[~~(13) TNRCC--the Texas Natural Resource Conservation Commission.~~]

(14) - (16) (No change.)

§57.932. State Aquatic Vegetation Plan.

(a) (No change.)

(b) Additional Requirements Applicable to the Use of Aquatic Herbicides to Control Nuisance Aquatic Vegetation.

(1) (No change.)

(2) All persons intending to apply an aquatic herbicide shall provide written notice to the governing entity, TPWD, all public drinking water providers that have an intake within two river miles of a site at which an application of aquatic herbicide is proposed to occur, and all persons who have requested notice (TPWD will maintain a list) no later than the 14th day before the application is to occur. The notice shall include:

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

(D) information demonstrating that the proposed application will not result in exceeding:

(i) the maximum contaminant level of the herbicide in finished drinking water as set by the TCEQ [~~TNRCC~~] and the EPA; or

(ii) if the aquatic herbicide does not have an MCL established by the TCEQ [~~TNRCC~~] and the EPA, the maximum label rate; and

(E) (No change.)

(3) - (8) (No change.)

§57.934. Local Aquatic Vegetation Plan.

(a) To be approvable by TCEQ [~~TNRCC~~], TPWD, and TDA, a local plan must meet the minimum standards set forth in §57.932 of this title (relating to State Aquatic Vegetation Plan). Additional or more specific requirements are approvable.

(b) (No change.)

(c) Proposed local plans should be developed in cooperation with TPWD, TDA, and TCEQ [~~TNRCC~~], and shall be submitted to TPWD on a form prepared by TPWD. TPWD will coordinate review of the plan by TCEQ [~~TNRCC~~] and TDA.

(d) Governing entities shall seek and encourage public participation in the creation and review of local plans. At a minimum, TPWD, TCEQ [~~TNRCC~~], or TDA will hold at least one public meeting in the area affected by the local plan. Public comment will be received by TPWD, TCEQ [~~TNRCC~~], and TDA for 30 days after the local plan is submitted for agency approval. TPWD, TCEQ [~~TNRCC~~], and TDA will review and respond to local plan submittals within 60 days of receipt.

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

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

TRD-200500674
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Earliest possible date of adoption: March 27, 2005
For further information, please call: (512) 389-4775

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CHAPTER 65. WILDLIFE

SUBCHAPTER A. STATEWIDE HUNTING AND FISHING PROCLAMATION

The Texas Parks and Wildlife Department proposes the repeal of §65.42, amendments to §§65.1, 65.3, 65.10, 65.11, 65.19, 65.24 - 65.26, 65.56, 65.62, 65.64, 65.72, and 65.82, and new 65.34 and 65.42, concerning the Statewide Hunting and Fishing Proclamation.

The amendment to §65.1, concerning Application, adds a new subsection (c) to specify that the season lengths and bag limits created by the subchapter do not apply to special drawn hunts conducted by the department on units of public lands. Hunting

regulations on public hunting lands are established pursuant to Parks and Wildlife Code, Chapter 81.

The amendment to §65.3, concerning Definitions, adds a definition of the term 'unbranched antler.' The new definition is necessary because the proposed amendment to §65.42 includes alterations to the special antler restrictions currently in effect in Austin, Colorado, Fayette, Lavaca, Lee, and Washington counties that would allow an additional buck deer to be taken in those counties, provided the buck has an unbranched antler. The term should be legally defined so as to create an unambiguous standard for enforcement purposes. The proposed amendment also would alter the definition of "fishing guide" match changes to the statutory definition made by legislation enacted in 2003, which is necessary to prevent conflicts with statutory provisions.

The amendment to §65.10, concerning Possession of Wildlife Resources, makes the provisions of subsection (b), which exempts persons under certain circumstances from the tagging requirements relative to deer, applicable to mule deer taken by Managed Lands Deer Permit (MLDP). The amendment is necessary because proposed new §65.34 creates a Managed Lands Deer Permit for mule deer and the department intends to make the tagging rules for mule deer the same as those already in existence for white-tailed deer. The department in April of 2004 adopted rules to eliminate 'double tagging' (under previous rules, deer taken on MLDP properties were required to be tagged with both an MLDP tag and a license tag). The proposed amendment would require but a single tag to be attached to mule deer taken on MLDP properties. The proposed amendment also clarifies the provisions of subsection (f), which establishes the conditions under which persons may possess wildlife resources in excess of bag limits or that were taken by other persons. The amendment changes subsection (f) to clarify that if a person in possession of a wildlife resource is the person who took the wildlife resource, that person does need to possess a wildlife resource document, provided the person is in compliance with all other applicable laws. The amendment also alters the provisions of subsection (h)(4) to insert the effective date of the section. At the time the rule was promulgated, the department did not know exactly when the provision would take effect, which is known now and is being added in the interests of being as informative as possible.

The amendment to §65.11, concerning Lawful Means, would add a provision to prohibit the take or attempted take of wildlife resources by anyone not personally present at the location where the take or attempted take occurs. The department has become aware of recent adaptations of firearms and computer systems that would make it technologically possible for persons to take wildlife resources by use of electromechanical interfaces while not being physically present at the location where the wildlife resources are taken. The amendment is necessary because there is no way for the department to verify compliance with hunting license laws if the participating party is not physically present when and where a wildlife resource is hunted. The amendment also would alter the wording of provisions regarding the use of vehicles to hunt desert bighorn sheep. The current rule prohibits the use of a motorized conveyance to locate or hunt desert bighorn sheep. The proposed amendment would remove that prohibition, and is necessary because the department has determined that given the extremely remote and inaccessible areas that are a characteristic of desert bighorn sheep habitat, it is unrealistic to expect sheep to be located and hunted without the use of motorized vehicles. At the time the rule was promulgated, the hunting of desert bighorn sheep took place primarily on department lands where sheep had been stocked, and the department at that time sought an extremely conservative harvest regime. Populations have flourished to the extent that desert bighorn sheep are now found in many places, although they can be hunted only by permit.

The amendment to §65.19, concerning Hunting Deer with Dogs, would remove Hunt and Washington counties from the list of counties where it is unlawful to use dogs to track wounded deer. The department has determined that the practice of hunting deer with dogs (i.e., the use of dogs to hunt deer, rather than track wounded deer), which originally prompted a ban on the use of dogs in some counties, has declined in the named counties to the point that the regulation is no longer required.

The amendment to §65.24, concerning Permits, would create an appeal process for department decisions concerning the issuance of Managed Lands Deer Permits and Antlerless and Spike-buck Control Permits. The proposal is the result of a recommendation by the White-tailed Deer Advisory Committee (WTDAC), a group of deer managers, hunters, and department personnel appointed by the Chairman of the Parks and Wildlife Commission to study issues involving white-tailed deer and make recommendations. The intent of the proposed amendment is to create a process to allow persons who have been denied issuance of permits to appeal the decision to a panel of senior TPWD managers. The process as proposed would allow the department to reverse such decisions upon further review, and would require the department to report annually to the WTDAC on the number and disposition of appeals.

The amendment to §65.25, concerning Wildlife Management Plan (WMP), would create a set of criteria for wildlife management plans that address lesser prairie chicken. Long-term data indicate a declining population trend for lesser prairie chicken, not only in Texas but also throughout much of their historic range. There is an ongoing multi-state effort to manage the remaining lesser prairie chickens, and the department wishes to begin collecting additional data to assist in that effort. The proposed amendment is necessary to do that. The proposed amendment would require a habitat evaluation, five habitat management practices, and population and harvest data for each property where lesser prairie chicken are to be hunted. By conditioning the hunting of lesser prairie chicken on landowner agreement to manage habitat and harvest, the department is assured that harvest will not exceed biologically acceptable levels. By collecting valuable biological information on a property-by-property basis, the department will be much better able to assist in formulating a strategy for habitat protection and restoration.

The amendment to §65.25 also would create a set of criteria for wildlife management plans that address quail. The department wishes to encourage landowners and land managers to manage quail habitat more effectively. The proposed amendment is necessary to do that. By agreeing to perform data collection and habitat management practices and by accepting a harvest recommendation, landowners with an approved management plan for quail would be allowed to give hunters a bag limit of double the current daily bag limit (30 quail per day), if they so chose. By collecting valuable biological information on a property-by-property basis, the department will be much better able to assist in formulating a long-term strategy for better quail management. Research indicates that hunting mortality is not a major factor in the expansion or contraction of quail populations at the statewide scale. In fact, research indicates that a reduction in the bag limit of 50% would affect only 11% of the quail populations statewide.

Therefore, properties hunting under a harvest recommendation based on the concept of sustainable yield (i.e., irrespective of individual bag limits) should not experience a reduction in quail populations below their annual recuperative potential, provided the required habitat management practices are conducted.

The amendment to §65.26, concerning Managed Lands Deer (MLD) Permits, would amend the title of the section to reflect that the section affects only white-tailed deer, remove all references to mule deer, and would make several nonsubstantive grammatical changes throughout the section for consistency and simplification. The amendment is necessary to make the section agree with proposed new §65.34, which would create a separate section addressing MLDPs for mule deer.

Proposed new §65.34, concerning Managed Lands Deer Permits (MLDP)-Mule Deer, would create an MLDP program for mule deer. In general, the new section will function by creating an incentive-based, habitat-focused permit program to facilitate the management goals of landowners and land managers by providing increased harvest flexibility under department-established harvest quotas. Specifically, the new section will function by: requiring an approved wildlife management plan (WMP) for permit issuance; establishing the minimum content of a WMP in terms of landowner-supplied data and habitat improvement practices; specifying the period of validity for permits and requirements for their use; providing for the waiver of regulatory requirements in the event of extenuating circumstances such as droughts and floods; establishing the conditions under which the department may exercise the right to cease issuing permits to individuals; and specifying an annual deadline for permit applications.

Proposed new §65.42, concerning Deer, is largely identical to the current section; therefore this discussion addresses changes that alter or are different from the provisions of the current rule. In general, the new section contemplates an effort to simplify regulations governing deer, but also is intended to increase hunter opportunity and manage wildlife resources more effectively in areas where biological data indicate the need for population reduction or control. The current rule reflects many years of amendments that have resulted in a structure that is unwieldy and difficult to navigate. To that end, the section is being restructured to accommodate the changes being made.

The new section would eliminate aggregate bag limits in counties with one- and two-buck bag limits. The department in 1989 implemented what is popularly referred to as the 'aggregate bag limit' rule, which designated a number of one-buck counties, primarily in the eastern third of the state, from which, in the aggregate, a hunter could take no more than one buck. For example, if a hunter took a buck in Nacogdoches County (one-buck bag limit), that hunter could not take another buck in any other county affected by the aggregate bag limit rule. At the time, the department's intent was to prevent the overharvest of buck deer in regions of the state where populations were low or hunting pressure was high with respect to abundance. In 1999, in an effort to increase hunter opportunity, the department separated the aggregate one-buck counties into two zones divided by Interstate Highway 35, allowing a hunter to harvest a buck from each zone. Harvest and population data from counties on either side of the I-35 dividing line, counties which by their proximity to each other were the likeliest to incur greater buck harvest, indicates no significant deviation from historical trends over the period from 1999 to the present. The department therefore proposes to eliminate the aggregate bag limit, meaning that a hunter could take the statewide personal bag limit of three bucks by taking one buck in each of three one-buck counties. A similar provision applied to counties with a two-buck bag limit (i.e., a hunter could take one buck in two two-buck counties, or two bucks in a single two-buck county, but could not take a third buck in another two-buck county). The department's concern in this case was that hunters would focus on taking a third buck, which could lead to an unwanted decline in doe harvest. Analysis of harvest data indicates that this concern may not be as pressing as originally thought; therefore, the aggregate two-buck bag limit is proposed for elimination as well.

The proposed new section also would alter the current 'doe-day' (time periods when it is lawful to take antlerless deer without a permit) rules. Currently there are five 'doe day' packages: 4, 9, 16, 23, or 23-plus days (the 23-plus package allows the take of does until the Sunday following Thanksgiving, which means the package length varies from year to year). The proposed new section would eliminate the 9- and 23-day 'doe day' packages and increase 'doe days' in many counties, including the introduction of 'doe days' in some counties where the take of antlerless deer currently is by permit only.

Under current rules the take of antlerless deer in Bowie, Camp, Delta, Fannin, Franklin, Grayson, Hopkins, Lamar, Morris, Red River, Titus, Upshur, and Wood counties is by permit only (i.e., there are no 'doe days'). The proposed new section would implement four 'doe days' to take place from Thanksgiving Day to the Sunday immediately following Thanksgiving Day. The proposed change is necessary to control increasing deer numbers and has the additional benefit of increasing hunter opportunity. Over the past ten years, deer populations in the affected counties have increased. Analysis of herd composition data in the affected counties shows a decreasing trend in the number of does per buck; however, the ratio remains unacceptably high, at approximately 4-5 does per buck (the target ratio is 1-2 does per buck). Hunter numbers in the affected counties have dropped considerably during the same time period, to about three-quarters of the total reported in 1993. These trends indicate that additional harvest is necessary to stabilize herd growth and protect habitat. The additional 'doe days' will allow the remaining hunters to more effectively manage population size and sex ratio.

The proposed new section also would increase the number of 'doe days' in Cass, Harrison, Marion, Nacogdoches, Panola, Sabine, San Augustine, and Shelby counties from four to 16. The new section is necessary because department data indicate that deer populations in the affected counties remain above desired densities, sex ratios are becoming increasingly skewed, and, due to uncharacteristically wet and warm winters, fawn recruitment has increased significantly, which means that habitat degradation is imminent if deer populations are maintained at current levels. In addition, harvest has decreased slightly, which is additive to the potential problem. By increasing the antlerless harvest, the department intends to limit additional population growth in order to bring the deer population into equilibrium with habitat, provide additional hunter opportunity, and deflect some harvest pressure away from the younger age classes of the buck segment of the population in order to eventually bring sex ratios back to a biologically sound proportion.

The proposed new section would implement full-season, either-sex hunting in a number of counties in the Panhandle and northern Rolling Plains regions that currently have either 16 or 23-plus 'doe days' (a variable doe-day structure designed to ensure that

Thanksgiving weekend is always included). Armstrong, Borden, Briscoe, Carson, Crosby, Fisher, Floyd, Foard, Hall, Hansford, Hutchinson, Jones, Knox, Ochiltree, Randall, Stonewall, and Swisher counties currently have 16 'doe days.' Childress, Collingsworth, Cottle, Dickens, Donley, Garza, Gray, Haskell, Hemphill, Kent, King, Lipscomb, Motley, Roberts, Scurry, and Wheeler counties currently have 23-plus 'doe days.' The proposed new section is necessary because although distribution and population densities vary in these counties, the data from the majority of counties indicate a moderate to significant upward trend in deer populations over the last 13 years. Harvest data indicate a conservative harvest of antlerless deer in these counties. Given the population growth and historically moderate hunting pressure, the department anticipates that full-season either-sex hunting will provide additional hunter opportunity and enable more effective management of antlerless deer for habitat conservation while resulting in neither depletion nor waste.

The proposed new section also would increase the number of 'doe days' in Hardeman, Wichita, and Wilbarger counties from 16 to 23-plus. The change is necessary because survey results indicate that deer populations in those counties have increased over the past ten years. These counties had six 'doe days' from 1996 to 1999 and 16 'doe days' from 2000 to the present. Due to the fact that populations are increasing, the department believes that additional antlerless opportunity is required to allow managers to effectively manage antlerless deer populations, which should reduce potential negative habitat impacts.

The proposed new section also would increase the number of 'doe days' in Denton and Tarrant counties from nine to 16. The change is necessary because data indicate that the deer populations in these counties have increased significantly over the past ten years. These counties have had nine 'doe days' since 1996, but due to fragmented habitat patterns and relatively low hunter effort, the harvest of antlerless deer has been insufficient to prevent overpopulation and resultant habitat degradation. By increasing the number of 'doe days,' the department hopes to give land managers additional flexibility to deal with population growth where it is a problem, and to create additional hunter opportunity.

The proposed new section also would increase the number of 'doe days' in Cooke, Hill, and Johnson counties from nine to 23-plus days. The new section is necessary because survey data indicate a significant upward population trend since 1996, during which time these counties had nine 'doe days.' The department has determined that, given the increase in deer populations, the current number of 'doe days' is insufficient to prevent habitat degradation in those counties and must be increased. Prior to 1996, these counties had two 'doe-days.' In the decade that these counties had nine 'doe days,' the estimated harvest did increase, but has remained below acceptable levels. Hunter densities have remained low to moderate and are expected to remain stable; thus, an increase in the antlerless harvest is desirable for population control/habitat management, with the additional benefit of providing additional hunter opportunity.

The proposed new section also would alter the 'doe day' structure in Brazoria, Fort Bend, Goliad (south of U.S. Highway 59), Jackson (south of U.S. Highway 59), Matagorda, Victoria (south of U.S. Highway 59), and Wharton (south of U.S. Highway 59) counties. These counties currently have a fixed-length 'doe day' season of 23 days. The proposed new section would implement 23-plus 'doe days' to make rules governing antlerless harvest consistent with those in a number of adjoining counties to the east. The new section is intended only to reduce regulatory complexity and will not result in depletion or waste of the resource.

In addition to the changes involving 'doe days' the proposed new section would alter regulations governing the take of buck deer in Austin, Colorado, Fayette, Lavaca, Lee, and Washington counties, and potentially expand those altered rules to include Bastrop, Brazoria, Caldwell, De Witt, Fort Bend, Goliad, Gonzales, Guadalupe, Jackson, Karnes, Matagorda, Victoria, Waller, Wilson, and Wharton counties. Hunting pressure in the Post Oak Savannah ecological region has been excessive for more than 30 years. Hunter-harvest survey data collected by the department indicates that this area has some of the highest hunter densities in the state. In 1971, the department instituted a one-buck bag limit in an effort to reduce pressure on the buck segment of the population. Although the one-buck bag limit successfully redistributed hunting pressure, it did little to reduce overall buck harvest. Department data indicate that prior to 2002, 80% of the buck harvest in these counties was comprised of bucks younger than 3.5 years of age. In response to requests from concerned landowners and hunters in the area, the department in 2002 implemented what at the time were called 'experimental' antler restrictions, which defined a legal buck as a buck with at least one unbranched antler (typically a spike buck), a buck with at least six antler points on one side, or a buck with an inside spread of 13 inches or greater. The rules were designed to protect the majority of bucks in the younger cohorts until those deer could reach a level of physical maturity. After three years under the experimental rules, the department's intensive survey effort indicates that the percentage of harvested bucks younger than 3.5 years of age had dropped from 80% to 29% and the percentage of harvested bucks 3.5 years of age and older increased from 20% to 71%. Additionally, after a first-year decline of 38%, buck harvest increased by 71% in the second year of the experimental rules. These data also show a decline in the harvest of spike bucks and an increase in the harvest of bucks with an inside spread of 13 inches or greater, which means that one effect of maintaining a one-buck limit under the antler restrictions is that hunting pressure is deflected from the spike-buck segment of the population, which is undesirable. Therefore, the proposed new section would implement a two-buck bag limit, one of which must have at least one unbranched antler, and redefine a legal buck as a buck having an inside spread of 13 inches or greater or at least one unbranched antler. The six-points-or-better criterion would be eliminated, as department data clearly indicate that the 13-inch-or-better standard is sufficient by itself to protect younger bucks. Eliminating the 6-points-or-better criterion will simplify the regulation, while resulting in a negligible decline in mature-buck harvest. By adding a second buck to the bag while requiring at least one buck to have an unbranched antler, the department intends to encourage the harvest of spike bucks which department research has indicated are less likely to develop into lawful bucks.

The amendment to §65.56, concerning Lesser Prairie Chicken: Open Seasons, Bag, and Possession Limits, would allow the hunting of lesser prairie chicken only on properties for which the department has approved a wildlife management plan that contains specific provisions for lesser prairie chicken conservation. Long-term data indicate a declining population trend for lesser prairie chicken, not only in Texas but also throughout much of their historic range. Current hunter-harvest surveys indicated that fewer than 200 lesser prairie chickens are harvested annually in Texas. Staff attributes the decline in lesser prairie chicken numbers primarily to habitat loss, not

hunting. Nonetheless, because there is an ongoing multi-state effort to manage the remaining lesser prairie chickens, the implementation of an extremely conservative hunting regime is necessary. The proposed amendment would also eliminate the lesser prairie chicken hunting permit. The permit was implemented to allow the department to survey prairie chicken hunters. With the implementation of hunting under management plans, the department would no longer need to survey hunters to determine harvest numbers, as that information will now be supplied by the landowner as part of the management plan.

The amendment to §65.62, concerning Quail: Open Seasons, Bag, and Possession Limits, would allow for twice the statewide daily bag limit and twice the statewide possession limit on properties operating under a department-approved wildlife management plan that specifically addresses quail. The rationale for the proposed amendment is contained in the discussion of the proposed amendment to §65.25 earlier in this preamble.

The amendment to §65.64, concerning Turkey, consists of several actions intended to create regulatory simplification by standardizing turkey seasons, bag limits, and bag composition where possible without resulting in depletion or waste.

The proposed amendment would alter the fall season for Rio Grande turkey in Archer, Bandera, Bell, Bexar, Blanco, Borden, Bosque, Burnet, Clay, Comal, Comanche, Cooke, Coryell, Denton, Erath, Gillespie, Goliad, Gonzales, Hamilton, Hays, Hill, Hood, Jack, Johnson, Karnes, Kendall, Kerr, Lampasas, Llano, McLennan, Montague, Palo Pinto, Parker, Real, Somervell, Stephens, Travis, Wichita, Williamson, Wilson, Wise, and Young by changing the bag composition from 'gobblers or bearded hens' to 'either sex.' The amendment is necessary to simplify and standardize turkey regulations. Current rates of fall hen harvest in the Rolling Plains and western Edwards Plateau have not negatively affected turkey population density. Therefore, fall hen harvest in the Cross Timbers and eastern Edwards Plateau should not negatively affect the population, assuming harvest rates (as a percentage of fall hen population) do not exceed that of the Rolling Plains and/or Edwards Plateau (approximately 3.4% of the hen population). Most of the turkey populations in east-central Texas are located on large ranches with suitable riparian corridors. Harvest in these counties should be very similar to the harvest in counties that currently enjoy either-sex bag composition.

The proposed amendment would create a standard turkey regulation north of Hwy. 90 and a standard turkey regulation south of Hwy. 90 in Kinney, Medina, Uvalde, and Val Verde counties. Under current regulations, Kinney, Uvalde, and Val Verde counties have an either-sex bag composition for turkey, while in Medina County the bag composition is gobblers or bearded hens. The northern portions of these counties are part of the Edwards Plateau ecoregion, while their southern portions are part of the South Texas Brush Country ecoregion. Because of this difference, the northern portion of these counties have a deer season that runs two weeks shorter than in the southern portion of these counties. For law enforcement simplicity and reduction of landowner and hunter confusion, the department has used U.S. Highway 90 as a dividing line. In attempting to standardize regulations, the proposed amendment must accommodate the department's long-standing policy of maintaining concurrent deer and turkey seasons. In order to both preserve the concurrency of deer-season length and standardize turkey regulations, it is therefore necessary for the portion of these counties north of Hwy. 90 to retain the either-sex bag composition, while shifting the bag composition south of Hwy. 90 to gobblers or bearded hens to be consistent with the bag composition in the remainder of south Texas that has the same deer season. In Medina County, the bag composition north of Hwy. 90 would shift from gobblers or bearded hens to either-sex. By any other arrangement, the department would be creating a regulatory 'island' of four counties with a different set of regulations from all surrounding counties, which the department is anxious to avoid in order to prevent confusion. The proposed amendment would not result in depletion or waste of the resource. Properly managed fall turkey seasons for the most part result in the removal of surplus birds from the population, birds that would probably be lost to other causes. Thus, mortality due to hunting is compensatory and is not in addition to mortality from natural causes.

The proposed amendment would also affect spring seasons for Rio Grande turkey. Currently there are 140 counties with a spring season for Rio Grande turkey. With the exception of Bastrop, Caldwell, Colorado, DeWitt, Fayette, Guadalupe, Jackson, Lavaca, Lee, Milam, and Victoria counties, where the bag limit is restricted to one gobbler, the bag limit in those 140 counties is identical: four turkeys, gobblers only. The only variation among the seasons in the 140 counties is when opening day occurs. In Archer, Armstrong, Bandera, Baylor, Bell, Blanco, Borden, Bosque, Brewster, Briscoe, Brown, Burnet, Callahan, Carson, Childress, Clay, Coke, Coleman, Collingsworth, Comal, Comanche, Concho, Cooke, Coryell, Cottle, Crane, Crockett, Crosby, Dawson, Denton, Dickens, Donley, Eastland, Ector, Edwards, Ellis, Erath, Fisher, Floyd, Foard, Garza, Gillespie, Glasscock, Gray, Hall, Hamilton, Hardeman, Hartley, Haskell, Hays, Hemphill, Hill, Hood, Howard, Hutchinson, Irion, Jack, Jeff Davis, Johnson, Jones, Kendall, Kent, Kerr, Kimble, King, Knox, Lampasas, Lipscomb, Llano, Lynn, Martin, Mason, McCulloch, McLennan, Menard, Midland, Mills, Mitchell, Montague, Moore, Motley, Nolan, Ochiltree, Oldham, Palo Pinto, Parker, Pecos, Potter, Randall, Reagan, Real, Roberts, Runnels, San Saba, Schleicher, Scurry, Shackelford, Somervell, Stephens, Sterling, Stonewall, Sutton, Swisher, Tarrant, Taylor, Terrell, Throckmorton, Tom Green, Travis, Upton, Val Verde, Ward, Wheeler, Wichita, Wilbarger, Williamson, Wise, and Young counties, the spring turkey season begins the first Saturday in April and runs for 37 consecutive days. In Aransas, Atascosa, Bee, Bexar, Brooks, Calhoun, Dimmit, Duval, Frio, Goliad, Gonzales, Hidalgo, Jim Hogg, Jim Wells, Karnes, Kenedy, Kinney, Kleberg, LaSalle, Live Oak, Maverick, McMullen, Medina, Nueces, Refugio, San Patricio, Starr, Uvalde, Webb, Willacy, Wilson, and Zavala counties the spring turkey season begins the last Saturday in March and likewise runs for 37 consecutive days. The proposed amendment would simplify regulations while still maintaining the agency's statutory duty to prevent depletion or waste of the resource by creating a single season for all counties with a four-turkey bag limit, to run from the Saturday closest to April 1 for 44 consecutive days. The proposed season is extremely unlikely to exert a negative effect on turkey populations, as the harvest is limited to male birds and the timing of the season is calculated according to breeding chronologies to ensure that the overwhelming majority of hens have been bred before the season opens.

The amendment also would open a fall season in Tarrant County and both spring and fall seasons in Cameron and Zapata counties. Most of the suitable turkey habitat in Tarrant, Cameron, and Zapata counties is located on large ranches with suitable riparian corridors. Harvest in these counties during the spring and fall

seasons should be very similar to harvest in surrounding counties.

In Bastrop, Caldwell, Colorado, DeWitt, Fayette, Guadalupe, Jackson, Lavaca, Lee, Milam, and Victoria counties, the spring season currently begins the first Saturday in April and runs for 37 consecutive days. The proposed amendment would replace that season with one to begin April 1 and end April 30. The bag limit would remain at one gobbler. Since the spring season is limited to only male birds (gobblers) there is little potential harm to turkey production, since the harvest will not affect bred hens.

The proposed amendment also would implement spring youth-only seasons for Rio Grande turkey to take place the weekends immediately preceding and following the open season, during which Rio Grande turkey could be hunted only by persons younger than 16 years of age. The change is necessary to continue to advance longstanding department policy to encourage and foster youth in the sport of hunting by creating mentoring opportunities. The proposed amendment will not result in depletion or waste, since hunter success and overall harvest resulting from youth-only hunting is expected to be statistically insignificant.

The amendment to §65.72, concerning Fish, would change the harvest regulations for red drum on Lake Nasworthy (Tom Green County) from the current 20-inch minimum length limit and daily bag limit of 3 fish, to no length and no bag limit. The change is necessary because the power plant on Lake Nasworthy is being closed. Without the power plant's discharge of warm water during the winter months, red drum will have little chance of survival; thus, the department would like to provide the additional harvest opportunity to anglers.

The amendment also changes the rules for channel catfish and blue catfish on the North Concho and South Concho rivers in Tom Green County. The change would implement a five-fish daily bag limit (in any combination), with no minimum length limit. Legal devices would be restricted to pole and line angling only. The amendment would affect the North Concho from O.C. Fisher Dam to Bell Street Dam and the South Concho from Lone Wolf Dam to Bell Street Dam. The amendment is necessary to reduce confusion as to the boundaries for areas to which special regulations apply and to allow increased opportunity for harvest and use of other gear types on portions of the South Concho River.

The amendment also eliminates the minimum length limit for spotted bass on Toledo Bend Reservoir (Newton, Panola, Sabine, and Shelby counties). Toledo Bend Reservoir lies in both Texas and Louisiana. The change is intended to create a standard regulation to facilitate enforcement and reduce angler confusion in both states.

The amendment to §65.82, concerning Other Aquatic Life, would establish a closed season from November 1 - April 30 of the following year for taking live, shell-bearing mollusks (or their shells), starfish, or sea urchins within an area bounded by the bay and pass sides of South Padre Island from the East end of the north jetty at Brazos Santiago Pass to the West end of West Marisol drive in the town of South Padre Island, out 1,000 yards from the mean high-tide line, and bounded to the south by the centerline of the Brazos Santiago Pass. A study conducted on the harvest of shell-bearing organisms in the lower Laguna Madre identified the November-May period as the most critical due to the extensive sand/mud flat that is exposed by winter low tides, coupled with easy access by large numbers of fishery participants. This area is biologically diverse due to its proximity to the shallow lower Laguna Madre and the deep water of Brazos Santiago Pass and the Gulf of Mexico. The area is utilized by some species of invertebrates at varying stages of their life histories during movement to or from the Gulf of Mexico. Shell-bearing mollusks in this area produce shells that are utilized by the thinstripe hermit (the species most often taken by fishery participants--79% of individuals harvested during the study period), which are subsequently transported to deeper water for use by deep water species of hermit crabs such as the flat claw hermit and giant hermit. Some of the most sought-after and easily located shells in this area are the reproducing mollusks, which can be conspicuously exposed during low tide. Harvest of organisms at reproductive aggregations or during reproduction can exacerbate the effects that harvest exerts on a population. The amendment provides needed protection during a critical biological time.

The amendment also implements an aggregate bag limit of 15 living univalve snails (all species), to include no more than two of each of the following species: lightning whelk, horse conch, Florida fighting conch, pear whelk, banded tulip, Florida rock-snail. Research indicates that fishery participants harvest an average of 31 organisms per day, of which 20% (6.2 individuals) are live, shell-bearing mollusks. The proposed bag limit represents slightly more than twice the average take of live, shell-bearing mollusks. The proposed bag limit is expected to have a minimal impact on the average fishery participant, but would limit those intending to take large numbers of live organisms. The individual species listed are highly desired by fishery participants and easy to locate due to their habitat preference and/or reproductive habits thus making them more vulnerable to harvest.

Robert Macdonald, regulations coordinator, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the rules.

Mr. Macdonald also has determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be the dispensation of the agency's statutory duty to protect and conserve the wildlife resources of this state, the duty to equitably distribute opportunity for the enjoyment of those resources among the citizens, and the execution of the commission's policy to maximize recreational opportunity within the precepts of sound biological management practices.

There will be no adverse economic effect on small businesses, microbusinesses, or persons required to comply with the rules as proposed. The economic impact of hunting and fishing in Texas, particularly in rural areas of the state, is significant. The Survey of Fishing, Hunting, and Wildlife-related Recreation, conducted annually since 1955 by the U.S. Fish and Wildlife Service, estimates that approximately $3.5 billion was spent by hunters and anglers in Texas in 2001, the last year for which survey data is available. Of that total, nearly $1.5 billion was spent on food, lodging, transportation, and fuel; $1.3 billion was spent on equipment; and $366 million was spent on licenses, permits, and fees paid to landowners for hunting rights. From these data it is readily apparent that hunting and fishing represent a significant economic impact to many individuals and types of businesses in the state.

Typically, the department's annual changes to the regulations governing recreational fish and wildlife use are characterized by minor alterations, usually affecting bag limits, bag composition,

season lengths, or provisions affecting licenses or permits. In assessing the effect of the proposed repeal, amendments and new sections on small businesses, microbusinesses, and persons required to comply, the department has made the assumption that the majority of economic influence exerted by fish and wildlife regulations is a function of the presence or absence of opportunity, which is directly tied to the biological parameters (availability, viability, surplus, etc.) that determine whether or not the commission is able to provide an open season under the requirements of Parks and Wildlife Code, Chapter 61.

In order to assess these impacts, the department compared the results of the 2001 Fish and Wildlife Service survey with previous survey results. A comparison employing a 90 percent confidence interval around survey estimates from 1991 to 2001 reveals that economic activity (in adjusted dollars) surrounding hunting and angling has remained statistically stable during that time, the notable exception being an approximately 46% increase in travel expenses related to hunting. This comparison, when viewed against the backdrop of continual but slight changes to regulations, would seem to indicate that minor fluctuations in the regulations do not, in and of themselves, result in significant economic impacts to any type of business. While this comparison indicates little or no change at the macro (statewide level) there could be minor changes at the micro (local) level.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rules may be submitted by phone (area code 512) or e-mail to Robert Macdonald (Wildlife 389-4775; e-mail: robert.macdonald@tpwd.state.tx.us), Ken Kurzawski (Inland Fisheries 389-4591; e-mail: ken.kurzawski@tpwd.state.tx.us), Jerry Cooke (Coastal Fisheries 389-4492; e-mail: jerry.cooke@tpwd.state.tx.us), David Sinclair (Wildlife Enforcement 389-4854; e-mail: david.sinclair@tpwd.state.tx.us), or Bill Robinson (Fisheries Enforcement 389-4628; e-mail: bill.robinson@tpwd.state.tx.us), Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4775 or 1-800-792-1112.

DIVISION 1. GENERAL PROVISIONS

31 TAC §§65.1, 65.3, 65.10, 65.11, 65.19, 65.24 - 65.26, 65.34

The repeal, amendments and new sections are proposed under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

The proposed repeal, amendments, and new rules affect Parks and Wildlife Code, Chapter 61.

§65.1. Application.

(a) This subchapter applies to all of the wildlife resources of Texas, except as otherwise provided for in this chapter.

(b) This chapter also applies to aquatic life caught in the Exclusive Economic Zone (EEZ) and landed in this state.

(c) The provisions of this subchapter that specify seasons and bag limits for game animals and game birds do not apply to special drawn hunts conducted under the provisions of Subchapter H of this chapter (relating to Wildlife Management Area and Public Hunting Lands Proclamation).

§65.3. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms in this chapter shall have the meanings assigned in the Texas Parks and Wildlife Code.

(1) Agent--A person authorized by a landowner to act on behalf of the landowner. For the purposes of this chapter, the use of the term "landowner" also includes the landowner's agent.

(2) Annual bag limit--The quantity of a species of a wildlife resource that may be taken from September 1 of one year to August 31 of the following year.

(3) Antlerless deer--A deer having no hardened antler protruding through the skin.

(4) Antler point--A projection that extends at least one inch from the edge of a main beam or another tine. The tip of a main beam is also a point.

(5) Artificial lure--Any lure (including flies) with hook or hooks attached that is man-made and is used as a bait while fishing.

(6) Bait--Something used to lure any wildlife resource.

(7) Baited area--Any area where minerals, vegetative material or any other food substances are placed so as to lure a wildlife resource to, on, or over that area.

(8) Bearded hen--A female turkey possessing a clearly visible beard protruding through the feathers of the breast.

(9) Buck deer--A deer having a hardened antler protruding through the skin.

(10) Cast net--A net which can be hand-thrown over an area.

(11) Coastal waters boundary--All public waters east and south of the following boundary are considered coastal waters: Beginning at the International Toll Bridge in Brownsville, thence northward along U.S. Highway 77 to the junction of Paredes Lines Road (F.M. Road 1847) in Brownsville, thence northward along F.M. Road 1847 to the junction of F.M. Road 106 east of Rio Hondo, thence westward along F.M. Road 106 to the junction of F.M. Road 508 in Rio Hondo, thence northward along F.M. Road 508 to the junction of F.M. Road 1420, thence northward along F.M. Road 1420 to the junction of State Highway 186 east of Raymondville, thence westward along State Highway 186 to the junction of U.S. Highway 77 near Raymondville, thence northward along U.S. Highway 77 to the junction of the Aransas River south of Woodsboro, thence eastward along the south shore of the Aransas River to the junction of the Aransas River Road at the Bonnie View boat ramp; thence northward along the Aransas River Road to the junction of F.M. Road 629; thence northward along F.M. Road 629 to the junction of F.M. Road 136; thence eastward along F.M. Road 136 to the junction of F.M. Road 2678; then northward along F.M. Road 2678 to the junction of F.M. Road 774 in Refugio, thence eastward along F.M. Road 774 to the junction of State Highway 35 south

of Tivoli, thence northward along State Highway 35 to the junction of State Highway 185 between Bloomington and Seadrift, thence northwestward along State Highway 185 to the junction of F.M. Road 616 in Bloomington, thence northeastward along F.M. Road 616 to the junction of State Highway 35 east of Blessing, thence southward along State Highway 35 to the junction of F.M. Road 521 north of Palacios, thence northeastward along F.M. Road 521 to the junction of State Highway 36 south of Brazoria, thence southward along State Highway 36 to the junction of F.M. Road 2004, thence northward along F.M. Road 2004 to the junction of Interstate Highway 45 between Dickinson and La Marque, thence northwestward along Interstate Highway 45 to the junction of Interstate Highway 610 in Houston, thence east and northward along Interstate Highway 610 to the junction of Interstate Highway 10 in Houston, thence eastward along Interstate Highway 10 to the junction of State Highway 73 in Winnie, thence eastward along State Highway 73 to the junction of U.S. Highway 287 in Port Arthur, thence northwestward along U.S. Highway 287 to the junction of Interstate Highway 10 in Beaumont, thence eastward along Interstate Highway 10 to the Louisiana State Line. The waters of Spindletop Bayou inland from the concrete dam at Russels Landing on Spindletop Bayou in Jefferson County; public waters north of the dam on Lake Anahuac in Chambers County; the waters of Taylor Bayou and Big Hill Bayou inland from the saltwater locks on Taylor Bayou in Jefferson County; Lakeview City Park Lake, West Guth Park Pond, and Waldron Park Pond in Nueces County; Galveston County Reservoir and Galveston State Park ponds #1-7 in Galveston County; Lake Burke-Crenshaw and Lake Nassau in Harris County; Fort Brown Resaca, Resaca de la Guerra, Resaca de la Palma, Resaca de los Cuates, Resaca de los Fresnos, Resaca Rancho Viejo, and Town Resaca in Cameron County; and Little Chocolate Bayou Park Ponds #1 and #2 in Calhoun County are not considered coastal waters for purposes of this subchapter.

(12) Community fishing lake--All public impoundments 75 acres or smaller located totally within an incorporated city limits or a public park, and all impoundments of any size lying totally within the boundaries of a state park.

(13) Crab line--A baited line with no hook attached.

(14) Daily bag limit--The quantity of a species of a wildlife resource that may be lawfully taken in one day.

(15) Day--A 24-hour period of time that begins at midnight and ends at midnight.

(16) Deer population data--Results derived from deer population surveys and/or from systematic data analysis of density or herd health indicators, such as browse surveys or other scientifically acceptable data, that function as direct or indirect indicators of population density

(17) Dip net--A mesh bag suspended from a frame attached to a handle.

(18) Final processing--the cleaning of a dead wildlife resource for cooking or storage purposes.

(19) Fish--

(A) Game fish--Blue catfish, blue marlin, broadbill swordfish, brown trout, channel catfish, cobia, crappie (black and white), flathead catfish, Guadalupe bass, king mackerel, largemouth bass, longbill spearfish, pickerel, red drum, rainbow trout, sailfish, sauger, sharks, smallmouth bass, snook, Spanish mackerel, spotted bass, spotted seatrout, striped bass, tarpon, wahoo, walleye, white bass, white marlin, yellow bass, and hybrids or subspecies of the species listed in this subparagraph.

(B) Non-game fish--All species not listed as game fish, except endangered and threatened fish, which are defined and regulated under separate proclamations.

(20) Fishing--Taking or attempting to take aquatic animal life by any means.

(21) Fish length--That straight-line measurement (while the fish is lying on its side) from the tip of the snout (jaw closed) to the extreme tip of the tail when the tail is squeezed together or rotated to produce the maximum overall length.

(22) Fish species names--The names of fishes are those prescribed by the American Fisheries Society in the most recent edition of "A List of Common and Scientific Names of Fishes of The United States and Canada."

(23) Fishing guide--a person who, [~~operates a boat~~] for compensation, accompanies, assists, or transports [~~to accompany or to transport~~] a person or persons engaged in fishing in the water of this state.

(24) Fishing guide deck hand--a person in the employ of a fishing guide who assists in operating a boat for compensation to accompany or to transport a person or persons engaged in fishing in the water of this state.

(25) Folding panel trap--a metallic or non-metallic mesh trap, the side panels hinged to fold flat when not in use, and suspended in the water by multiple lines.

(26) Fully automatic firearm--Any firearm that is capable of firing more than one cartridge in succession by a single function of the trigger.

(27) Gaff--Any hand-held pole with a hook attached directly to the pole.

(28) Gear tag--A tag constructed of material as durable as the device to which it is attached. The gear tag must be legible, contain the name and address of the person using the device, and, except for saltwater trotlines and crab traps, the date the device was set out.

(29) Gig--Any hand-held shaft with single or multiple points.

(30) Jug line--A fishing line with five or less hooks tied to a free-floating device.

(31) Lawful archery equipment--Longbow, recurved bow, and compound bow.

(32) License year--The period of time for which an annual hunting or fishing license is valid.

(33) Muzzleloader--Any firearm that is loaded only through the muzzle.

(34) Natural bait--A whole or cut-up portion of a fish or shellfish or a whole or cut-up portion of plant material in its natural state, provided that none of these may be altered beyond cutting into portions.

(35) Permanent residence--One's principal or ordinary home or dwelling place. This does not include a temporary abode or dwelling such as a hunting/fishing club, or any club house, cabin, tent, or trailer house used as a hunting/fishing club, or any hotel, motel, or rooming house used during a hunting, fishing, pleasure, or business trip.

(36) Pole and line--A line with hook, attached to a pole. This gear includes rod and reel.

(37) Possession limit--The maximum number of a wildlife resource that may be lawfully possessed at one time.

(38) Purse seine (net)--A net with flotation on the corkline adequate to support the net in open water without touching bottom, with a rope or wire cable strung through rings attached along the bottom edge to close the bottom of the net.

(39) Sail line--A type of trotline with one end of the main line fixed on the shore, the other end of the main line attached to a wind-powered floating device or sail.

(40) Sand Pump--A self-contained, hand-held, hand-operated suction device used to remove and capture Callianassid ghost shrimp (Callichirus islagrande, formerly Callianassa islagrande) from their burrows.

(41) Seine--A section of non-metallic mesh webbing, the top edge buoyed upwards by a floatline and the bottom edge weighted.

(42) Silencer or sound-suppressing device--Any device that reduces the normal noise level created when the firearm is discharged or fired.

(43) Spear--Any shaft with single or multiple points, barbed or barbless, which may be propelled by any means, but does not include arrows.

(44) Spear gun--Any hand-operated device designed and used for propelling a spear, but does not include the crossbow.

(45) Spike-buck deer--A buck deer with no antler having more than one point.

(46) Throwline--A fishing line with five or less hooks and with one end attached to a permanent fixture. Components of a throwline may also include swivels, snaps, rubber and rigid support structures.

(47) Trap--A rigid device of various designs and dimensions used to entrap aquatic life.

(48) Trawl--A bag-shaped net which is dragged along the bottom or through the water to catch aquatic life.

(49) Trotline--A nonmetallic main fishing line with more than five hooks attached and with each end attached to a fixture.

(50) Umbrella net--A non-metallic mesh net that is suspended horizontally in the water by multiple lines attached to a rigid frame.

(51) Unbranched antler-An antler having no more than one antler point.

(52) [~~(51)~~] Upper-limb disability--A permanent loss of the use of fingers, hand or arm in a manner that renders a person incapable of using a longbow, compound bow or recurved bow.

(53) [~~(52)~~] Wildlife resources--All game animals, game birds, and aquatic animal life.

(54) [~~(53)~~] Wounded deer--A deer leaving a blood trail.

§65.10. Possession of Wildlife Resources.

(a) For all wildlife resources taken for personal consumption and for which there is a possession limit, the possession limit shall not apply after the wildlife resource has reached the possessor's permanent residence and is finally processed.

(b) A person who lawfully takes a deer is exempt from the tagging requirements of Parks and Wildlife Code, §42.018 if the deer is taken:

(1) under the provisions of §65.26 of this title (relating to Managed Lands Deer [~~(MLD)~~] Permits (MLDP)-White-tailed Deer);

(2) under the provisions of §65.34 of this title (relating to Managed Lands Deer Permits (MLDP)-Mule Deer);

(3) [~~(2)~~] under the provisions of §65.28 of this title (relating to Landowner Assisted Management Permits (LAMPS));

(4) [~~(3)~~] by special permit under the provisions of Subchapter H of this chapter (relating to Public Lands Proclamation);

(5) [~~(4)~~] on department-leased lands under the provisions of Parks and Wildlife Code, §11.0272;

(6) [~~(5)~~] by special antlerless permit issued by the U.S. Forest Service (USFS) for use on USFS lands that are part of the department's public hunting program; or

(7) [~~(6)~~] under the provisions of §65.27 of this title (relating to Antlerless and Spike-Buck Deer Control Permits).

(c) A person who kills a bird or animal under circumstances that require the bird or animal to be tagged with a tag from the person's hunting license shall immediately attach a properly executed tag to the bird or animal.

(d) Proof of sex must remain with certain wildlife resources until the wildlife resource reaches either the possessor's permanent residence or a cold storage/processing facility and is finally processed. Proof of sex is as follows:

(1) turkey (in a county where the bag composition is restricted to gobblers and/or bearded hens):

(A) male turkey:

(i) one leg, including the spur, attached to the bird; or

(ii) the bird, accompanied by a patch of skin with breast feathers and beard attached.

(B) female turkey taken during the fall season: the bird, accompanied by a patch of skin with breast feathers and beard attached.

(2) deer:

(A) buck: the head, with antlers still attached;

(B) antlerless: the head;

(3) antelope: the unskinned head; and

(4) pheasant: one leg, including the spur, attached to the bird or the entire plumage attached to the bird.

(e) In lieu of proof of sex, the person who killed the wildlife resource may:

(1) obtain a receipt from a taxidermist or a signed statement from the landowner, containing the following information:

(A) the name of person who killed the wildlife resource;

(B) the date the wildlife resource was killed;

(C) one of the following, as applicable:

(i) whether the deer was antlered or antlerless;

(ii) the sex of the antelope;

(iii) the sex of the turkey and whether a beard was attached; or

(iv) the sex of the pheasant; or

(2) if the deer is to be tested by the department for chronic wasting disease, obtain a department-issued receipt (PWD 905).

(f) A person may give, leave, receive, or possess any species of legally taken wildlife resource, or a part of the resource, that is required to have a tag or permit attached or is protected by a bag or possession limit, if the wildlife resource is accompanied by a wildlife resource document from the person who killed or caught the wildlife resource. A wildlife resource may be possessed without a WRD by the person who took the wildlife resource, provided the person is in compliance with all other applicable provisions of this subchapter and the Parks and Wildlife Code.

(1) For deer, turkey, or antelope, a properly executed wildlife resource document shall accompany the wildlife resource until it reaches either the possessor's permanent residence or a cold storage/processing facility and is finally processed.

(2) For all other wildlife resources, a properly executed wildlife resource document shall accompany the wildlife resource until it reaches the possessor's permanent residence and is finally processed.

(3) The wildlife resource document must contain the following information:

(A) the name, signature, address, and hunting or fishing license number, as required, of the person who killed or caught the wildlife resource;

(B) the name of the person receiving the wildlife resource;

(C) a description of the wildlife resource (number and type of species or parts);

(D) the date the wildlife resource was killed or caught; and

(E) the location where the wildlife resource was killed or caught (name of ranch; area; lake, bay or stream; and county).

(g) It is a defense to prosecution if the person receiving the wildlife resource does not exceed any possession limit or possesses a wildlife resource or a part of a wildlife resource that is required to be tagged if the wildlife resource or part of the wildlife resource is tagged.

(h) The identification requirements for desert bighorn sheep skulls are as follows.

(1) No person may possess the skull of a desert bighorn ram in this state unless:

(A) one horn has been marked with a department identification plug by a department representative; or

(B) the person also possesses evidence of lawful take in the state or country where the ram was killed.

(2) A person may possess the skull and horns of a desert bighorn ram found dead in the wild, provided:

(A) the person did not cause or participate in the death of the ram;

(B) the person notifies a department biologist or game warden within 48 hours of discovering the dead ram and arranges for marking with a department identification plug by a department representative; and

(C) the landowner on whose property the skull was found signs an affidavit prior to the time the skull is marked that attests the place and date that the person discovered the ram.

(3) Individual horns may be possessed without any identification or documentation.

(4) This subsection does not apply to skulls possessed prior to July 11, 2004 [~~before the effective date of the subsection~~].

§65.11. Lawful Means.

It is unlawful to hunt any of the wildlife resources of this state except by the means authorized by this section and as provided in §65.19 of this title (relating to Hunting Deer with Dogs).

(1) Firearms.

(A) It is lawful to hunt game animals and game birds with any legal firearm, including muzzleloading weapons, except as specifically restricted in this section.

(B) Special muzzleloader-only deer seasons are restricted to muzzleloading firearms only.

(C) It is unlawful to use rimfire ammunition to hunt deer, antelope, or desert bighorn sheep.

(D) It is unlawful to hunt game animals or game birds with a fully automatic firearm or any firearm equipped with a silencer or sound-suppressing device.

(2) Archery.

(A) A person may hunt by means of lawful archery equipment during any open season; however, no person shall hunt deer by lawful archery equipment or crossbow during a special muzzleloader-only deer season.

(B) Arrows that are treated with poisons or drugs, or that contain explosives are not lawful devices for hunting any species of wildlife resource in this state.

(C) While hunting turkey and all game animals other than squirrels by means of longbow, compound bow, or recurved bow:

(i) the bow must have a minimum peak draw weight of 40 pounds at the time of hunting; and

(ii) the arrow must be equipped with a broadhead hunting point at least 7/8-inch in width upon impact, with a minimum of two cutting edges. A mechanical broadhead must begin to open upon impact and when open must be a minimum of 7/8-inch in width.

(D) It is unlawful to hunt deer or turkey with a broadhead hunting point while in possession of a firearm during an archery-only season.

(E) Special archery-only seasons are restricted to lawful archery equipment only, except as provided in paragraph (3) of this section.

(3) Crossbow. Crossbows are lawful during any general open season. A person having an upper-limb disability may use a crossbow to hunt deer and turkey during an archery-only season, provided the person has in their immediate possession a physician's statement certifying the extent of the disability. When hunting turkey and all game animals other than squirrels by means of crossbow:

(A) the crossbow must have a minimum of 125 pounds of pull;

(B) the crossbow must have a mechanical safety;

(C) the crossbow stock must be not less than 25 inches in length; and

(D) the bolt must conform with paragraphs (2)(B) and (2)(C)(ii) of this section.

(4) Falconry. It is lawful to hunt any game bird or game animal by means of falconry under the provisions of Subchapter K of this chapter (relating to Raptor Proclamation).

(5) Special Provisions [~~Provision~~].

(A) Desert bighorn sheep. Except as provided in this paragraph, no motorized conveyance of any type shall be used to [~~locate,~~] herd or [~~,~~] harass[~~, or hunt~~] desert bighorn sheep. [~~Any person who qualifies for handicapped parking privileges under Transportation Code, Chapter 681 may possess a loaded firearm in or on a motor vehicle while hunting desert bighorn sheep and may hunt desert bighorn sheep from a motor vehicle, provided the motor vehicle is not in motion and the engine is not running.~~]

(B) Hunting by remote control. It is an offense for any person to hunt a wildlife resource by the means listed in this section if that person is not physically present and personally operating the means of take at the location where the hunting occurs during the time that the hunting occurs.

§65.19. Hunting Deer With Dogs.

(a) It is unlawful to use a dog or dogs in hunting, pursuing, or taking deer in all counties.

(b) It is lawful to use not more than two dogs in trailing a wounded deer in all counties, except in Angelina, Hardin, Harris, Harrison, Houston, [~~Hunt,~~] Jasper, Jefferson, Liberty, Montgomery, Nacogdoches, Newton, Orange, Panola, Polk, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Trinity, Tyler, and Walker[~~, and Washington~~] counties, where dogs shall not be used to trail wounded deer.

§65.24. Permits.

(a) Permits shall be issued only to the landowner.

(b) No person may hunt white-tailed deer, mule deer, desert bighorn sheep, or antelope when permits are required unless that person has received from the landowner and has in possession a valid permit issued by the department.

(c) When permits are required to hunt or possess the wildlife resources listed in subsection (b) of this section, it is unlawful to:

(1) use a permit more than once;

(2) use a permit on a tract of land other than the tract for which the permit was issued;

(3) falsify or fail to fully complete any information required by a permit application; or

(4) possess the wildlife resource without attaching a valid, properly executed permit, which shall remain attached until the wildlife resource reaches its final destination.

(d) No state-issued permit is required to hunt antlerless white-tailed deer on a National Wildlife Refuge.

(e) An applicant for a permit issued under §65.26 of this title (relating Managed Lands Deer Permits (MLDP)), §65.27 of this title (relating to Antlerless and Spike Buck Control Permits (control permits)), or §65.34 of this title (relating to Managed Lands Deer Permits (MLDP)-Mule Deer) may appeal a decision by the department to deny issuance of those permits.

(1) An applicant seeking to appeal a decision of the department under this subsection shall contact the department within ten working days of being notified by the department of permit denial.

(2) The department shall resolve the appeal and notify the applicant of the results within ten working days of receiving a request for an appeal.

(3) The appeal shall be presented to an appeals panel. The appeals panel shall consist of the following:

(A) the Director of the Wildlife Division;

(B) the Regional Director with jurisdiction;

(C) the Big Game Program Director; and

(D) the White-tailed Deer or Mule Deer program leader, as appropriate.

(4) The decision of the appeals panel is final.

(5) The department shall report on an annual basis to the White-tailed Deer Advisory Committee the number and disposition of all appeals under this subsection that involve white-tailed deer.

§65.25. Wildlife Management Plan (WMP).

(a) Deer.

(1) An approved WMP, specifying a harvest quota for antlerless deer or both buck and antlerless deer, is required for the issuance of Managed Lands Deer Permits and Antlerless/Spike-Buck Deer Control Permits.

(2) [~~(b)~~] MLD permit issuance shall be determined by the WMP as follows.

(A) [~~(1)~~] Level 1 MLD permits shall be issued to a landowner whose WMP includes current deer population data.

(B) [~~(2)~~] Level 2 MLD permits shall be issued to a landowner whose WMP includes:

(i) [~~(A)~~] deer population data for both the current year and the immediately preceding year;

(ii) [~~(B)~~] deer harvest data from the immediately preceding year; and

(iii) [~~(C)~~] at least two recommended habitat management practices.

(C) [~~(3)~~] Level 3 MLD permits shall be issued to a landowner whose WMP includes:

(i) [~~(A)~~] deer population data for the current year and the immediately preceding two years;

(ii) [~~(B)~~] deer harvest data from the immediately preceding two years; and

(iii) [~~(C)~~] at least four recommended habitat management practices.

(3) [~~(c)~~] A WMP is not valid unless it is:

(A) [~~(1)~~] consistent with Parks and Wildlife Code, §§61.053 and 61.056; and

(B) [~~(2)~~] signed by a Wildlife Division biologist or technician. A WMP is valid for one year following the date of such signature.

(b) Lesser Prairie Chicken. No person may hunt a lesser prairie chicken in this state except on a property for which the department has approved a WMP as set forth under this subsection that contains a recommended harvest for lesser prairie chicken.

(1) The WMP required by this subsection shall include:

(A) a lesser prairie chicken population estimate for the current year (April breeding-ground counts);

(B) accurate harvest data from the property for the initial hunting season and each season thereafter that the landowner seeks to hunt lesser prairie chicken on the property;

(C) a biological evaluation of the quality of existing prairie chicken habitat and the potential for enhancing existing habitat or creating additional habitat;

(D) at least five department-recommended habitat management practices designed to increase, enhance, or connect lesser prairie chicken habitat; and

(E) a recommended harvest not to exceed five percent of the estimated lesser prairie chicken population on the property.

(2) The landowner agrees, by signing the WMP, to perform data collection for the purposes of meeting the requirements of paragraph (1) of this subsection.

(3) A WMP under this subsection is not valid unless it has been signed by a department employee authorized to approve management plans. A WMP under this subsection is valid for one year following such signature. The department may refuse to approve a WMP if the landowner has not complied with the provisions of this subsection.

(4) The department may authorize a recommended harvest in the absence of population or harvest data only for the year 2005; thereafter, a property must meet the requirements of subparagraph (1) of this subsection.

(5) The bag and possession limits for the harvest of lesser prairie chicken shall be as provided in §65.56 of this title (relating to Lesser Prairie Chicken: Open Seasons, Bag, and Possession Limits).

(6) No person may possess a harvested lesser prairie chicken anywhere other than the property on which the lesser prairie chicken was harvested unless that person also possesses a completed, department-supplied affidavit signed by the landowner of the property where the person harvested the lesser prairie chicken.

(c) Quail. No person may exceed the bag or possession limits established in §65.62(b) and (c) of this title (relating to Quail: Open Seasons, Bag, and Possession Limits) unless the quail are taken on a property for which the department has approved a WMP specifically addressing quail as provided in this subsection.

(1) A WMP under this subsection shall include:

(A) a quail population estimate for the current year;

(B) accurate harvest data from the property for the initial hunting season and each season thereafter that the landowner seeks to hunt quail on the property;

(C) a biological evaluation of the quality of existing quail habitat and the potential for enhancing existing habitat or creating additional habitat; and

(D) at least five department-recommended habitat management practices designed to increase, enhance, or connect quail habitat.

(2) The landowner agrees, by signing the WMP, to perform data collection for the purposes of meeting the requirements of paragraph (1) of this subsection.

(3) A WMP under this subsection is not valid unless it has been signed by a department employee authorized to approve management plans. A WMP under this subsection is valid for one year following such signature. The department may refuse to approve a WMP if the landowner has not complied with the provisions of this subsection.

(4) A person in possession of more than 45 quail anywhere other than the property on which the quail were harvested shall also possess a completed, department-supplied affidavit signed by the landowner of the property where the person harvested the quail.

§65.26. Managed Lands Deer [~~(MLD)~~] Permits (MLDP)-White-tailed Deer.

(a) MLDPs for white-tailed deer [~~MLD Permits~~] may be issued only to a landowner who has a current WMP in accordance with §65.25 of this title (relating to Wildlife Management Plan). In the case that a landowner is otherwise in fulfillment of the provisions of §65.25 of this title but does not have current population data, the department may conditionally authorize partial issuance of MLDPs [~~MLD Permits~~], not to exceed 30 per cent of the total MLDPs [~~MLD Permits~~] to be issued for that property during the affected license year, with the balance of MLDPs [~~MLD Permits~~] to be issued upon submission of the required population data.

(b) An applicant may request the issuance of any type of MLDP [~~MLD Permit~~] listed in this section.

(1) Level 1. Level 1 MLDPs [~~MLD Permits~~] authorize only the take of antlerless white-tailed [~~or antlerless mule~~] deer. A Level 1 permit [~~MLD Permit~~] is valid during any open deer season in the county for which it is issued and the provisions of §65.42(b)(8) of this title (relating to Archery-Only Open Season), §65.42(b)(9) of this title (relating to Muzzleloader-Only Open Season), and the stamp requirement of Parks and Wildlife Code, Chapter 43, Subchapter I apply. There is no bag limit for antlerless deer on properties for which Level 1 [~~Level I~~] permits have been issued; however, the county and statewide bag limits for buck deer apply.

(2) Level 2.

(A) Level 2 MLDPs [~~MLD Permits~~] authorize the take of buck or antlerless white-tailed deer as specified by the permit.

(i) A Level 2 antlerless permit is valid from the Saturday closest to September 30 through the last day in February on the property for which it is issued;

(ii) A Level 2 buck permit is valid:

(I) for spike bucks taken by any lawful means, for all bucks taken by means of lawful archery equipment, and for any buck taken by a hunter 16 years of age or younger during a youth-only open deer season: from the Saturday closest to September 30 through the last day in February on the property for which it is issued; and

(II) for any buck, irrespective of means: from the opening day of the general open deer season in the county for which it is issued through the last day in February on the property for which it is issued.

(B) On all tracts of land for which Level 2 permits [~~MLD Permits~~] have been issued there is no bag limit for buck or antlerless deer and the provisions of §65.42(b)(8) of this title (relating to Archery-Only Open Season), §65.42(b)(9) of this title (relating to Muzzleloader-Only Open Season), and the stamp requirement of Parks and Wildlife Code, Chapter 43, Subchapter I do not apply.

(C) By acceptance of Level 2 permits [~~MLD Permits~~] a landowner agrees to accomplish at least two habitat management recommendations contained in the WMP within three years of permit issuance, and agrees to maintain the habitat management practices for as long as Level 2 permits are accepted thereafter. A landowner who fails to accomplish at least two habitat management recommendations of the WMP within three years is not eligible for Level 2 permits the following year, but is eligible for Level 1 MLDPs [~~MLD Permits~~] or may choose to cease accepting MLDPs [~~MLD Permits~~].

(3) Level 3. Level 3 MLDPs [~~MLD Permits~~] authorize the take of buck and antlerless white-tailed deer as specified by the permit. A Level 3 permit [~~MLD Permit~~] is valid from the Saturday nearest September 30 through the last day in February on the property for which it is issued. On all tracts of land for which Level 3 permits [~~MLD Permits~~] have been issued:

(A) there is no bag limit for buck or antlerless deer and the provisions of §65.42(b)(8) of this title, §65.42(b)(9) of this title, and the stamp requirement of Parks and Wildlife Code, Chapter 43, Subchapter I do not apply.

(B) By acceptance of Level 3 permits [~~MLD Permits~~] a landowner agrees to accomplish at least four habitat management recommendations contained in the WMP within three years of permit issuance, and agrees to maintain the habitat management practices for as long as Level 3 permits are accepted thereafter. A landowner who fails to accomplish at least four habitat management recommendations of the WMP within three years is not eligible for Level 3 permits the following year, but may be eligible for other levels of MLDPs [~~MLD Permits~~] or may choose to cease accepting MLDPs [~~MLD Permits~~].

(c) The number of MLDPs [~~MLD Permits~~] distributed to a hunter shall be at the discretion of the landowner.

(d) A deer killed under the authority of an MLDP [~~a MLD Permit~~] must be tagged with an MLDP [~~a MLD Permit~~] immediately by the person who killed the deer or the person who killed the deer shall immediately take the carcass by the most direct route to a tagging station (location where permits are maintained on the permitted property) where an appropriate MLDP [~~MLD Permit~~]shall be attached.

(e) If a landowner in possession of MLDPs [~~MLD Permits~~] does not wish to abide by the harvest quota or habitat management practices specified by the WMP, the landowner must return all MLDPs [~~MLD Permits~~] to the department by the Saturday closest to September 30.

(f) In the event that unforeseeable developments such as floods, droughts, or other natural disasters make the attainment of recommended habitat management practices impractical or impossible, the department may, on a case-by-case basis, waive the requirements of this section.

(g) The department reserves the right to deny issuance of MLDPs [~~MLD Permits~~]:

(1) for one year for a property upon which the harvest quota specified by the WMP has been exceeded; and

(2) for three years for a property that otherwise is not in compliance with the WMP.

(h) Administratively complete applications received by the department before August 15 of each year shall be approved or denied by October 1 of the same year.

§65.34. Managed Lands Deer Permits (MLDP)- Mule Deer.

(a) MLDPs for mule deer may be issued only to a landowner who has a current wildlife management plan (WMP) in accordance with subsection (b) of this section that specifies a harvest quota for both buck and antlerless mule deer or antlerless mule deer only. A WMP is not valid unless it is:

(1) consistent with Parks and Wildlife Code, §§61.053 and 61.056; and

(2) signed by a Wildlife Division biologist or technician authorized to write wildlife management plans. A WMP is valid for one year following the date of such signature.

(b) MLDP issuance for mule deer shall be determined by the WMP as follows. MLDPs shall be issued to a landowner whose WMP includes:

(1) deer population data for both the current year and the two immediately preceding years;

(2) deer harvest data from the immediately preceding two years; and

(3) at least three recommended habitat improvements.

(c) An MLDP issued under this section permits the take of antlerless and/or buck mule deer, as specified on the permit. An MLDP issued under this paragraph is valid:

(1) only on the property for which it is issued (as described in the WMP); and

(2) from the first Saturday in November through the first Sunday in January.

(d) There is no bag limit for antlerless deer on properties for which antlerless permits have been issued.

(e) There is no bag limit for buck deer on properties for which buck permits have been issued.

(f) The provisions of §65.42(c)(5) of this title (relating to Archery-Only Open Season) and the stamp requirement of Parks and Wildlife Code, Chapter 43, Subchapter I, do not apply on properties for which both buck and antlerless permits have been issued.

(g) Except as provided in this subsection, all deer harvested by MLDP must immediately be tagged with an appropriate MLDP. If an appropriate MLDP is not attached immediately at the time of kill, the person who killed the deer shall immediately take the carcass to a location on the property where an appropriate MLDP shall be attached.

(h) If a landowner in possession of MLDPs does not wish to abide by the harvest quota or habitat management practices specified by the WMP, the landowner must return all MLDPs to the department no later than one day prior to the date that the permits are valid under subsection (c) of this section.

(i) In the event that unforeseeable developments such as floods, droughts, or other natural disasters make the attainment of recommended habitat management practices or harvest goals impractical or impossible, the department may, on a case-by-case basis, waive the requirements of this section.

(j) The department reserves the right to deny further issuance of MLDPs to a landowner who exceeds the harvest quota specified by the WMP or who does not otherwise abide by the WMP. A property for which the department denies further permit issuance under this subsection is ineligible to receive MLDPs for a period of three years from the date of denial.

(k) MLDP requests received by the department before August 15 of each year shall be approved or denied by November 1 of the same year.

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

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

TRD-200500666

Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Earliest possible date of adoption: March 27, 2005
For further information, please call: (512) 389-4775

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DIVISION 2. OPEN SEASONS AND BAG LIMITS--HUNTING PROVISIONS

31 TAC §65.42

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

The repeal is proposed under Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

The proposed repeal affects Parks and Wildlife Code, Chapter 61.

§65.42. Deer.

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

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

TRD-200500667
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Earliest possible date of adoption: March 27, 2005
For further information, please call: (512) 389-4775

♦ ♦ ♦

31 TAC §§65.42, 65.56, 65.62, 65.64

The amendments and new section are proposed under Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

The proposed amendments and new section affect Parks and Wildlife Code, Chapter 61.

§65.42. Deer.

(a) No person may exceed the annual bag limit of five white-tailed deer (no more than three bucks) and two mule deer (no more than one buck), except as provided by:

(1) §65.26 of this title (relating to Managed Lands Deer Permits (MLDP) --White-tailed Deer);

(2) §65.34 of this title (relating to Managed Lands Deer Permits (MLDP)-Mule Deer);

(3) §65.27 of this title (relating to Antlerless and Spike-Buck Deer Control Permits);

(4) §65.28 of this title (relating to Landowner Assisted Management Permits (LAMPS));

(5) special permits under the provisions of Subchapter H of this chapter (relating to Public Lands Proclamation); or

(6) special antlerless permit issued by the U.S. Forest Service (USFS) for use on USFS lands that are part of the department's public hunting program.

(b) White-tailed deer. The open seasons and annual bag limits for white-tailed deer shall be as follows.

(1) In Aransas, Atascosa, Bee, Brooks, Calhoun, Cameron, Dimmit, Duval, Frio, Hidalgo, Jim Hogg, Jim Wells, Kenedy, Kinney (south of U.S. Highway 90), Kleberg, LaSalle, Live Oak, Maverick, McMullen, Medina (south of U.S. Highway 90), Nueces, Refugio, San Patricio, Starr, Uvalde (south of U.S. Highway 90), Val Verde (that southeastern portion located both south of U.S. Highway 90 and east of Spur 239), Webb, Willacy, Zapata, and Zavala counties, there is a general open season.

(A) Open season: the first Saturday in November through the third Sunday in January.

(B) Bag limit: five deer, no more than three bucks.

(C) Special Late General Season. In the counties listed in this paragraph there is a special late general season for the take of antlerless and spike-buck deer only.

(i) Open season: 14 consecutive days starting the first Monday following the third Sunday in January.

(ii) Bag limit: five antlerless or spike-buck deer in the aggregate, no more than three of which may be spike bucks.

(D) No permit is required to hunt antlerless deer unless MLDP antlerless permits have been issued for the tract of land.

(2) In Bandera, Bexar, Blanco, Brown, Burnet, Coke, Coleman, Comal (west of Interstate 35), Concho, Crockett, Edwards, Gillespie, Glasscock, Hays (west of Interstate 35), Howard, Irion, Kendall, Kerr, Kimble, Kinney (north of U.S. Highway 90), Llano, Mason, McCulloch, Medina (north of U.S. Highway 90), Menard, Mills, Mitchell, Nolan, Real, Reagan, Runnels, San Saba, Schleicher, Sterling, Sutton, Tom Green, Travis (west of Interstate 35), Uvalde (north of U.S. Highway 90) and Val Verde (north of U.S. Highway 90; and that portion located both south of U.S. 90 and west of Spur 239) counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) Bag limit: five deer, no more than two bucks.

(C) Special Late General Season. In the counties listed in this paragraph there is a special late general season for the take of antlerless and spike-buck deer only.

(i) Open season: 14 consecutive days starting the first Monday following the first Sunday in January.

(ii) Bag limit: five antlerless or spike-buck deer in the aggregate, no more than two of which may be spike bucks.

(D) No permit is required to hunt antlerless deer unless MLDP antlerless permits have been issued for the tract of land.

(3) In Brewster, Culberson, Jeff Davis, Pecos, Presidio, Reeves, Terrell, and Upton (that southeastern portion located both south of U.S. Highway 67 and east of State Highway 349) counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) Bag limit: four deer, no more than two bucks.

(C) No permit is required to hunt antlerless deer unless MLDP antlerless permits have been issued for the tract of land.

(4) In Angelina, Chambers, Hardin, Harris, Jasper, Jefferson, Liberty, Montgomery, Newton, Orange, Polk, San Jacinto, Trinity, Tyler, and Walker counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) Bag limit: four deer, no more than two bucks and no more than two antlerless.

(C) From opening day through the Sunday immediately following Thanksgiving, antlerless deer may be taken without antlerless deer permits unless MLDP antlerless, LAMPS, or USFS antlerless permits have been issued for the tract of land. On USFS, Corps of Engineers, Sabine River Authority, and Trinity River Authority lands, the take of antlerless deer shall be by permit only. If USFS antlerless, MLDP antlerless, or LAMPS permits have been issued, they must be attached to all antlerless deer harvested on the tract of land. From the Monday following Thanksgiving, antlerless deer may be taken only by USFS antlerless, MLDP antlerless, or LAMPS permits. On tracts of land for which LAMPS permits have been issued, no LAMPS permit is required for the harvest of antlerless deer during the archery-only or muzzleloader-only open season.

(5) In Austin, Bastrop, Caldwell, Colorado, De Witt, Fayette, Goliad (north of U.S. Highway 59), Gonzales, Guadalupe, Jackson (north of U.S. Highway 59), Karnes, Lavaca, Lee, Victoria (north of U.S. Highway 59), Waller, Wilson, Washington and Wharton (north of U.S. Highway 59) counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) The provisions of this clause do not apply on properties for which Level 2 or Level 3 MLDPs have been issued. In the counties listed in this paragraph, a legal buck is a buck deer having:

(i) at least one unbranched antler; or

(ii) an inside spread of 13 inches or greater.

(C) Buck bag limit: two bucks, to include no more than one buck with an inside spread of 13 inches or greater.

(D) Antlerless bag limit: two, by MLDP antlerless permit only.

(6) In Brazoria, Fort Bend, Goliad (south of U.S. Highway 59), Jackson (south if U.S. Highway 59), Matagorda, Victoria (south of U.S. Highway 59), and Wharton (south of U.S. Highway 59) counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) The provisions of this clause do not apply on properties for which Level 2 or Level 3 MLDPs have been issued. In the counties listed in this paragraph, a legal buck is a buck deer having:

(i) at least one unbranched antler; or

(ii) an inside spread of 13 inches or greater.

(C) Buck bag limit: two bucks, to include no more than one buck with an inside spread of 13 inches or greater.

(D) Antlerless bag limit: two.

(E) From opening day through the Sunday immediately following Thanksgiving Day, antlerless deer may be taken without antlerless deer permits unless MLDP antlerless permits have been issued for the tract of land. If MLDP antlerless permits have been issued, they must be attached to all antlerless deer harvested on the tract of land. From the Monday following Thanksgiving, antlerless deer may be taken only by MLDP antlerless permit.

(7) In Archer, Armstrong, Baylor, Bell (west of IH 35), Borden, Bosque, Briscoe, Callahan, Carson, Childress, Clay, Collingsworth, Comanche, Coryell, Cottle, Crosby, Dickens, Donley, Eastland, Erath, Fisher, Floyd, Foard, Garza, Gray, Hall, Hamilton, Hansford, Haskell, Hemphill, Hood, Hutchinson, Jack, Jones, Kent, King, Knox, Lampasas, Lipscomb, McLennan, Montague, Motley, Ochiltree, Palo Pinto, Parker, Randall, Roberts, Scurry, Shackelford, Somervell, Stephens, Stonewall, Swisher, Taylor, Throckmorton, Wheeler, Williamson (west of IH 35), Wise, and Young counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) Bag limit: three deer, no more than one buck and no more than two antlerless.

(C) No permit is required to hunt antlerless deer unless MLDP antlerless permits have been issued for the tract of land.

(8) In Cooke, Hardeman, Hill, Johnson, Wichita, and Wilbarger counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) Bag limit: three deer, no more than one buck and no more than two antlerless.

(C) From opening day through the Sunday immediately following Thanksgiving Day, antlerless deer may be taken without antlerless deer permits unless MLDP antlerless permits have been issued for the tract of land. If MLDP antlerless permits have been issued, they must be attached to all antlerless deer harvested on the tract of land. From the Monday following Thanksgiving, antlerless deer may be taken only by MLDP antlerless permit.

(9) In Cass, Denton, Harrison, Marion, Nacogdoches, Panola, Sabine, San Augustine, Shelby, and Tarrant counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) Bag limit: three deer, no more than one buck and no more than two antlerless.

(C) During the first 16 days of the general season, antlerless deer may be taken without antlerless deer permits unless MLDP, LAMPS, or USFS antlerless permits have been issued for the tract of land.

On USFS, Corps of Engineers, and Sabine River Authority lands, the take of antlerless deer shall be by permit only. If USFS antlerless, MLDP antlerless, or LAMPS permits have been issued, they must be attached to all antlerless deer harvested on the tract of land. After the first 16 days of the general season, antlerless deer may be taken only by USFS antlerless, MLDP antlerless, or LAMPS permits.

(10) In Bowie, Brazos, Burleson, Camp, Cherokee, Delta, Fannin, Franklin, Grayson, Gregg, Grimes, Hopkins, Houston, Lamar, Madison, Milam, Morris, Red River, Robertson, Rusk, Titus, Upshur, and Wood counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) Bag limit: three deer, no more than one buck and no more than two antlerless.

(C) From Thanksgiving Day through the Sunday immediately following Thanksgiving Day, antlerless deer may be taken without antlerless deer permits unless MLDP antlerless or LAMPS permits have been issued for the tract of land. On USFS, Corps of Engineers, and Sabine River Authority lands, the take of antlerless deer shall be by permit only. If USFS antlerless, MLDP antlerless, or LAMPS permits have been issued, they must be attached to all antlerless deer harvested on the tract of land. From the first Saturday in November through the day before Thanksgiving Day, and from the Monday immediately following Thanksgiving Day through the first Sunday in January, antlerless deer may be taken only by USFS antlerless, MLDP antlerless, or LAMPS permits.

(D) Special regulation. In Grayson County:

(i) lawful means are restricted to lawful archery equipment and crossbows only, including MLDP properties; and

(ii) antlerless deer shall be taken by MLDP only, except on the Hagerman National Wildlife Refuge.

(11) In Anderson, Bell (east of Interstate 35), Comal (east of Interstate 35), Crane, Ector, Ellis, Falls, Freestone, Hays (east of Interstate 35), Henderson, Hunt, Kaufman, Leon, Limestone, Loving, Midland, Navarro, Rains, Smith, Travis (east of Interstate 35), Upton (that portion located north of U.S. Highway 67; and that area located both south of U.S. Highway 67 and west of state highway 349), Van Zandt, Ward, and Williamson (east of Interstate 35) counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) Bag limit: one buck, no more than two antlerless. Antlerless deer may be taken only by MLDP antlerless or LAMPS permits.

(12) In Dallam, Hartley, Moore, Oldham, Potter, and Sherman Counties, there is a general open season.

(A) Open season: Saturday before Thanksgiving for 16 consecutive days.

(B) Bag limit: one buck, no more than two antlerless. Antlerless deer may be taken only by MLDP antlerless permit.

(13) In Andrews, Bailey, Castro, Cochran, Collin, Dallas, Dawson, Deaf Smith, El Paso, Gaines, Galveston, Hale, Hockley, Hudspeth, Lamb, Lubbock, Lynn, Martin, Parmer, Rockwall, Terry, Winkler, and Yoakum counties, there is no general open season.

(14) Archery-only open seasons. In all counties where there is a general open season for white-tailed deer, there is an archery-only open season during which either sex of white-tailed deer may be taken as provided for in §65.11(2) and (3) of this title (relating to Means and Methods).

(A) Open season: the Saturday closest to September 30 for 30 consecutive days.

(B) Bag limit: the bag limit in any given county is as provided for that county during the general open season.

(C) No permit is required to hunt antlerless deer unless MLDP permits have been issued for the property.

(15) Muzzleloader-only open seasons, and bag and possession limits shall be as follows.

(A) In Brewster, Culberson, Jeff Davis, Pecos, Presidio, Reeves, Terrell, and Upton (that portion located both south of U.S. Highway 67 and east of state highway 349) counties, there is an open season during which only antlerless and spike-buck deer may be taken only with a muzzleloader.

(i) Open Season: from the first Saturday following the closing of the general open season for nine consecutive days.

(ii) Bag limit: four antlerless or spike-buck deer in the aggregate, no more than two spike bucks.

(B) In Angelina, Chambers, Hardin, Harris, Jasper, Jefferson, Liberty, Montgomery, Newton, Orange, Polk, San Jacinto, Trinity, Tyler, and Walker counties, there is an open season during which only antlerless and spike-buck deer may be taken only with a muzzleloader.

(i) Open Season: from the first Saturday following the closing of the general open season for nine consecutive days.

(ii) Bag limit: four antlerless or spike-buck deer in the aggregate, no more than two spike bucks and no more than two antlerless.

(C) No permit is required to hunt antlerless deer unless MLDP permits have been issued for the property.

(16) Special Youth-Only Seasons. There shall be special youth-only general hunting seasons in all counties where there is a general open season for white-tailed deer.

(A) early open season: the Saturday and Sunday immediately before the first Saturday in November.

(B) late open season: the third weekend (Saturday and Sunday) in January.

(C) Bag limits, provisions for the take of antlerless deer, and special requirements in the individual counties listed in paragraphs (1)-(11) of this subsection shall be as specified for the first two days of the general open season in those counties, except as provided in subparagraph (D) of this paragraph.

(D) Provisions for the take of antlerless deer in the individual counties listed in paragraph (10) of this subsection shall be as specified in those counties for the period of time from Thanksgiving Day through the Sunday immediately following Thanksgiving Day.

(E) Licensed hunters 16 years of age or younger may hunt deer by any lawful means during the seasons established by subparagraphs (A) and (B) of this paragraph, except in Grayson County, where legal means are restricted to crossbow and lawful archery equipment.

(F) A licensed hunter 16 years of age or younger may hunt any deer on any property (including MLDP properties) during the seasons established by subparagraphs (A) and (B) of this paragraph.

(G) The stamp requirement of Parks and Wildlife Code, Chapter 43, Subchapter I, does not apply during the seasons established by this paragraph.

(c) Mule deer. The open seasons and annual bag limits for mule deer shall be as follows.

(1) In Armstrong, Borden, Briscoe, Carson, Childress, Coke, Collingsworth, Cottle, Crosby, Dallam, Deaf Smith, Dickens, Donley, Fisher, Floyd, Foard, Garza, Gray, Hall, Hardeman, Hartley, Hemphill, Hutchinson, Kent, King, Lipscomb, Moore, Motley, Ochiltree, Oldham, Potter, Randall, Roberts, Scurry, Stonewall, and Swisher counties, there is a general open season.

(A) Open season: Saturday before Thanksgiving for 16 consecutive days.

(B) Bag limit: two deer, no more than one buck.

(C) Antlerless deer may be taken only by Antlerless Mule Deer or MLD Permits.

(2) In Brewster, Crane, Crockett, Culberson, Ector, El Paso, Hudspeth, Jeff Davis, Loving, Midland, Pecos, Presidio, Reagan, Reeves, Terrell, Upton, Val Verde, Ward, and Winkler counties, there is a general open season.

(A) Open season: last Saturday in November for 16 consecutive days.

(B) Bag limit: two deer, no more than one buck.

(C) Antlerless deer may be taken only by Antlerless Mule Deer or MLD Permits.

(3) In Andrews (west of U.S. Highway 385), Bailey, Cochran, Hockley, Lamb, Terry, and Yoakum counties, there is a general open season.

(A) Open season: Saturday before Thanksgiving for nine consecutive days.

(B) Bag limit: two deer, no more than one buck.

(C) Antlerless deer may be taken by permit only.

(4) In all other counties, there is no general open season for mule deer.

(5) Archery-only open seasons and bag and possession limits shall be as follows. During an archery-only open season, deer may be taken only as provided for in §65.11(2) and (3) of this title (relating to Means and Methods). No antlerless permit is required unless MLD antlerless permits have been issued for the property.

(A) In Armstrong, Borden, Briscoe, Carson, Childress, Coke, Collingsworth, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Deaf Smith, Dickens, Donley, Ector, El Paso, Fisher, Floyd, Foard, Garza, Gray, Hall, Hardeman, Hartley, Hemphill, Hudspeth, Hutchinson, Jeff Davis, Kent, King, Lipscomb, Loving, Midland, Moore, Motley, Ochiltree, Oldham, Potter, Presidio, Randall, Reagan, Reeves, Roberts, Scurry, Stonewall, Swisher, Upton, Val Verde, Ward, and Winkler counties, there is an open season.

(i) Open season: from the Saturday closest to September 30 for 30 consecutive days.

(ii) Bag limit: one buck deer.

(B) In Brewster, Pecos, and Terrell counties, there is an open season.

(i) Open season: from the Saturday closest to September 30 for 30 consecutive days.

(ii) Bag limit: two deer, no more than one buck.

(C) In all other counties, there is no archery-only open season for mule deer.

§65.56. Lesser Prairie Chicken: Open Seasons, Bag, and Possession Limits.

(a) There is no open season for lesser prairie chicken except on properties for which the department has approved a wildlife management plan that contains a component specifically addressing the management of lesser prairie chicken. [~~In Cochran, Hemphill, Hockley, Lipscomb, Ochiltree, Terry, Wheeler, and Yoakum counties, there is an open season on prairie chicken, during which prairie chicken may be taken only by permit.~~]

(1) Open season: Third Saturday in October for two consecutive days.

(2) Daily bag limit: Two lesser prairie chickens.

(3) Possession limit: Four lesser prairie chickens.

[~~(b) In all other counties, there is no open season on prairie chicken.~~]

(b) [~~(c)~~] It is unlawful to hunt prairie chicken by any means other than shotgun.

§65.62. Quail: Open Seasons, Bag, and Possession Limits.

(a) In all counties there is an open season for quail beginning the Saturday closest to October 28 through the last Sunday in February.

(b) Daily bag limit: 15 quail.

(c) Possession limit: 45 quail.

(d) There is no open season on Mearns' quail (commonly called fool's quail).

(e) On all properties for which the department has approved a WMP under the provisions of §65.11(c) of this title, relating to Wildlife Management Plan (WMP), the daily bag limit shall be 30 quail and the possession limit shall be 90 quail.

§65.64. Turkey.

(a) The annual bag limit for Rio Grande and Eastern turkey, in the aggregate, is four, no more than one of which may be an Eastern turkey.

(b) Rio Grande Turkey. The open seasons and bag limits for Rio Grande turkey shall be as follows.

(1) Fall seasons and bag limits:

[~~(A) In Archer, Bandera, Bell, Bexar, Blanco, Bosque, Burnet, Clay, Comal, Comanche, Cooke, Coryell, Denton, Erath, Gillespie, Goliad, Gonzales, Hamilton, Hays, Hill, Hood, Jack, Johnson, Karnes, Kendall, Kerr, Lampasas, Llano, McLennan, Medina (only north of U.S. Highway 90) Montague, Palo Pinto, Parker, Real, Somervell, Stephens, Travis, Wichita, Williamson, Wilson, Wise, and Young counties, there sis a fall general open season.~~]

[(i) ~~Open season: first Saturday in November through the first Sunday in January.~~]

[(ii) ~~Bag limit: four turkeys, gobblers or bearded hens.~~]

(A) [~~(B)~~] In Aransas, Atascosa, Bee, Calhoun, Cameron, Dimmit, Duval, Frio, Hidalgo, Jim Hogg, Jim Wells, Kinney (south of U.S. Highway 90), LaSalle, Live Oak, Maverick, McMullen, Medina (south of U.S. Highway 90), Nueces, Refugio, San Patricio, Starr, Uvalde (south of U.S. Highway 90), Val Verde (in

that southeastern portion located both south of U.S. Highway 90 and east of Spur 239), Webb, Zapata, and Zavala counties, there is a fall general open season.

(i) Open season: first Saturday in November through the third Sunday in January.

(ii) Bag limit: four turkeys, gobblers or bearded hens.

[~~(C) In Kinney (south of U.S. Highway 90) and Uvalde (south of U.S. Highway 90), and Val Verde (in that southeastern portion located both south of U.S. Highway 90 and east of Spur 239) counties, there is a fall general open season.~~]

[~~(i) Open season: first Saturday in November through the third Sunday in January.~~]

[~~(ii) Bag limit: four turkeys, either sex.~~]

(B) [~~(D)~~] In Brooks, Kenedy, Kleberg, and Willacy counties, there is a fall general open season.

(i) Open season: first Saturday in November through the last Sunday in February.

(ii) Bag limit: four turkeys, either sex.

(C) [~~(E)~~] In Archer, Armstrong, Bandera, Baylor, Bell, Bexar, Blanco, Borden, Bosque, Briscoe, Brown, Burnet, Callahan, Carson, Childress, Clay, Coke, Coleman, Collingsworth, Comal, Comanche, Concho, Cooke, Coryell, Cottle, Crane, Crockett, Crosby, Dawson, Denton, Dickens, Donley, Eastland, Ector, Edwards, Erath, Fisher, Floyd, Foard, Garza, Gillespie, Glasscock, Goliad, Gonzales, Gray, Hall, Hamilton, Hardeman, Hartley, Haskell, Hays, Hemphill, Hill, Hood, Howard, Hutchinson, Irion, Jack, Johnson, Jones, Karnes, Kendall, Kent, Kerr, Kimble, King, Kinney (north of U.S. Highway 90), Knox, Lipscomb, Lampasas, Llano, Lynn, Martin, Mason, McCulloch, McLennan, Medina (north of U.S. Highway 90), Menard, Midland, Mills, Mitchell, Montague, Moore, Motley, Nolan, Ochiltree, Oldham, Palo Pinto, Parker, Pecos, Potter, Randall, Reagan, Real, Roberts, Runnels, Sutton, San Saba, Schleicher, Scurry, Shackelford, Somervell, Stephens, Sterling, Stonewall, Swisher, Tarrant, Taylor, Terrell, Throckmorton, Tom Green, Travis, Upton, Uvalde (north of U.S. Highway 90), Ward, Wheeler, Wichita, Wilbarger, Williamson, Wilson, Wise, [~~and~~] Val Verde (that portion located north of U.S. Highway 90; and that portion located both south of U.S. 90 and west of Spur 239) , and Young counties, there is a fall general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: four turkeys, either sex.

(2) Archery-only season and bag limits. In all counties where there is a general fall season for turkey there is an open season during which turkey may be taken only as provided for in §65.11(2) and (3) of this title (relating to Means and Methods).

(A) Open season: from the Saturday closest to September 30 for 30 consecutive days.

(B) Bag limit: in any given county, the annual bag limit is as provided by this section for the fall general season in that county.

(3) Spring season and bag limits.

(A) In Archer, Armstrong, Aransas, Atascosa, Bandera, Baylor, Bell, Bee, Bexar, Blanco, Borden, Bosque, Brooks, Brewster, Briscoe, Brown, Burnet, Callahan, Calhoun, Cameron, Carson, Childress, Clay, Coke, Coleman, Collingsworth, Comal, Comanche, Concho, Cooke, Coryell, Cottle, Crane, Crockett, Crosby, Dawson, Denton, Dickens, Dimmit, Donley, Duval, Eastland, Ector, Edwards, Ellis, Erath, Fisher, Floyd, Foard, Frio, Garza, Gillespie, Glasscock, Goliad, Gonzales, Gray, Hall, Hamilton, Hardeman, Hartley, Haskell, Hays, Hemphill, Hidalgo, Hill, Hood, Howard, Hutchinson, Irion, Jack, Jeff Davis, Jim Hogg, Jim Wells, Johnson, Jones, Karnes, Kendall, Kenedy, Kent, Kerr, Kimble, King, Kinney, Kleberg, Knox, Lampasas, LaSalle, Lipscomb, Live Oak, Llano, Lynn, Martin, Mason, Maverick, McCulloch, McLennan, McMullen, Medina, Menard, Midland, Mills, Mitchell, Montague, Moore, Motley, Nolan, Nueces, Ochiltree, Oldham, Palo Pinto, Parker, Pecos, Potter, Randall, Reagan, Real, Refugio, Roberts, Runnels, San Saba, San Patricio, Schleicher, Scurry, Shackelford, Somervell, Starr, Stephens, Sterling, Stonewall, Sutton, Swisher, Tarrant, Taylor, Terrell, Throckmorton, Tom Green, Travis, Upton, Uvalde, Val Verde, Ward, Webb, Wheeler, Wichita, Wilbarger, Willacy, Williamson, Wilson, Wise, [~~and~~] Young, Zapata, and Zavala counties, there is a spring general open season.

(i) Open season: Saturday closest to April 1 for 44 consecutive days [~~first Saturday in April for 37 consecutive days~~].

(ii) Bag limit: four turkeys, gobblers only.

(B) In Bastrop, Caldwell, Colorado, De Witt, Fayette, Guadalupe, Jackson, Lavaca, Lee, Milam, and Victoria counties, there is a spring general open season.

(i) Open season: from April 1 through April 30 [~~first Saturday in April for 37 consecutive days~~].

(ii) Bag limit: one turkey, gobblers only.

[~~(C) In Aransas, Atascosa, Bee, Bexar, Brooks, Calhoun, Dimmit, Duval, Frio, Goliad, Gonzales, Hidalgo, Jim Hogg, Jim Wells, Karnes, Kenedy, Kinney, Kleberg, LaSalle, Live Oak, Maverick, McMullen, Medina, Nueces, Refugio, San Patricio, Starr, Uvalde, Webb, Willacy, Wilson, and Zavala counties, there is a spring general open season.~~]

[~~(i) Open season: last Saturday in March for 37 consecutive days.~~]

[~~(ii) Bag limit: four turkeys, gobblers only.~~]

(4) Special Youth-Only Seasons [~~Season~~]. Only licensed hunters 16 years of age or younger may hunt during the seasons established by this subsection.

(A) There shall be a special youth-only fall general hunting season in all counties where there is a fall general open season.

(i) open season : the weekend (Saturday and Sunday) immediately preceding the first Saturday in November, and the third weekend (Saturday and Sunday) in January.

(ii) bag limit: as specified for individual counties in paragraph (1) of this subsection.

(B) There shall be special youth-only spring general open hunting seasons for Rio Grande turkey in the counties listed in paragraph (3)(A) of this section.

(i) open seasons: the weekend (Saturday and Sunday) immediately preceding the first Saturday in April and the weekend (Saturday and Sunday) immediately following the close of the general open spring season.

(ii) bag limit: as specified for individual counties in paragraph (3)(A)(ii) of this subsection.

[~~(B) Only licensed hunters 16 years of age or younger may hunt during the season established by this subsection.~~]

(c) Eastern turkey. The open seasons and bag limits for Eastern turkey shall be as follows. In Angelina, Bowie, Brazoria, Camp, Cass, Cherokee, Delta, Fannin, Fort Bend, Franklin, Grayson, Gregg, Hardin, Harrison, Hopkins, Houston, Hunt, Jasper, Lamar, Liberty, Marion, Matagorda, Montgomery, Morris, Nacogdoches, Newton, Panola, Polk, Rains, Red River, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Smith, Titus, Trinity, Tyler, Upshur, Walker, Wharton, and Wood counties, there is a spring season during which both Rio Grande and Eastern turkey may be lawfully hunted.

(1) Open season: from April 1 for 30 consecutive days.

(2) Bag limit (both species combined): one turkey, gobbler only.

(3) In the counties listed in this subsection:

(A) it is unlawful to hunt turkey by any means other than a shotgun, lawful archery equipment, or crossbows;

(B) it is unlawful for any person to take or attempt to take turkeys by the aid of baiting, or on or over a baited area; and

(C) all turkeys harvested during the open season must be registered at designated check stations within 24 hours of the time of kill. Harvested turkeys may be field dressed but must otherwise remain intact.

(d) In all counties not listed in subsection (b) or (c) of this section, the season is closed for hunting turkey.

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

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

TRD-200500668
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Earliest possible date of adoption: March 27, 2005
For further information, please call: (512) 389-4775

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DIVISION 3. SEASONS AND BAG LIMITS--FISHING PROVISIONS

31 TAC §65.72, §65.82

The amendment and new section are proposed under Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

The proposed amendment and new section affect Parks and Wildlife Code, Chapter 61.

§65.72. Fish.

(a) General rules.

(1) There are no public waters closed to the taking and retaining of fish, except as provided in this subchapter.

(2) Game fish may be taken only by pole and line, except as provided in this subchapter.

(3) It is unlawful:

(A) to take or attempt to take, or possess fish within a protected length limit, in greater numbers, by other means, or at any time or place, other than as permitted under this subchapter;

(B) while fishing on or in public waters to have in possession fish in excess of the daily bag limit or fish within a protected length limit as established for those waters;

(C) to land by boat or person any fish within a protected length limit, or in excess of the daily bag limit or possession limit established for those fish;

(D) to use game fish or any part thereof as bait;

(E) to possess a finfish of any species, except broadbill swordfish, shark or king mackerel, taken from public water that has the head or tail removed until such person finally lands the catch on the mainland, a peninsula, or barrier island not including jetties or piers and does not transport the catch by boat;

(F) to use airboats or jet-driven devices to pursue and harass or harry fish; or

(G) to release into the public waters of this state a fish with a device or substance implanted or attached that is designed, constructed or adapted to produce an audible, visual, or electronic signal used to monitor, track, follow, or in any manner aid in the location of the released fish.

(4) Finfish tags: Prohibited Acts.

(A) No person may purchase or use more finfish (red drum or tarpon) tags during a license year than the number and type authorized by the commission, excluding duplicate tags issued under Parks and Wildlife Code, §46.006.

(B) It is unlawful to:

(i) use the same finfish tag for the purpose of tagging more than one finfish;

(ii) use a finfish tag in the name of another person;

(iii) use a tag on a finfish for which another tag is specifically required;

(iv) catch and retain a finfish required to be tagged and fail to immediately attach and secure a tag, with the day and month of catch cut out, to the finfish at the narrowest part of the finfish tail, just ahead of the tail fin;

(v) have in possession both a Red Drum Tag and a Duplicate Red Drum Tag issued to the same license or salt water stamp holder;

(vi) have in possession both a Red Drum Tag or a Duplicate Red Drum Tag and a Bonus Red Drum Tag issued to the same license or salt water stamp holder;

(vii) have in possession both an Exempt Red Drum Tag and a Duplicate Exempt Red Drum Tag issued to the same license holder; or

(viii) have in possession both an Exempt Red Drum Tag or a Duplicate Exempt Red Drum Tag and a Bonus Red Drum Tag issued to the same holder.

(5) Commercial fishing seasons.

(A) The commercial seasons for finfish species listed in this paragraph and caught in Texas waters shall run concurrently with commercial seasons established for the same species caught in federal waters of the Exclusive Economic Zone (EEZ).

(B) The commercial fishing season in the EEZ will be set by the National Marine Fisheries Service for:

(i) red snapper under guidelines established by the Fishery Management Plan for Reef Fish Resources for the Gulf of Mexico;

(ii) king mackerel under guidelines established by the Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; and

(iii) sharks (all species, their hybrids and subspecies) under guidelines established by the Fishery Management Plan for Highly Migratory Species).

(C) When federal and/or state waters are closed, it will be unlawful to:

(i) purchase, barter, trade or sell finfish species listed in this paragraph landed in this state;

(ii) transfer at sea finfish species listed in this paragraph caught or possessed in the waters of this state; and

(iii) possess finfish species listed in this paragraph in excess of the current recreational bag or possession limit in or on the waters of this state.

(6) In Brewster, Crane, Crockett, Culberson, Ector, El Paso, Jeff Davis, Hudspeth, Loving, Pecos, Presidio, Reeves, Terrell, Upton, Val Verde, Ward, and Winkler counties, the only fishes that may be used or possessed for bait while fishing are common carp, fathead minnows, gizzard and threadfin shad, sunfish (Lepomis), goldfish, golden shiners, Mexican tetra, Rio Grande cichlid, and silversides (Atherinidae family).

(b) Bag, possession, and length limits.

(1) The possession limit does not apply to fish in the possession of or stored by a person who has an invoice or sales ticket showing the name and address of the seller, number of fish by species, date of the sale, and other information required on a sales ticket or invoice.

(2) There are no bag, possession, or length limits on game or non-game fish, except as provided in these rules.

(A) Possession limits are twice the daily bag limit on game and non-game fish except as provided in these rules.

(B) Statewide daily bag and length limits shall be as follows.

Figure 1: 31 TAC §65.72(b)(2)(B) (No change.)

(C) Exceptions to statewide daily bag, possession, and length limits shall be as follows:

(i) The following is a figure:

Figure 2: 31 TAC §65.72(b)(2)(C)(i)

(ii) Bag and possession limits for black drum and sheepshead do not apply to the holder of a valid Commercial Finfish Fisherman's License.

(iii) Fish caught in federal waters in compliance with a federal fishery management plan may be landed in Texas.

(iv) The bag limit for a guided fishing party is equal to the total number of persons in the boat licensed to fish or otherwise exempt from holding a license minus each fishing guide and fishing guide deckhand multiplied by the bag limit for each species harvested.

(c) Devices, means and methods.

(1) In fresh water only, it is unlawful to fish with more than 100 hooks on all devices combined.

(2) Game [~~In community fishing lakes, Lake Pflugerville (Travis County), and in sections of rivers lying totally within the boundaries of state parks, game~~] and non-game fish may be taken by pole and line only~~.~~ in:

(A) community fishing lakes;

(B) sections of rivers lying totally within the boundaries of state parks;

(C) Lake Pflugerville (Travis County);

(D) the North Concho River (Tom Green County) from O.C. Fisher Dam to Bell Street Dam; and

(E) the South Concho River (Tom Green County) from Lone Wolf Dam to Bell Street Dam.

(3) It is unlawful to take, attempt to take, or possess fish caught in public waters of this state by any device, means, or method other than as authorized in this subsection.

(4) In salt water only, it is unlawful to fish with any device that is marked with a buoy made of a plastic bottle(s) of any color or size.

(5) Device restrictions.

(A) Cast net. It is unlawful to use a cast net exceeding 14 feet in diameter.

(i) Only non-game fish may be taken with a cast net.

(ii) In salt water, non-game fish may be taken for bait purposes only.

(B) Dip net.

(i) It is unlawful to use a dip net except:

(I) to aid in the landing of fish caught on other legal devices; and

(II) to take non-game fish.

(ii) In salt water, non-game fish may be taken for bait purposes only.

(C) Gaff.

(i) It is unlawful to use a gaff except to aid in landing fish caught by other legal devices, means or methods.

(ii) Fish landed with a gaff may not be below the minimum, above the maximum, or within a protected length limit.

(D) Gig. Only non-game fish may be taken with a gig.

(E) Jugline. For use in fresh water only. Non-game fish, channel catfish, blue catfish and flathead catfish may be taken with a jugline. It is unlawful to use a jugline:

(i) with invalid gear tags. Gear tags must be attached within six inches of the free-floating device, are valid for 30

days after the date set out, and must include the number of the permit to sell non-game fish taken from freshwater, if applicable;

(ii) for commercial purposes that is not marked with an orange free-floating device;

(iii) for non-commercial purposes that is not marked with a white free-floating device;

(iv) in Lake Bastrop in Bastrop County, Bellwood Lake in Smith County, Lake Bryan in Brazos County, Boerne City Park Lake in Kendall County, Lakes Coffee Mill and Davy Crockett in Fannin County, Dixieland Reservoir in Cameron County, Gibbons Creek Reservoir in Grimes County, and Tankersley Reservoir in Titus County.

(F) Lawful archery equipment. Only non-game fish may be taken with lawful archery equipment or crossbow.

(G) Minnow trap (fresh water and salt water).

(i) Only non-game fish may be taken with a minnow trap.

(ii) It is unlawful to use a minnow trap that exceeds 24 inches in length or with a throat larger than one by three inches.

(H) Perch traps. For use in salt water only.

(i) Perch traps may be used only for taking non-game fish.

(ii) It is unlawful to fish a perch trap that:

(I) exceeds 18 cubic feet in volume;

(II) is not equipped with a degradable panel. A trap shall be considered to have a degradable panel if one of the following methods is used in construction of the trap:

(-a-) the trap lid tie-down strap is secured to the trap by a loop of untreated jute twine (comparable to Lehigh brand # 530) or sisal twine (comparable to Lehigh brand # 390). The trap lid must be secured so that when the twine degrades, the lid will no longer be securely closed; or

(-b-) the trap lid tie-down strap is secured to the trap by a loop of untreated steel wire with a diameter of no larger than 20 gauge. The trap lid must be secured so that when the wire degrades, the lid will no longer be securely closed; or

(-c-) the trap contains at least one sidewall, not including the bottom panel, with a rectangular opening no smaller than 3 inches by 6 inches. Any obstruction placed in this opening may not be secured in any manner except:

(-1-) it may be laced, sewn, or otherwise obstructed by a single length of untreated jute twine (comparable to Lehigh brand # 530) or sisal twine (comparable to Lehigh brand # 390) knotted only at each end and not tied or looped more than once around a single mesh bar. When the twine degrades, the opening in the sidewall of the trap will no longer be obstructed; or

(-2-) it may be laced, sewn, or otherwise obstructed by a single length of untreated steel wire with a diameter of no larger than 20 gauge. When the wire degrades, the opening in the sidewall of the trap will no longer be obstructed; or

(-3-) the obstruction may be loosely hinged at the bottom of the opening by no more than two untreated steel hog rings and secured at the top of the obstruction in no more than one place by a single length of untreated jute twine (comparable to Lehigh brand # 530), sisal twine (comparable to Lehigh brand # 390), or by a single length of untreated steel wire with a diameter of no larger than 20 gauge. When the twine or wire degrades, the obstruction will hinge downward and the opening in the sidewall of the trap will no longer be obstructed.

(III) that is not marked with a floating visible orange buoy not less than six inches in height and six inches in width. The buoy must have a gear tag attached. Gear tags are valid for 30 days after date set out.

(I) Pole and line.

(i) Game and non-game fish may be taken by pole and line. It is unlawful to take or attempt to take fish with one or more hooks attached to a line or artificial lure used in a manner to foul-hook a fish (snagging or jerking). A fish is foul-hooked when caught by a hook in an area other than the fish's mouth.

(ii) Game and nongame fish may be taken by pole and line. It is unlawful to take fish with a hand-operated device held underwater except that a spear gun and spear may be used to take nongame fish.

(iii) Game and non-game fish may be taken by pole and line, except that in the Guadalupe River in Comal County from the second bridge crossing on River Road upstream to the easternmost bridge crossing on F.M. Road 306, rainbow and brown trout may not be retained when taken by any method except artificial lures. Artificial lures cannot contain or have attached either whole or portions, living or dead, of organisms such as fish, crayfish, insects (grubs, larvae, or adults), or worms, or any other animal or vegetable material, or synthetic scented materials. This does not prohibit the use of artificial lures that contain components of hair or feathers. It is an offense to possess rainbow and brown trout while fishing with any other device in that part of the Guadalupe River defined in this paragraph.

(J) Purse seine (net).

(i) Purse seines may be used only for taking menhaden, only from that portion of the Gulf of Mexico within the jurisdiction of this state extending from one-half mile offshore to nine nautical miles offshore, and only during the period of time beginning the third Monday in April through the first day in November each year.

(ii) Purse seines used for taking menhaden may not be used within one mile of any jetty or pass.

(iii) The purse seine, not including the bag, shall not be less than three-fourths inch square mesh.

(K) Sail line. For use in salt water only.

(i) Non-game fish, red drum, spotted seatrout, and sharks may be taken with a sail line.

(ii) Line length shall not exceed 1,800 feet from the reel to the sail.

(iii) The sail and most shoreward float must be a highly visible orange or red color. All other floats must be yellow.

(iv) No float on the line may be more than 200 feet from the sail.

(v) A weight of not less than one ounce shall be attached to the line not less than four feet or more than six feet shoreward of the last shoreward float.

(vi) Reflectors of not less than two square inches shall be affixed to the sail and floats and shall be visible from all directions for sail lines operated from 30 minutes after sunset to 30 minutes before sunrise.

(vii) There is no hook spacing requirement for sail lines.

(viii) No more than one sail line may be used per fisherman.

(ix) Sail lines may not be used by the holder of a commercial fishing license.

(x) Sail lines must be attended at all times the line is fishing.

(xi) Sail lines may not have more than 30 hooks and no hook may be placed more than 200 feet from the sail.

(L) Seine.

(i) Only non-game fish may be taken with a seine.

(ii) It is unlawful to use a seine:

(I) which is not manually operated.

(II) with mesh exceeding 1/2-inch square.

(III) that exceeds 20 feet in length.

(iii) In salt water, non-game fish may be taken by seine for bait purposes only.

(M) Shad trawl. For use in fresh water only.

(i) Only non-game fish may be taken with a shad trawl.

(ii) It is unlawful to use a shad trawl longer than six feet or with a mouth larger than 36 inches in diameter.

(iii) A shad trawl may be equipped with a funnel or throat and must be towed by boat or by hand.

(N) Spear. Only non-game fish may be taken with a spear.

(O) Spear gun. Only non-game fish may be taken with spear gun.

(P) Throwline. For use in fresh water only.

(i) Non-game fish, channel catfish, blue catfish and flathead catfish may be taken with a throwline.

(ii) It is unlawful to use a throwline in Lake Bastrop in Bastrop County, Bellwood Lake in Smith County, Lake Bryan in Brazos County, Boerne City Park Lake in Kendall County, Lakes Coffee Mill and Davy Crockett in Fannin County, Dixieland Reservoir in Cameron County, Gibbons Creek Reservoir in Grimes County, and Tankersley Reservoir in Titus County.

(Q) Trotline.

(i) Non-game fish, channel catfish, blue catfish, and flathead catfish may be taken by trotline.

(ii) It is unlawful to use a trotline:

(I) with a mainline length exceeding 600 feet;

(II) with invalid gear tags. Gear tags must be attached within three feet of the first hook at each end of the trotline and are valid for 30 days after date set out, except on saltwater trotlines, a gear tag is not required to be dated;

(III) with hook interval less than three horizontal feet;

(IV) with metallic stakes; or

(V) with the main fishing line and attached hooks and stagings above the water's surface.

(iii) In fresh water, it is unlawful to use a trotline:

(I) with more than 50 hooks;

(II) in Gibbons Creek Reservoir in Grimes County, Lake Bastrop in Bastrop County, Lakes Coffee Mill and Davy Crockett in Fannin County, Fayette County Reservoir in Fayette County, Pinkston Reservoir in Shelby County, Lake Bryan in Brazos County, Bellwood Lake in Smith County, Dixieland Reservoir in Cameron County, Boerne City Park Lake in Kendall County, and Tankersley Reservoir in Titus County.

(iv) In salt water:

(I) it is unlawful to use a trotline:

(-a-) in or on the waters of the Gulf of Mexico within the jurisdiction of this state;

(-b-) from which red drum, sharks or spotted seatrout caught on the trotline are retained or possessed;

(-c-) placed closer than 50 feet from any other trotline, or set within 200 feet of the edge of the Intracoastal Waterway or its tributary channels. No trotline may be fished with the main fishing line and attached hooks and stagings above the water's surface;

(-d-) baited with other than natural bait, except sail lines;

(-e-) with hooks other than circle-type hook with point curved in and having a gap (distance from point to shank) of no more than one-half inch, and with the diameter of the circle not less than five-eighths inch. Sail lines are excluded from the restrictions imposed by this clause; or

(-f-) in Aransas County in Little Bay and the water area of Aransas Bay within one-half mile of a line from Hail Point on the Lamar Peninsula, then direct to the eastern end of Goose Island, then along the southern shore of Goose Island, then along the causeway between Lamar Peninsula and Live Oak Peninsula, then along the eastern shoreline of the Live Oak Peninsula past the town of Fulton, past Nine-Mile Point, past the town of Rockport to a point at the east end of Talley Island, including that part of Copano Bay within 1,000 feet of the causeway between Lamar Peninsula and Live Oak Peninsula.

(II) No trotline or trotline components, including lines and hooks, but excluding poles, may be left in or on coastal waters between the hours of 1 p.m. on Friday through 1:00 p.m. on Sunday of each week, except that attended sail lines are excluded from the restrictions imposed by this clause. Under the authority of the Texas Parks and Wildlife Code, §66.206(b), in the event small craft advisories or higher marine weather advisories issued by the National Weather Service are in place at 8:00 a.m. on Friday, trotlines may remain in the water until 6:00 p.m. on Friday. If small craft advisories are in place at 1:00 p.m. on Friday, trotlines may remain in the water until Saturday. When small craft advisories are lifted by 8:00 a.m. on Saturday, trotlines must be removed by 1:00 p.m. on Saturday. When small craft advisories are lifted by 1:00 p.m. on Saturday, trotlines must be removed by 6:00 p.m. on Saturday. When small craft advisories or higher marine weather advisories are still in place at 1:00 p.m. on Saturday, trotlines may remain in the water through 1:00 p.m. on Sunday. It is a violation to tend, bait, or harvest fish or any other aquatic life from trotlines during the period that trotline removal requirements are suspended under this provision for adverse weather conditions. For purposes of enforcement, the geographic area customarily covered by marine weather advisories will be delineated by department policy.

(III) It is unlawful to fish for commercial purposes with:

(-a-) more than 20 trotlines at one time;

(-b-) any trotline that is not marked with yellow flagging attached to stakes or with a floating yellow buoy not less than six inches in height, six inches in length, and six inches in width attached to end fixtures;

(-c-) any trotline that is not marked with yellow flagging attached to stakes or with a yellow buoy bearing the commercial finfish fisherman's license plate number in letters of a contrasting color at least two inches high attached to end fixtures;

(-d-) any trotline that is marked with yellow flagging or with a buoy bearing a commercial finfish fisherman's license plate number other than the commercial finfish fisherman's license plate number displayed on the finfish fishing boat;

(IV) It is unlawful to fish for non-commercial purposes with:

(-a-) more than 1 trotline at any time; or

(-b-) any trotline that is not marked with a floating yellow buoy not less than six inches in height, six inches in length, and six inches in width, bearing a two-inch wide stripe of contrasting color, attached to end fixtures.

(R) Umbrella net.

(i) Only non-game fish may be taken with an umbrella net.

(ii) It is unlawful to use an umbrella net with the area within the frame exceeding 16 square feet.

§65.82. Other Aquatic Life.

(a) It is unlawful for a person to knowingly take, kill, or disturb sea turtles or sea turtle eggs in or from the waters of the State of Texas.

(b) There is no open season on porpoises, dolphins (mammals), and whales.

(c) It is unlawful for any person to take or kill shell-bearing mollusks, hermit crabs, starfish, or sea urchins from November 1 through April 30 within the following boundary: the bay and pass sides of South Padre Island from the East end of the north jetty at Brazos Santiago Pass to the West end of West Marisol drive in the town of South Padre Island, out 1,000 yards from the mean high-tide line, and bounded to the south by the centerline of the Brazos Santiago Pass.

(d) It is unlawful for any person to take, kill, or possess more than 15 univalve snails (all species), to include no more than two of each of the following species: lightening whelk, horse conch, Florida fighting conch, pear whelk, banded tulip, and Florida rocksnail.

(e) [~~(c)~~] Any other aquatic life (except threatened and endangered species) not addressed in this subchapter may be taken only by hand or with the devices defined as lawful for taking fish, crabs, oysters, or shrimp in places and at times as provided by proclamations of the Parks and Wildlife Commission and the Parks and Wildlife Code.

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

Filed with the Office of the Secretary of State on February 15, 2005.

TRD-200500690
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Earliest possible date of adoption: March 27, 2005
For further information, please call: (512) 389-4775

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

CHAPTER 101. ADMINISTRATIVE RULES AND PROCEDURES

SUBCHAPTER H. PURCHASE OF GOODS AND SERVICES FOR REHABILITATION SERVICES

DIVISION 4. PURCHASE OF GOODS AND SERVICES

The Texas Health and Human Services Commission proposes the repeal and replacement of Title 40, Part 2, §101.4527, the rules of the Department of Assistive and Rehabilitative Services, concerning purchase of goods and services by the Division for Rehabilitation Services. The change is being proposed to update the schedule of rates the Commission will pay for medical services for rehabilitation services for 2005, and to conform procedures for adopting the updated rates to the requirements of H. B. No. 2292, 78th Legislature, Regular Session.

Bill Wheeler, Chief Financial Officer, Department of Assistive and Rehabilitative Services, estimates that for the first five-year period the sections are in effect, there will be a $2.3 million annual cost to state government.

Mr. Wheeler also estimates that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the agency's compliance with House Bill 2292, 78th Legislature, Regular Session, and other existing provision of law pertaining to provision of health and human services in Texas. There should be no material effect to small or micro businesses. There should be no material economic cost to persons who are required to comply with the sections as proposed for repeal and replacement. In accordance with Government Code section 2001.022, the Health and Human Services Commission has determined that the proposed rule changes will not affect a local economy.

Comments on the proposal may be submitted to Roger Darley, Deputy General Counsel, Department of Assistive and Rehabilitative Services, 4800 North Lamar Boulevard, Suite 300, Austin, Texas 78751.

The Commission will hold a public hearing before adopting these proposed rates to allow interested persons to present comments. The hearing will be conducted at the DARS Administration Bldg., 4800 North Lamar Boulevard, Suite 300, Austin, Texas 78751, Conference Room 250 on March 21, 2005 from 1:00 pm to 3:00 pm.

40 TAC §101.4527

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

The repeal is proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

§101.4527. Schedule of Rates.

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

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

TRD-200500658
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: March 27, 2005
For further information, please call: (512) 424-4050

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40 TAC §101.4527

The new section is proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

§101.4527. Schedule of Rates.

Pursuant to Human Resources Code, §111.0552(b) and Texas Administrative Code Title 40, §101.4525, the Executive Commissioner of the Health and Human Services Commission adopts by reference the annual schedule of rates the Department of Assistive and Rehabilitative Services, Division for Rehabilitation Services, will pay for medical services beginning May 1, 2005. The schedule of rates may be viewed or copies may be obtained by calling the Department of Assistive and Rehabilitative Services at (512-424-4144) or visiting the Division for Rehabilitation Services at the Brown Heatly Building at 4900 North Lamar; Austin, Texas; 78751.

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

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

TRD-200500659
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: March 27, 2005
For further information, please call: (512) 424-4050

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 22. EXAMINING BOARDS

PART 9. TEXAS STATE BOARD OF MEDICAL EXAMINERS

CHAPTER 170. AUTHORITY OF PHYSICIAN TO PRESCRIBE FOR THE TREATMENT OF PAIN

22 TAC §§170.1 - 170.3

The Texas State Board of Medical Examiners withdraws the proposed repeals to §170.1 - 170.3 which appeared in the December 31, 2004, issue of the *Texas Register* (29 TexReg 12075).

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

TRD-200500660
Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Effective date: February 14, 2005
For further information, please call: (512) 305-7016

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22 TAC §§170.1 - 170.3

The Texas State Board of Medical Examiners withdraws the proposed new to §170.1 - 170.3 which appeared in the December 31, 2004, issue of the *Texas Register* (29 TexReg 12075).

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

TRD-200500661
Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Effective date: February 14, 2005
For further information, please call: (512) 305-7016

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 1. CONSUMER CREDIT REGULATION

SUBCHAPTER Q. CHAPTER 342, PLAIN LANGUAGE CONTRACT PROVISIONS

7 TAC §§1.1206, 1.1216, 1.1217, 1.1225 - 1.1227, 1.1235 - 1.1237, 1.1245 - 1.1247

The Finance Commission of Texas (the Commission) adopts amendments to Chapter 1, Subchapter Q, §§1.1206, 1.1216, 1.1217, 1.1225 - 1.1227, 1.1235 - 1.1237, and 1.1245 - 1.1247 concerning plain language model clauses, contract provisions, and permissible changes. The purpose of the amendments is to make technical changes that clarify the rules and to offer additional model clauses that are being frequently used in contracts. The first amendment adds the option for a lender to obtain a witness signature on a loan contract. The second amendment offers clarifying language to ensure readers comply with §26.02 of the Business and Commerce Code for contracts over $50,000. The amendments also add flexibility for lenders and consumers. The amendment deletes the model figure for the itemization of amount financed. The use of this figure is primarily governed by Regulation Z. The rule advises that if the lender has complied with Regulation Z, the lender will also comply with the rule. Significant variation exists in the industry for use of the itemization of amount financed figure. The rule creates flexibility for lenders and borrowers. If a lender uses the model contract provisions, the lender will not be required to submit a non-standard contract for review. The amendments are adopted without changes to the proposal published in the December 31, 2004, issue of the *Texas Register* (29 TexReg 12065).

The agency received one written comment from Robert Wisner. The commenter cited Texas Local Government Code §191.007(c) requires each document that is filed with a county clerk for filing or recording to have a clearly identifying heading at the top of the first page. The plain language rule is drafted to allow each lender to format their form without having to file it as a non-standard. The formatting for the Deed of Trust has been changed to comply with the Local Government Code.

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

The statutory provision (as currently in effect) affected by the amendments is Texas Finance Code §341.403.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 11, 2005.

TRD-200500631
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Effective date: March 3, 2005
Proposal publication date: December 31, 2004
For further information, please call: (512) 936-7640

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SUBCHAPTER R. MOTOR VEHICLE INSTALLMENT SALES CONTRACT PROVISIONS

7 TAC §1.1308

The Finance Commission of Texas (the Commission) adopts an amendment to Chapter 1, Subchapter R, concerning model clauses. The purpose of the adopted amendments is to make technical changes that clarify certain provisions or correct technical errors within the rules. The rule is adopted with nonsubstantive changes to the proposal as published in the December 31, 2004, issue of the *Texas Register* (29 TexReg 12069).

Section 1.1308 corrects the pronoun "your" to "my" in §1.1308(8)(A) and §1.1308(8)(B). The amendment also implements a technical correction to change the itemization of amount financed in §1.1308(8)(B).

Section 1.1308(43) adds a permissible disclosure on the negotiability of the finance charge. One commenter suggested that the rule was unclear whether the clause was permissible. The agency agrees that the clause is permissible, but declines to modify the rule because the clauses in the section are not required. The disclosure may be used at the creditor's option. The same commenter provided two suggestions for re-wording the disclosure, one of which more closely followed a commonly-used and industry-recommended version of the disclosure. The agency has non-substantively modified the disclosure. Another commenter wanted to add a disclosure that more narrowly tracks the language of Chapter 348. The agency agrees with the comment and has added another form of the disclosure which more closely tracks the language of Chapter 348.

The amendment is adopted under Texas Finance Code §11.304, which authorizes the Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §348.513 authorizes the Commission to adopt rules for the enforcement of the motor vehicle installment sales chapter.

The statutory provision (as currently in effect) affected by the adopted rule is Texas Finance Code Chapter 348.

§1.1308. Model Clauses.

The following model clause provides the plain language equivalent of provisions found in contracts subject to Chapter 348.

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

(A) The model identification clause lists the name and address of the creditor, the date of the contract, and the name and address of the buyer. At the creditor's option, a creditor may include an account number or contract number. The model clause reads:
Figure: 7 TAC §1.1308(1)(A) (No change.)

(B) The Buyer is referred to as "I" or "me." The Seller is referred to as "you" or "your."

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

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

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

(5) Identification of the Motor Vehicle. The motor vehicle identification information provision should contain the following information about the motor vehicle: the seller's stock number; the manufacturer's year model; the manufacturer's make; the manufacturer's model type or number; the vehicle identification number; the license plate number (if applicable); a new/used designation; and the primary purpose designation. The seller's stock number and the license number are both optional; the omission will not make a contract non-standard. The motor vehicle identification information provision may include additional information about the vehicle including, odometer reading, color, the designation as a heavy commercial vehicle, and key code. If the creditor includes this additional information about the motor vehicle, the change will not make the provision a non-standard provision. The model clause regarding Identification of the Motor Vehicle reads:
Figure: 7 TAC §1.1308(5) (No change.)

(6) Trade-in Vehicle Description. The model clause regarding Trade-in Vehicle Description reads:
Figure: 7 TAC §1.1308(6) (No change.)

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

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

(A) The model clause regarding Itemization of Amount Financed-Sales Tax Advance reads:
Figure: 7 TAC §1.1308(8)(A)

(B) The model clause regarding Itemization of Amount Financed-Sales Tax Deferred reads:
Figure: 7 TAC §1.1308(8)(B)

(9) Documentary Fee.

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

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

(10) Deferred Downpayments. The creditor has considerable flexibility in disclosing the deferred downpayments. The model provision discloses the deferred downpayments by placing the information, the due date and dollar amount of the deferred downpayments, in several boxes. If a creditor uses this model provision, the creditor

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

(11) Required Physical Damage Insurance. The creditor may chose to omit the statement of the borrowers right to obtain substitute coverage from another source. The model clause regarding Required Physical Damage Insurance reads:
Figure: 7 TAC §1.1308(11) (No change.)

(12) Optional Insurance Coverages. The model clause regarding Optional Insurance Coverages reads:
Figure: 7 TAC §1.1308(12) (No change.)

(13) Optional Credit Life and Accident and Health Insurance. The model clause regarding Optional Credit Life and Accident and Health Insurance reads:
Figure: 7 TAC §1.1308(13) (No change.)

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

(A) "THIS CONTRACT DOES NOT INCLUDE INSURANCE COVERAGE FOR PERSONAL LIABILITY AND PROPERTY DAMAGE CAUSED TO OTHERS."

(B) "UNLESS A CHARGE FOR LIABILITY INSURANCE IS INCLUDED IN THE ITEMIZATION OF AMOUNT FINANCED, LIABILITY INSURANCE COVERAGE FOR BODILY INJURY AND PROPERTY DAMAGE CAUSED TO OTHERS IS NOT INCLUDED IN THIS CONTRACT."

(C) "UNLESS A CHARGE FOR LIABILITY INSURANCE IS INCLUDED IN THE ITEMIZATION OF AMOUNT FINANCED, ANY INSURANCE REFERRED TO IN THIS CONTRACT DOES NOT INCLUDE COVERAGE FOR PERSONAL LIABILITY AND PROPERTY DAMAGE CAUSED TO OTHERS."

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

(16) Finance Charge Earnings Methods.

(A) Regular Transaction using sum of the periodic balances 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) "You figure the Finance Charge using the add-on method as defined by the Texas Finance Commission Rule. Add-on Finance Charge is calculated on the full amount of the unpaid principal balance and added as a lump sum to the unpaid principal balance for the full term of the contract."

(II) "The Finance Charge will be calculated by using the add-on method. Add-on Finance Charge is calculated on the full amount of the unpaid principal balance and added as a lump sum to the unpaid principal balance for the full term of the contract. The add-on Finance Charge is calculated at a rate of $____ per $100.00."

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

(B) True Daily Earnings Method.

(i) Sales Tax Advance. At the creditor's option a creditor may choose one of the following model clauses regarding Sales Tax Advance.

(I) "You figure the Finance Charge using the true daily earnings method as defined by the Texas Finance Code. Under the true daily earnings method, the Finance Charge will be figured by applying the daily rate to the unpaid portion of the Amount Financed for the number of days the unpaid portion of the Amount Financed is outstanding. The daily rate is 1/365th of the Annual Percentage Rate. The unpaid portion of the Amount Financed does not include late charges or return check charges."

(II) If a retail seller requires a retail buyer to purchase credit life or credit accident and health insurance 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 true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance. The daily rate is 1/365th of the contract rate. The unpaid principal balance does not include the late charges or returned check charges."

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

(C) Scheduled Installment Earnings Method:

(i) Sales Tax Advance: At the creditor's option a creditor may choose one of the following model clauses regarding Sales Tax Advance.

(I) "You figure the Finance Charge using the scheduled installment earnings method as defined by the Texas Finance Code. Under the scheduled installment earnings method, the Finance Charge is figured by applying the daily rate to the unpaid portion of the Amount Financed as if each payment will be made on its scheduled payment date. The daily rate is 1/365th of the Annual Percentage Rate. The unpaid portion of the Amount Financed does not include late charges or return check charges."

(II) If a retail seller requires a retail buyer to purchase credit life or credit accident and health insurance 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."

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

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

(A) For contracts using the sum of the periodic balances (Rule of 78s) or the scheduled installment earnings method. The notice may read:

(i) "NOTICE TO THE BUYER -- I WILL NOT SIGN THIS CONTRACT BEFORE I READ IT OR IF IT CONTAINS ANY BLANK SPACES. I AM ENTITLED TO A COPY OF THE CONTRACT I SIGN. UNDER THE LAW, I HAVE THE RIGHT TO PAY OFF IN ADVANCE ALL THAT I OWE AND UNDER CERTAIN CONDITIONS MAY OBTAIN A PARTIAL REFUND OF THE FINANCE CHARGE. I WILL KEEP THIS CONTRACT TO PROTECT MY LEGAL RIGHTS." or

(ii) "NOTICE TO THE BUYER -- THE BUYER SHOULD NOT SIGN THIS CONTRACT BEFORE READING IT OR IF IT CONTAINS ANY BLANK SPACES. THE BUYER IS ENTITLED TO A COPY OF THE SIGNED CONTRACT. UNDER THE LAW, THE BUYER HAS THE RIGHT TO PAY OFF IN ADVANCE ALL THAT THE BUYER OWES AND UNDER CERTAIN CONDITIONS MAY OBTAIN A PARTIAL REFUND OF THE FINANCE CHARGE. THE BUYER SHOULD KEEP THIS CONTRACT TO PROTECT ITS LEGAL RIGHTS."

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

(18) Buyer's Acknowledgment of Contract Receipt.

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

(i) If the buyer's signature is dated. If this clause is chosen, the copy must be mailed within a reasonable period of time. A reasonable period of time would ordinarily be three days, excluding Sundays and holidays. The model acknowledgement may read: "I AGREE TO THE TERMS OF THIS CONTRACT. WHEN I SIGN THE CONTRACT, I WILL RECEIVE THE COMPLETED CONTRACT. IF NOT, I UNDERSTAND THAT A COPY WILL BE MAILED TO ME WITHIN A REASONABLE TIME."

(ii) If the buyer's signature is not dated. The model acknowledgment may read: "I AGREE TO THE TERMS OF THIS CONTRACT. I CONFIRM THAT BEFORE I SIGNED THIS CONTRACT, YOU GAVE IT TO ME, AND I WAS FREE TO TAKE IT AND REVIEW IT. I RECEIVED THE COMPLETED CONTRACT ON _____ (MO.) (DAY) (YR.)."

(iii) If the buyer's signature is not dated. If this clause is chosen, the copy must be mailed within a reasonable period of time. The model acknowledgment may read: "I SIGNED THIS CONTRACT ON _____ AND A COPY WILL BE MAILED TO ME WITHIN A REASONABLE TIME."

(iv) If the buyer's signature is not dated but the contract contains the date of the transaction. The model acknowledgement may read: "I AGREE TO THE TERMS OF THIS CONTRACT AND ACKNOWLEDGE RECEIPT OF A COMPLETED COPY OF IT. I CONFIRM THAT BEFORE I SIGNED THIS CONTRACT, YOU GAVE IT TO ME, AND I WAS FREE TO TAKE IT AND REVIEW IT."

(B) Acceptance of Contract Receipt. The model clauses regarding Acceptance of Contract Receipt reads:
Figure: 7 TAC §1.1308(18)(B) (No change.)

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

(20) Finance Charge Refund Method. If a contract uses the finance charge refunding method of the sum of the periodic balances or the scheduled installment earnings method, the Finance Charge Refund 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) Contracts using the sum of the periodic balances method.

(i) Name of the method. The model clause to identify the method of refunding finance charge reads: "You will figure the Finance Charge refund by using the sum of the periodic balances method as defined by the Texas Finance Commission rule."

(ii) Optional description of the method. The creditor may include the following additional description of the method.

The model clause reads: "You will figure the Finance Charge refund using the sum of the periodic balances method as defined by the Texas Finance Commission rule. The Finance Charge Refund will be computed upon the entire Finance Charge minus the Acquisition Cost. I will not get a refund if it is less than $1.00."

(iii) At the creditor's option, a contract for a heavy commercial vehicle, as defined in the Texas Finance Code, may include the following description of the method. The model clause reads: "You will figure the Finance Charge refund using the sum of the periodic balances method as defined by the Texas Finance Commission rule. The Finance Charge refund will be computed based upon the entire Finance Charge calculated using the sum of the periodic balances method. Then you will subtract the Acquisition Cost from that amount. I will not get a refund if it is less than $1.00."

(B) Contracts using the scheduled installment earnings method.

(i) Name of the 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 the method. The creditor may include the following additional description of the method: "You will figure my refund by deducting earned finance charges from the 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. I will not get a refund if it is less than $1.00."

(C) Flexible contract forms designed to accommodate alternative methods. Creditors may use a flexible contract form with alternative earnings methods, so long as the method used on a particular contract is permissible for that contract. The following illustrates one way that this may be done: "You will figure the Finance Charge refund using the sum of the periodic balances method as defined by the Texas Finance Commission rule if: this contract is a Regular Payment Contract as defined by the Texas Finance Commission rule, and this contract does not have a term greater than 61 months. If this contract is not a Regular Payment Contract or if it has a term greater than 61 months, you will figure the Finance Charge refund using the scheduled installment earnings method as defined by the Texas Finance Commission rule. I will not get a refund if it is less than $1.00."

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

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

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

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

(A) Paying the balloon payment. If a retail installment contract contains a balloon payment that is the final payment, the contract must also provide the right for the retail buyer to pay the balloon payment. The model provision for paying the amount of the final scheduled balloon payment reads: "I can pay all I owe when the balloon payment is due and keep my motor vehicle."

(B) Balloon payment alternatives. If the retail installment contract contains the right for a retail buyer to refinance a balloon installment, the contract provision to refinance the installment must comply with either clause (i) or (ii) of this subparagraph. A contract under clause (ii) of this subparagraph must also contain the right of the retail buyer to sell the motor vehicle back to holder or retail seller.

(i) The model clause to describe a buyer's right to refinance a balloon installment under Texas Finance Code §348.123(a), when applicable reads: "If I buy the motor vehicle primarily for personal, family, or household use, I can enter into a new written agreement to refinance the balloon payment when due without a refinancing fee. If I refinance the balloon payment, my periodic payments will not be larger or more often than the payments in this contract. The annual percentage rate in the new agreement will not be more than the Annual Percentage Rate in this contract. This provision does not apply if my Payment Schedule has been adjusted to my seasonal or irregular income."

(ii) If the contract contains a balloon payment and the seller intends Texas Finance Code §348.123(b)(5) to apply to the contract:

(I) Special right to refinance balloon payment under Texas Finance Code §348.123(b)(5)(B)(iii). "I can enter into a new agreement to refinance my last installment if I am not in default. I can refinance at an annual percentage rate up to 5 points greater than the Annual Percentage Rate shown in this contract. The rate will not be more than applicable law allows. The new agreement will allow me to refinance the last installment for at least 24 months with equal monthly payments. You and I can also agree to refinance the last installment over another time period or on a different payment schedule."

(II) If the contract includes a balloon payment, the creditor must draft a provision addressing the repurchase option.

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

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

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

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

(A) The model clause for contracts using the true daily earnings method reads: "If you get a refund on insurance or service contracts, or other contracts included in the cash price, you will subtract it from what I owe. Once all amounts owed under this contract are paid, any remaining refunds will be paid to me."

(B) For contracts using the scheduled installment earnings or sum of the periodic balances method, the creditor may substitute the following: "If you get a refund of insurance or service contract charges, you will apply it and the unearned finance charges on it in the reverse order of the payments to as many of my payments as it will cover. Once all amounts owed under this contract are paid, any remaining refunds will be paid to me."

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

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

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

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

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

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

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

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

(C) Repossession. At the creditor's option a creditor may choose one of the following model provision pertaining to repossessions reads:

(i) "If I default, you may repossess the motor vehicle from me if you do so peacefully. If any personal items are in the motor vehicle, you can store them for me and give me written notice at my last address shown on your records within 15 days of discovering that you have my personal items. If I do not ask for these items back within 31 days from the day you mail or deliver the notice to me, you may dispose of them as applicable law allows. Any accessory, equipment, or replacement part stays with the motor vehicle." In this provision, the term "peacefully" is intended to have the same meaning as "breach of peace," as determined by the Texas courts.

(ii) "If I default, you may repossess the motor vehicle from me if you do so without breaching the peace. If any personal items are in the motor vehicle, you can store them for me and give me written notice at my last address shown on your records within 15 days of discovering that you have my personal items. If I do not ask for these items back within 31 days from the day you mail or deliver the notice to me, you may dispose of them as applicable law allows. Any accessory, equipment, or replacement part stays with the motor vehicle."

(D) Buyer's right to redeem. The model clause regarding buyer's right to redeem reads: "If you take my motor vehicle, you will tell me how much I have to pay to get it back. If I do not pay you to get the motor vehicle back, you can sell it or take other action allowed by law. My right to redeem ends when the motor vehicle is sold or you have entered into a contract for sale or accepted the collateral as full or partial satisfaction of a contract."

(E) Disposition of motor vehicle. The model clause regarding disposition of motor vehicle reads: "If I don't pay you to get the motor vehicle back, you can sell it or take other action allowed by law. You will send me notice at least 10 days before you sell it. You can use the money you get from selling it to pay allowed expenses and to reduce the amount I owe. Allowed expenses are expenses you pay as a direct result of taking the motor vehicle, holding it, preparing it for sale, and selling it. If any money is left, you will pay it to me unless you must pay it to someone else. If the money from the sale is not enough to pay all I owe, I must pay the rest of what I owe you plus interest. If you take or sell the motor vehicle, I will give you the certificate of title and any other document required by state law to record transfer of title."

(F) Collection costs. The model clause regarding collection costs reads: "If you hire an attorney who is not your employee to enforce this contract, I will pay reasonable attorney's fees and court costs as the applicable law allows."

(G) Cancellation of optional insurance or service contracts. The model clause regarding cancellation of optional insurance or service contracts reads: "This contract may contain charges for insurance or service contracts or for services included in the cash price. If I default, I agree that you can claim benefits under these contracts to the extent allowable, and terminate them to obtain refunds of unearned charges to reduce what I owe or repair the motor vehicle."

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

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

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

(38) No Waiver and Limitations on Creditor's Rights and Usury Savings.

(A) A model clause to prevent a creditor's delay in enforcing rights under the contract from affecting a waiver of those rights reads: "If you don't enforce your rights every time, you can still enforce them later."

(B) A provision establishing limitations on the creditor's rights reads: "You will exercise all of your rights in a lawful way."

(C) The model clause regarding usury savings reads: "I don't have to pay finance charge or other amounts that are more than the law allows. This provision prevails over all other parts of this contract and over all your other acts."

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

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

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

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

(A) "Used Car Buyer's Guide. The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale."

(B) Spanish Translation: "Guía para compradors de vehículos usados. La información que ve en el formulario de la ventanilla para este vehículo forma parte del presente contrato. La información del formulario de la ventanilla deja sin efecto toda disposición en contrario contenida en el contrato de venta."

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

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

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

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 11, 2005.

TRD-200500632
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Effective date: March 3, 2005
Proposal publication date: December 31, 2004
For further information, please call: (512) 936-7640

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PART 4. TEXAS SAVINGS AND LOAN DEPARTMENT

CHAPTER 80. MORTGAGE BROKER AND LOAN OFFICER LICENSING

SUBCHAPTER A. LICENSING

7 TAC §80.1, §80.2

The Finance Commission of Texas ("Finance Commission") adopts amendments to 7 TAC §80.1, Scope and 7 TAC §80.2, Definitions to more clearly define the terms "mortgage broker," "loan officer", and "mortgage loan." Section 80.1 is adopted with minor changes to the proposed rule as published in the *Texas Register* on December 31, 2004, (29 TexReg 12070). The changes are non-substantive. Section 80.2 is adopted without changes and will not be republished.

The amendments to 7 TAC §80.1 amend the rule defining the activities which require licensing under the Act. Amended §80.1(4) provides that the taking of an application for a mortgage loan when combined with any of the other activities identified in that section will constitute activity requiring a license. In connection with the normal services of a real estate agent, general information relating to loans available in the marketplace may be provided to consumers. Amended §80.1(5) is intended to clarify that the providing of general information by a real estate agent does not activate the licensing requirement, provided no additional compensation is received by the real estate agent.

The amendment to §80.1(5)(B)(iii) clarifies the exemption of a person who makes a mortgage loan from his own funds but does not regularly engage in the business of making mortgage loans. Under the amendment, a person will be deemed to be regularly engaging in the business of making mortgage loans if the person either holds himself out as being engaged in the business of making mortgage loans or if the person makes more than one loan in a calendar quarter.

The amendment to 7 TAC §80.2 is intended to more clearly define "commercial loans." If the real property is intended to be used as a one to four family residence, it is a "mortgage loan" for purposes of the Act even if it is acquired for investment purposes. This is consistent with the provisions of the Act.

Three individuals submitted comments during the official comment period. A mortgage broker suggested that assisting an applicant with understanding and clearing credit problems is a function often performed by loan processors who are exempt from licensing. An oral comment from the Texas Association of Realtors also suggested that this activity may occasionally be performed by a real estate agent, and should not be considered licensed activity when performed by a real estate agent. The Mortgage Broker Advisory Committee considered this comment at its January 26, 2005 meeting. The Committee concurred and suggested deleting this requirement. This change has been made. Therefore, the rule as adopted eliminates §80.1(4)(A)(iv) of the rule as published for comment.

Another commenter objected to the revision of the definition of "regularly engage in the business of making or brokering Mortgage Loans. Prior to the amendment, §80.1(4)(A)(iii) exempted persons who made loans from their own funds, but did not invest more than 50% of their net assets in mortgage loans. The proposed rule §80.1(6)(A)(iii) included in the definition anyone who either held himself out as engaged in making such loans or made more than one loan per quarter. The commenter stated that this change unduly impeded his right to do business and requested that the change not be made. The Mortgage Broker Advisory Committee recommended that the proposed rule not be amended to reflect the views of the commenter. Both the Committee and the Finance Commission believe that the new definition is reasonable, and that the benefit to consumers outweighs any burden on similarly situated individuals or businesses. As amended, the rule is consistent with the scope of the Federal Truth in Lending Act which defines a "creditor" as someone making more than four extensions of credit in the period of a year.

A third individual suggested that the rule further attempt to define the term "receive an application." The Commission declines to do

so at this time. The term is consistent with the use of the term in the statute itself. The Mortgage Broker Advisory Committee did not believe the rule needed further clarification.

In the adopted amendment, §80.1(5) has been modified to provide a technical correction by inserting (A) between (4) (i) and (ii) to properly reference (4)(A)(i) and (ii). In addition the word "additional" has been inserted before the word "compensation" to further clarify the intent of the paragraph.

The amendments are adopted under *Finance Code*, §11.306, which authorizes the Finance Commission to adopt mortgage broker rules as provided by Chapter 156 of the Act, and under *Finance Code*, §156.102(a) and (b), which authorizes the Commissioner of the Texas Savings and Loan Department, subject to review and compliance with the directives of the Finance Commission, to adopt and enforce rules necessary for the intent of or to ensure compliance with the Act.

The section of the Act affected by the amendment is *Finance Code*, §156.102(a) relating to authority for the Finance Commission to adopt rules to implement the intended purposes of the Act or to enforce the Act. The amended rule relates to *Finance Code* §156.002(5), (9), and (10); and *Finance Code* §156.201.

§80.1. Scope.

This Chapter governs the licensing and conduct of Mortgage Brokers, and the Loan Officers working for them, under the Act.

(1) As used herein the term "Mortgage Broker" means an individual who receives an application from a prospective borrower to attempt to obtain a Mortgage Loan. An individual is a "Mortgage Broker" even if the individual is not exclusively engaged in the activities of a Mortgage Broker.

(2) As used herein, the term "Loan Officer" means an individual required to be sponsored by a licensed Mortgage Broker for the purposes of performing the acts of a Mortgage Broker.

(3) The terms Mortgage Broker and Loan Officer do not include:

(A) An individual who performs only clerical functions in connection with the obtaining, compiling, or delivery of an application for a Mortgage Loan; or

(B) An individual functioning solely as a Mortgage Loan processor performing those duties listed in *Finance Code* §156.002(6).

(4) An individual is required to be licensed under the Act if:

(A) The individual, acting alone or in concert with others, receives a mortgage loan application and performs any one of the following activities:

(i) Advises a prospective borrower about the different type of loan products available, or advises a prospective borrower how closing costs and monthly payments could vary under each product; or

(ii) Consults or discusses with a prospective borrower about the maximum amount of the mortgage a prospective borrower can afford; or

(iii) Provides disclosures to a prospective borrower or discusses or explains such disclosures. Disclosures include but are not limited to the mortgage broker disclosure form; truth in lending disclosures, the good faith estimate of settlement costs, affiliated business arrangements; and disclosures relating to the dual role as mortgage broker and loan officer and real estate broker or sales agent. An individual who prepares a required disclosure under the direction and supervision of a licensed loan officer or licensed mortgage broker, but who does not discuss the disclosure with a prospective borrower shall not be deemed to have provided a disclosure for purposes of this subsection; or

(iv) Determines the lender(s) or investor(s) to whom the loan will be submitted; or

(v) Issues or signs a prequalification letter or preapproval letter; or

(B) the individual represents or holds himself out as a "loan officer," "mortgage consultant," or "mortgage broker", or otherwise represents that the person is engaging in or conducting the business of originating mortgage loans.

(5) An individual who is a licensed real estate agent or real estate broker, and who only provides general information relating to activities described in paragraph (4)(A)(i) and (4)(A)(ii) is not required to be licensed provided that such individual receives no additional compensation for providing such services.

(6) Exemptions.

(A) The following business entities are exempt from the Act and this Chapter, and the Employees, as defined in paragraph (11) of §80.2 of this Chapter (relating to Definitions), of such entities are also exempt from the Act and this Chapter to the extent they are working for the benefit of their employer:

(i) a bank, savings bank, or savings association and any subsidiary or affiliate of any of the foregoing;

(ii) a state or federal credit union;

(iii) in insurance company licensed or authorized to do business in the State of Texas;

(iv) a Mortgage Banker; or

(v) an organization that qualifies for an exemption from state franchise and sales taxes by virtue of its status under §501(c)(3) of the *Internal Revenue Code*, as amended.

(vi) An Employee is presumed to be working for the benefit of his or her employer with respect to a Mortgage Loan if when the Mortgage Loan is made it is closed at the direction of the employer or the employer directly shares in the economic gain or loss of the Mortgage Loan transaction.

(B) The following individuals are exempt from the Act and this Chapter:

(i) an individual who makes a Mortgage Loan from the individual's own funds to a spouse, former spouse, or person or persons in the lineal line of consanguinity of the person making such Mortgage Loan;

(ii) an owner of real property who makes a Mortgage Loan to a purchaser of the real property for all or a part of the purchase price of that same real property; and

(iii) an individual who makes a Mortgage Loan from that individual's own funds who is not and is not required, by virtue of his or her business, to be an authorized lender under Chapter 342, *Finance Code*, and does not regularly engage in the business of making or brokering Mortgage Loans. For purposes of this subsection, a person is deemed to be regularly engaging in the business of making or brokering Mortgage Loans if that person:

(I) advertises or holds himself out to be engaged in the business of making or brokering mortgage loans; or

(II) originates or brokers more than one mortgage loan in any one calendar quarter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200500657
John Fleming
General Counsel
Texas Savings and Loan Department
Effective date: March 6, 2005
Proposal publication date: December 31, 2004
For further information, please call: (512) 475-1353

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PART 6. CREDIT UNION DEPARTMENT

CHAPTER 91. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

SUBCHAPTER D. POWERS OF CREDIT UNIONS

7 TAC §91.403

The Credit Union Commission adopts an amendment to §91.403, relating to debt cancellation products with a non-substantive change to the text published in the November 5, 2004, issue of the *Texas Register* (29 TexReg 10189).

The amendment clarifies how a refund of a debt cancellation product should be calculated and adds a definition for "actuarial method". It also adds a consumer protection provision requiring that certain written disclosures be given to the borrower prior to the execution of a debt cancellation agreement.

One comment was received on the proposal from Mike Roark at Resource One Credit Union. The commenter felt that GAP products should not be included in a rule on debt cancellation products since credit unions do not cancel debt with GAP. The Commission disagrees and believes that GAP is a debt cancellation product and credit unions would not have authority to offer GAP unless it is included in this rule. The Commission on its own initiative made a non-substantive change to correct a grammatical error.

The amendment is adopted under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and Texas Finance Code §123.003 which authorizes the Commission to adopt rules that authorize a state credit union to engage in any activity in which it could engage, exercise any power it could exercise, or make any loan or investment it could make, if it were operating as a federal credit union.

The specific section affected by the amendment is Texas Finance Code, §124.001.

§91.403. Federal Parity Debt Cancellation Products.

(a) A credit union may offer any debt cancellation product it could offer if it were operating as a federal credit union, so long as it complies with this section. For the purposes of this section, a debt cancellation product is an agreement between the credit union and the member under which the credit union agrees to waive, suspend, defer, or cancel all or part of a member's obligation to pay an indebtedness under a lease, loan, or other extension of credit upon the occurrence of a specified event. The credit union may offer debt cancellation products for a fee. If the debt cancellation product is offered on a fee basis, then participation must be optional for the member.

(b) For any debt cancellation product offered by a credit union:

(1) The credit union must purchase insurance, from an insurer authorized to do business in Texas, to indemnify itself from loss resulting from operation of the product;

(2) The credit union may not extend credit nor alter the terms or conditions of an extension of credit conditioned upon the member choosing a debt cancellation product; and

(3) The debt cancellation product must provide for the refunding of, or crediting to, the member any unearned fees resulting from termination of the member's participation in the product, whether by prepayment of the extension of credit or otherwise. Any unearned fees must be calculated using a method that produces a result at least as favorable to the member as the actuarial method. The credit union must disclose, in writing, prior to purchase of the debt cancellation product that the purchase of the debt cancellation product is optional; the conditions for and method of calculating any refund of the debt cancellation fee, including when fees are considered earned by the credit union; that the member should carefully review all of the terms and conditions of the debt cancellation agreement prior to signing the agreement.

(c) A credit union must notify the commissioner in writing of its intent to offer any type of debt cancellation product at least 30 days prior to any such product being offered to members. The notice must contain:

(1) A statement describing the type(s) of debt cancellation product(s) that the credit union will offer to its membership; and

(2) The name of the insurer from whom the credit union will purchase the insurance policy required under subsection (b)(1) of this section.

(d) Each credit union, before offering any debt cancellation products, shall adopt written policies approved by its board of directors that establish and maintain effective risk management and control processes over the offering of these products. The policies shall also establish reasonable fees, if any, that will be charged; the appropriate disclosures that will be given; and the claims processing procedures that will be utilized.

(e) For purposes of this section "actuarial method" means the method of allocating payments made on a debt between the amount financed and the finance charge pursuant to which a payment is applied first to the accumulated finance charge and any remainder is subtracted from, or any deficiency is added to, the unpaid balance of the amount financed.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200500680
Harold E. Feeney
Commissioner
Credit Union Department
Effective date: March 6, 2005
Proposal publication date: November 5, 2004
For further information, please call: (512) 837-9236

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SUBCHAPTER G. LENDING POWERS

7 TAC §91.709

The Credit Union Commission adopts amendments to rule §91.709 relating to member business loans with no changes to the text published in the November 5, 2004 issue of the *Texas Register* (29 TexReg 10190).

The amendments to the rule give state chartered credit unions more permissive member business loan regulations similar to those for federal credit unions. In keeping with the "parity" provisions of Section 123.003, Texas Finance Code, the Commission felt that a revision of §91.709 was necessary to provide as much flexibility for state chartered credit unions as the federal chartered credit unions now enjoy. The amendments also set forth certain specific criteria for any waivers of member business loan limitations to be granted by the Commissioner.

No comments were received on the proposal.

The amendment is adopted under the provision of the Texas Finance Code, Section 15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and Texas Finance Code Section 123.003 which authorizes the Commission to adopt rules that authorize a state credit union to engage in any activity in which it could engage, exercise any power it could exercise, or make any loan or investment it could make, if it were operating as a federal credit union.

The specific sections affected by the amendment are Texas Finance Code, Sections 124.001 and 124.003.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200500682
Harold E. Feeney
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Effective date: March 6, 2005
Proposal publication date: November 5, 2004
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SUBCHAPTER H. INVESTMENTS

7 TAC §91.804

The Credit Union Commission adopts amendments to rule §91.804 relating to custody and safekeeping with no changes to the text published in the November 5, 2004 issue of the *Texas Register* (29 TexReg 10194).

The amendment to the rule adds a requirement that credit unions perform an annual analysis of each safekeeper as part of their due diligence.

No comments were received on the proposal.

The amendment is adopted under the provision of the Texas Finance Code, Section 15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and Texas Finance Code Section 124.351, which authorizes the Commission to adopt rules authorizing other investments permissible for credit unions that are responsive to (a) changes in economic conditions or competitive practices and (b) the need for safety and soundness of credit union investments.

The specific section affected by the amendment is Texas Finance Code, Section 124.351.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200500681
Harold E. Feeney
Commissioner
Credit Union Department
Effective date: March 6, 2005
Proposal publication date: November 5, 2004
For further information, please call: (512) 837-9236

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PART 8. JOINT FINANCIAL REGULATORY AGENCIES

CHAPTER 152. REPAIR, RENOVATION, AND NEW CONSTRUCTION ON HOMESTEAD PROPERTY

7 TAC §§152.9, 152.11, 152.13

The Joint Financial Regulatory Agencies comprised of the Finance Commission of Texas and the Texas Credit Union Commission (the "Commissions") adopt new 7 TAC §§152.9, 152.11, and 152.13 (Chapter 152), administrative interpretations of subsection (t), Section 50, Article XVI, Texas Constitution. Sections 152.11 and 152.13 are adopted with non-substantive changes to the proposal as published in the November 5, 2004, issue of the *Texas Register* (29 TexReg 10195). Section 152.9 is adopted without changes and will not be republished.

The Commissions made non-substantive changes to clarify and simplify the addressed provisions as the result of comments.

The Commissions received written comments. The following commenters only requested clarifications or recommended modifications: Robert W. Doggett of Texas RioGrande Legal Aid, Inc.; and Gaylan Goodnight of Countrywide Home Loans.

The constitutional provisions do not detail every aspect of home equity lending. Compliance with Section 50 along with other Texas and federal statutes and Texas constitutional provisions is required in making a home equity loan. These interpretations construe the language of Section 50(a)(6)(Q)(x) and provide the required practical framework for home equity lending that reflects the constitutional language and the intent of the legislature and the voters. For example, Section 50(a)(6)(Q)(x) contains terms that are not defined, even though definitions are necessary for clear meaning and consistent application. Additionally, the constitutional provisions are silent as to the effect of other laws on home equity lending.

The Commissions have applied Chapter 311, Government Code (Code Construction Act) in the use of language in Chapter 153. For example, in Chapter 153, words used in the singular include the plural and the plural includes the singular, the heading of a title, subtitle, chapter, subchapter, or section does not limit or expand the meaning of an interpretation, and the use of the word "include" means "including but not limited to."

Issues raised in comments to the proposed interpretations have been addressed in this preamble regardless of whether a change was made to the interpretation in response to the comments. Constitutional provisions not interpreted at this time may be addressed either at the request of an interested party or on the motion of the Commissions.

Proposed §§152.9, 152.11, and 152.13 interpret Section 50(a)(5), the constitutional provisions that govern the nature of and process by which a lender of a home improvement loan may take a lien against a homestead. Each section is more fully explained in the following paragraphs.

Section 152.9 specifies the method for counting the days for the five day waiting period that must elapse between the date the owner makes written application for a loan for work and materials and the execution of the contract for work and materials by the owner and the owner's spouse.

Section 152.11 specifies the method for counting the three days the owner has to rescind the contract for work and materials after it is executed by all parties. This section goes on to explain that the three day right of rescission is not the same as the three day right of rescission in Regulation Z.

One commenter suggested that the rule specify the time of day when the rescission period ends. The commenter suggested that by specifying exactly when the rescission ends would avoid unnecessary disputes among borrowers, contractors, lenders and title companies. The Commissions agree with the commenter and have modified the rule.

One commenter suggested that if the third calendar day fell on a Saturday, that the rescission period should be extended to the next calendar day that is not a Sunday or federal legal public holiday. The Commissions decline to modify the rule. This interpretation is consistent with the interpretation of the rescission period contained in Chapter 153 and the Commissions do not believe a change is justified. The Commissions decline to modify the interpretation.

Section 152.13 prescribes the procedures for waiver by the owner of either the 5-day waiting or 3-day rescission period.

One commenter suggested that the rule omitted two concepts contained in the constitution: necessity that the repairs be performed immediately and that the condition of the property materially affect the health or safety of the owner. The Commissions agree with the comment and have modified the rule. The same commenter also suggested the rule might create a rebuttable presumption in favor of the repairs. The Commissions do not believe that the rule creates a rebuttable presumption. The rule creates a procedure that may be used. In order to comply with the requirements of the constitution, an evaluation would have to be made of the content of the statement by the owner. This evaluation will have to be made on a case by case basis. The Commissions decline to change the rule to address the commenter's suggestion of a rebuttable presumption.

One commenter provided a number of reports, studies, and loan documents as support for his comments. The commenter wanted the Commissions to have the information to consider prior to adopting any more interpretations. No specific relationship was drawn between the documents that were provided in support of the comments and the interpretations or the comments themselves. Additionally, there does not appear to be a relationship between the comments made and the information contained in the documents other than providing general information relating to mortgage lending. Listed below is a brief summary of each document provided.

1. Quantifying the Economic Cost of Predatory Lending, by Eric Stein of Coalition for Responsible Lending, 2001.

Summary: Describes three types of predatory lending practices (Equity Stripping, Rate-Risk Disparities, and Excessive Foreclosures) and estimates the cost of these practices on U.S. consumers.

2. North Carolina's Subprime Home Loan Market After Predatory Lending Reform, By Keith Ernst et al. of Coalition for Responsible Lending, 2002.

Summary: A study of home lending in North Carolina after passage of a state law curbing predatory mortgage lending. The study concludes that North Carolina has benefited from the curb on predatory lending.

3. Curbing Predatory Home Mortgage Lending, by HUD-Treasury Task Force, June 2000.

Summary: The task force proposes a four-point plan to address predatory lending practices:

(1) Improve consumer literacy and disclosures;

(2) Prohibit harmful sales practices in the mortgage market;

(3) Restrict abusive terms and conditions on High-Cost loans; and

(4) Improve market structure.

4. Credit, Capital and Communities: The Implications of the Changing Mortgage Banking Industry for Community Based Organizations, by Joint Center for Housing Studies, Harvard University, 2004.

Summary: Principal Findings:

(1) New technology drives mortgage industry restructuring

(2) Industry structure perpetuates a dual market system

(3) A prime lending gap exists in minority neighborhoods

(4) Changes in the mortgage industry challenge Community Based Organization activities

(5) Community Based Organizations must work to improve their mortgage lending activities

(6) New roles present Community Based Organizations with new opportunities

Community Based Organizations once had the ability to protest the lack of mortgage lending in the community by local banks. The evolution of the mortgage lending market has reduced the ability of CBO's to put pressure on the local segment of the mortgage lending industry. CBO's must work to improve the ability of consumers to shop wisely for mortgage products. CBO's must increase their understanding of how today's technologically sophisticated Market operates.

5. Consumer Protection -- Federal and State Agencies Face Challenges in Combating Predatory Lending, United States General Accounting Office, January 2004.

Summary: Principal Findings:

(1) Federal agencies have taken enforcement and other actions to address predatory lending, but face challenges.

(2) Many states have passed laws addressing predatory lending, but Federal agencies have preempted some statutes.

(3) The secondary market may benefit consumers but can also facilitate predatory lending.

(4) The usefulness of consumer education, counseling, and disclosures in deterring predatory lending may be limited.

(5) Predatory lenders may target elderly consumers.

6. Declaration of Cathy Lesser Mansfield (ACORN v. Finance Commission of Texas) Summary: Ms. Mansfield's statement expressing her opinion on interpretations already adopted.

7. A Tale of Three Markets: The Law and Economics of Predatory Lending, by Kathleen C. Engel and Patricia A. McCoy, 2002.

Summary: Describes the forces that have contributed to the emergence of predatory lending and concludes that such practices will continue without government intervention.

8. Loan Documents of Plaintiffs:

Carlos Rivas (000001 - 000021)

Valerie Norwood (000022 - 000048)

Pamela E. Cooper (000049 - 000052)

Mary Ann Robles (000053 - 000074)

Bobby L. Martin (000075 - 000087)

Elsie P. Shows (000088 - 000109)

Summary: Copies of borrower's home equity loan documents for these consumers.

9. Texas Finance Commission Meeting Minutes, August 16, 2002.

Summary: Minutes of the Finance Commission meeting where the study on subprime lending was discussed.

10. Texas Finance Commission Meeting Minutes, February 14, 2003.

Summary: Minutes of the Finance Commission meeting where the study on subprime lending was discussed.

11. Office of Consumer Credit Commissioner Accomplishment Report for Fiscal Year September 1, 2001, to August 31, 2002, October 8, 2002.

Summary: Report to the Finance Commission discussing several issues, mortgage lending/predatory lending being the first issue.

12. Office of Consumer Credit Commissioner External Assessment: The View From Here, October 6, 2004.

Summary: Focus on "Predatory Lending: Murky Waters" section.

13. Home Equity Lending Report

Summary: Breakdown of number of loans, total dollar amount loaned, and average amount loaned for 1st and 2nd lien home equity loans for calendar years 1998 through 2002.

14. The Finance Commission of Texas and The Office of Consumer Credit Commissioner by the Texas Legislative Council, Legislative Report, Analysis of Home Mortgage Disclosure Act (HMDA) Data for Texas, 1999-2001, April 11, 2003.

Summary: Measure of home mortgage lending activity for calendar years 1999 through 2001. Shows number and type of loan applications; number and reasons for application denials; and number, type and dollar amounts of loans.

15. Texas Department of Banking, Briefing Packet on Home Equity Lending Survey Results for The House Committee on Financial Institutions, Randall S. James, Commissioner, April 6, 2000.

Summary: Measure of the home equity lending market in state chartered banks conducted in December of 1999.

16. House Committee on Border and International Affairs, Interim Charge #6: Prevalence of Subprime and Predatory Lending Along the Texas Border, August 12, 2004.

Summary: Gives an overview of subprime and predatory lending also breaks down the types of business operating in the market. Discusses how predatory lending is being addressed in Federal and State Legislation.

17. Research Into Home Equity Lending in Texas: Interviews with Key Decision-Makers in 91 Financial Institutions, September, 1999.

Summary: The Texas Finance Commission provided Analytica information from 347 financial institutions. Analytica broke the information down into many facets including: type of institution, loan approval rates, interest rate amounts, types of fees and advertising.

18. Research Into Home Equity Lending in Texas: A Survey of 1,201 Texas Homeowners, September 1999.

Summary: Analytica, Inc. surveyed 1,200 Texas homeowners on their perceptions and experiences regarding home equity lending. Analytica broke the information gathered into many facets including: demographic information of the homeowners surveyed, effectiveness of advertising, level of service they received when shopping for a product, where they shopped for a product, and how they used the proceeds.

The listed documents do not appear to relate to the comments made on the proposed interpretation or to any one of the proposed interpretations. No response is required to information that does not relate to the proposed rule or to the comments made on the rule.

The sections (interpretations) are adopted pursuant to Texas Finance Code, §11.308 and §15.413 (as added by Acts 2003, 78th

Legislature, Chapter 1207, §2), which separately and independently authorize each Commission to issue interpretations of the Texas Constitution, Article XVI, §50(a)(5) - (7), (e) - (p), (t), and (u), subject to Texas Government Code, Chapter 2001.

The Texas Constitution, Article XVI, §50(a)(5)(B) and (C) are affected by the proposed sections.

§152.11. Three Day Right to Rescind Contract for Work and Materials for Repairs or Renovation: Section 50(a)(5)(C).

The owner and owner's spouse may rescind the contract for work and materials within three calendar days after execution by all parties of the contract for work and materials. To count the three days, the day after the contract is executed is day one. The rescission period ends at midnight of the third calendar day following the execution of the contract. If the third calendar day falls on a Sunday or federal legal public holiday, then the right of rescission is extended to midnight of the next calendar day that is not a Sunday or federal legal public holiday.

§152.13. Health or Safety Reasons for Waiving the Five Day Waiting Period and the Three Day Right to Rescind: Section 50(a)(5)(B) and (C).

(a) If the owner wants to waive the 5-day waiting period in §50(a)(5)(B) or the 3-day right of rescission in §50(a)(5)(C), the owner must sign a statement that, at a minimum:

(1) describes how the conditions of the homestead property require immediate repair;

(2) describes how the conditions of the homestead property materially affect the health and safety of the owner or the person residing in the homestead; and

(3) states that the owner is waiving the 5-day waiting period under §50(a)(5)(B), the 3-day period to rescind the contract for work and materials under §50(a)(5)(C), or both;

(b) Printed forms for this purpose are prohibited.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 11, 2005.

TRD-200500637
Leslie L. Pettijohn
Commissioner
Joint Financial Regulatory Agencies
Effective date: March 3, 2005
Proposal publication date: November 5, 2004
For further information, please call: (512) 936-7640

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CHAPTER 153. HOME EQUITY LENDING

7 TAC §153.93

The Finance Commission of Texas and the Texas Credit Union Commission ("Commissions") jointly adopt new 7 TAC §153.93, concerning interpretations of the nature of and process by which a lender or holder ("lender") of a home equity loan may cure its failure to fully comply with its obligations under the Texas Constitution, Article XVI, §50 (Section 50). The rule is adopted with non-substantive changes to the proposal published in the November 5, 2004, issue of the *Texas Register* (29 TexReg 10196).

The Commissions made non-substantive changes to clarify and simplify the addressed provisions as the result of comments.

The Commissions received written comments from David Dulock of Black, Mann & Graham, L.L.P. and Robert W. Doggett of Texas RioGrande Legal Aid, Inc. Both commenters recommended modifications to the rule. One commenter provided a number of reports, studies, and loan documents as support for his comments.

The constitutional provisions do not detail every aspect of home equity lending. Compliance with Section 50 along with other Texas and federal statutes and Texas constitutional provisions is required in making a home equity loan. These interpretations construe the language of Section 50(a)(6)(Q)(x) and provide the required practical framework for home equity lending that reflects the constitutional language and the intent of the legislature and the voters. For example, Section 50(a)(6)(Q)(x) contains terms that are not defined, even though definitions are necessary for clear meaning and consistent application. Additionally, the constitutional provisions are silent as to the effect of other laws on home equity lending.

The Commissions have applied Chapter 311, Government Code (Code Construction Act) in the use of language in Chapter 153. For example, in Chapter 153, words used in the singular include the plural and the plural includes the singular, the heading of a title, subtitle, chapter, subchapter, or section does not limit or expand the meaning of an interpretation, and the use of the word "include" means "including but not limited to."

Issues raised in comments to the proposed interpretation have been addressed in this preamble regardless of whether a change was made to the interpretation in response to the comments. Constitutional provisions not interpreted at this time may be addressed either at the request of an interested party or on the motion of the Commissions.

Section 153.93(a) allows the borrower to notify the lender under Section 50(a)(6)(Q)(x) of the Texas Constitution, orally or in writing, at the address designated by the lender. Under the method specified by this section, the notice is more likely to reasonably notify the lender or holder of the violation, and less likely to result in a borrower's notice not actually getting to the correct person(s) at the lender or holder. Under §153.93(a), the lender or holder may additionally designate a phone number, email address, or other address for delivery of a notice.

One commenter suggested that the language in §153.93(a) be changed to make it mandatory that the borrower deliver notice to the lender's designated notice location. The Commissions do not believe that this provision should be mandatory. The Constitution does not prohibit, nor does it expressly permit, the parties to contractually determine the terms for delivery of the notice. If the borrower chooses another method of delivery, then the borrower would assume the burden of proving adequate delivery of a notice of violation.

The commenter also objected to oral notification stating that "oral notification will cause a harsh and unfair burden on lenders and their loan servicing operations." The Commissions considered this when proposing §153.93(a). There are several instances involving notices where the constitutional language requires the notice be in writing. In this instance there is no constitutional language requiring the notice be in writing. The Constitution, in this instance, only requires that "the lender or holder is notified by the borrower." If a borrower were to provide notice orally, the borrower would have the burden to prove when it was given, to

whom, and the content of the notice. The Commissions decline to modify the interpretation because the Constitution does not require that the notice be in writing.

Section 153.93(b) allows the lender to modify a designated location for delivery. The lender should give the borrower reasonable notice of a change of a delivery location.

One commenter objected to this provision stating that "to allow a designation or a change in designation to be placed within one document sent to a borrower on[e] time is simply unfair and not contemplated by the Texas Constitution." The Commissions feel that lenders should be able to change the delivery designation of the notice if necessary. Lenders may move offices or transfer loans to holders or rearrange their operational structure. However, in an effort to protect the borrower, this provision provides that the notice of change of delivery address is not effective until lender sends borrower a conspicuous written notice of the change. The Commissions decline to change this provision.

Section 153.93(c) allows the borrower to deliver a notice to the registered agent of the lender or holder. One commenter felt that this subsection was unnecessary if the lender could designate an address for notice. Another commenter felt that this provision was helpful but noted that many holders do not have registered agents in Texas. The Commissions agree that this provision is helpful and should remain. The Commissions are concerned that a borrower may not be able to locate the delivery information in the closing documents or multiple changes in location notices sent by a lender. Allowing a notice to be delivered to a registered agent provides the borrower with a known location of delivery which will facilitate adequate delivery of notices.

Pursuant to §153.93(d), if the lender or holder does not designate a location for delivery, the borrower may deliver the notice to any location of the lender or holder. One commenter felt that this provision might cause the courts to hold by implication that the borrower is required to send the notice to lenders designated address for it to be effective. The commenter also stated that the rule as drafted is inconsistent with the Texas Constitution, noting that restricting notification to a specific agent selected by the lender is not contemplated by the Constitution. He stated that a borrower who notifies a lender through an agent that has express or apparent authority has fulfilled her constitutional duty of notice. The commenter suggested that some language be added to the proposed rule which made it clear that borrower did not have to deliver notice to the lender's designated location but then had the burden of proving that the lender was notified. The Commissions agree that the borrower can not be required to send the notice to the lender's designated location and have revised §153.93(e) and have accordingly added §153.93(f).

One commenter provided a number of reports, studies, and loan documents as support for his comments. The commenter wanted the Commissions to have the information to consider prior to adopting any more interpretations. No specific relationship was drawn between the documents that were provided in support of the comments and the interpretations or the comments themselves. Additionally, there does not appear to be a relationship between the comments made and the information contained in the documents other than providing general information relating to mortgage lending. Listed below is a brief summary of each document provided.

1. Quantifying the Economic Cost of Predatory Lending, by Eric Stein of Coalition for Responsible Lending, 2001.

Summary: Describes three types of predatory lending practices (Equity Stripping, Rate-Risk Disparities, and Excessive Foreclosures) and estimates the cost of these practices on U.S. consumers.

2. North Carolina's Subprime Home Loan Market After Predatory Lending Reform, By Keith Ernst et al. of Coalition for Responsible Lending, 2002.

Summary: A study of home lending in North Carolina after passage of a state law curbing predatory mortgage lending. The study concludes that North Carolina has benefited from the curb on predatory lending.

3. Curbing Predatory Home Mortgage Lending, by HUD-Treasury Task Force, June 2000.

Summary: The task force proposes a four-point plan to address predatory lending practices:

(1) Improve consumer literacy and disclosures;

(2) Prohibit harmful sales practices in the mortgage market;

(3) Restrict abusive terms and conditions on High-Cost loans; and

(4) Improve market structure.

4. Credit, Capital and Communities: The Implications of the Changing Mortgage Banking Industry for Community Based Organizations, by Joint Center for Housing Studies, Harvard University, 2004.

Summary: Principal Findings:

(1) New technology drives mortgage industry restructuring

(2) Industry structure perpetuates a dual market system

(3) A prime lending gap exists in minority neighborhoods

(4) Changes in the mortgage industry challenge Community Based Organization activities

(5) Community Based Organizations must work to improve their mortgage lending activities

(6) New roles present Community Based Organizations with new opportunities

Community Based Organizations once had the ability to protest the lack of mortgage lending in the community by local banks. The evolution of the mortgage lending market has reduced the ability of CBO's to put pressure on the local segment of the mortgage lending industry. CBO's must work to improve the ability of consumers to shop wisely for mortgage products. CBO's must increase their understanding of how today's technologically sophisticated Market operates.

5. Consumer Protection - Federal and State Agencies Face Challenges in Combating Predatory Lending, United States General Accounting Office, January 2004.

Summary: Principal Findings:

(1) Federal agencies have taken enforcement and other actions to address predatory lending, but face challenges.

(2) Many states have passed laws addressing predatory lending, but Federal agencies have preempted some statutes.

(3) The secondary market may benefit consumers but can also facilitate predatory lending.

(4) The usefulness of consumer education, counseling, and disclosures in deterring predatory lending may be limited.

(5) Predatory lenders may target elderly consumers.

6. Declaration of Cathy Lesser Mansfield (ACORN v. Finance Commission of Texas)

Summary: Ms. Mansfield's statement expressing her opinion on interpretations already adopted.

7. A Tale of Three Markets: The Law and Economics of Predatory Lending, by Kathleen C. Engel and Patricia A. McCoy, 2002.

Summary: Describes the forces that have contributed to the emergence of predatory lending and concludes that such practices will continue without government intervention.

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The listed documents do not appear to relate to the comments made on the proposed interpretation. No response is required to information that does not relate to the proposed rule or to the comments made on the rule.

The sections (interpretations) are adopted pursuant to Texas Finance Code, §11.308 and §15.413 (as added by Acts 2003, 78th Legislature, Chapter 1207, §2), which separately and independently authorize each Commission to issue interpretations of the Texas Constitution, Article XVI, §50(a)(5)-(7), (e)-(p), (t), and (u), subject to Texas Government Code, Chapter 2001.

The Texas Constitution, Article XVI, §50(a)(6)(Q)(x), is affected by the adopted sections.

§153.93. Methods of Notification.

(a) At closing, the lender or holder may make a reasonably conspicuous designation in writing of the location where the borrower may deliver a written or oral notice of a violation under 50(a)(6)(Q)(x). The designation may include a mailing address, physical address, and telephone number. In addition, the lender or holder may designate an email address or other point of contact for delivery of a notice.

(b) If the lender or holder chooses to change the designated delivery location as provided in subsection (a) of this section, the address change does not become effective until the lender or holder sends conspicuous written notice of the address change to the borrower.

(c) The borrower may always deliver written notice to the registered agent of the lender or holder even if the lender or holder has named a delivery location.

(d) If the lender or holder does not designate a location where the borrower may deliver a notice of violation, the borrower may deliver

the notice to any physical address or mailing address of the lender or holder.

(e) Delivery of the notice by borrower to lender or holder's designated delivery location or registered agent by certified mail return receipt or other carrier delivery receipt, signed by the lender or holder, constitutes a rebuttable presumption of receipt by the lender or holder.

(f) If the borrower opts for a location or method of delivery other than set out in subsection (e), the borrower has the burden of proving that the location and method of delivery were reasonably calculated to put the lender or holder on notice of the default.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 11, 2005.

TRD-200500634
Leslie L. Pettijohn
Commissioner
Joint Financial Regulatory Agencies
Effective date: March 3, 2005
Proposal publication date: November 5, 2004
For further information, please call: (512) 936-7640

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 80. MANUFACTURED HOUSING SUBCHAPTER G. STATEMENTS OF OWNERSHIP AND LOCATION

10 TAC §80.201

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs (the "Department") adopts with non-substantive changes §80.201; therefore, the text will be republished. The proposal was published in the October 29, 2004, issue of the *Texas Register* (29 TexReg 9952).

The effective date of the adoption is thirty (30) days following the date of publication with the *Texas Register* of notice that the rule has been adopted.

A public hearing was held on November 30, 2004. The following interested groups or associations presented comments either at the hearing or in writing: Texas Manufactured Housing Association ("TMHA").

Set forth below are comments from TMHA and the analysis and recommendations of staff.

One commenter responded, both in writing and with oral testimony at the public hearing on November 30, 2004. The commenter pointed out that the proposed rule overlapped with a portion of the existing rule, 10 TAC §80.207, dealing with conversion of manufactured homes documented as real property back into manufactured homes documented as personal property. In connection with a comprehensive review and proposed revisions to all aspects of these rules, the staff of the Division will be proposing that §80.207 be deleted. However, the overlap is noted, and in the event that §80.207 is not deleted, it will be proposed that this §80.201(e), as amended, be revised consistent with §80.207 and that §80.207 be revised as appropriate.

Other aspects of the comment focused on the substance of the proposed rule change, albeit couched in terms of proposed amendments to §80.207(a). The first comment was to add a provision to §80.207(a)(1) to provide for a statement by a lender that it consented. The second was to expand §80.207(a)(4) to require confirmation of a clear chain of title. The third was to require under a new §80.207(a)(6) that the newly issued Statement of Ownership and Location, reflecting personal property status, be recorded in the county real property records, presumably in the county where the home was located at the time that it was real property. All of these comments make good sense, and, though already addressed in the proposed language of amended 10 TAC §80.201(e), have been more clearly stated therein through some additional non-substantive changes.

Except as noted below, the rules as proposed on October 29, 2004, are adopted as final rules with the following non-substantive changes.

Corrected the word "reflect" to "reflected" in subsection (b)(2)(C).

New subsection (e) is reworded for clarification.

The following is a restatement of the rules' factual basis:

New subsection (e) explains that an owner acquiring a manufactured home that is and will remain real property is not required to apply for an updated Statement of Ownership and Location unless the owner desires a change to personal property status; the home no longer meets the requirements as real property; or the home is being moved.

The amended rule is adopted under the Texas Manufactured Housing Standards Act, Occupations Code, Subtitle C, Chapter 1201, §1201.052, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.603, which authorizes the director to adopt rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

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

§80.201. Issuance of Statements of Ownership and Location.

(a) Initial Statements.

(1) The Department will issue an initial Statement of Ownership and Location within ten (10) working days after receipt of a complete application, accompanied by all documentation necessary to support the application.

(2) In order to be deemed complete, an application for a Statement of Ownership and Location must include, as applicable:

(A) A completed and fully executed Application for Statement of Ownership and Location on the Department's prescribed form;

(B) The required fee;

(C) If one or more liens are to be reflected on the Statement of Ownership and Location, copies of documentation establishing the creation, existence, and priority of each such lien;

(D) If a manufactured home is relocated, satisfactory evidence that there are no property tax liens on the home or that provision has been made for them. Satisfactory evidence would include, but would not be limited to, evidence that the relocation was effected with a TxDOT approved move or a statement from a title company, lender, or escrow agent, executed by a person purporting to be its duly authorized officer or representative, that money sufficient to pay the taxes was being held by them and would be applied to the payment of those taxes.

(b) Revised Statements.

(1) The Department will issue a revised Statement of Ownership and Location within ten (10) working days after receipt of a complete application, accompanied by all documentation necessary to support the application.

(2) In order to be deemed complete, an application for a revised Statement of Ownership and Location must include, as applicable:

(A) A completed and fully executed Application for Statement of Ownership and Location on the Department's prescribed form;

(B) The required fee;

(C) If one or more liens are to be reflected on the Statement of Ownership and Location, copies of documentation establishing the creation, existence, and priority of each such lien;

(D) If one or more existing liens are to be released or transferred, appropriate supporting documentation, including a properly executed and completed release of lien form;

(E) If a manufactured home is to be designated for use as a dwelling after the home has been designated for business use only or salvage, evidence of a satisfactory habitability inspection by the Department, accompanied by the required fee;

(F) If a manufactured home is relocated, satisfactory evidence that there are no property tax liens on the home or that provision has been made for them. Satisfactory evidence would include but would not be limited to, evidence that the relocation was effected with a TxDOT approved move, a paid taxes certificate from the county tax assessor for the county where the home was located prior to the move, or an original, signed statement from a title company, lender, or escrow agent, executed by a person purporting to be its duly authorized officer or representative, that money sufficient to pay the taxes was being held by them and would be applied to the payment of those taxes;

(G) In instances where title to a manufactured home is conveyed in a transaction other than a transaction requiring a license under the Standards Act, such as testamentary and non-testamentary transfers, private sales not requiring a license, voluntary or court-ordered partitions, etc, originals or certified copies of appropriate documentation to support any such transfer, as required by the Department; and

(3) Any change in a Statement of Ownership and Location shall result in a new Statement of Ownership and Location being issued, and the new Statement of Ownership and Location shall specify the effective date which shall be either the date of the submission of the completed application or such other date as the Director may determine is appropriately supported by the information provided.

(c) Replacing a Document of Title.

(1) Upon receipt of a written request, applicable fee(s), and any necessary additional information, including a notarized statement of election of real or personal property status, the Department will replace a document of title with a Statement of Ownership and Location.

(2) If a manufactured home title showed that it was personal property, that will be presumed to be its status until and unless a revised Statement of Ownership and Location is applied for and issued. Likewise, if a manufactured home has had a certificate of attachment issued and had title cancelled to real property, that shall be presumed to be its status until and unless a revised Statement of Ownership and Location is applied for and issued.

(d) Corrections to Statements of Ownership and Location.

(1) If a correction is required as a result of a department error, it will be corrected at no charge.

(2) If an error was made for another reason, it will be corrected upon receipt of all documentation needed to support the correction.

(3) If a correction is requested because of an error made by a party other than the department, the correction will not be made until the department receives the following:

(A) A complete corrected application for Statement of Ownership and Location,

(B) Any necessary supporting documentation, and

(C) The required fee of $25, which can be reduced or waived by the director for good cause.

(e) Updating of Statements of Ownership and Location on Manufactured Homes Transferred as Real Property.

(1) When a manufactured home has become real property because the owner elected real property status and their Statement of Ownership and Location was recorded in the appropriate county records, the home may be sold or transferred as real property by the customary means used for real property transactions. As long as the home remains real property at the same location, ownership of the home is confirmed in the same manner as any other real property, rather than by verifying Department records. Any buyer or transferee is not required to apply for a new Statement of Ownership and Location until and unless:

(A) the manufactured home is moved to a new location;

(B) the current owner of the manufactured home wishes to convert it to personal property status; or

(C) the manufactured home no longer meets the requirements to be classified as real property (such as the home being on property subject to a long term lease which is not assignable to the buyer or transferee).

(2) To convert the manufactured home back from real property to personal property, the owner of the home must submit a completed Application for Statement of Ownership and Location to the Department with supporting documentation as follows:

(A) If the applicant is not the owner of record with the Department, satisfactory proof of ownership under a complete chain of title. Acceptable evidence would include, but not be limited to, authenticated copies of all intervening transfer documents, a court order confirming ownership, or a commitment for title insurance in such owner's name issued by a title insurance company licensed to do business in Texas.

(B) Satisfactory evidence that any liens on the manufactured home have been discharged or that all lienholders have consented to the change.

(3) Upon receipt of the certified copy of the new Statement of Ownership and Location that reflects the personal property election of the home, the owner shall file that certified copy in the county real property records, at which time the personal property election will take effect.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200500642
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: March 27, 2005
Proposal publication date: October 29, 2004
For further information, please call: (512) 475-2208

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 62. CAREER COUNSELING SERVICES

16 TAC §62.80

The Texas Department of Licensing and Regulation ("Department") adopts amendments to an existing rule at 16 Texas Administrative Code, §62.80 regarding the career counseling services program as published in the November 26, 2004, issue of the *Texas Register* (29 TexReg 10859), without changes, and will not be republished.

The amendments lower the original and renewal certificate of authority fee from $2,000 to $1,250. Texas Occupations Code, §51.202 requires the Department to set fees in amounts reasonable and necessary to cover the costs of administering programs under its jurisdiction. The Department conducted its annual fee review pursuant to §51.202 and recommended to the Texas Commission of Licensing and Regulation ("Commission") that the referenced fees be reduced as indicated. The revenue generated by current fees exceeds the amount required by the Department to cover costs of administering the career counseling services program. On August 9, 2004, the Commission directed the Department to initiate the recommended fee reductions.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. No comments were received.

The amendments are adopted under Texas Occupations Code, Chapter 2502 and Chapter 51, §§51.201, 51.202, and 51.203 which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department and which requires the Commission to set fees in amounts reasonable and necessary to cover the costs of administering Department programs.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 2502 and Chapter 51. No other statutes, articles, or codes are affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 9, 2005.

TRD-200500592
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: March 1, 2005
Proposal publication date: November 26, 2004
For further information, please call: (512) 463-7348

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CHAPTER 73. ELECTRICIANS

16 TAC §73.51, §73.52

The Texas Department of Licensing and Regulation ("Department") adopts amendments to existing rules at 16 Texas Administrative Code, §73.51 and §73.52 concerning information required to be included on electrical contractor and electrical sign contractor proposals, invoices, and contracts, with changes, as published in the October 1, 2004, issue of the *Texas Register* (29 TexReg 9323).

The amendment adds a subsection (c) to each rule to require licensees to include on contracts, proposals, and invoices a statement that the department regulates the business and the contact information. The amendments are necessary to comply with the requirement of Texas Occupations Code, §51.252(a), which requires the Executive Director to establish methods by which consumers and service recipients are notified of complaint filing information.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. Several comments were received in opposition to the proposed changes.

One commenter objected to the rule amendments on the basis that such rules invite complaints. The commenter questioned whether the purpose of the rules is to allow the Department to "collect the $500 for a complaint." Another commenter, who chose to withhold his name, indicated that he did not intend to comply with the rules and suggested that the Department provide a stamp or similar device to each contractor to use for compliance. The Department does not recommend any change on the basis of these comments. The purpose of the rule is to comply with the statutory requirement of Texas Occupations Code, §51.252(a), which requires the Executive Director to establish methods by which consumers and service recipients are notified of complaint filing information.

A third commenter noted that his company is an electrical subcontractor that contracts with various general contractors who provide the contract documents to the commenter. The commenter noted that it would be presumptuous on his part to add statements required by the rules to a contract that does not belong to him. The commenter also asked whether a sign posted in the business office would meet the requirements. The Commission agrees that the point concerning contracts offered by

general contractors is well taken and the rules as adopted are amended to require that the notice language be placed on contracts generated by a licensee. The language of the rule does not provide for compliance by posting a sign. Language was amended at subsection (c) to read: "The electrical contractor's name, address, phone number, and license number shall appear on all proposals, invoices, and written contracts proposed by the contractor."

The amendments are adopted under Texas Occupations Code, Chapter 1305 and Texas Occupations Code, Chapter 51, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department and provides that the Department shall require the notice provided for.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 1305 and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the adoption.

§73.51. Electrical Contractors' Responsibilities.

(a) A licensed electrical contractor shall display its name and license number on both sides of each vehicle owned or operated by the business and used in the conduct of electrical work. Lettering shall be of a contrasting color and at least two inches in height. The license number shall be preceded by the letters "TECL".

(b) All of a contractor's non-exempt electrical work shall be performed by licensed individuals. A contractor is responsible for compliance with applicable codes for all such electrical work it performs.

(c) The electrical contractor's name, address, phone number, and license number shall appear on all proposals, invoices, and written contracts proposed by the contractor. The following information: "Regulated by The Texas Department of Licensing and Regulation, P. O. Box 12157, Austin, Texas 78711, 1-800-803-9202, 512-463-6599; website: www.license.state.tx.us/complaints" shall be listed on invoices and written contracts.

§73.52. Electrical Sign Contractors' Responsibilities.

(a) A licensed electrical sign contractor shall display its name and license number on both sides of each vehicle owned or operated by the business and used in the conduct of electrical sign work. Lettering shall be of a contrasting color and at least two inches in height. The license number shall be preceded by the letters "TSCL".

(b) All of a contractor's non-exempt electrical sign work shall be performed by licensed individuals. A contractor is responsible for compliance with applicable codes for all such electrical sign work it performs.

(c) The electrical sign contractor's name, address, phone number, and license number shall appear on all proposals, invoices, and written contracts proposed by the contractor. The following information: "Regulated by The Texas Department of Licensing and Regulation, P. O. Box 12157, Austin, Texas 78711, 1-800-803-9202, 512-463-6599; website: www.license.state.tx.us/complaints" shall be listed on invoices and written contracts.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 9, 2005.

TRD-200500593
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: March 1, 2005
Proposal publication date: October 1, 2004
For further information, please call: (512) 463-7348

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16 TAC §73.80

The Texas Department of Licensing and Regulation ("Department") adopts amendments to 16 Texas Administrative Code §73.80, concerning electrician and sign electrician application and renewal fees and revised or duplicate license fees for electrical apprentices as published in the November 26, 2004, issue of the *Texas Register* (29 TexReg 10860), without changes, and will not be republished.

The amendment lowers the application and renewal license fees for master electricians and master sign electricians from $75 to $65 and for journeyman electricians and journeyman sign electricians from $50 to $40. Language is also added to clarify that the fee for the issuance of a revised or duplicate license is $25 with the exception of a revised or duplicate license fee of $15 for an electrical apprentice. Texas Occupations Code, §51.202 requires the Department to set fees in amounts reasonable and necessary to cover the costs of administering programs under its jurisdiction. The Department conducted its annual fee review pursuant to §51.202 and recommended to the Texas Commission of Licensing and Regulation ("Commission") that the referenced fees be reduced as indicated. The revenue generated by current fees exceeds the amount required by the Department to cover costs of administering the electricians program. On August 9, 2004, the Commission directed the Department to initiate the recommended fee reductions.

The Department drafted and distributed the proposed amendments to persons internal and external to the agency. One comment was received regarding the proposal. The commenter did not propose any changes or objections to the rule. His comment concerned his history as an electrician. No changes are made.

The amendments are adopted under Texas Occupations Code, Chapter 1305 which establishes a program to regulate electricians and Texas Occupations Code, Chapter 51, §§51.201, 51.202, and 51.203 which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department and which requires the Commission to set fees in amounts reasonable and necessary to cover the costs of administering the Department programs.

The statutory provisions effected by the adoption are those set forth in Texas Occupations Code, Chapter 1305 and Chapter 51. No other statutes, articles, or codes are affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 9, 2005.

TRD-200500594

William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: March 1, 2005
Proposal publication date: November 26, 2004
For further information, please call: (512) 463-7348

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CHAPTER 77. SERVICE CONTRACT PROVIDERS

16 TAC §77.80

The Texas Department of Licensing and Regulation ("Department") adopts amendments to 16 Texas Administrative Code §77.80, regarding the service contract providers program as published in the November 26, 2004, issue of the *Texas Register* (29 TexReg 10861), without changes, and will not be republished.

The amendments to §77.80 lower the registration fees for 0 - 250 contracts from $750 to $250; for 251 - 499 contracts from $1,400 to $500; and for 500 or more contracts from $1,900 to $1,000. Texas Occupations Code, §51.202 requires the Department to set fees in amounts reasonable and necessary to cover the costs of administering programs under its jurisdiction. The Department conducted its annual fee review pursuant to §51.202 and recommended to the Texas Commission of Licensing and Regulation ("Commission") that the referenced fees be reduced as indicated. The revenue generated by current fees exceeds the amount required by the Department to cover costs of administering the service contract providers program. On August 9, 2004, the Commission directed the Department to initiate the recommended fee reductions.

The Department drafted and distributed the proposed amendments to persons internal and external to the agency. No comments were received.

The amendments are adopted under Texas Occupations Code, Chapter 1304 and Chapter 51, §§51.201, 51.202, and 51.203 which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department and which requires the Commission to set fees in amounts reasonable and necessary to cover the costs of administering Department programs.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 1304 and 51. No other statutes, articles, or codes are affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 9, 2005.

TRD-200500595
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: March 1, 2005
Proposal publication date: November 26, 2004
For further information, please call: (512) 463-7348

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TITLE 22. EXAMINING BOARDS

PART 9. TEXAS STATE BOARD OF MEDICAL EXAMINERS

CHAPTER 163. LICENSURE

The Texas State Board of Medical Examiners adopts an amendment to §163.1(13), regarding the definition of substantial equivalence and the repeal of §163.15, regarding visiting physician permit, without changes to the proposed text as published in the December 17, 2004, issue of the *Texas Register* (29 TexReg 11539) and will not be republished.

The amendment is necessary to establish requirements for medical school education completed outside the U.S. or Canada to ensure that the education is substantially equivalent at a U.S. school. The repeal is necessary as the subject matter now appears in 22 TAC §172.5 effective November 7, 2004.

No comments were received regarding adoption of the rules.

22 TAC §163.1

The amendment is adopted under the authority of the Occupations Code Annotated, §155.0031 and §155.004 which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200500662
Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Effective date: March 6, 2005
Proposal publication date: December 17, 2004
For further information, please call: (512) 305-7016

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22 TAC §163.15

The repeal is adopted under the authority of the Occupations Code Annotated, §155.0031 and §155.004 which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200500663

Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Effective date: March 6, 2005
Proposal publication date: December 17, 2004
For further information, please call: (512) 305-7016

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CHAPTER 183. ACUPUNCTURE

22 TAC §183.20

The Texas State Board of Medical Examiners adopts an amendment to §183.20, concerning reporting of CME for acupuncturists on-line, without changes to the proposed text as published in the December 31, 2004, issue of the *Texas Register*(29 TexReg 12077) and will not be republished.

The amendment facilitates the reporting of CME for acupuncturists on-line.

No comments were received regarding adoption of the rule.

The amendment is adopted under the authority of the Occupation Code Annotated, §153.001 and §205.251, which provide that the Texas State Board of Medical Examiners may adopt rules and bylaws as necessary to perform its duties, regulate the practice of medicine in this state, enforce the Medical Practice Act, and provide for the annual renewal of a license to practice acupuncture.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200500664
Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Effective date: March 6, 2005
Proposal publication date: December 31, 2004
For further information, please call: (512) 305-7016

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 15. COASTAL AREA PLANNING
SUBCHAPTER B. COASTAL EROSION PLANNING AND RESPONSE

31 TAC §15.41

The Texas General Land Office (Land Office) adopts an amendment to §15.41, relating to Evaluation Process for Coastal Erosion Studies and Projects. The amendment is adopted without changes to the proposed text as published in the December 24, 2004, issue of the *Texas Register* (29 TexReg 11917) and the text will not be republished. The amendment is adopted pursuant to the Joe Faggard Coastal Erosion Planning and Response Act (CEPRA), as amended, Texas Natural Resources Code, Chapter 33, Subchapter H. The CEPRA requires the Land Office to implement a program of coastal erosion avoidance, remediation, and planning. The amendment to Subparagraph 15.41(1)(A) includes changes to the submission deadline for the project goal summaries required to be furnished by potential project partners from December 1 of the first year of the state fiscal biennium in which funding is sought to July 1 immediately preceding the state fiscal biennium in which funding is sought. For example, the deadline for the state fiscal biennium beginning September 1, 2005, will be July 1, 2005.

SUMMARY OF COMMENTS

The Land Office received comments in favor of the adopted amendments from representatives of the Brazoria County Shoreline Restoration Task Force, The Texas Parks and Wildlife Department (TPWD), and Brazoria County.

Commenters representing the Brazoria County Shoreline Restoration Task Force and Brazoria County stated that the time frame established by the amendment will allow funded projects to be completed within the two year funding cycle and allow for higher quality projects and studies each cycle. The Land Office agrees with these comments.

One commenter representing TPWD stated that the department supports the change to rules for the CEPRA program because it will facilitate more efficient and effective coastal erosion projects by providing more time for project implementation. The Land Office agrees with this comment.

REASONED JUSTIFICATION

The justification for adoption of the amendment to Subparagraph 15.41(1)(A) is that the change will allow additional time within the biennium to conduct and complete CEPRA projects and studies, thus reducing the necessity of requesting that funds be carried over into the following biennium. The typical CEPRA project is comprised of preliminary engineering, permitting, final engineering design, and construction phases. During the course of a project, many critical path challenges exist, including time required for permitting, bird and turtle nesting windows when construction is not allowed, and securing cost effective sand resources proximal to project locations. Although the CEPRA program continues to improve its processes for project evaluation, selection, and contracting, the minimum time frames for these elements are substantial. The adopted change would allow use of 22 out of 24 months of the biennium for project implementation, rather than 16 of 24 months. Project partners will have greater assurance that projects can be completed within the biennium and will have less risk that partially completed projects may not obtain funding in the following biennium. In addition, the alignment of project selection time frames and commencement of local government fiscal years (October 1 for many jurisdictions) may be improved by moving the submission deadline to July. Professional service providers will have more reasonable project timelines, allowing greater attention to detail and more efficient work patterns. Administrative efficiency will be improved as a result of fewer contracting documents required when more projects are completed within the biennium.

MAJOR ENVIRONMENTAL RULE ANALYSIS

The Land Office has evaluated the adopted rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to §2001.0225 because it does not meet the definition of

a "major environmental rule" as defined in the statute. "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. The adopted amendment to §15.41 is not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the adopted rulemaking implements legislative requirements in CEPRA relating to coastal erosion studies or projects undertaken in cooperation with a qualified project partner under an agreement with the Commissioner of the Land Office.

STATUTORY AUTHORITY

The amendments are adopted under the Texas Natural Resources Code, §33.602(c) that provides the Commissioner of the General Land Office with the authority to adopt rules to implement Subchapter H, Chapter 33, Texas Natural Resources Code, concerning coastal erosion.

STATUTORY PROVISIONS AFFECTED

Texas Natural Resources Code, §§33.601 - 33.605 are affected by the adopted amendment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 9, 2005.

TRD-200500602
Larry L. Laine
Chief Clerk/Deputy Land Commissioner
General Land Office
Effective date: March 1, 2005
Proposal publication date: December 24, 2004
For further information, please call: (512) 305-8598

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PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER A. STATEWIDE HUNTING AND FISHING PROCLAMATION

DIVISION 3. SEASONS AND BAG LIMITS--FISHING PROVISIONS

31 TAC §65.74

The Texas Parks and Wildlife Commission adopts new §65.74, concerning Freeze Events, with changes to the proposed text as published in the December 17, 2004, issue of the *Texas Register* (29 TexReg 11557).

The rule as adopted will allow the department to temporarily prohibit fishing during a freeze event in affected areas to minimize further loss of fish.

The rule is necessary to address concerns about the vulnerability of fish during freeze events. Freeze events can kill fish in the shallow waters of bay systems and surviving fish are easily located in the remaining deep water areas. The new rule allows the department to temporarily prohibit certain types of fishing during a freeze event in affected areas to minimize further loss of fish. As a result of the protection during a freeze event, game fish stocks will be able to recover more quickly and overall fishing opportunity will be enhanced.

Rapidly on-setting low temperatures constitute one of the greatest threats to fish water survival because of the inherent slow rate of acclimation to low temperatures. The tolerance threshold for most fishes is 8.3° C (47° F). Drops in water temperature below this threshold are common following passage of severe cold fronts in Texas.

Based on department records, major freeze related fish mortalities have occurred along the Texas coast about every 15 years. Prior to 1983, the longest continuous freeze on record began on December 19, 1924 and ended 74 hours later. This record was eclipsed in December 1983 when 77 hours of continuous below freezing temperatures were recorded in Port Arthur.

Three unusually cold weather events occurred along the Texas coast in the 1980's, one in 1983 and two in 1989, which caused massive fish kills. Approximately, 32 million fish died in those events, representing 159 species--103 fishes, 45 invertebrates and 11 vertebrates other than fishes. Using the 1983 freeze as an example of the impact of these events, the Texas Parks and Wildlife Department (TPWD) harvest monitoring data suggest that the recreational angler catch rates for spotted seatrout did not again reach pre-freeze levels until 1987. From TPWD resource surveys, spring gill net catch rates in the upper Laguna Madre for spotted seatrout dropped from 0.7/hr in 1983 to 0.1/hr in the spring of 1984, a direct result of that winter's freeze event.

For these reasons, the department decided that it was necessary to promulgate a rule to authorize the Executive Director to close area(s) affected by a freeze event until the freeze event is over. The strategy is to reduce fishing mortality on spawning adult fish in areas where they are known to aggregate during freeze events. This protection ensures maximum survival of spawning stock biomass in freeze-affected areas, which will minimize the overall effect of a freeze event upon the fishery. The Executive Director would provide adequate notice to the public regarding the closing of affected areas and similarly publicize the reopening of those areas to fishing when the freeze condition has passed. These closures would be limited to the deeper areas where fish are known to congregate in freezes and would end as soon as possible.

One public hearing was held December 7, 2004 in addition to the hearing at the Texas Parks and Wildlife Commission meeting on January 27, 2005. The department received a total of 89 comments on the proposed regulations 63 in support and 26 expressed disagreement.

Of the 26 opposed, 15 defined their opposition as follows:

COMMENT: Four individuals opposed adoption of the rules, stating that they were opposed to any further restrictions in saltwater fishing.

AGENCY RESPONSE: The agency disagrees and responds that the statutory purpose of the department's regulatory authority is to provide a comprehensive method for the conservation of an ample supply of wildlife resources on a statewide basis

to insure reasonable and equitable enjoyment of the privileges of ownership and pursuit of wildlife resources. The agency is required to respond to depletion or waste of wildlife resources and that response may take the form of restrictions on when species may be taken, how they may be taken, and how many may be taken. Responding to reduce fishing mortality during a freeze event that can cause massive fish kills and depletion of a population of saltwater fish is warranted and will allow for maximum survival of spawning stock biomass in freeze-affected areas, which will minimize the overall effect of a freeze event upon the fishery. No changes were made as a result of these comments.

COMMENT: Three individuals opposed adoption of the rules, stating that the rules were not supported with data.

AGENCY RESPONSE: The agency disagrees and responds that the impact of historic freeze events have been well documented and can be found in publications such as: McEachron, L. W., G. C. Matlock, C. E. Bryan, P. Unger, T. J. Cody, and J. H. Martin. 1994. Winter mass mortality of animals in Texas bays. Northeast Gulf Science. Vol. 13, No. 2, p. 121-138. Martin, J. H. and L. W. McEachron. 1996. Historical annotated review of winter kills of marine organisms in Texas bays. Texas Parks and Wildlife Department Management Data Series No. 118. 22pp.

No changes were made as a result of these comments.

COMMENT: One individual opposed adoption of the rules, stating that currently existing regulations (e.g., prohibitions against the use of gigs and nets for taking game fish) were adequate to protect saltwater fish species during freeze events.

AGENCY RESPONSE: The agency disagrees and responds that the proposal is specifically aimed at fishermen who use hook and line, pole and line, or throwlines which are not affected by regulations prohibiting other means or methods. The agency is required to respond to depletion or waste of wildlife resources and that response may take the form of restrictions on when species may be taken, how they may be taken, and how many may be taken. Responding to reduce fishing mortality during a freeze event that can cause massive fish kills and depletion of a population of saltwater fish is warranted and will allow for maximum survival of spawning stock biomass in freeze-affected areas, which will minimize the overall effect of a freeze event upon the fishery. No changes were made as a result of these comments.

COMMENT: Five individuals opposed adoption of the rules, stating that the proposal was too general and it was not clear how the rule would function.

AGENCY RESPONSE: The agency agrees with the commenters and amended the proposal clarifying the definition of a freeze, the type of areas that would be considered for closure, and narrowed the closure so it would not affect commercial fisheries in those areas. Further, the commission was presented with a list of potential affected counties.

COMMENT: Two individuals opposed adoption of the rules, stating that closing the Intracoastal Waterway provided better protection.

AGENCY RESPONSE: The agency disagrees and responds that vessel traffic in the Intracoastal Waterway is not under regulatory jurisdiction of the Texas Parks and Wildlife Commission. The department has been in contact with interested groups and parties that would be affected through either mandatory or voluntary closures in the Intracoastal Waterway, and will continue to try to work with these groups to ensure maximum protection to marine species in the event of freezes. No changes were made as a result of these comments.

Two organizations commented on adoption of the proposed rule. The Coastal Conservation Association and the Lower Laguna Madre Foundation supported adoption of the proposed rule.

The new section is adopted under the authority of Parks and Wildlife Code, Chapter 61, which authorizes the regulation of the take of aquatic animal life including when, where, how, and how many individuals of which species may be taken.

§65.74. Freeze Events.

(a) Definitions. For purposes of this section:

(1) "Freeze" means a period of cold weather that begins when the air temperature drops to or below 32 degrees Fahrenheit and creates a risk of depletion of one or more game fish species.

(2) "Affected area" means an area of coastal water where fishing from the bank is possible and where game fish are known or expected to take refuge from cold weather conditions.

(b) The Executive Director shall provide appropriate notice to the public that a freeze has occurred and fishing in the affected area or areas is prohibited. The Executive Director shall provide appropriate public notice as to when fishing in the affected area or areas is allowed to resume.

(c) No person shall fish with a hook and line, pole and line, or throwline in an affected area during a freeze after the Executive Director has given notice to the public that a freeze has occurred and fishing in the affected area is prohibited and before the Executive Director gives notice that fishing may resume.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 10, 2005.

TRD-200500605
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Effective date: March 2, 2005
Proposal publication date: December 17, 2004
For further information, please call: (512) 389-4775

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 3. TEXAS YOUTH COMMISSION

CHAPTER 97. SECURITY AND CONTROL

SUBCHAPTER A. SECURITY AND CONTROL

37 TAC §97.21

The Texas Youth Commission (TYC) adopts the repeal of §97.21, concerning Approved Restraint Equipment, without changes to the proposal as published in the November 19, 2004, issue of the *Texas Register* (29 TexReg 10695).

The repeal is necessary in order to allow for the content of this section to be included in a new rule, §97.23, which is adopted in this issue of the *Texas Register*.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The adopted rule implements the Human Resources Code, §61.034.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 11, 2005.

TRD-200500633
Dwight Harris
Executive Director
Texas Youth Commission
Effective date: March 3, 2005
Proposal publication date: November 19, 2004
For further information, please call: (512) 424-6301

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37 TAC §97.23

The Texas Youth Commission (TYC) adopts the repeal of §97.23, concerning Use of Force, without changes to the proposal as published in the November 19, 2004, issue of the *Texas Register* (29 TexReg 10696).

The repeal will allow for a new rule to be published in its place, which is adopted in this issue of the *Texas Register*.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The adopted rule implements the Human Resources Code, §61.034.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 11, 2005.

TRD-200500636
Dwight Harris
Executive Director
Texas Youth Commission
Effective date: March 3, 2005
Proposal publication date: November 19, 2004
For further information, please call: (512) 424-6301

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37 TAC §97.23

The Texas Youth Commission (the commission) adopts new §97.23, concerning Physical Restraint, with changes to the proposed text as published in the November 19, 2004, issue of the *Texas Register* (29 TexReg 10696). Changes to the proposed text consist of responses to the public comments as noted below; adding Plastic Flex Cuffs to the list of approved mechanical restraint equipment in order to correct an oversight; clarifying that use of mechanical restraints on youth being transported following release on parole from a residential program is discretionary; and minor grammatical changes.

The justification for the new rule is safety for TYC youth and staff. The new rule will provide greater clarity as to when and how restraint is to be used and what steps should be taken to prevent the need for its use.

The commission received public comments from a Wisconsin company, Crisis Prevention Institute, Inc. (CPI), regarding the proposed new rule. The comments are summarized below, followed by the commission's response.

Comment: Regarding subsection (a) and (d), language should be revised to further clarify the concept of use of physical restraint only as a last resort, and only after all other less restrictive interventions have failed.

Response: The commission believes that physical restraint should be used only when it is absolutely necessary and as a last resort. The commission agrees to add the CPI's suggested language in the purpose clause that physical restraint is to be used as a last resort. The commission amends subsection (a) by adding a sentence to read, "It is to be used as a last resort, only after all other less restrictive interventions have failed".

However, the commission does not agree with the recommendation to amend subsection (d) to include the language "least restrictive" and "last resort". The commission believes the proposed subsection establishes guidelines to determine whether use of restraint is justified and prudent, and the rule states that intervention is expected to be used to the greatest extent possible to avoid the necessity for any physical restraint. The additional language in this section would be redundant and is unnecessary. The commission made no changes to subsection (d) in response to the recommendation.

Comment: Regarding subsection (d)(4), youth should be informed by staff of what they need to do to be released from restraint. Further, there should be a provision for staff debriefing after the incident, using a nationally recognized debriefing technique, to provide an opportunity to learn from the incident and contribute to the reduction or elimination of future incidents.

Response: The commission believes youth should be informed of what is required of the youth to be released from restraint. The commission staff receive training which addresses obtaining youth compliance and determining when a youth can be safely released from all restraints at the site of the incident. Informing youth during a restraint of what is required of the youth in order to be released is a part of that training. It is an important part of the restraint protocol, but its inclusion would be misplaced in this section of our rules, which describes when restraint is authorized.

The commission also believes that staff debriefings following use of restraints are important for evaluating our restraint practices. Each facility utilizes a review board as one means to serve this purpose. This is an important part of our oversight activity, but,

again, its inclusion would be misplaced in this section that describes when restraint is authorized. The commission made no amendments to the rule in response to the recommendation.

Comment: Regarding subsection (f), concern is expressed that the rule allows for methods of manual restraint that, under the circumstances existing at the time of the intervention, may be more suitable than agency-approved methods. A suggestion is made that the agency consider expanding the list of approved providers of training programs to include providers that are evidence-based and nationally recognized and omitting the names of specific proprietary systems or models, instead including a reference to a list of approved methods or systems of restraint.

Response: The commission believes it is important to have only one approved method of restraint. It makes for more effective and efficient staff training and, because it avoids confusion regarding the particular techniques that are expected to be used, it promotes safety. The commission's Staff Development Department conducts an annual needs assessment to evaluate and assess the agency's training requirements and restraint methods. The commission made no amendments to the proposed rule regarding the company's suggestion to consider expanding the list of approved providers and including references to a list of approved methods.

Comment: Regarding subsection (g), the language should state that staff will refrain from applying forceful prone restraints on the floor; require staff education in the risks of restraints, including restraint-related positional asphyxia; and require that auxiliary staff continuously monitor for signs of distress in the restrained youth.

Response: CPI's suggestions regarding staff training, debriefing and monitoring are addressed in the agency's training curriculum and in other agency policies. However, the commission believes the proposed subsection could benefit from emphasizing that placement of youth in positions that are capable of causing positional asphyxia is a prohibited technique. Therefore, the commission amends the proposed subsection (g)(1) to read, "restricting respiration in any way, such as applying a chokehold or pressure to a youth's back or chest or placing a youth in a position that is capable of causing asphyxia;"

The new rule is adopted under the Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to order a child's confinement under conditions it believes best designed for the child's welfare and the interests of the public.

The adopted rule implements the Human Resources Code, §61.034.

§97.23. Physical Restraint.

(a) Purpose. It is the policy of the Texas Youth Commission (TYC) not to use force against a youth except for purposes of physical restraint under the limited circumstances described in this rule. Problem-solving, verbal intervention and de-escalation techniques are expected to be used to the greatest extent possible to avoid the necessity for any physical restraint. When physical restraint becomes necessary, it is the policy of TYC to use restraint techniques that minimize the risk of harm to the youth and staff. Physical restraint is never to be used as punishment or for the convenience of staff. It is to be used as a last resort, only after all other less restrictive interventions have failed.

(b) Applicability.

(1) See §97.27 of this title (relating to Riot Control).

(2) To allow youth time to regain self-control, see §97.35 of this title (relating to Temporary Segregation of Youth Out of Control) and §97.39 of this title (relating to Isolation).

(3) For short-term placement of out-of-control youth in a security program, see §97.40 of this title (relating to Security Program).

(4) See §91.92 of this title (relating to Psychotropic Medication-Related Emergencies).

(c) Explanation of Terms Used.

(1) Full-Body Restraint--means use of a padded cloth or leather mechanical restraint devices to secure a youth to a specially designed bed as a means of physical restraint.

(2) Handle With Care--means a proprietary physical intervention system based on a passive manual restraint method that provides control without inflicting pain or injury.

(3) Manual Restraint--means use of hands-on techniques as a means of physical restraint.

(4) Mechanical Restraint--means use of a mechanical device applied to a youth as a means of physical restraint.

(5) OC Spray--also known as pepper spray, means the chemical agent, Oleoresin Capsicum (OC), used as a means of physical restraint.

(6) Physical Restraint--means restricting a youth's freedom of action by using various restraint methods, including manual restraint, mechanical restraint, OC spray and full-body restraint.

(7) Verbal Judo--means a proprietary system of communication and persuasion for de-escalating a situation before using physical restraint.

(d) When Physical Restraint Is Authorized.

(1) Physical restraint of a youth must never be used unless it is necessary in order to prevent the youth from:

(A) causing harm to himself/herself or others;

(B) causing property damage;

(C) escaping, absconding, or fleeing apprehension;

(D) resisting removal from a dangerous or disruptive situation;

(E) resisting administration of medical treatment when, under the circumstances, failure to administer the treatment could have serious health implications; or

(F) resisting collection of DNA samples as required by law.

(2) In deciding whether to physically restrain a youth for any of the purposes indicated above, a staff member must consider the following two questions:

(A) Is it likely that what the youth would be restrained from doing will actually occur, continue or escalate if the restraint is not undertaken immediately? Consider:

(i) how imminent or certain the risk is;

(ii) the extent to which the youth has voluntarily ceased the conduct; and

(iii) how effective de-escalation efforts have been.

(B) Under the circumstances existing at the time, is physical restraint justified and prudent? Consider:

(i) the extent of harm that might result if the youth is not restrained now and the conduct occurs, continues or escalates; and

(ii) the extent of the potential risk of harm to both the youth and staff by using physical restraint now.

(3) When both questions are answered affirmatively, the use of physical restraint is required. Sometimes that decision must be made in a split second in order to prevent the youth from causing serious harm. When either question is answered negatively, because the restraint is considered to be either unnecessary for now or unjustified or imprudent under the circumstances, preventive measures appropriate to the situation must be tried first.

(4) A youth must be released from physical restraint as soon as the purpose for which the youth was restrained under subsection (d)(1) of this section has been achieved.

(e) Preventive Steps To Avoid The Necessity For Physical Restraint.

(1) In situations where a youth's behavior indicates that physical restraint may become necessary, or where a youth's resistance to compliance with a request may escalate, preventive steps must be taken to the greatest extent possible to prevent the need for physical restraint. The aim of these steps is to assist the youth in regaining self-control with dignity and complying voluntarily. These steps include:

(A) using Verbal Judo or other communication and persuasion techniques, along with empathy and presence, in appealing to the youth's reason and practical sense;

(B) re-directing the youth's attention and energy toward a more constructive objective; and

(C) using staff teamwork, particularly as a way to switch the youth's focus to staff members who may not have been involved in the situation initially.

(2) These preventive steps are most effective when they occur in a culture and climate of safety, where all youth and staff respect each other's person and are proactively engaged at all times in preventing the need for physical restraint. The steps for creating such a culture and climate include:

(A) respectful and active listening in order to create relationships of trust and connection between staff and youth and to encourage youth to break their ingrained code of silence;

(B) providing regular opportunities for conflict resolution and problem solving, and, when feasible and appropriate, delaying another scheduled activity in order to allow timely staff-supervised verbal intervention with other youth in behavior groups;

(C) rewarding youth and staff for their actions that prevent combative situations and that help create a culture and climate of safety; and

(D) implementing fair, firm, and consistent disciplinary consequences for misconduct that threatens safety and security.

(f) Approved Techniques For Physical Restraint. Techniques that may be used for physical restraint are limited to:

(1) agency-approved:

(A) Handle With Care methods of manual restraint;

(B) mechanical restraints;

(C) OC spray, under certain limited circumstances; and

(D) full-body restraints, under certain limited circumstances; or

(2) other methods of manual restraint that under the circumstances existing at the time:

(A) are more practical than the agency-approved Handle With Care methods of restraint, taking into account the youth's and staff's particular vulnerability to harm;

(B) involve a use of force to a degree no greater than that reasonably necessary to achieve the objective; and

(C) do not unduly risk serious harm or needless pain to the youth or staff.

(g) Prohibited Techniques of Physical Restraint. Prohibited techniques of restraint that unduly risk serious harm or needless pain to the youth include:

(1) restricting respiration in any way, such as applying a chokehold or pressure to a youth's back or chest or placing a youth in a position that is capable of causing asphyxia;

(2) using any method that is capable of causing loss of consciousness or harm to the neck;

(3) pinning down with knees to torso, head and/or neck;

(4) slapping, punching, kicking, or hitting;

(5) using pressure point, pain compliance and joint manipulation techniques, other than an approved Handle With Care method for release of a chokehold, bite or hair pull;

(6) modifying restraint equipment or applying any cuffing technique that connects handcuffs behind the back to ankle restraints;

(7) dragging or lifting of the youth by the hair or by any type of mechanical restraints;

(8) using other youth or untrained staff to assist with the restraint;

(9) securing a youth to another youth or to a fixed object, other than to an agency-approved full-body restraint device; or

(10) administering a drug for controlling acute episodic behavior as a means of physical restraint, except when the youth's behavior is attributable to mental illness and the drug is authorized by a licensed physician and administered by a licensed medical professional.

(h) Approved Manual Restraint Techniques and Guidelines for Use.

(1) Approved Manual Restraint Techniques. Handle With Care methods of manual restraint are the agency-approved manual restraint techniques. Manual restraint is authorized only when the requirements of subsection (d) of this section have been met.

(2) Guidelines for Use in Planned Manual Restraint Situations.

(A) When a youth is confined alone in a locked room and time is available to plan for manual restraint in the event preventive steps prove unsuccessful, the facility administrator or designee may approve planned manual restraint.

(B) All planned manual restraints must be videotaped, including a recording of a verbal description of the youth's conduct and all warnings provided the youth.

(C) Only staff trained in planned manual restraint may participate in the team that is assembled for the room entry.

(D) The youth must be warned to discontinue the misconduct at least two times after the team is assembled and before the room entry.

(3) Guidelines for use in Removing Clothing From Suicidal Youth.

(A) A mental health professional (MHP), as defined in §91.88 of this title (relating to Suicide Alert Explanation of Terms), shall determine if physical restraint is necessary in order to remove clothing from a youth who displays suicidal ideation or behavior.

(B) Approval by the facility administrator or designee is required for the restraint.

(C) Manual restraint may only be used to remove clothing that could potentially be used for imminent self-injury.

(D) Clothing will be removed in the security unit, in a private location.

(E) Staff must ensure that at least one staff conducting the restraint is the same gender as the youth.

(F) Once the clothing has been removed, the restraint is terminated and protective clothing is issued.

(i) Approved Mechanical Restraints and Guidelines for Use.

(1) Approved Mechanical Restraint Equipment. The following devices, when used only in a manner consistent with their intended purpose and when the requirements of subsection (d) of this section are met, are agency-approved mechanical restraint equipment:

(A) Handcuffs (Hard)--metal (not plastic) devices fastened around the wrist to restrain free movement of the hands and arms.

(B) Wristlets (Soft)--a cloth or leather band fastened around the wrist or arm and which may be secured to a waist belt.

(C) Plastic Flex Cuffs--plastic devices fastened around the wrist to restrain free movement of the hands and arms and used only in riot control.

(D) Anklets (Soft)--a cloth or leather band fastened around the ankle or leg.

(E) Leg Irons (Hard)--a metal, device with a length of chain fastened around the ankle to limit movement of the legs. Handcuffs may not be used to cuff the ankles. Oversized leg irons may be used if the standard leg irons do not go around the cuff of the ankle.

(F) Transportation Belt/Chain, Waist Band, and/or Belly Chain--these devices can be cloth, leather, or metal links that are fastened around the waist. The transportation belt is used to secure the arms to the sides or front of the body.

(G) Transport Box--a small metal box that may be used to secure handcuffs while using a transportation chain.

(H) Padlocks or Key Locks--these locks are used to secure handcuffs, wristlets, anklets, and ankle cuffs.

(I) Mittens--a cloth, plastic, foam rubber, or leather hand covering fastened around the wrist or lower arm. Acceptable fasteners include elastic, Velcro, ties, paper tape, and pull strings.

(J) Helmets--a plastic, foam rubber, or leather head covering. If appropriate, a face guard may be attached to the helmet. The device must be proper size for the youth, and the chin strap should not be so tight as to interfere with circulation.

(K) Spit Mask--a cloth or nylon covering that is designed to prevent spitting and discourage biting.

(L) Transport Leg Brace--a metal and nylon device that allows a person to walk, but will impede running or kicking. This device can be worn out of sight under trousers.

(2) Guidelines for Use.

(A) Mechanical restraint equipment must be applied properly. A device must not be secured so tightly as to interfere with circulation or so loosely as to permit chafing of the skin.

(B) When mechanical restraints are employed, the youth is placed on his/her side as soon as possible in order to help ensure adequate respiration and circulation.

(C) A mechanical restraint, for other than transportation or riot control, shall be terminated as soon as the purpose for which the youth was restrained under subsection (d)(1) of this section has been achieved, but in any event within 30 minutes, unless an extension is approved by the facility administrator or designee. Approval must be obtained every 30 minutes until termination of restraint.

(D) When mechanical restraints are employed, staff shall ensure the youth's safety by checking the youth for adequate respiration and circulation every 30 minutes. Staff will provide continuous visual supervision and appropriate assistance until the mechanical restraint is terminated.

(3) Mechanical Restraint Use by the Transportation Unit. Mechanical wrist and ankle restraints attached to a waist belt by a lead chain shall be used during transportation by the transportation unit. Exceptions may be made for youth being transported following release on parole from a residential program.

(4) Mechanical Restraint Use by Other Transporters.

(A) Mechanical ankle and wrist restraints attached to a waist belt by a lead chain shall be used during transportation when a youth is being transported to a high restriction program.

(B) Mechanical ankle and wrist restraints attached to a waist belt by a lead chain may be used when transporting a youth off-campus.

(C) Mechanical ankle and wrist restraints attached to a waist belt by a lead chain may be used when transporting a youth to a security unit and when transporting youth currently admitted to the security unit to activities outside the unit.

(D) Mechanical ankle and wrist restraints attached to a waist belt by a lead chain may be used when transporting youth currently admitted to the security unit to activities within the security unit.

(j) Approved Use of OC Spray and Guidelines for Use.

(1) Approved Use of OC Spray.

(A) OC Spray is the only agency-approved chemical agent. It is authorized for use only when:

(i) the requirements of subsection (d) of this section have been met;

(ii) manual restraint is likely to result in injury to youth or staff under the circumstances existing at the time; and

(iii) it is necessary to:

(I) quell a riot or major campus disruption;

(II) resolve a hostage situation;

(III) remove youth from behind a barricade;

(IV) secure an object that is being used as a weapon and that is capable of causing serious bodily injury; or

(V) rescue a person being assaulted by youth.

(B) Unless it is necessary to prevent loss of life or serious bodily injury, OC spray is not authorized for use when:

(i) the youth has been identified as having respiratory problems or other health conditions which would make use of OC spray dangerous; or

(ii) the youth is assigned to a mental health treatment program or identified by a mental health professional as having a psychiatric condition or mental health diagnosis that would contraindicate the use of OC spray until the MHP has been given the opportunity to establish control; or

(iii) the youth is confined in a room in a security unit.

(2) Persons Authorized to Use OC Spray.

(A) OC spray is permitted only in TYC high restriction institutions and in high restriction contract care programs approved by the executive director or designee.

(B) Only staff who have been trained in the use of OC spray are authorized to use it.

(C) In TYC high restriction institutions, only security personnel whose regular assignment is outside the security unit are authorized to routinely carry OC spray on their person.

(3) Guidelines for Use.

(A) OC spray canisters must be carefully controlled at all times. Access to them must be controlled at a single central location.

(B) After administration of OC spray, staff must initiate de-contamination with cool water as soon as the purpose of the restraint has been achieved.

(C) Immediately following de-contamination from OC spray, medical staff will be contacted to examine and, if necessary, treat youth and staff.

(k) Approved Use of Full-Body Restraint and Guidelines for Use.

(1) Approved Use of Full-Body Restraint. A full-body restraint bed equipped with cloth or leather mechanical restraint straps/devices to secure a person on a bed, face upward, is the only agency-approved full-body restraint equipment. It must be used only in a manner consistent with its intended purpose. It is authorized for use only when:

(A) the requirements of subsection (d) of this section have been met; and

(B) the restraint is necessary to prevent serious self-injury.

(2) Persons Authorized to Use Full-Body Restraint.

(A) Full-body mechanical restraints are permitted only in TYC institutions and in high restriction contract care programs approved by the executive director or designee.

(B) Staff who may be expected to participate in any aspect of the restraint must receive special training and will not participate in its implementation until the training has been received. The training will include proper use and application of full body restraint devices and applicable TYC policies and guidelines regarding the implementation, documentation, and continuation of full body restraint.

(C) At least one staff trained specifically in full body restraint techniques must be involved in any takedown procedure. If at least one trained staff is not available to supervise, full-body restraint shall not be employed.

(3) Guidelines for Use.

(A) If the facility resources are not sufficient to support the procedural requirements for full body restraint as specified in this subsection, then full body restraint of the youth must not be employed.

(B) Authorization by the facility administrator or designee to use full body restraint is required and is valid for up to one hour only.

(C) Prior to the expiration of the first hour, the youth shall be evaluated by a MHP who may recommend approval to continue the full body restraint.

(D) In order to recommend continuation of the restraint, the mental health assessment will verify that the current use of full body restraint is not having a psychologically damaging effect and that the need for full body restraint is not due to an immediate psychiatric crisis which requires alternative interventions.

(E) Approval from a physician or a licensed doctoral psychologist must be obtained to continue the full body restraint beyond one (1) hour.

(F) Additional MHP assessment is required to extend the restraint beyond four (4) hours and at least every four (4) hours thereafter if the restraint continues.

(G) The facility administrator or designee may direct additional MHP assessment at any time.

(H) Restraint shall be terminated as soon as the youth's behavior indicates the threat of imminent self-injury is absent.

(I) Staff employing a full body restraint shall ensure the youth's personal dignity by providing a protected environment and as much privacy as possible.

(J) All items or articles (i.e. belts, gloves, and jewelry) with which a youth might injure himself/herself shall be removed prior to application of restraint devices. However, youth shall be permitted to wear as much clothing as is safe.

(K) Youth placed in full body restraint shall be provided:

(i) regular checks, performed by a nurse, of the physical condition of the youth and the placement of the restraints within the first 30 minutes and every hour during the restraint;

(ii) an assessment of circulation, position, and open airway checks at least every 15 minutes by specifically trained staff;

(iii) opportunity for motion and exercise for a period of not less than five (5) minutes at each half hour;

(iv) regularly scheduled meals and drinks served on appropriate food ware for safety;

(v) regularly prescribed medications, unless otherwise ordered by a physician;

(vi) opportunities for elimination of bodily waste are offered at least every two (2) hours;

(vii) a room of adequate size, free of safety hazards, adequately ventilated during warm weather, adequately heated during cold weather, and appropriately lighted; and

(viii) continuous visual supervision at arms' length by staff.

(L) No order or approval for full body restraint may be in force for longer than 12 hours. If such restraint is still required for the youth's safety, a physician must directly observe the youth and provide written orders.

(M) Use of medications to assist in calming an agitated youth at the time of restraint or as a substitute for restraint may be appropriate and/or the preferred method of treatment. Refer to §91.92 of this title (relating to Psychotropic Medication-Related Emergencies).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 11, 2005.

TRD-200500635
Dwight Harris
Executive Director
Texas Youth Commission
Effective date: March 3, 2005
Proposal publication date: November 19, 2004
For further information, please call: (512) 424-6301

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37 TAC §97.25

The Texas Youth Commission (TYC) adopts the repeal of §97.25, concerning Use of Force: Chemical Agent OC, without changes to the proposal as published in the November 19, 2004, issue of the *Texas Register* (29 TexReg 10700).

The repeal is necessary in order to allow for the content of this section to be included in a new rule, §97.23, which is adopted in this issue of the *Texas Register*

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The adopted rule implements the Human Resources Code, §61.034.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 11, 2005.

TRD-200500638
Dwight Harris
Executive Director
Texas Youth Commission
Effective date: March 3, 2005
Proposal publication date: November 19, 2004
For further information, please call: (512) 424-6301

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PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 405. CHARGES FOR PUBLIC RECORDS

The Texas Commission on Fire Protection (TCFP) adopts amendments to §§405.1, 405.3, 405.5, 405.7, 405.11, and 405.15, and the repeal of §405.17, concerning general provisions, definitions, charges for providing copies of public information, access to information where copies are not requested, estimates and waivers of public information charges, and the TCFP charge schedule and billing form, in Chapter 405, entitled Charges for Public Records. Sections 405.1, 405.3, 405.5, 405.7, and 405.15, and the repeal of §405.17 are adopted without changes to the proposed text published in the December 17, 2004, issue of the *Texas Register* (29 TexReg 11564) and will not be republished. Section 405.11 is adopted with changes to the proposed text published in the December 17, 2004, issue. The change is a typo in subsection (b)(1), where the word "changes" should be "charges."

The Texas Building and Procurement Commission's (TPBC) rules (1 TAC §§111.61 - 111.71) require state agencies to adopt the TBPC charge schedule for copies of public information. These amendments bring TCFP into compliance with recent changes made to the TBPC charge schedule. The amendments also update obsolete terminology, add TBPC language not previously incorporated, and reword for clarity. The repeal of §405.17, entitled Billing Form, removes from rule format an agency standard form and adds that billing form to the agency's set of standard forms, which are internally produced.

No comments were received regarding the proposed amendments and repeal.

37 TAC §§405.1, 405.3, 405.5, 405.7, 405.11, 405.15

The amendments are adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties.

Cross reference to statute: Texas Government Code, §419.008.

§405.11. Estimates and Waivers of Public Information Charges.

(a) In accordance with 1 TAC, Chapter 111, the Commission will provide to the party requesting copies of public information an itemized statement of estimated charges if charges for copies of public information or if charges for making public information available for inspection will exceed $40. The itemized statement will contain the following information:

(1) the itemized charges, including any allowable charges for personnel time, overhead, copies, etc; and

(2) whether a less costly or no-cost way of viewing the information is available.

(b) The requestor must respond to the itemized statement in writing by mail, in person, by facsimile or email within 10 business days after the date the statement is sent, or the request will be considered to have been automatically withdrawn by the requestor. The written response must contain one of the following statements:

(1) that the requestor will accept the estimated charges; or

(2) that the requestor is modifying the request in response to the itemized statement; or

(3) that the requestor has sent to the Texas Building and Procurement Commission a complaint alleging that the requestor has been overcharged for being provided with a copy of the public information.

(c) If the Commission cannot produce the requested public information and/or duplication within 10 business days after the date the written response from the requestor has been received, the Commission will certify to that fact in writing and set a date and hour within a reasonable time, as to when the information will be available.

(d) The Commission will furnish public records without charge or at a reduced charge if it determines that a waiver or reduction is in the public interest because providing the copy of the information primarily benefits the general public.

(e) If the estimated charges are $100 or more, the Commission may require a bond for the entire estimated amount or a deposit not to exceed 50 percent of the entire estimated charges.

(f) Where a particular request will involve considerable time and resources to process, the Commission staff will advise the requesting party of what may be involved and an estimated date of completion. All efforts will be made to process requests as efficiently as possible so that requested information will be provided at the lowest possible charge. When the Commission charges for public information, full disclosure will be made to the requesting party as to how the charges were calculated.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 10, 2005.

TRD-200500606
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: March 2, 2005
Proposal publication date: December 17, 2004
For further information, please call: (512) 239-4921

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37 TAC §405.17

The repeal is adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties.

Cross reference to statute: Texas Government Code, §419.008.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 10, 2005.

TRD-200500607
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: March 2, 2005
Proposal publication date: December 17, 2004
For further information, please call: (512) 239-4921

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CHAPTER 421. STANDARDS FOR CERTIFICATION

37 TAC §421.3

The Texas Commission on Fire Protection (TCFP) adopts an amendment to §421.3, concerning minimum standards set by the TCFP, in Chapter 421, entitled Standards for Certification. The amendment is adopted without changes to the proposed text published in the December 17, 2004, issue of the *Texas Register* (29 TexReg 11567) and will not be republished. The amendment adds position descriptions for Fire Officer I and Fire Officer II positions, which had not previously existed in §421.3.

No comments were received on the proposed amendment.

The amendment is adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.032, which provides the TCFP with the authority to prescribe the means of presenting evidence of the fulfillment of the qualifications for appointment as fire protection personnel.

Cross reference to statute: Texas Government Code, §419.008 and §419.032.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 10, 2005.

TRD-200500608
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: March 2, 2005
Proposal publication date: December 17, 2004
For further information, please call: (512) 239-4921

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CHAPTER 423. FIRE SUPPRESSION

The Texas Commission on Fire Protection (TCFP) adopts amendments to §423.13 and §423.211, concerning International Fire Service Accreditation Congress (IFSAC) seals, in Chapter 423, entitled Fire Suppression. The amendments are adopted without changes to the proposed text published in the December 17, 2004, issue of the *Texas Register* (29 TexReg 11568) and will not be republished. The amendments to §423.13 and §423.211 are adopted concurrently with the adoption of amendments to §§429.211, 431.13, 431.211, 433.7, 451.7, 451.207, 453.5, and 453.7.

This group of amendments makes the procedures for obtaining an IFSAC seal consistent across disciplines; corrects the effective date of a change in qualifying requirements for individuals seeking an IFSAC seal; changes the term "First Responder" to the more commonly used term "Hazardous Materials Technician;" and makes minor grammatical changes for clarity.

No comments were received regarding the proposed amendments.

SUBCHAPTER A. MINIMUM STANDARDS FOR STRUCTURE FIRE PROTECTION PERSONNEL CERTIFICATION

37 TAC §423.13

The amendments are adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.022(a)(5), which provides the TCFP with the authority to establish minimum educational standards for appointment as basic and advanced fire protection personnel.

Cross reference to statute: Texas Government Code, §419.008 and §419.022(a)(5).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 10, 2005.

TRD-200500609
Gary L. Warren, Sr.
Executive Director
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Effective date: March 2, 2005
Proposal publication date: December 17, 2004
For further information, please call: (512) 239-4921

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SUBCHAPTER B. MINIMUM STANDARDS FOR AIRCRAFT RESCUE FIRE FIGHTING PERSONNEL

37 TAC §423.211

The amendments are adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.022(a)(5), which provides the TCFP with the authority to establish minimum educational standards for appointment as basic and advanced fire protection personnel.

Cross reference to statute: Texas Government Code, §419.008 and §419.022(a)(5).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 10, 2005.

TRD-200500610
Gary L. Warren, Sr.
Executive Director
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Effective date: March 2, 2005
Proposal publication date: December 17, 2004
For further information, please call: (512) 239-4921

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CHAPTER 427. TRAINING FACILITY CERTIFICATION

The Texas Commission on Fire Protection (TCFP) adopts amendments to §427.15 and §427.205, concerning testing procedures, in Chapter 427, entitled Training Facility Certification. The amendments are adopted without changes to the proposed text published in the December 17, 2004, issue of the *Texas Register* (29 TexReg 11569) and will not be republished.

The amendments clarify that certified training facilities and academies must provide students all the materials required to meet the competencies of the curriculum.

No comments were received regarding the proposed amendments.

SUBCHAPTER A. ON-SITE CERTIFIED TRAINING PROVIDER

37 TAC §427.15

The amendments are adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; Texas Government Code, §419.022(a)(5), which gives the TCFP the authority to establish minimum educational standards for appointment as basic and advanced fire protection personnel; and Texas Government Code, §419.028(3), which provides the TCFP with the authority to set conditions under which training facilities operate.

Cross reference to statute: Texas Government Code, §§419.008, 419.022(a)(5), and 419.028(3).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 10, 2005.

TRD-200500611
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: March 2, 2005
Proposal publication date: December 17, 2004
For further information, please call: (512) 239-4921

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SUBCHAPTER B. DISTANCE TRAINING PROVIDER

37 TAC §427.205

The amendments are adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; Texas Government Code, §419.022(a)(5), which gives the TCFP the authority to establish minimum educational standards for appointment as basic and advanced fire protection personnel; and Texas Government Code, §419.028(3), which provides the TCFP with the authority to set conditions under which training facilities operate.

Cross reference to statute: Texas Government Code, §§419.008, 419.022(a)(5), and 419.028(3).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 10, 2005.

TRD-200500612
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: March 2, 2005
Proposal publication date: December 17, 2004
For further information, please call: (512) 239-4921

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CHAPTER 429. MINIMUM STANDARDS FOR FIRE INSPECTORS

SUBCHAPTER B. MINIMUM STANDARDS FOR FIRE INSPECTOR CERTIFICATION

37 TAC §429.211

The Texas Commission on Fire Protection (TCFP) adopts an amendment to §429.211, concerning International Fire Service Accreditation Congress (IFSAC) seals (new track), in Chapter 429, entitled Minimum Standards for Fire Inspectors. The amendment is adopted without changes to the proposed text published in the December 17, 2004, issue of the *Texas Register* (29 TexReg 11570) and will not be republished. The amendment is adopted concurrently with the adoption of amendments to §§423.13, 423.211, 431.13, 431.211, 433.7, 451.7, 451.207, 453.5, and 453.7.

This group of amendments makes the procedures for obtaining an IFSAC seal consistent across disciplines; corrects the effective date of a change in qualifying requirements for individuals seeking an IFSAC seal; changes the term "First Responder" to the more commonly used term "Hazardous Materials Technician;" and makes minor grammatical changes for clarity.

No comments were received regarding the proposed amendment.

The amendment is adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.022(a)(5), which provides the TCFP with the authority to establish minimum educational standards for appointment as basic and advanced fire protection personnel.

Cross reference to statute: Texas Government Code, §419.008 and §419.022(a)(5).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 10, 2005.

TRD-200500613
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: March 2, 2005
Proposal publication date: December 17, 2004
For further information, please call: (512) 239-4921

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CHAPTER 431. FIRE INVESTIGATION

The Texas Commission on Fire Protection (TCFP) adopts amendments to §§431.13, 431.203, and 431.211, concerning International Fire Service Accreditation Congress (IFSAC) seals and minimum standards for Fire Investigator certification, in Chapter 431, entitled Fire Investigation. The amendments are adopted without changes to the proposed text published in the December 17, 2004, issue of the *Texas Register* (29 TexReg 11571) and will not be republished. The amendments to §431.13 and §431.211 are adopted concurrently with the adoption of amendments to §§423.13, 423.211, 429.211, 433.7, 451.7, 451.207, 453.5, and 453.7. The amendment to §431.203 is adopted separately.

The amendments to §431.13 and §431.211 make the procedures for obtaining an IFSAC seal consistent across disciplines; correct the effective date of a change in qualifying requirements for individuals seeking an IFSAC seal; change the term "First Responder" to the more commonly used term "Hazardous Materials Technician;" and make minor grammatical changes for clarity.

The amendment to §431.203 deletes subsection (e), which has become obsolete now that new higher levels of certification for Fire Investigator have been recently adopted.

No comments were received regarding the proposed amendments.

SUBCHAPTER A. MINIMUM STANDARDS FOR ARSON INVESTIGATOR CERTIFICATION

37 TAC §431.13

The amendments are adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.022(a)(5), which provides the TCFP with the authority to establish minimum educational standards for appointment as basic and advanced fire protection personnel.

Cross reference to statute: Texas Government Code, §419.008 and §419.022(a)(5).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 10, 2005.

TRD-200500614
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: March 2, 2005
Proposal publication date: December 17, 2004
For further information, please call: (512) 239-4921

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SUBCHAPTER B. MINIMUM STANDARDS FOR FIRE INVESTIGATOR CERTIFICATION

37 TAC §431.203, §431.211

The amendments are adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.022(a)(5), which provides the TCFP with the authority to establish minimum educational standards for appointment as basic and advanced fire protection personnel.

Cross reference to statute: Texas Government Code, §419.008 and §419.022(a)(5).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 10, 2005.

TRD-200500615
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: March 2, 2005
Proposal publication date: December 17, 2004
For further information, please call: (512) 239-4921

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CHAPTER 433. MINIMUM STANDARDS FOR DRIVER/OPERATOR-PUMPER

37 TAC §433.7

The Texas Commission on Fire Protection (TCFP) adopts an amendment to §433.7, concerning International Fire Service Accreditation Congress (IFSAC), in Chapter 433, entitled Minimum Standards for Driver/Operator-Pumper. The amendment is adopted without changes to the proposed text published in the December 17, 2004, issue of the *Texas Register* (29 TexReg 11572) and will not be republished. The amendment is adopted concurrently with the adoption of amendments to §§423.13, 423.211, 429.211, 431.13, 431.211, 433.7, 451.7, 451.207, 453.5, and 453.7.

This group of amendments makes the procedures for obtaining an IFSAC seal consistent across disciplines; corrects the effective date of a change in qualifying requirements for individuals seeking an IFSAC seal; changes the term "First Responder" to the more commonly used term "Hazardous Materials Technician;" and makes minor grammatical changes for clarity.

No comments were received regarding adoption of the proposed amendment.

The amendment is adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.022(a)(5), which provides the TCFP with the authority to establish minimum educational standards for appointment as basic and advanced fire protection personnel.

Cross reference to statute: Texas Government Code, §419.008 and §419.022(a)(5).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 10, 2005.

TRD-200500616
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: March 2, 2005
Proposal publication date: December 17, 2004
For further information, please call: (512) 239-4921

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CHAPTER 435. FIRE FIGHTER SAFETY

37 TAC §435.11

The Texas Commission on Fire Protection (TCFP) adopts an amendment to §435.11, concerning incident management systems (IMS), in Chapter 435, entitled Fire Fighter Safety. The amendment is adopted without changes to the proposed text published in the December 17, 2004, issue of the *Texas Register* (29 TexReg 11573) and will not be republished.

The amendment adds a new subsection (d), which recommends that departments follow the National Incident Management System (NIMS) when developing their incident management systems.

No comments were received regarding the proposed amendment.

The amendment is adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.044, which provides the TCFP with the authority to establish minimum standards for regulated fire department incident management systems.

Cross reference to statute: Texas Government Code, §419.008 and §419.044.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 10, 2005.

TRD-200500617
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: March 2, 2005
Proposal publication date: December 17, 2004
For further information, please call: (512) 239-4921

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CHAPTER 437. FEES

37 TAC §437.5, §437.15

The Texas Commission on Fire Protection (TCFP) adopts amendments to §437.5 and §437.15, concerning renewal fees, in Chapter 437, entitled Fees. The amendments are adopted without changes to the proposed text published in the December 17, 2004, issue of the *Texas Register* (29 TexReg 11573) and will not be republished.

The amendments add the word "non-refundable" to the sections of the rules that deal with renewal fees, late fees charged in connection with renewal fees, and fees for IFSAC seals issued by the TCFP.

No comments were received regarding the proposed amendments.

The amendments are adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.026, which provides the TCFP with the authority to set and collect fees for certifications and certification renewals.

Cross reference to statute: Texas Government Code, §419.008 and §419.026.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 10, 2005.

TRD-200500618
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: March 2, 2005
Proposal publication date: December 17, 2004
For further information, please call: (512) 239-4921

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CHAPTER 439. EXAMINATIONS FOR CERTIFICATION

SUBCHAPTER A. EXAMINATIONS FOR ON-SITE DELIVERY TRAINING

37 TAC §439.5

The Texas Commission on Fire Protection (TCFP) adopts an amendment to §439.5, concerning testing procedures, in Chapter 439, entitled Examinations for Certification. The amendment is adopted without changes to the proposed text published in the December 17, 2004, issue of the *Texas Register* (29 TexReg 11574) and will not be republished.

The amendment revises subsection (c) in order to address a situation in which an individual passes the state certification examination but fails to pass the International Fire Service Accreditation Congress (IFSAC) portion of that test. The amendment extends to two years the time in which an individual may retest on an IFSAC portion.

No comments were received regarding the proposed amendment.

The amendment is adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopted rules for the administration of its powers and duties; and Texas Government Code, §419.022(a)(5), which provides the TCFP with the authority to establish minimum educational standards for appointment as basic and advanced fire protection personnel.

Cross reference to statute: Texas Government Code, §419.008 and §419.022(a)(5).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 10, 2005.

TRD-200500619
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: March 2, 2005
Proposal publication date: December 17, 2004
For further information, please call: (512) 239-4921

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CHAPTER 451. FIRE OFFICER

The Texas Commission on Fire Protection (TCFP) adopts amendments to §451.7 and §451.207, concerning International Fire Service Accreditation Congress (IFSAC) seals, in Chapter 423, entitled Fire Suppression. The amendments are adopted without changes to the proposed text published in the December 17, 2004, issue of the *Texas Register* (29 TexReg 11574) and will not be republished. The amendments are adopted concurrently with the adoption of amendments to §§423.13, 423.211, 429.211, 431.13, 431.211, 433.7, 453.5, and 453.7.

This group of amendments makes the procedures for obtaining an IFSAC seal consistent across disciplines; corrects the effective date of a change in qualifying requirements for individuals seeking an IFSAC seal; changes the term "First Responder" to the more commonly used term "Hazardous Materials Technician;" and makes minor grammatical changes for clarity.

No comments were received regarding the proposed amendments.

SUBCHAPTER A. MINIMUM STANDARDS FOR FIRE OFFICER I

37 TAC §451.7

The amendments are adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.022(a)(5), which provides the TCFP with the authority to establish minimum educational standards for appointment as basic and advanced fire protection personnel.

Cross reference to statute: Texas Government Code, §419.008 and §419.022(a)(5).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 10, 2005.

TRD-200500620
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: March 2, 2005
Proposal publication date: December 17, 2004
For further information, please call: (512) 239-4921

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SUBCHAPTER B. MINIMUM STANDARDS FOR FIRE OFFICER II

37 TAC §451.207

The amendments are adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.022(a)(5), which provides the TCFP with the authority to establish minimum educational standards for appointment as basic and advanced fire protection personnel.

Cross reference to statute: Texas Government Code, §419.008 and §419.022(a)(5).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 10, 2005.

TRD-200500621
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: March 2, 2005
Proposal publication date: December 17, 2004
For further information, please call: (512) 239-4921

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CHAPTER 453. MINIMUM STANDARDS FOR HAZARDOUS MATERIALS TECHNICIAN

37 TAC §453.5, §453.7

The Texas Commission on Fire Protection (TCFP) adopts amendments to §453.5 and §453.7, concerning International Fire Service Accreditation Congress (IFSAC) seals, in Chapter 453, entitled Minimum Standards for Hazardous Material Technician. The amendments are adopted without changes to the proposed text published in the December 17, 2004, issue of the *Texas Register* (29 TexReg 11575) and will not be republished. The amendments are proposed concurrently with the adoption of amendments to §§423.13, 423.211, 429.211, 431.13, 431.211, 433.7, 451.7, and 451.207.

This group of amendments makes the procedures for obtaining an IFSAC seal consistent across disciplines; corrects the effective date of a change in qualifying requirements for individuals seeking an IFSAC seal; changes the term "First Responder" to the more commonly used term "Hazardous Materials Technician;" and makes minor grammatical changes for clarity.

No comments were received regarding the proposed amendments.

The amendments are adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.022(a)(5), which provides the TCFP with the authority to establish minimum educational standards for appointment as basic and advanced fire protection personnel.

Cross reference to statute: Texas Government Code, §419.008 and §419.022(a)(5).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 10, 2005.

TRD-200500622
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: March 2, 2005
Proposal publication date: December 17, 2004
For further information, please call: (512) 239-4921

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Adopted Rule Reviews

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Credit Union Department

Title 7, Part 6

The Credit Union Commission has completed the review of Texas Administrative Code Title 7, Chapter 97, §§97.101 relating to meetings; 97.102 relating to delegation of duties; 97.103 relating to recusal or disqualification of commission members; 97.105 relating to frequency of examinations; 97.106 relating to complaint notice; 97.107 relating to related entities; 97.113 relating to operating fees; 97.114 relating to charges for public records; 97.200 relating to employee training program; 97.205 relating to use of historically underutilized businesses; 97.207 relating to contracts for professional or personal service and 97.300 relating to gifts of money or property. Notice of the proposed review and a request for comments was published in the December 17, 2004, issue of the *Texas Register* (29 TexReg 11751).

The Commission received no comments with respect to these rules. The Department believes that the reasons for initially adopting these rules continue to exist. The Commission finds that the reasons for initially adopting 7 TAC §§97.101 - 97.103, 97.105 - 97.107, 97.113, 97.114, 97.200, 97.205, 97.207 and 97.300. continue to exist and readopts these sections without changes, pursuant to the requirements of Government Code, §2001.039.

TRD-200500683
Harold E. Feeney
Commissioner
Credit Union Department
Filed: February 14, 2005

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Texas Water Development Board

Title 31, Part 10

Pursuant to the notice of intent to review published in the December 31, 2004 issue of the *Texas Register*, (29 TexReg 12249), the Texas Water Development Board (the board) has reviewed and considered for readoption, revision or repeal 31 TAC, Part 10, Chapter 373, Grants Administration, in accordance with the Texas Government Code, §2001.039.

The board considered, among other things, whether the reasons for adoption of these rules continue to exist. No comments were received on the proposed rule review.

As a result of the board's review, the board determined that the rules are not necessary because the Construction Grants Program has expended all the funds provided for it and all projects receiving funding from the program have been closed out. In addition, there is no evidence that funding for this program will be revived by the federal government. As a result of the rule review, the board adopts the repeal of 31 TAC Chapter 373, Grants Administration, §§373.1- 373.14, §§373.16-373.30 and §§373.32- 373.44. This completes the board's review of 31 TAC Chapter 373, Grants Administration.

TRD-200500722
Suzanne Schwartz
General Counsel
Texas Water Development Board
Filed: February 15, 2005

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 7 TAC §1.1308(8)(A)

ITEMIZATION OF AMOUNT FINANCED

1. Cash price [Optional additional description: "(including any accessories, services, and taxes)"] $_____(1)

2. Downpayment =
[*If netting add*: (if negative, enter "0" and see Line 4.A. below)]
Gross trade-in $_____
- payoff by seller $_____
= net trade-in $_____
[*If not netting add*: (if negative enter "0" and see Line 4.A. below)]
+ cash $_____
+ Mfrs. Rebate $_____
+ other (describe) _____ $_____
Total downpayment $_____(2)

3. Unpaid balance of cash price (1 minus 2) $_____(3)

4. Other charges including amounts paid to others on my behalf (Seller may keep part of these amounts.):
   A. Net trade-in payoff [*Alternative caption*: "prior credit or lease balance"] to _____ $_____
   B. Cost of physical damage insurance paid to insurance company $_____
   C. Cost of optional coverages with physical damage insurance paid to insurance company $_____
   D. Cost of optional credit insurance paid to insurance company or companies $_____
      Life
      Disability
   E. Other insurance paid to the insurance company $_____
   F. Official fees paid to government agencies $_____
   G. Dealer's inventory tax [*Optional addition*: (if not included in cash price)] $_____
   H. Sales tax [*Optional addition*: (if not included in cash price)] $_____
   I. Other taxes [*Optional addition*: (if not included in cash price)] $_____
   J. Government license and/or registration fees $_____
   K. Government certificate of title fee $_____
   L. Government vehicle inspection fees $_____
   M. Deputy service fee paid to dealer $_____
   N. **Documentary fee. A documentary fee is not an official fee. A documentary fee is not required by law, but may be charged to buyers for handling documents and performing services relating to the closing of a sale. A documentary fee may not exceed $50. This notice is required by law.** [***Option to insert Spanish translation of disclosure here.***] $_____
   O. Other charges (Seller must identify who is paid and describe purpose)
      to_____for_____ $_____
      to_____for_____ $_____
      to_____for_____ $_____
   Total other charges and amounts paid to others on my behalf $_____(4)

5. **Amount Financed** (3 + 4) $_____(5)

[*Optional Caption*: Taxes, title fee, license fee, and any state inspection fee (*except for $5.00 of each such inspection fee that will be retained by Seller*) will be paid by Seller to government agencies. Documentary fee and deputy service fee will be retained by Seller and the seller may also retain parts of the insurance, service contracts, and other charges.]

[***Note: A creditor may delete portions of the figure applicable to any insurance premiums that are not financed in the contract and may also delete other inapplicable portions.***]

Figure: 7 TAC §1.1308(8)(B)

ITEMIZATION OF AMOUNT FINANCED

1.	Cash price [Optional additional description: "(including any accessories, services, and taxes)"]		$_____(1)
2.	Downpayment (A + B) =		
	A. [*If netting add*: (if negative, enter "0" and see Line 4.A. below)]		
	Gross trade-in	$_____	
	- payoff by seller	$_____	
	= net trade-in	$_____	
	B. [*If not netting add*: (if negative enter "0" and see Line 4.A. below)]		
	+ cash	$_____	
	+ Mfrs. Rebate	$_____	
	+ other (describe) _____	$_____	
	Total downpayment		$_____(2)
3.	Unpaid balance of cash price (1 minus 2)		$_____(3)
4.	Other charges including amounts paid to others on my behalf (Seller may keep part of these amounts.):		
	A. Net trade-in payoff [*Alternative caption*: "prior credit or lease balance"] to _____	$_____	
	B. Cost of physical damage insurance paid to insurance company	$_____	
	C. Cost of optional coverages with physical damage insurance paid to insurance company	$_____	
	D. Cost of optional credit insurance paid to insurance company or companies Life Disability	$_____	
	E. Other insurance paid to the insurance company	$_____	
	F. Official fees paid to government agencies	$_____	
	G. Dealer's inventory tax [*Optional addition*: (if not included in cash price)]	$_____	
	H. Other taxes [*Optional addition*: (if not included in cash price)]	$_____	
	I. Government license and/or registration fees	$_____	
	J. Government certificate of title fee	$_____	
	K. Government vehicle inspection fees	$_____	
	L. Deputy service fee paid to dealer	$_____	
	M. **Documentary fee. A documentary fee is not an official fee. A documentary fee is not required by law, but may be charged to buyers for handling documents and performing services relating to the closing of a sale. A documentary fee may not exceed $50. This notice is required by law.** [***Option to insert Spanish translation of disclosure here.***]	$_____	
	N. Other charges (Seller must identify who is paid and describe purpose)		
	to_____for_____	$_____	
	to_____for_____	$_____	
	to_____for_____	$_____	
	Total Itemized Charges upon which the Finance Charge is assessed		$_____(4)
5.	Total Unpaid Balance Plus Itemized Charges Upon which the Finance Charge is assessed. (3+4)		$_____(5)
6.	Total Sales Tax (Upon Which No Finance Charge is Assessed)		$_____(6)
7.	**Amount Financed** (5+6)		$_____(7)
	Finance Charge (Not Assessed Upon Sales Tax)		$_____

[*Optional Caption*: Taxes, title fee, license fee, and any state inspection fee (*except for $5.00 of each such inspection fee that will be retained by Seller*) will be paid by Seller to government agencies. Documentary fee and deputy service fee will be retained by Seller.]

[***Note: A creditor may delete portions of the figure applicable to any insurance premiums that are not financed in the contract and may also delete other inapplicable portions.***]

Figure: 7 TAC §1.1309(b)

MOTOR VEHICLE RETAIL INSTALLMENT SALES CONTRACT

(Optional: DATE _____)

BUYER _____ SELLER/CREDITOR _____

ADDRESS _____ ADDRESS _____

CITY _____ STATE ____ ZIP _____ CITY _____ TX _____

PHONE _____ PHONE _____

The Buyer is referred to as "I" or "me." The Seller is referred to as "you" or "your." This contract may be transferred by the Seller.

PROMISE TO PAY

The credit price is shown below as the "Total Sales Price." The "Cash Price" is also shown below. By signing this contract, I choose to purchase the motor vehicle on credit according to the terms of this contract. I agree to pay you the Amount Financed, Finance Charge, and any other charges in this contract. I agree to make payments according to the Payment Schedule in this contract. If more than one person signs as a buyer, I agree to keep all the promises in this agreement even if the others do not.

I have thoroughly inspected, accepted, and approved the motor vehicle in all respects.

MOTOR VEHICLE IDENTIFICATION

Stock No.	Year	Make	Model	Vehicle Identification Number	License Number (if applicable)	☐ New ☐ Demonstrator ☐ Factory Official/Executive ☐ Used	USE FOR WHICH PURCHASED ☐ PERSONAL, FAMILY OR HOUSEHOLD ☐ BUSINESS OR COMMERCIAL ☐ AGRICULTURAL

Trade-in: Year _____ Make _____ Model _____ VIN _____ License No. _____

ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate.	**FINANCE CHARGE** The dollar amount the credit will cost me.	**Amount Financed** The amount of credit provided to me or on my behalf.	**Total of Payments** The amount I will have paid after I have made all payments as scheduled.	**Total Sale Price** The total cost of my purchase on credit, including down payment of $_____
%	$	$	$	$

My Payment Schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due

Security: You will have a security interest in the motor vehicle being purchased.

Late Charge: [True daily earnings:] (Option A:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge at the rate of _____% per year on the past due amount. The late charge on the past due amount will be earned from the due date to the date that it is paid. (Option B:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge of _____% of the scheduled payment. [Scheduled Installment Earnings Method or sum of the periodic balances:] (Option A:) If I do not pay my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge on the past due amount at the contract rate. (Option B:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge at the rate of _____% per year on the late amount. The late charge on the past due amount will be earned from the due date to the date that it is paid. (Option C:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge of _____% of the scheduled payment.

Prepayment: [True daily earnings method:] If I pay all that I owe early, I will not have to pay a penalty. [Sum of the periodic balances method:] I can pay all that I owe early. If I do so, I can get a refund of part of the Finance Charge.

Additional Information: I will refer to this document for information about nonpayment, default, security interests, any required repayment in full before the scheduled date, and prepayment refunds.

ITEMIZATION OF AMOUNT FINANCED

1.	Cash price [Optional additional description: "(including any accessories, services, and taxes)"]		$_____(1)
2.	Downpayment =		
	[*If netting add*: (if negative, enter "0" and see Line 4.A. below)]		
	Gross trade-in	$_____	
	- payoff by seller	$_____	
	= net trade-in	$_____	
	[*If not netting add*: (if negative enter "0" and see Line 4.A. below)]		
	+ cash	$_____	
	+ Mfrs. Rebate	$_____	
	+ other (describe) _____	$_____	
	Total downpayment		$_____(2)
3.	Unpaid balance of cash price (1 minus 2)		$_____(3)
4.	Other charges including amounts paid to others on my [~~your~~] behalf (Seller may keep part of these amounts.):		
	A. Net trade-in payoff [*Alternative caption*: "prior credit or lease balance"] to _____	$_____	
	B. Cost of physical damage insurance paid to insurance company	$_____	
	C. Cost of optional coverages with physical damage insurance paid to insurance company	$_____	
	D. Cost of optional credit insurance paid to insurance company or companies Life Disability	$_____	
	E. Other insurance paid to the insurance company	$_____	
	F. Official fees paid to government agencies	$_____	
	G. Dealer's inventory tax [*Optional addition*: (if not included in cash price)]	$_____	
	H. Sales tax [*Optional addition*: (if not included in cash price)]	$_____	
	I. Other taxes [*Optional addition*: (if not included in cash price)]	$_____	
	J. Government license and/or registration fees	$_____	
	K. Government certificate of title fee	$_____	
	L. Government vehicle inspection fees	$_____	
	M. Deputy service fee paid to dealer	$_____	
	N. **Documentary fee. A documentary fee is not an official fee. A documentary fee is not required by law, but may be charged to buyers for handling documents and performing services relating to the closing of a sale. A documentary fee may not exceed $50. This notice is required by law. [*Option to insert Spanish translation of disclosure here.*]**	$_____	
	O. Other charges (Seller must identify who is paid and describe purpose) to_____for_____	$_____	
	to_____for_____	$_____	
	to_____for_____	$_____	
	Total other charges and amounts paid to others on my [~~your~~] behalf		$_____(4)
5.	**Amount Financed** (3 + 4)		$_____(5)

[*Optional Caption*: Taxes, title fee, license fee, and any state inspection fee (*except for $5.00 of each such inspection fee that will be retained by Seller*) will be paid by Seller to government agencies. Documentary fee and deputy service fee will be retained by Seller and the seller may also retain parts of the insurance, service contracts, and other charges.]

[***Note: A creditor may delete portions of the figure applicable to any insurance premiums that are not financed in the contract and may also delete other inapplicable portions.***]

DEFERRED DOWNPAYMENT(S)	
AMOUNT	**DATE DUE**

MODEL CLAUSE FOR PHYSICAL DAMAGE INSURANCE

PROPERTY INSURANCE: I must keep the collateral insured against damage or loss in the amount I owe. I must keep this insurance until I have paid all that I owe under this contract. I may obtain property insurance from anyone I want or provide proof of insurance I already have. The insurer must be authorized to do business in Texas. I agree to give you proof of property insurance. I must name you as the person to be paid under the policy in the event of damage or loss.

[Note: The following optional provisions are included for Creditors who finance physical damage insurance. Creditors who do not routinely finance Physical Damage coverage, or who are not financing it in a particular transaction, may delete the remaining disclosures in this Figure. A creditor may also delete those portions below that pertain to coverages it does not routinely finance, or that pertain to coverages that it is not financing in a particular transaction.]

If any insurance is included below, policies or certificates from the insurance company will describe the terms, conditions and deductibles.

A. Physical damage insurance. If you obtain physical damage insurance, the coverages, terms and premiums for these terms are set forth below.

Coverage	Term in Months	Premium
Collision	___	☐$_____
Comprehensive	___	☐$_____
Fire, Theft, and Combined Additional Coverage	___	☐$_____
Other	___	☐$_____

B. Optional coverages with physical damage insurance. If I have chosen this insurance, the premiums for the initial _____ month term are itemized below. **[*Note: alternatively, these optional coverages may be disclosed as part of Figure 1: 7 TAC 1.1308(12).*]**

☐$_____ Towing and Labor Costs Reimbursement ☐$_____ Rental Reimbursement

☐$_____ Other:_____

If the box next to a premium for an insurance coverage included above is marked, that premium is not fixed or approved by the Texas Insurance Commissioner. If the premium is for a required coverage, I have the option, for a period of 10 days from the date I receive a copy of this contract, of furnishing that coverage through existing policies of insurance or by obtaining like coverage from any insurance company authorized to do business in Texas.

I agree to purchase the above checked coverages.
Buyer's Signature: _____ Date: _____

MODEL CLAUSE FOR OPTIONAL INSURANCE COVERAGES

Optional insurance coverages. The insurance described below is not required to obtain credit. It will not be provided unless I sign and agree to pay the extra cost. [***At Creditor's Option, the following may be added:***] My decision to buy or not buy these insurance coverages will not be a factor in the credit approval process.

Coverage	Term in Months	Premium
GAP*	_____	☐ $_____
Invol. Unemployment	_____	☐ $_____
_____	_____	☐ $_____
Liability Insurance	_____	☐ $_____

$_____ per person $_____ property damage
$_____ per accident

*If the motor vehicle is determined to be a total loss, GAP Insurance will pay you the difference between the proceeds of my basic collision policy and the amount I owe on the motor vehicle, minus my deductible. I can cancel that insurance without charge for 10 days from the date of this contract.

If the box next to a premium for an insurance coverage included above is marked, that premium is not fixed or approved by the Texas Insurance Commissioner.

I want the optional coverages for which premiums are included above

Buyer's Signature: _____ Date: _____

[Note: A creditor who does not routinely finance optional coverages, or does not finance them in a particular transaction, may omit this figure. A creditor may also delete those portions of the Figure that pertain to coverages it does not routinely finance, or that pertain to coverages that it is not financing in a particular transaction.]

MODEL CLAUSE FOR OPTIONAL CREDIT LIFE AND ACCIDENT AND HEALTH (DISABILITY) INSURANCE

Optional credit life and credit disability insurance. Credit life insurance and credit disability insurance are not required to obtain credit. They will not be provided unless I sign and agree to pay the extra cost. ***[At Creditor's Option, the following may be added:]*** My decision to buy or not buy these insurance coverages will not be a factor in the credit approval process.

☐Credit Life, one buyer	$_____	☐Credit Life, both buyers	$_____	Term _____
☐Credit Disability, one buyer	$_____	☐Credit Disability, both buyers	$_____	Term _____

[Optional additional sentence for balloon payment contracts:] Credit Life Insurance is for the scheduled term of this contract. Credit Disability Insurance covers the first ____ payments and does not cover the last scheduled payment. ***[Optional additional language for true daily earnings method contracts:]*** Credit life insurance pays only the amount I would owe if I paid all my payments on time. Credit disability insurance does not cover any increase in my payment or in the number of payments.
If the term of the insurance is 121 months or longer, the premium is not fixed or approved by the Texas Insurance Commissioner.

I want the insurance indicated above.
Buyer's Signature: _____ Date: _____
Co-Buyer's Signature: _____ Date: _____

[Note: A creditor who does not routinely finance these coverages, or does not finance them in a particular transaction, may omit this figure. A creditor may also delete those portions of the Figure that pertain to coverages it does not routinely finance, or that pertain to coverages that it is not financing in a particular transaction.]

LIABILITY INSURANCE

(OPTION A) THIS CONTRACT DOES NOT INCLUDE INSURANCE COVERAGE FOR PERSONAL LIABILITY AND PROPERTY DAMAGE CAUSED TO OTHERS.

(OPTION B) UNLESS A CHARGE FOR LIABILITY INSURANCE IS INCLUDED IN THE ITEMIZATION OF AMOUNT FINANCED, LIABILITY INSURANCE COVERAGE FOR BODILY INJURY AND PROPERTY DAMAGE CAUSED TO OTHERS IS NOT INCLUDED IN THIS CONTRACT.

(OPTION C) UNLESS A CHARGE FOR LIABILITY INSURANCE IS INCLUDED IN THE ITEMIZATION OF AMOUNT FINANCED, ANY INSURANCE REFERRED TO IN THIS CONTRACT DOES NOT INCLUDE COVERAGE FOR PERSONAL LIABILITY AND PROPERTY DAMAGE CAUSED TO OTHERS.

Any change to this contract must be in writing. Both you and I must sign it. No oral changes to this contract are enforceable.

_____ Buyer _____ Co-Buyer

HOW YOU FIGURE THE FINANCE CHARGE

[Regular Transaction using sum of the periodic balances method:] (Option A_1: Sales Tax Advance) You figure the Finance Charge using the add-on method as defined by the Texas Finance Commission Rule. Add-on Finance Charge is calculated on the full amount of the unpaid principal balance and added as a lump sum to the unpaid principal balance for the full term of the contract. (Option A_2: Sales Tax Advance) The Finance Charge will be calculated by using the add-on method. Add-on Finance Charge is calculated on the full amount of the unpaid principal balance and added as a lump sum to the unpaid principal balance for the full term of the contract. The add-on Finance Charge is calculated at a rate of $____ per $100.00. (Option B: Deferred Sales Tax) The Finance Charge will be calculated by using the add-on method. Add-on Finance Charge is calculated on the full amount of the unpaid principal balance subject to a finance charge and added as a lump sum to the unpaid principal balance subject to a Finance Charge for the full term of the contract. The add-on finance charge is calculated at a rate of $____ per $100.00.

[True Daily Earnings Method:] (Option A_1: Sales Tax Advance) You figure the Finance Charge using the true daily earnings method as defined by the Texas Finance Code. Under the true daily earnings method, the Finance Charge will be figured by applying the daily rate to the unpaid portion of the Amount Financed for the number of days the unpaid portion of the Amount Financed is outstanding. The daily rate is 1/365th of the Annual Percentage Rate. The unpaid portion of the Amount Financed does not include late charges or return check charges. (Option A_2: Sales Tax Advance) The contract rate is _____%. This contract rate may not be the same as the Annual Percentage Rate. You will figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance. The daily rate is 1/365th of the contract rate. The unpaid principal balance does not include the late charges or returned check charges. (Option B: Deferred Sales Tax) The contract rate is _____%. This contract rate may not be the same as the Annual Percentage Rate. You will figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance subject to a Finance Charge. The daily rate is 1/365th of the contract rate. The unpaid principal balance subject to a finance charge does not include the late charges, sales tax, or returned check charges.

[Scheduled Installment Earnings Method:] (Option A_1: Sales Tax Advance) You figure the Finance Charge using the scheduled installment earnings method as defined by the Texas Finance Code. Under the scheduled installment earnings method, the Finance Charge is figured by applying the daily rate to the unpaid portion of the Amount Financed as if each payment will be made on its scheduled payment date. The daily rate is 1/365th of the Annual Percentage Rate. The unpaid portion of the Amount Financed does not include late charges or return check charges. (Option A_2: Sales Tax Advance) The contract rate is _____%. This contract rate may not be the same as the Annual Percentage Rate. You will figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance. You based the Finance Charge, Total of Payments, and Total Sale Price as if all payments were made as scheduled. The unpaid principal balance does not include the

late charges or returned check charges. (Option B: Deferred Sales Tax) The contract rate is _____%. This contract rate may not be the same as the Annual Percentage Rate. You figured the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance subject to a Finance Charge. You based the Finance Charge, Total of Payments, and Total Sale Price as if all payments were made as scheduled. The unpaid principal balance subject to a Finance Charge does not include the late charges, sales tax, or returned check charges.

CONSUMER WARNING

[Scheduled Installment Earnings Method:] Notice to the buyer - I will not sign this contract before I read it or if it contains any blank spaces. I am entitled to a copy of the contract I sign. Under the law, I have the right to pay off in advance all that I owe and under certain conditions may obtain a partial refund of the finance charge. I will keep this contract to protect my legal rights.

[True Daily Earnings Method:] Notice to the buyer - I will not sign this contract before I read it or if it contains any blank spaces. I am entitled to a copy of the contract I sign. Under the law, I have the right to pay off in advance all that I owe and under certain conditions may save a portion of the finance charge. I will keep this contract to protect my legal rights.

BUYER'S ACKNOWLEDGEMENT OF CONTRACT RECEIPT

(OPTION A: **If buyer's signature is dated)** I AGREE TO THE TERMS OF THIS CONTRACT. WHEN I SIGN THE CONTRACT, I WILL RECEIVE THE COMPLETED CONTRACT. IF NOT, I UNDERSTAND THAT A COPY WILL BE MAILED TO ME WITHIN A REASONABLE TIME.

(OPTION B: **If the buyer's signature is not dated)** I AGREE TO THE TERMS OF THIS CONTRACT. I CONFIRM THAT BEFORE I SIGNED THIS CONTRACT, YOU GAVE IT TO ME, AND I WAS FREE TO TAKE IT AND REVIEW IT. I RECEIVED THE COMPLETED CONTRACT ON _____ (MO.) (DAY) (YR.)

(OPTION C: **If the buyer's signature is not dated)** I SIGNED THIS CONTRACT ON _____ AND A COPY WILL BE MAILED TO ME WITHIN A REASONABLE TIME.

(OPTION D: **If the buyer's signature is dated or not dated)** I AGREE TO THE TERMS OF THIS CONTRACT AND ACKNOWLEDGE RECEIPT OF A COMPLETED COPY OF IT. I CONFIRM THAT BEFORE I SIGNED THIS CONTRACT, YOU GAVE IT TO ME, AND I WAS FREE TO TAKE IT AND REVIEW IT.

_____ _____ _____ _____

Buyer Date Seller Date

_____ _____

Co-Buyer Date

THIS CONTRACT IS NOT VALID UNTIL YOU AND I SIGN IT.

CONSUMER CREDIT COMMISSIONER NOTICE. To contact (insert authorized business name of retail seller, creditor or holder as appropriate) about this account, call (insert telephone number of retail seller, creditor, or holder as appropriate). This contract is subject in whole or in part to Texas law which is enforced by the Consumer Credit Commissioner, 2601 N. Lamar Blvd., Austin, Texas 78705-4207; (800) 538-1579; (512) 936-7600, and can be contacted relative to any inquiries or complaints.

OTHER TERMS AND CONDITIONS

[Sum of the periodic balances method and Scheduled Installment Earnings Method:] HOW YOU CALCULATE MY FINANCE CHARGE REFUND IF I PREPAY If I prepay in full, I may be entitled to a refund of part of the Finance Charge. **[Sum of the periodic balances method:]** You will figure the Finance Charge refund by using the sum of the periodic balances method as defined by the Texas Finance Commission rule. (Optional: You will figure the Finance Charge refund using the sum of the periodic balances method as defined by the Texas Finance Commission rule. The Finance Charge Refund will be computed upon the entire Finance Charge minus the Acquisition Cost. I will not get a refund if it is less than $1.00.) (Additional Option for heavy commercial vehicle: You will figure the Finance Charge refund using the sum of the periodic balances method as defined by the Texas Finance Commission rule. The Finance Charge refund will be computed based upon the entire Finance Charge calculated using the sum of the periodic balances method. Then you will subtract the Acquisition Cost from that amount. I will not get a refund if it is less than $1.00.) **[Scheduled Installment Earnings Method:]** You will figure the Finance Charge refund by the scheduled installment earnings method as defined by the Texas Finance Commission rule. (Optional: You will figure my refund by deducting earned finance charges from the 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. I will not get a refund if it is less than $1.00.) **[Flexible contract forms designed to accommodate alternative methods:]** You will figure the Finance Charge refund using the sum of the periodic balances method as defined by the Texas Finance Commission rule if: this contract is a Regular Payment Contract as defined by the Texas Finance Commission rule, and this contract does not have a term

greater than 61 months. If this contract is not a Regular Payment Contract or if it has a term greater than 61 months, you will figure the Finance Charge refund using the scheduled installment earnings method as defined by the Texas Finance Commission rule. I will not get a refund if it is less than $1.00.

HOW YOU WILL APPLY MY PAYMENTS [**True daily earnings method:**] You will apply my payments in the following order:

1. earned but unpaid finance charge; and
2. to anything else I owe under this agreement.

HOW LATE OR EARLY PAYMENTS CHANGE WHAT I MUST PAY [**True daily earnings method:**] You based the Finance Charge, Total of Payments, and Total Sale Price as if all payments were made as scheduled. If I do not timely make all my payments in at least the correct amount, I will have to pay more Finance Charge and my last payment will be more than my final scheduled payment. If I make scheduled payments early, my Finance Charge will be reduced (less). If I make my scheduled payments late, my Finance Charge will increase.

INTEREST AFTER MATURITY If I don't pay all I owe when the final payment becomes due, or I do not pay all I owe if you demand payment in full under this contract, I will pay an interest charge on the amount that is still unpaid. That interest charge will be the higher rate of 18% per year or the maximum rate allowed by law, if that rate is higher. The interest charge for this amount will begin the day after the final payment becomes due.

SPECIAL PROVISIONS FOR BALLOON PAYMENTS CONTRACTS A balloon payment is a scheduled payment more than twice the amount of the average of my scheduled payments, other than the downpayment, that are due before the balloon payment.

(Paying the balloon payment under Texas Finance Code §348.123(a)) I can pay all I owe when the balloon payment is due and keep my motor vehicle.

(Option A: Refinancing the balloon payment) If I buy the motor vehicle primarily for personal, family, or household use, I can enter into a new written agreement to refinance the balloon payment when due without a refinancing fee. If I refinance the balloon payment, my periodic payments will not be larger or more often than the payments in this contract. The annual percentage rate in the new agreement will not be more than the Annual Percentage Rate in this contract. This provision does not apply if my Payment Schedule has been adjusted to my seasonal or irregular income.

(Option B: Special right to refinance balloon payment under Texas Finance Code §348.123(b)(5)(b)(iii)) I can enter into a new agreement to refinance my last installment if I am not in default. I can refinance at an annual percentage rate up to 5 points greater than the Annual Percentage Rate shown in this contract. The rate will not be more than applicable law allows. The new agreement will allow me to refinance the last installment for at least 24 months with equal monthly payments. You and I can also agree to refinance the last installment over another time period or on a different payment schedule.

AGREEMENT TO KEEP MOTOR VEHICLE INSURED I agree to have physical damage insurance covering loss or damage to the vehicle for the term of this contract. The insurance must cover your interest in the vehicle. (Optional Language Provision: The insurance must include collision coverage and either comprehensive or fire, theft, and combined additional coverage.)

YOUR RIGHT TO PURCHASE REQUIRED INSURANCE IF I FAIL TO KEEP THE MOTOR VEHICLE INSURED If I fail to give you proof that I have insurance, you may buy physical damage insurance. You may buy insurance that covers my interest and your interest in the motor vehicle, or you may buy insurance that covers your interest only. I will pay the premium for the insurance and a finance charge at the contract rate. If you obtain collateral protection insurance, you will mail notice to my last known address shown in your file.

PHYSICAL DAMAGE INSURANCE PROCEEDS I must use physical damage insurance proceeds to repair the motor vehicle, unless you agree otherwise in writing. However, if the motor vehicle is a total loss, I must use the insurance proceeds to pay what I owe you. I agree that you can use any proceeds from insurance to repair the motor vehicle, or you may reduce what I owe under this contract. If you apply insurance proceeds to the amount I owe, they will be applied to my payments in the reverse order of when they are due. If my insurance on the motor vehicle or credit insurance doesn't pay all I owe, I must pay what is still owed. Once all amounts owed under this contract are paid, any remaining proceeds will be paid to me.

RETURNED INSURANCE PREMIUMS AND SERVICE CONTRACT CHARGES [**True daily earnings method:**] If you get a refund on insurance or service contracts, or other contracts included in the cash price, you will subtract it from what I owe. Once all amounts owed under this contract are paid, any remaining refunds will be paid to me. [**Scheduled installment earnings method or sum of the periodic balances:**] If you get a refund of insurance or service contract charges, you will apply it and the unearned finance charges on it in the reverse order of the payments to as many of my payments as it will cover. Once all amounts owed under this contract are paid, any remaining refunds will be paid to me.

APPLICATION OF CREDITS Any credit that reduces my debt will apply to my payments in the reverse order of when they are due, unless you decide to apply it to another part of my debt. The amount of the credit and all finance charge or interest on the credit will be applied to my payments in the reverse order of my payments.

TRANSFER OF RIGHTS You may transfer this contract to another person. That person will then have all your rights, privileges, and remedies.

SECURITY INTEREST To secure all I owe on this contract and all my promises in it, I give you a security interest in

- the motor vehicle including all accessories and parts now or later attached (Optional: and any other goods financed in this contract);
- all insurance proceeds and other proceeds received for the motor vehicle;
- any insurance policy, service contract or other contract financed by you and any proceeds of those contracts; and
- any refunds of charges included in this contract for insurance, or service contracts.

This security interest also secures any extension or modification of this contract. The certificate of title must show your security interest in the motor vehicle.

USE AND TRANSFER OF THE MOTOR VEHICLE I will not sell or transfer the motor vehicle without your written permission. If I do sell or transfer the motor vehicle, this will not release me from my obligations under this contract, and you may charge me a transfer of equity fee of $25.00 ($50 for a heavy commercial vehicle). I will promptly tell you in writing if I change my address or the address where I keep the motor vehicle. I will not remove the motor vehicle (Optional: motor vehicle or other collateral) from Texas for more than 30 days unless I first get your written permission.

CARE OF THE MOTOR VEHICLE I agree to keep the motor vehicle free from all liens, and claims except those that secure this contract. I will timely pay all taxes, fines, or charges pertaining to the motor vehicle. I will keep the motor vehicle in good repair. I will not allow the motor vehicle to be seized or placed in jeopardy or use it illegally. I must pay all I owe even if the motor vehicle is lost, damaged or destroyed. If a third party takes a lien or claim against or possession of the motor vehicle, you may pay the third party any cost required to free the motor vehicle from all liens or claims. You may immediately demand that I pay you the amount paid to the third party for the motor vehicle. If I do not pay this amount, you may repossess the motor vehicle and add that amount to the amount I owe. If you do not repossess the motor vehicle, you may still demand that I pay you, but you cannot compute a finance charge on this amount.

DEFAULT I will be in default if:

- I do not pay any amount when it is due;
- I break any of my promises in this agreement;
- I allow a judgment to be entered against me or the collateral; or
- I file bankruptcy, bankruptcy is filed against me, or the motor vehicle becomes involved in a bankruptcy.

If I default, you can exercise your rights under this contract and your other rights under the law.

LATE CHARGE I will pay you a late charge as agreed to in this contract when it accrues.

REPOSSESSION If I default, you may repossess the motor vehicle from me if you do so peacefully. If any personal items are in the motor vehicle, you can store them for me and give me written notice at my last address shown on your records within 15 days of discovering that you have my personal items. If I do not ask for these items back within 31 days from the day you mail or deliver the notice to me, you may dispose of them as applicable law allows. Any accessory, equipment, or replacement part stays with the motor vehicle.

MY RIGHT TO REDEEM If you take my motor vehicle, you will tell me how much I have to pay to get it back. If I do not pay you to get the motor vehicle back, you can sell it or take other action allowed by law. My right to redeem ends when the motor vehicle is sold or you have entered into a contract for sale or accepted the collateral as full or partial satisfaction of a contract.

DISPOSITION OF THE MOTOR VEHICLE If I don't pay you to get the motor vehicle back, you can sell it or take other action allowed by law. You will send me notice at least 10 days before you sell it. You can use the money you get from selling it to pay allowed expenses and to reduce the amount I owe. Allowed expenses are expenses you pay as a direct result of taking the motor vehicle, holding it, preparing it for sale, and selling it. If any money is left, you will pay it to me unless you must pay it to someone else. If the money from the sale is not enough to pay all I owe, I must pay the rest of what I owe you plus interest. If you take or sell the motor vehicle, I will give you the certificate of title and any other document required by state law to record transfer of title.

COLLECTION COSTS If you hire an attorney who is not your employee to enforce this contract, I will pay reasonable attorney's fees and court costs as the applicable law allows.

CANCELLATION OF OPTIONAL INSURANCE AND SERVICE CONTRACTS This contract may contain charges for insurance or service contracts or for services included in the cash price. If I default, I agree that you can claim benefits under these contracts to the extent allowable, and terminate them to obtain refunds of unearned charges to reduce what I owe or repair the motor vehicle.

YOUR RIGHT TO DEMAND PAYMENT IN FULL If I default, or you believe in good faith that I am not going to keep any of my promises, you can demand that I immediately pay all that I owe. You don't have to give me notice that you are demanding or intend to demand immediate payment of all that I owe.

IF YOU DEMAND I PAY ALL I OWE [Sum of the periodic balances method or scheduled installment earnings method:] If you demand that I pay you all that I owe, you will give me a credit of part of the Finance Charge as if I had prepaid in full.

INTEGRATION AND SEVERABILITY CLAUSE This contract contains the entire agreement between you and me relating to the sale and financing of the motor vehicle. If any part of this contract is not valid, all other parts stay valid.

LEGAL LIMITATIONS ON YOUR RIGHTS If you don't enforce your rights every time, you can still enforce them later. You will exercise all of your rights in a lawful way. I don't have to pay finance charge or other amounts that are more than the law allows. This provision prevails over all other parts of this contract and over all your other acts.

APPLICABLE LAW Federal and Texas law apply to this contract.

SELLER'S DISCLAIMER OF WARRANTIES Unless the seller makes a written warranty, or enters into a service contract within 90 days from the date of this contract, the seller makes no warranties, express or implied, on the motor vehicle, and there will be no implied warranties of merchantability or of fitness for a particular purpose. This provision does not affect any warranties covering the motor vehicle that the motor vehicle manufacturer may provide.

NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS AND SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER (This provision applies to this contract only if the motor vehicle financed in the contract was purchased for personal, family, or household use.)

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

In this box only, the word "you" refers to the Buyer

Used Car Buyers Guide. The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale.
Spanish Translation:
Guía para compradors de vehículos usados. La información que ve en el formulario de la ventanilla para este vehículo forma parte del presente contrato. La información del formulario de la ventanilla deja sin efecto toda disposición en contrario contenida en el contrato de venta.

Figure: 10 TAC §80.240(a)(1)

MAXIMUM SPACING FOR DIAGONAL TIES (WIND ZONE I ONLY!)

Minimum Nominal Widths Single/Double Section				
Max. Vertical Distance	**12/24 wide**	**14/28 wide**	**16/32 wide**	**18/36 wide**
20" to 24"	11 ft	14 ft	15 ft	16 ft
25" to 29"	9 ft	12 ft	14 ft	15 ft
30" to 40"	8 ft	10 ft	12 ft	14 ft
41" to 48"	7 ft	9 ft	11 ft	13 ft
49" to 60" (see note 3)	6 ft	8 ft	10 ft	12 ft
61" to 80" (see note 3)	5 ft	6 ft	8 ft	10 ft
Minimum number of longitudinal ties, each end of each section.	1 at min. 58° angle from vertical	2 at min. 32° angle from vertical	2 at min. 38° angle from vertical	2 at min. 46° angle from vertical

Notes:

1) This chart applies to single and multi section homes.
2) Anchoring components are rated at 4725 lbs. ultimate load. Anchoring components and equipment shall be installed in accordance with the anchoring component and equipment manufacturer's installation instructions or the generic standards in §80.55(d)(4).
3) Single section units shall have diagonal ties directly opposite each other along the two main I-beams. Multi section units need diagonal ties on the outer-most main I-beam only. When vertical distance exceeds 48", connect diagonal tie to opposite beam.
4) Ties installed at each end of the home shall be within 24 inches of each end of the applicable I-beam.
5) The distance between any two ties may be exceeded to avoid an obstruction, as long as the total number of ties remains the same, and no two anchors shall be within 4 ft of each other. See the table in §80.240(a)(2).
6) Any vertical ties present on homes must be attached to a ground anchor. Both vertical and diagonal ties may be connected to a single double-headed anchor, if the anchor manufacturer's installation instructions allow for the combined loading.
7) The vertical distance is measured from the anchor head to the underside of the floor joists.
8) No two anchors shall be within 4 ft of each other.
9) Other stabilizing systems registered with the department may replace longitudinal and/or lateral ties as long as the system manufacturer's installation instructions are followed.

Figure: 10 TAC §80.240(a)(2)

MINIMUM NUMBER OF DIAGONAL TIES REQUIRED PER SIDE, PER UNIT LENGTH (WIND ZONE I ONLY)

	o.c. spacing (ft)												
unit length (ft)	**4**	**5**	**6**	**7**	**8**	**9**	**10**	**11**	**12**	**13**	**14**	**15**	**16**
40	10	8	7	6	6	5	5	4	4	4	4	3	3
42	11	9	7	6	6	5	5	5	4	4	4	4	3
44	11	9	8	7	6	5	5	5	4	4	4	4	4
46	12	9	8	7	6	5	5	5	5	4	4	4	4
48	12	10	8	7	7	6	5	5	5	4	4	4	4
50	13	10	9	8	7	6	6	5	5	5	4	4	4
52	13	11	9	8	7	6	6	5	5	5	4	4	4
54	14	11	9	8	7	7	6	6	5	5	5	4	4
56	14	11	10	8	8	7	6	6	5	5	5	4	4
58	15	12	10	9	8	7	6	6	6	5	5	5	4
60	15	12	10	9	8	7	7	6	6	5	5	5	5
62	16	13	11	9	8	7	7	6	6	5	5	5	5
64	16	13	11	10	9	8	7	6	6	6	5	5	5
66	17	13	11	10	9	8	7	7	6	6	5	5	5
68	17	14	12	10	9	8	7	7	6	6	6	5	5
70	18	14	12	10	9	8	8	7	7	6	6	5	5
72	18	15	12	11	10	9	8	7	7	6	6	6	5
74	19	15	13	11	10	9	8	7	7	6	6	6	5
76	19	15	13	11	10	9	8	8	7	7	6	6	6

Note: If unit length is not listed use next higher tabulated length.

Figure: 10 TAC §80.240(a)(3)

MAXIMUM SPACING FOR DIAGONAL TIES (WIND ZONE II) PER SIDE OF THE ASSEMBLED UNIT

Minimum Nominal Widths Single/Double Section				
Max. Vertical Distance	**12/24 wide**	**14/28 wide**	**16/32 wide**	**18/36 wide**
20" to 24"	7 ft	8 ft	8 ft	8 ft
25" to 29"	6 ft	7 ft	8 ft	8 ft
30" to 40"	5 ft	6 ft	7 ft	8 ft
41" to 48"	4 ft	5 ft	6 ft	7 ft
49" to 60" (see note 3)	4 ft	6 ft	6 ft	6 ft
61" to 80" (see note 3)	4 ft	4 ft	4 ft	4ft
Minimum number of longitudinal ties, each end of each section.	2 at min. 58° angle from vertical	2 at min. 32° angle from vertical	3 at min. 38° angle from vertical	3 at min. 46° angle from vertical

Notes:

1) This chart applies to single and multi section homes.
2) Anchor components are rated at 4725 lbs. ultimate load.
3) Single section units shall have diagonal ties directly opposite each other along the two main I-beams. Multi section units need diagonal ties on the outer-most main I-beam only. When vertical distance exceeds 48", connect diagonal tie to opposite beam.
4) Ties installed at each end of the home shall be within 24 inches of each end of the applicable I-beam.
5) The distance between any two ties may be exceeded to avoid an obstruction, as long as the total number of ties remains the same, and no two anchors shall be within 4 ft of each other. See the table in §80.240(a)(2).
6) Any vertical ties present on homes must be attached to a ground anchor. Both vertical and diagonal ties may be connected to a single double-headed anchor, if the anchor manufacturer's installation instructions allow for the combined loading.
7) The vertical distance is measured from the anchor head to the underside of the floor joists.
8) No two anchors shall be within 4 ft of each other.
9) Other stabilizing systems registered with the department may replace longitudinal and/or lateral ties as long as the system manufacturer's installation instructions are followed.

Figure: 10 TAC §80.240(a)(4)

MAXIMUM CENTERLINE WALL OPENING FOR COLUMN UPLIFT BRACKETS

	----Maximum opening based on floor widths----			
	12 Wide (140"max)	14 Wide (164"max.)	16 Wide (186" max.)	18 Wide (210" max.)
One Single Bracket (2-lags) either side of column.	17'-6"	15'-0"	13'-3"	11'-9"
Two Single Brackets (2-lags each), one each side of column.	35'-0"	30'-0"	26'-6"	23'-6"
One Double Bracket (4-lags) either side of column. Spans are on both sections, opposite each other.	31'-9"	27'-2"	23'-11"	21'-2"
*Two Double Brackets (4-lags) either side of column. Spans are on both sections, opposite each other.	40'-0"	40'-0"	40'-0"	40'-0"
** For openings larger than 40'-0", consult a local licensed professional engineer or architect.*				

Figure: 10 TAC §80.240(a)(5)

Floor Connections - Wind Zone I and II

	min 5/16 lag screw	# 10 wood screw
Wind Zone I	max. 36"	max. 24"
Wind Zone II	max. 24"	max. 12"

Figure: 10 TAC §80.240(a)(6)

Roof Connection - Fastener Type and Spacing:

	---------- maximum o.c. spacing (in) ----------		
	3/8 Lag	1/4 Lag	#10 wood screw
Wind Zone I	36"	24"	24"
Wind Zone II	20"	16"	12"

Figure: 10 TAC §80.240(a)(7)

MAIN PANEL BOX FEEDER CONDUCTOR SIZES

Main Breaker size (amps)	Raceway diameter	Red/Black (power)	White (neutral)	Green (grounding)
50	1	#6	#6	#8
100	1 1/4	#2 or #3	#2 or #3	#6
150	1 1/2	#1/0 or #2/0	#2	#6
200	2	#3/0	#2	#6

Figure: 10 TAC §80.240(a)(8)

FOOTER CAPACITIES (LBS)

	Soil Bearing Capacity						
Footer size	**1000psf**	**1500psf**	**2000psf**	**2500psf**	**3000psf**	**3500psf**	**4000psf**
16x16x4	1700	2700	3500	4400	5300	6100	7000
20x20x4	2700	4100	5500	6900	8300	9400	11000
16x32x4	3500	5200	6800	8600	10400	12000	14000
24x24x4	4000	6000	8000	10000	12000	14000	16000

Notes:

1) 8x16x4 footers may be used for perimeter and/or exterior door supports. Capacity is half that of the tabulated values for a 16x16x4 footer. For double 8x16x4 footers use the 16x16x4 row.
2) Footers of material other than concrete may be used if registered with the department and the listed capacity and area is equal to or greater than the footer it replaces. Concrete footers of sizes not listed may be used as long as their size is equal to or greater than the size listed.
3) Footers with loads greater than 10,000 lbs. require a double stacked pier.
4) All poured concrete is minimum 2500 psi at 28 days.
5) Actual footer dimensions may be 3/8 inch less than the nominal dimensions for solid concrete footers conforming to the specifications in ASTM C90-99a, Standard Specification for Loadbearing Concrete Masonry Units.

Figure: 10 TAC §80.240(a)(9)

PIER LOADS (LBS) AT TABULATED SPACINGS
(WITHOUT PERIMETER SUPPORTS)

	---------- maximum pier spacing ----------				
Unit Width(ft)	**4 ft o.c.**	**5 ft o.c.**	**6 ft o.c.**	**7 ft o.c.**	**8 ft o.c.**
12 Wide	1725	2150	2600	3000	3400
14 wide	2000	2500	3000	3500	4000
16 Wide	2350	2900	3500	4100	4700

Note: 18 ft. wides require perimeter blocking per the table in §80.240(a)(10).

Example: Determine maximum pier spacing for a 16 ft. wide x 76 ft. long single section with a soil bearing capacity of 1500 psf. Footer size to be used is a single 16x16x4 precast concrete footer.

Step 1: In the table in §80.240(a)(8) look up the maximum load for a single 16x16x4 pad set on 1500 psf soil. Answer = 2700 psf

Step 2: In the table in §80.240(a)(9) in the column for 16 ft. wide, find the on-center spacing (o.c.) load equal to or less than the footer capacity of 2700 lbs found in the table in §80.240(a)(8).

Answer: The 4ft column shows minimum capacity of 2350 lbs. Therefore, for a 16 ft. wide and a soil bearing capacity of 1500 psf using 16x16x4 footers the maximum pier spacing is 4 ft. o.c.

Figure: 10 TAC §80.240(a)(10)

PIER LOADS (LBS) AT TABULATED SPACINGS (WITH PERIMETER SUPPORTS)

---------- maximum I-Beam pier spacing ----------

Unit width (ft)	4 ft o.c.	6 ft o.c.	8 ft o.c.	10 ft o.c.	12 ft o.c.
12 Wide	750	1150	1500	1900	2300
14 Wide	1050	1600	2100	2600	3100
16 Wide	1200	1800	2400	3000	3600
18 Wide	1450	2150	2850	3600	4300

Note: Maximum I-Beam pier spacing is 8 ft. o.c. for 8" I-Beam, 10 ft. o.c. for 10" I-Beam and 12 ft. o.c. for 12" I-Beam or the resultant maximum spacing based on soil bearing and footer size per the table in §80.240(a)(8), whichever is less.

---------- maximum perimeter pier spacing ----------

Unit width (ft)	4 ft o.c.	5 ft o.c.	6 ft o.c.	7 ft o.c.	8 ft o.c.
12 Wide	1000	1200	1500	1700	1900
14 Wide	1100	1400	1650	1900	2200
16 Wide	1300	1600	1900	2250	2500
18 Wide	1600	2000	2300	2700	3000

Example: Determine maximum I-Beam pier spacing for a 16 ft. wide with 12" I-Beam, perimeter blocking and 1500 psf soil bearing capacity.

Step 1: From the table in §80.240(a)(8), the maximum load for a 16x16x4 at 1500 psf soil is 2700 lbs.

Step 2: From the table in §80.240(a)(10), the I-Beam pier load @ 10 ft. o.c. is 3000 lbs ==> no good, the I-Beam pier load @ 8 ft. o.c. is 2400 lbs ====> ok

I-Beam pier spacing is at 8 ft. o.c.

Step 3: The perimeter pier load @ 8ft. o.c. is 2500 lbs ====> ok

Perimeter pier spacing is at 8 ft. o.c.

Figure: 10 TAC §80.240(a)(11)

MATING LINE COLUMN LOADS (LBS)

Span in feet	Unit width in feet (nominal) 12 Wide	14 Wide	16 Wide
4	720	840	960
6	1080	1260	1440
8	1440	1680	1920
10	1800	2100	2400
12	2160	2520	2880
14	2520	2940	3360
16	2880	3360	3840
18	3240	3780	4320
20	3600	4200	4800
22	3960	4620	5280
24	4320	5040	5760
26	4680	5460	6240
28	5040	5880	6720
30	5400	6300	7200
32	5760	6720	7680
34	6120	7140	8160
36	6480	7560	8640

Note: If actual span is not shown use next higher tabulated span.

Figure: 10 TAC §80.240(a)(12)

Enforcement Matrix

Nature of Violation	Range of Recommended Actions
1st time--no dangerous conditions or loss to consumers--addressed promptly	1st time violator letter
1st time--no dangerous conditions or loss to consumers--not addressed promptly	Up to $250 fine
1st time--danger to consumer and/or significant loss to consumer--addressed promptly	Up to $500 fine
1st time--danger to consumer and/or significant loss to consumer--not addressed promptly	$500 - 1000 fine
recurring--no dangerous conditions or loss to consumers--addressed promptly	Up to $250 fine for 1st recurrence; Up to $500 for 2nd; Up to $1000 PLUS a written plan to prevent additional violations for 3rd
recurring--no dangerous conditions or loss to consumers--not addressed promptly	Up to $500 fine for 1st recurrence; Up to $1000 for 2nd; Up to $1000 and/or seek suspension
recurring--danger to consumer and/or significant loss to consumer--addressed promptly	$500 -1000 for first recurrence; Seek suspension (may be probated) for 2nd recurrence; Revocation for 3rd recurrence
recurring--danger to consumer and/or significant loss to consumer--not addressed promptly	Up to maximum allowed by law for 1st recurrence; Seek suspension (may be probated) for 2nd recurrence; Revocation for 3rd recurrence

Figure: 10 TAC §80.240(b)(1)

Counties Located in Wind Zone II

The following counties in Texas are considered to be in Wind Zone II (100 mph):

(1)	Aransas	(9)	Kleberg
(2)	Brazoria	(10)	Matagorda
(3)	Calhoun	(11)	Nueces
(4)	Cameron	(12)	Orange
(5)	Chambers	(13)	Refugio
(6)	Galveston	(14)	San Patricio
(7)	Jefferson	(15)	Willacy
(8)	Kenedy		

All other counties are in Wind Zone I.

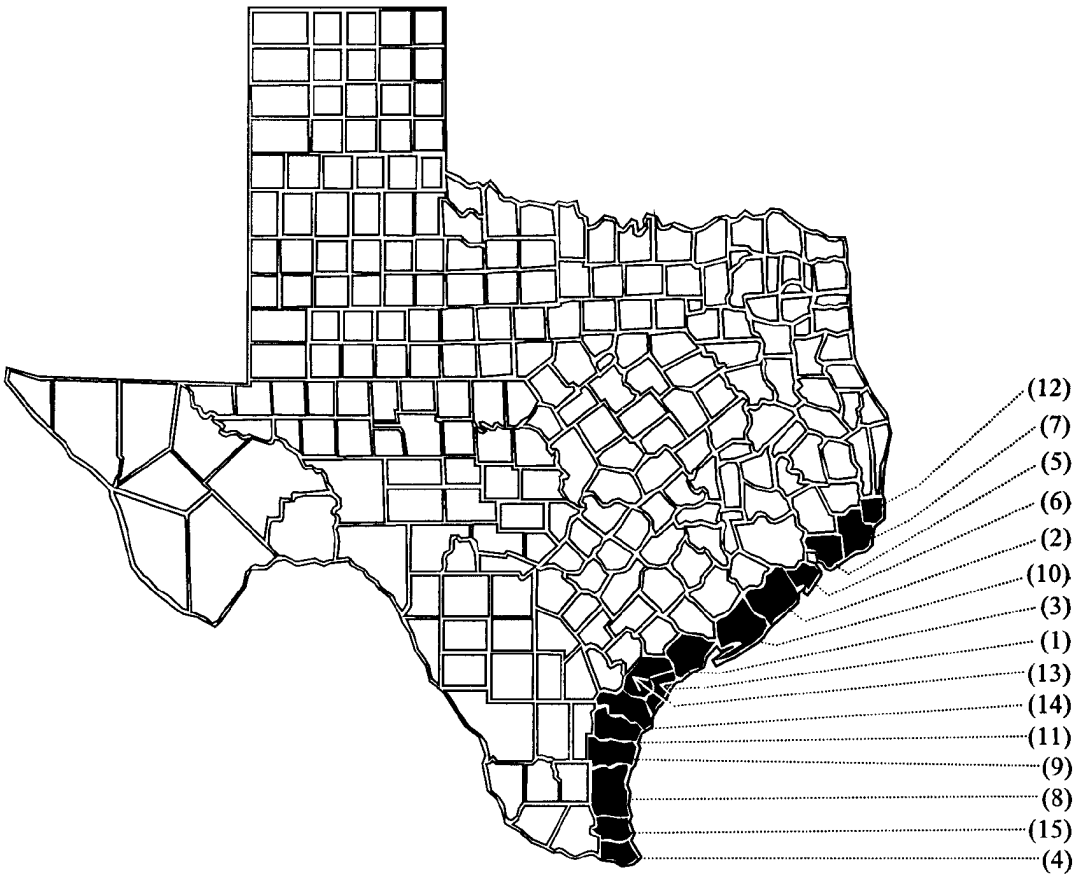


Figure: 10 TAC §80.240(b)(2)

ANCHOR INSTALLATION

Notes:
1) Anchor head must be not more than 1 inch from the ground at insertion point.
2) Anchor head may be inset a maximum of 6 inches from the vertical outer edge of the floor framing to allow for skirting installation.

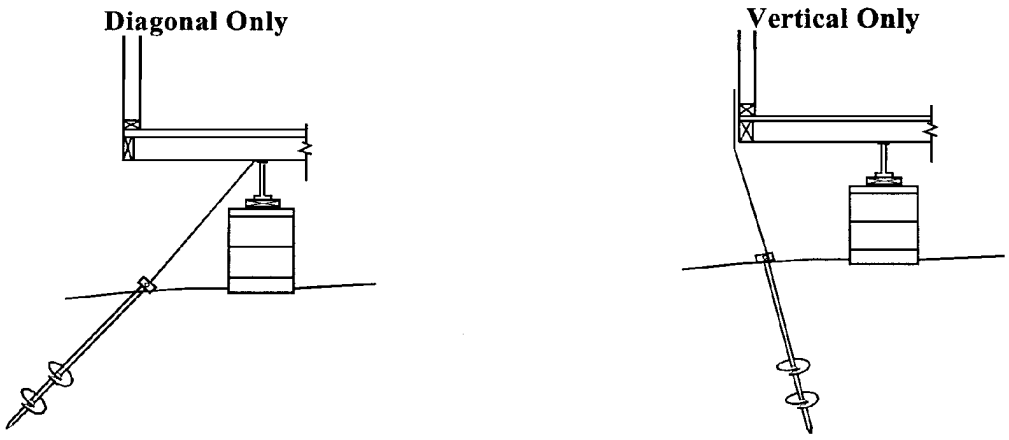
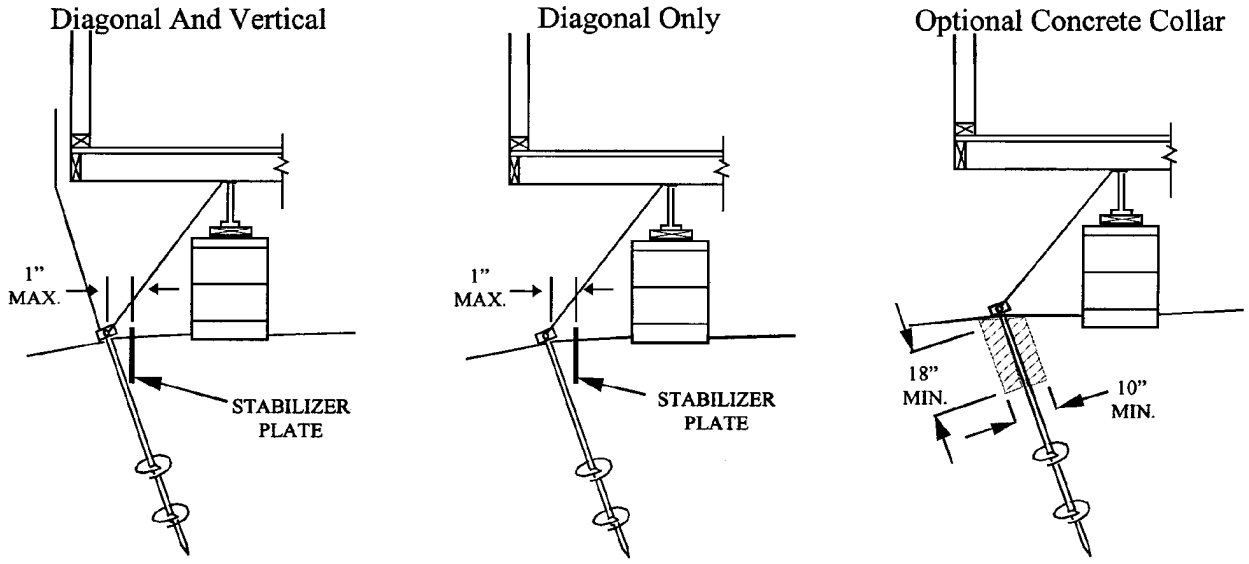


Figure: 10 TAC §80.240(b)(3)

PLACEMENT OF STABILIZING PLATES



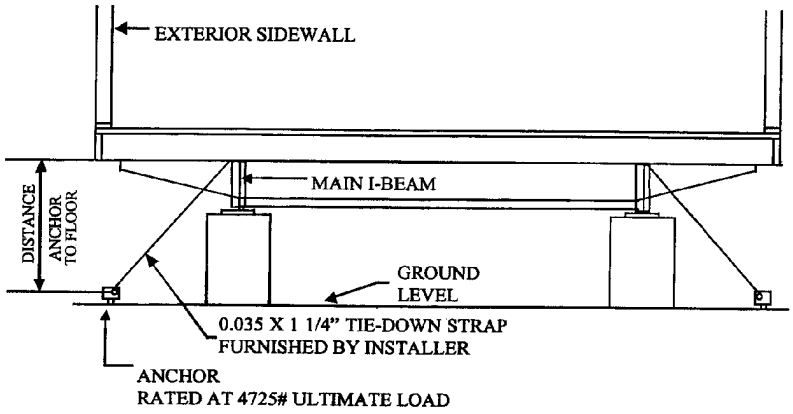
Notes:
1) Stabilizer plate may be replaced with concrete collar that is at least 18 inches deep and 10 inches in diameter.
2) Diagonal tie must depart from the top of the I-Beam as shown.
3) The top of the stabilizer plate must be within 1 inch of the anchor shaft.
4) Stabilizer plates must be installed in accordance with the plate manufacturer's instructions.

Figure: 10 TAC §80.240(b)(4)

WIND ZONE I – SINGLE/MULTI-SECTION INSTALLATION

(Refer to other figures for depictions of proper anchor and stabilizer device installation.)

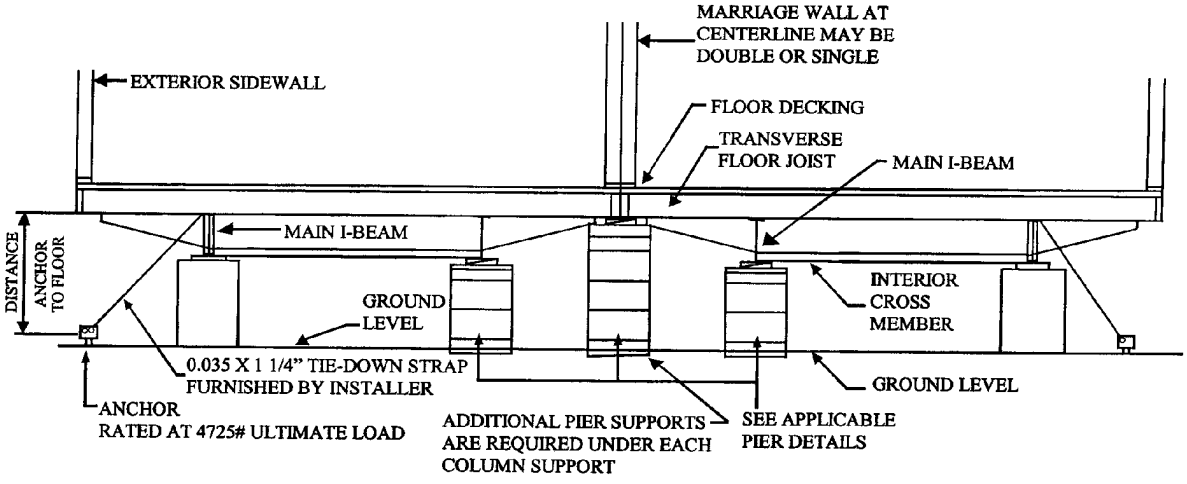
Figure 1: Single Section



Notes:

1) Single section units require diagonal ties to be directly opposite each other.
2) All existing vertical ties must be connected to a ground anchor.
3) Diagonal tie spacing per the table in §80.240(a)(1) or §80.55(d)(4). Vertical distance in this table refers to the distance of the anchor head to the underside of the floor joists as shown above.
4) Diagonal tie must depart from the top of the I-Beam as shown.

Figure 2: Multi-Section



Notes:

1) Multi-section units require diagonal ties on the outer main I-Beams only.
2) Diagonal ties need not be directly opposite each other.
3) Diagonal tie spacing per the table in §80.240(a)(1) or §80.55(d)(4). Vertical distance in this table refers to the distance of the anchor head to the underside of the floor joists as shown above.
4) Existing vertical ties must be connected to a ground anchor.
5) Diagonal tie must depart from the top of the I-Beam as shown.

Figure: 10 TAC §80.240(b)(5)

DIAGONAL STRAP PLACEMENT FOR PIERS EXCEEDING 36 INCHES IN HEIGHT

(Refer to other figures for depiction of proper anchor and stabilizer device installation.)

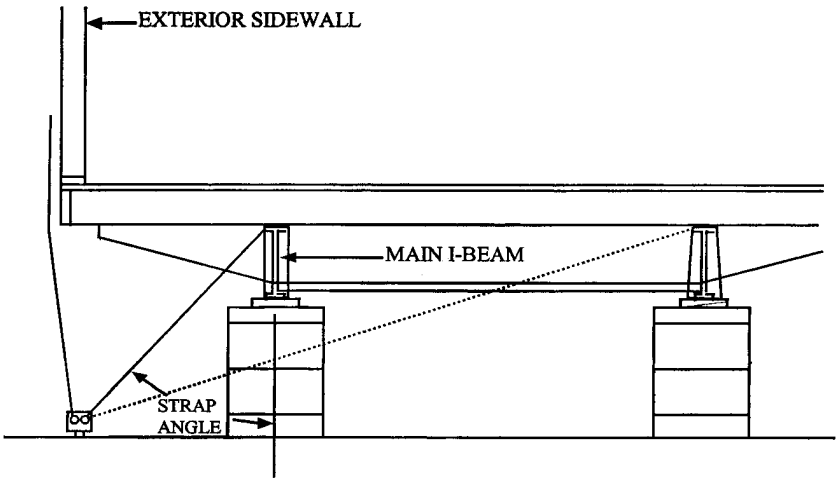


Figure: 10 TAC §80.240(b)(6)

DIAGONAL AND VERTICAL TIES

(Refer to other figures for depiction of proper anchor and stabilizer device installation.)

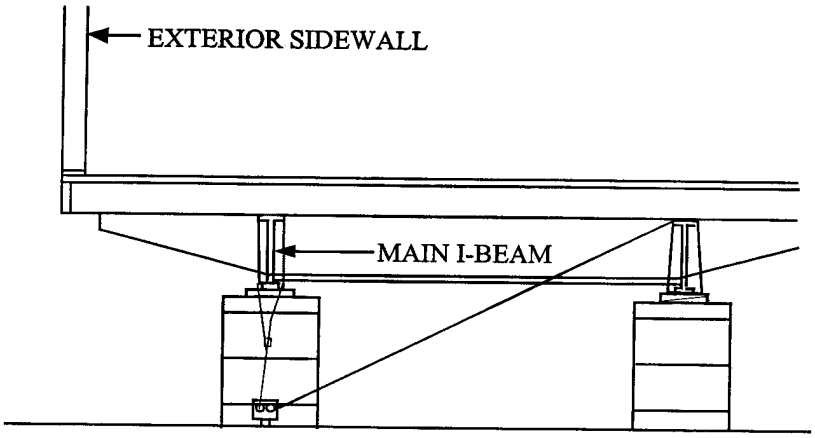
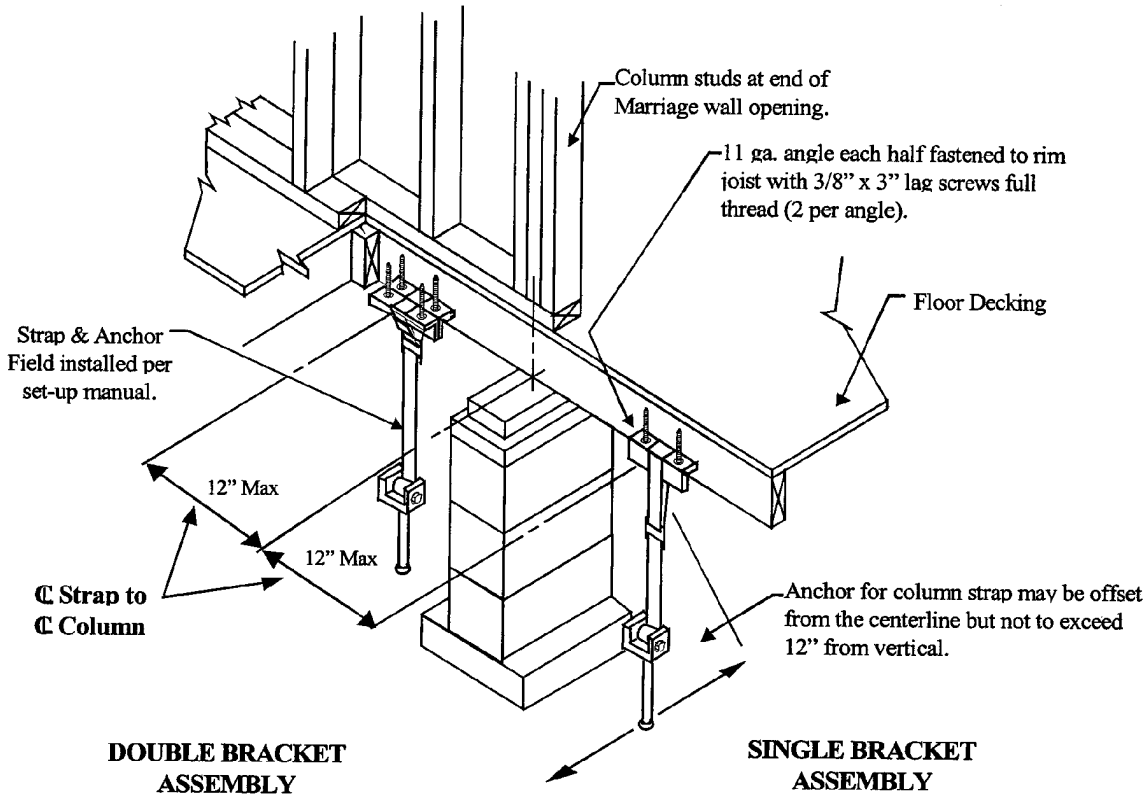


Figure: 10 TAC §80.240(b)(7)

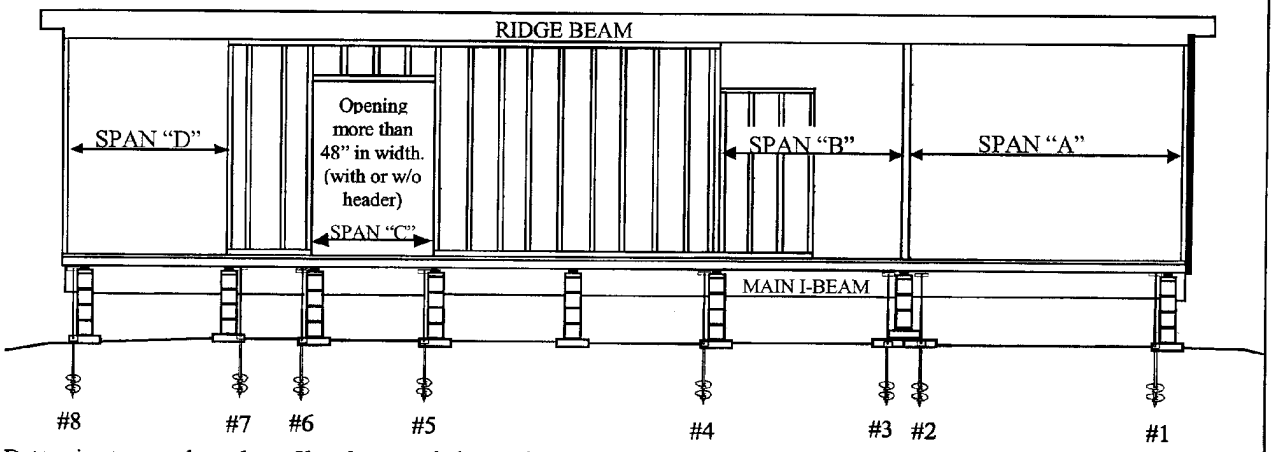
TYPICAL INSTALLATION DETAILS



Note: Anchors, straps, buckles and crimps shown are for illustration purposes only. All components used must be registered with the department.

Figure: 10 TAC §80.240(b)(8)

ANCHOR SPAN



Determine type and number of brackets needed at each opening.

Anchor #1: From the table in §80.240(a)(4), row 3 in the 14 ft. wide column, the maximum span for this condition is 27'-2". Actual span is 18'-0" ====> one double bracket is ok.

Anchor #2 & #3: Since the wall between spans "A" and "B" is less than 16 inches in width the two spans must be added together to determine number and type of brackets.
Span "A" (18'-0") + Span "B" (14'-8") = 32'-8"
From the table in §80.240(a)(4), row 3 in the 14 ft. wide column, the maximum span for one double bracket is 27'-2". Actual span is 32'-8" ====> two double brackets required.

Anchor #4: Span "B" is on both sections @ 14'-8". From the table in §80.240(a)(4), row 3 in the 14 ft. wide column, the maximum span for one double bracket is 27'-2" ====> ok

Anchor #5: Same as anchor # 4, except for 6'-8" span.

Anchor #6 & #7: This span is on one section only. Therefore a single bracket may be used. From the table in §80.240(a)(4), row 1 in the 14 ft. wide column, the maximum span for a single bracket is 15'-0". Actual span is 13'-8" ====> single bracket is ok.

Figure: 10 TAC §80.240(b)(9)

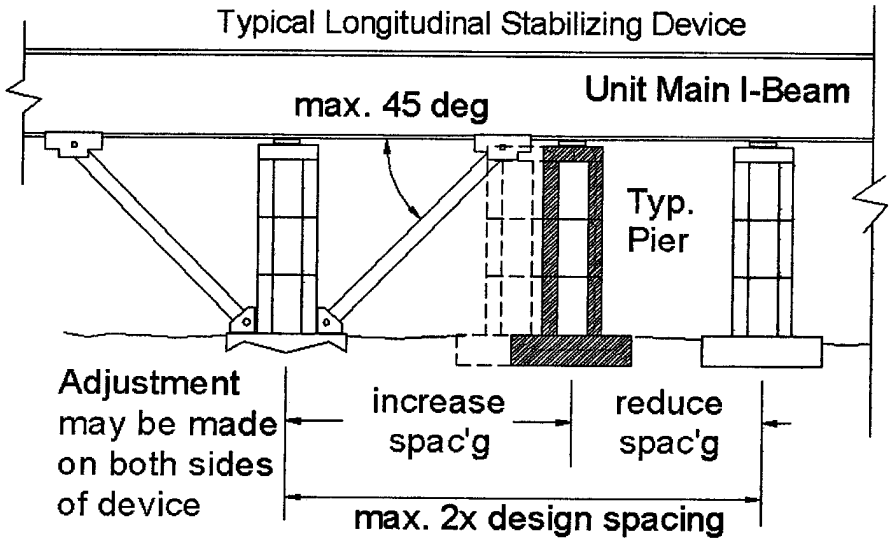


Figure: 10 TAC §80.240(b)(10)

LONGITUDINAL TIES

Figure 1

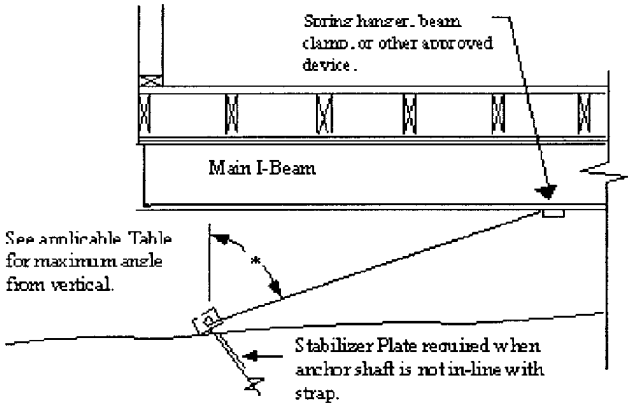


Figure 1: Connection to existing spring hangers, factory installed or site installed beam clamps.

Figure 2

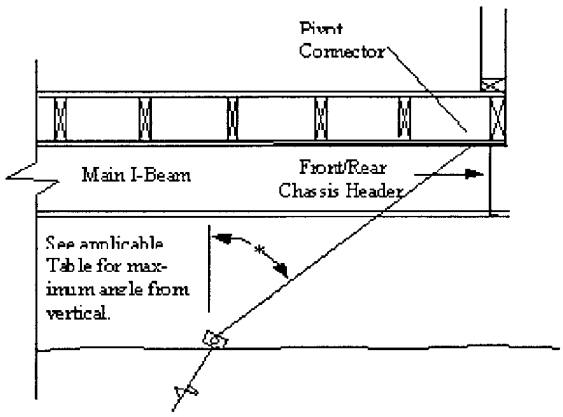


Figure 2: Connection to front or rear chassis headers. Strap must be installed within 12" of where the header member connects to the main I-beam.

Figure: 10 TAC §80.240(b)(11)

MATING LINE SURFACES

Mating line surfaces are along the floor, up the front and rear endwalls and along the ceiling line.

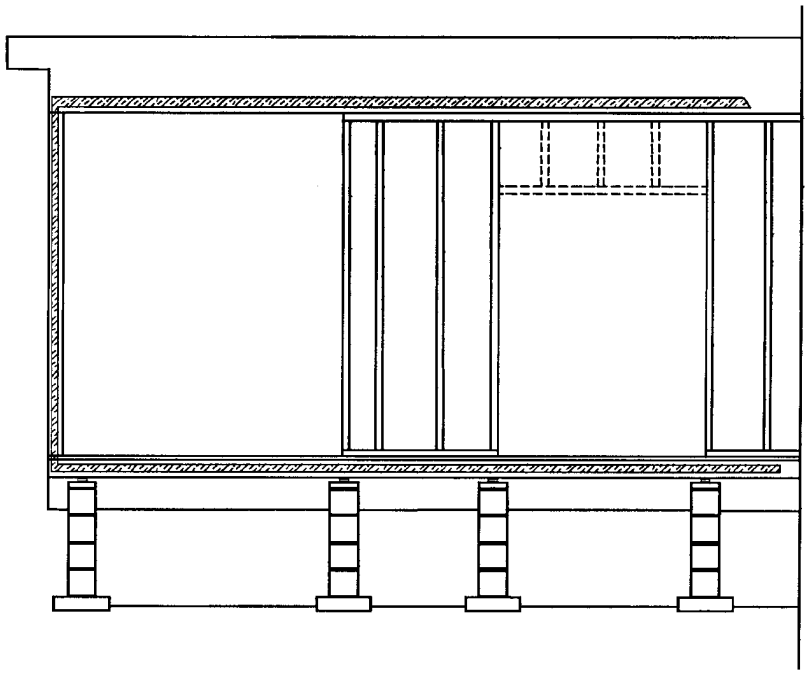


Figure: 10 TAC §80.240(b)(12)

FLOOR CONNECTIONS

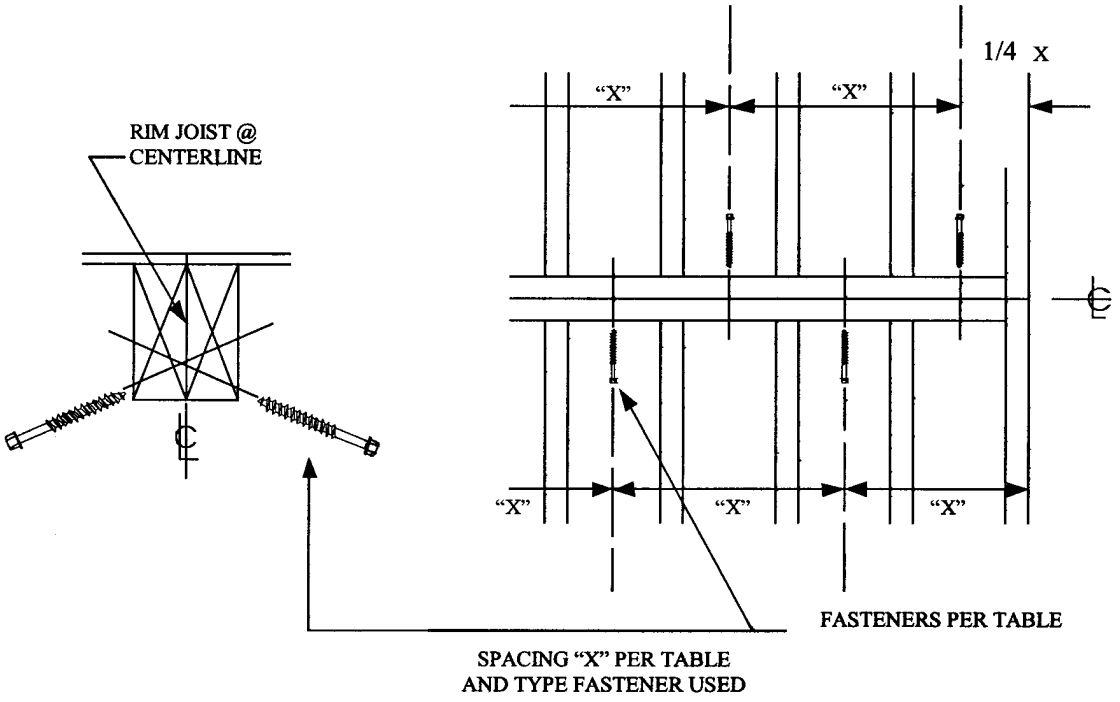


Figure: 10 TAC §80.240(b)(13)

ENDWALL CONNECTIONS

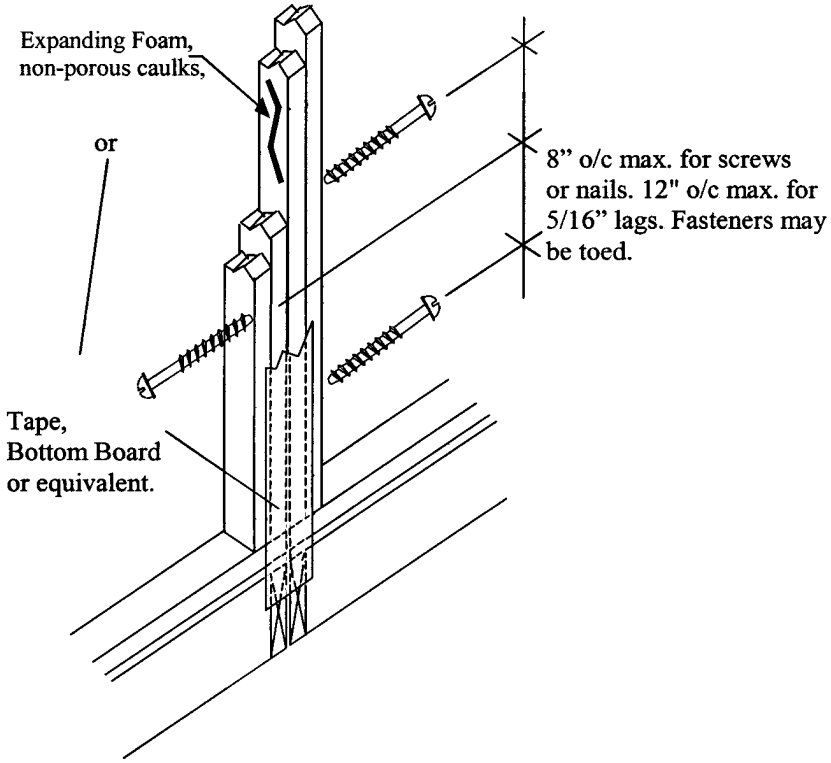


Figure: 10 TAC §80.240(b)(14)

ROOF CONNECTION

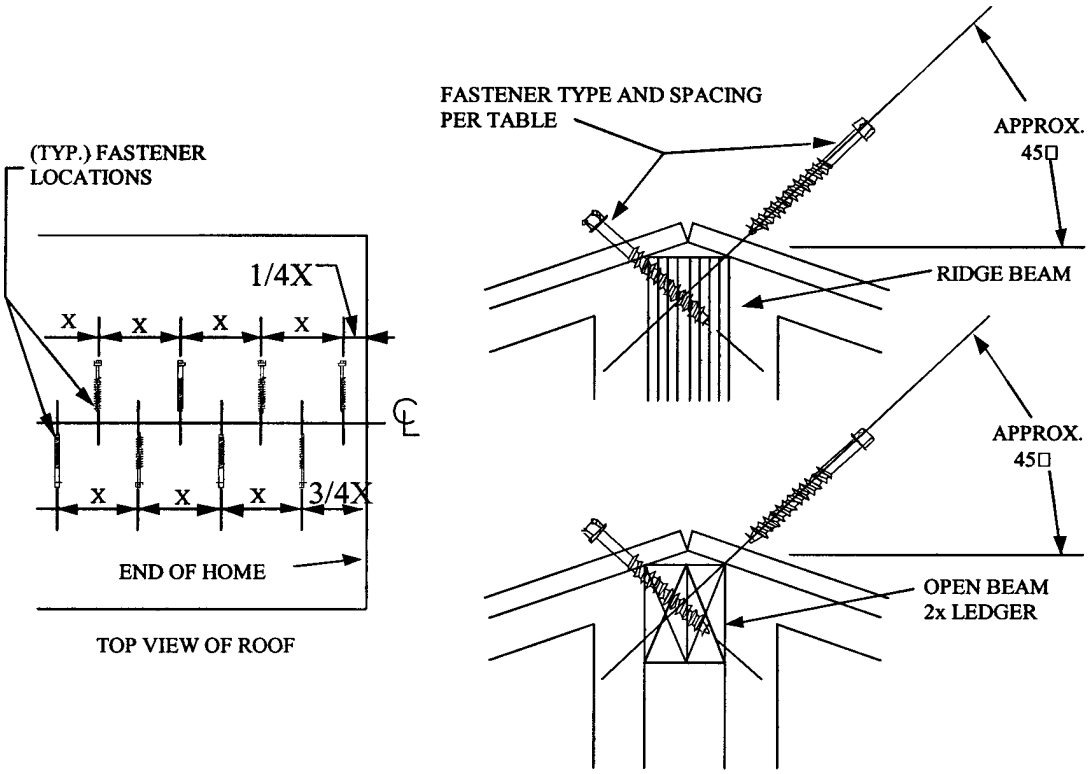


Figure: 10 TAC §80.240(b)(15)

EXTERIOR ROOF CLOSE UP

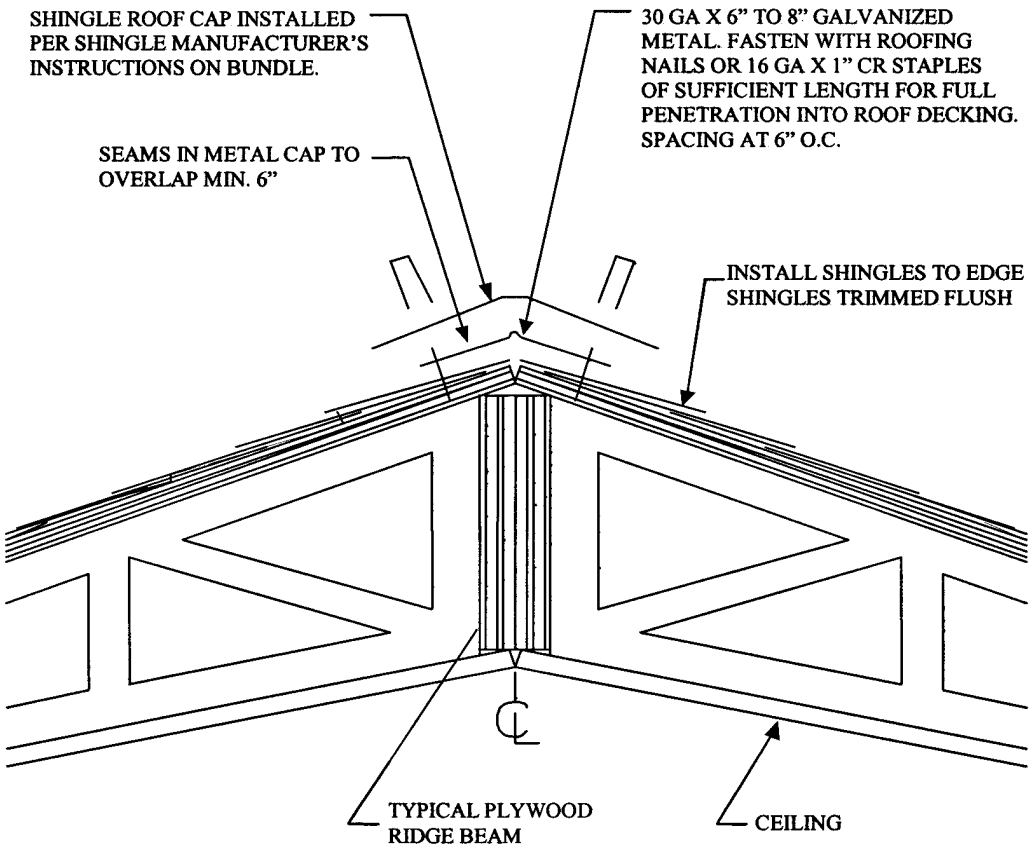
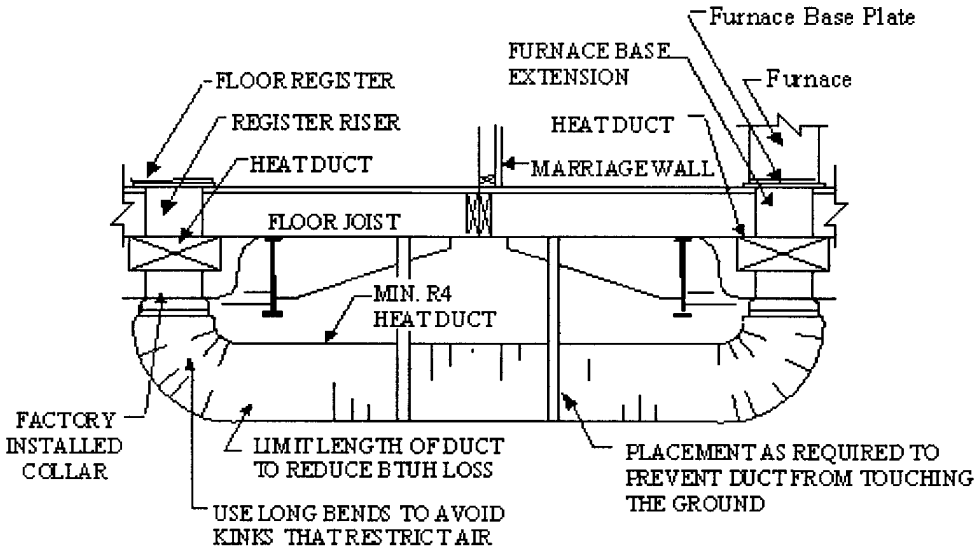


Figure: 10 TAC §80.240(b)(16)

HVAC (HEAT/COOLING) DUCT CROSSOVER



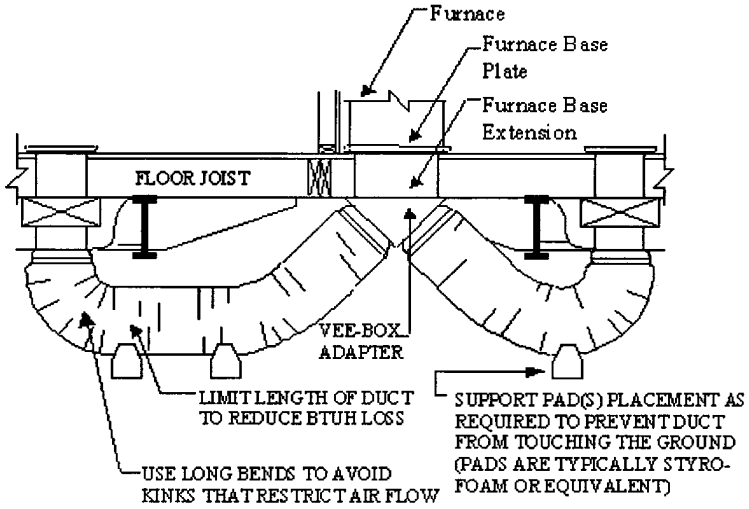
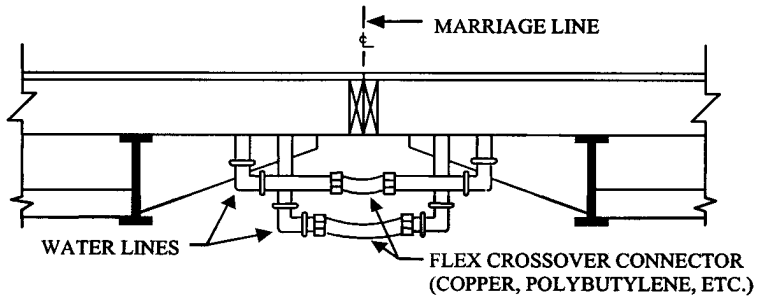


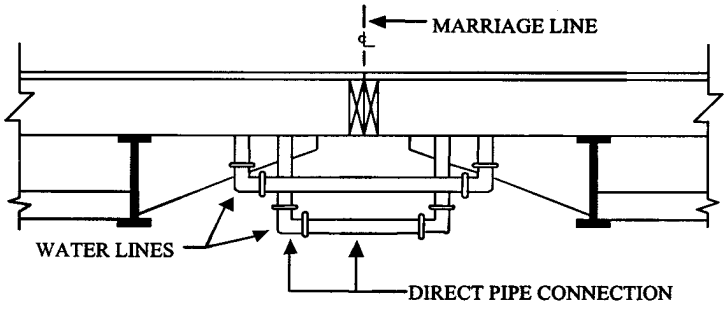
Figure: 10 TAC §80.240(b)(17)

MULTI-SECTION WATER CROSSOVER CONNECTIONS

METHOD A



METHOD B



METHOD C

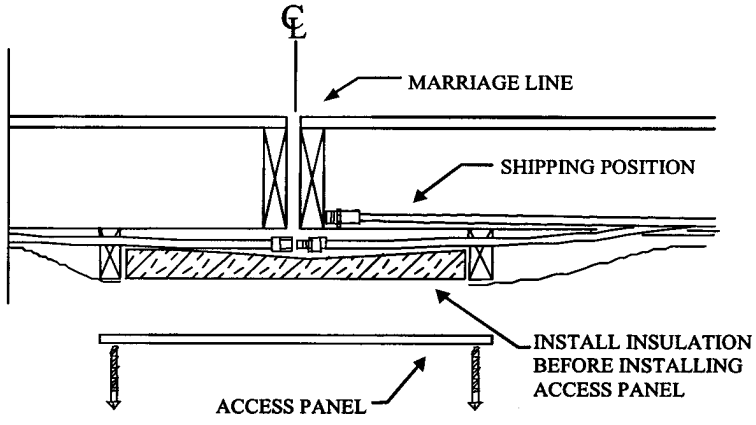
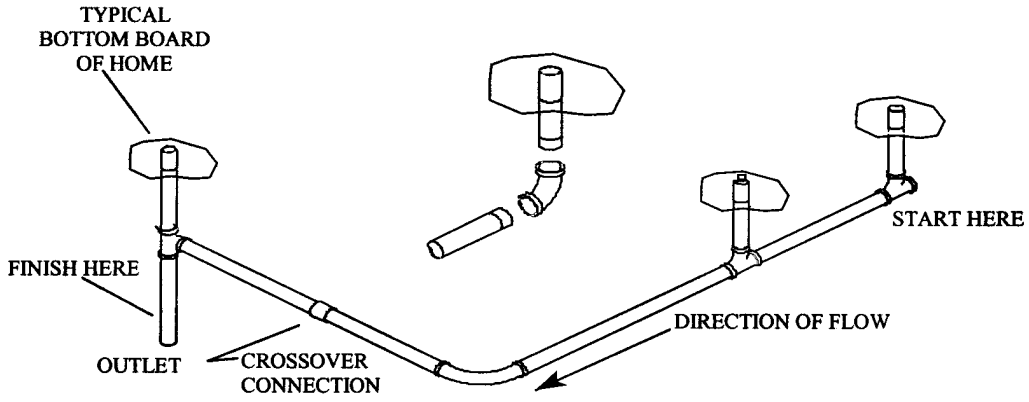
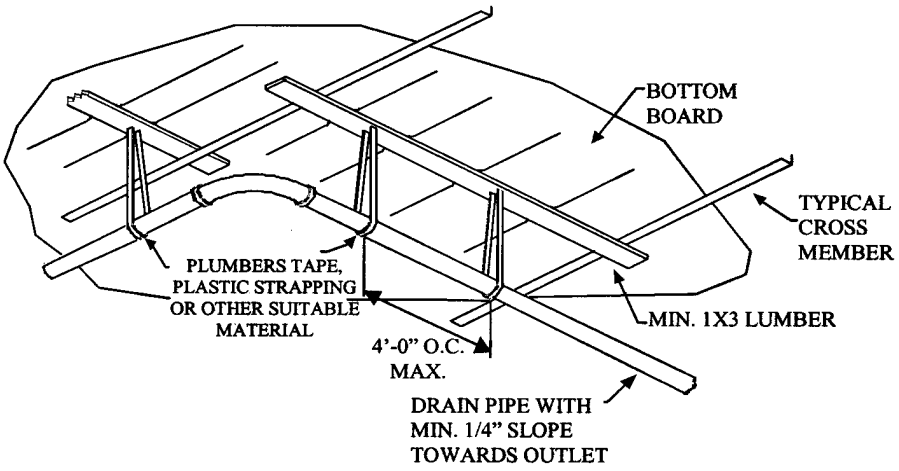


Figure: 10 TAC §80.240(b)(18)

DRAIN, WASTE AND VENT FLOOR PIPING SYSTEM





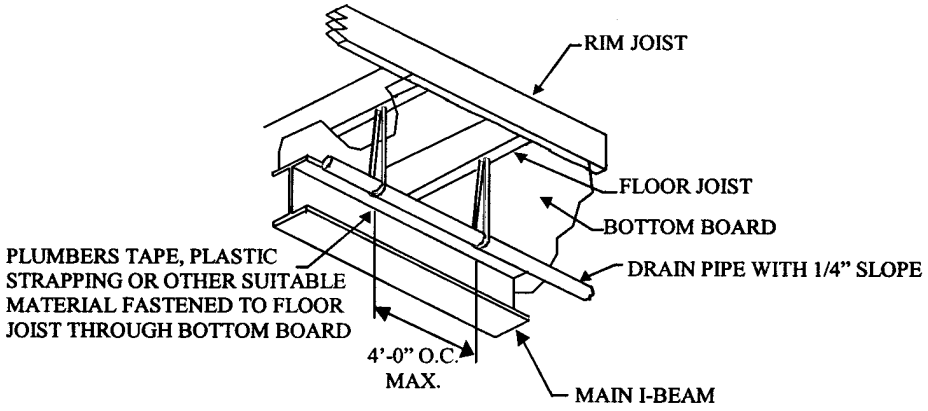


Figure: 10 TAC §80.240(b)(19)

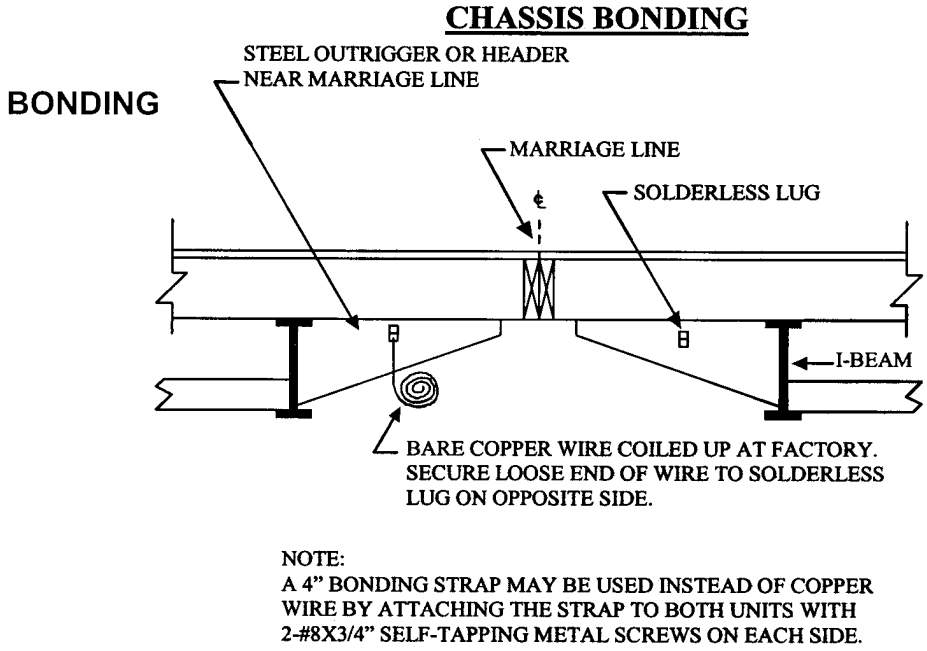
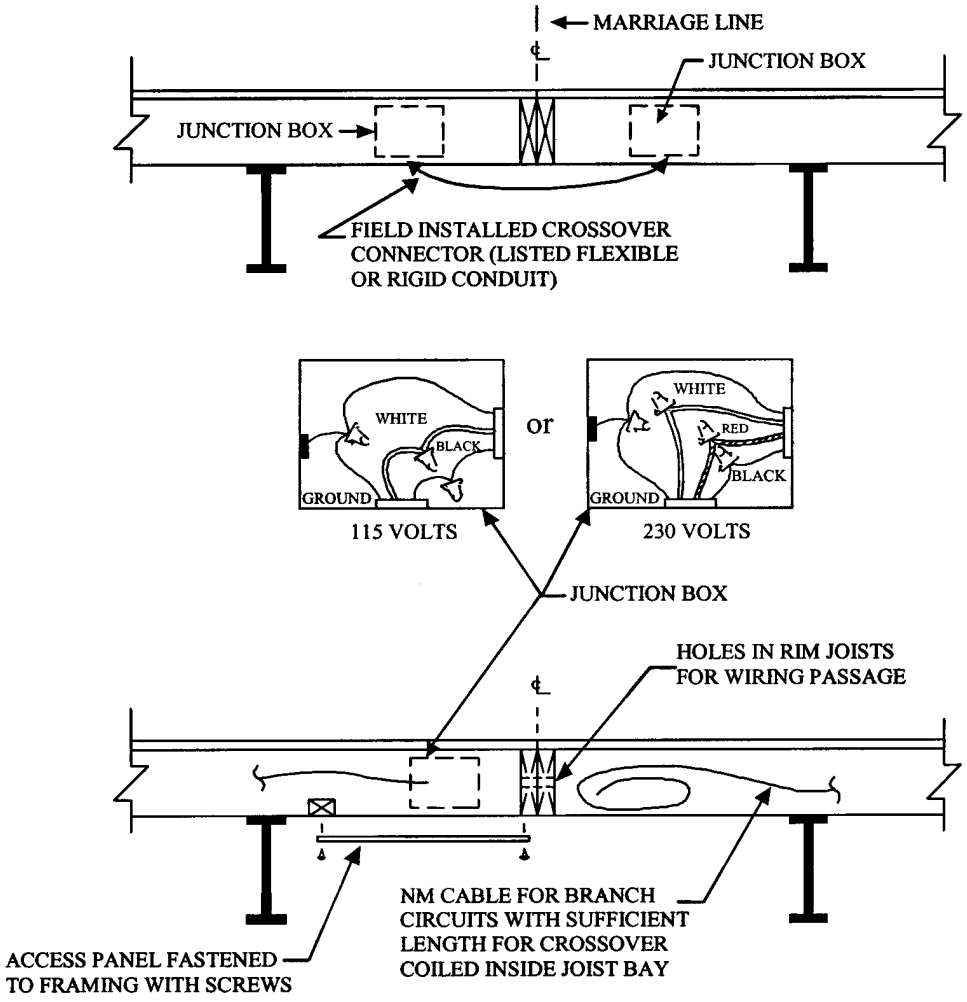


Figure: 10 TAC §80.240(b)(20)

ELECTRICAL CROSSOVER

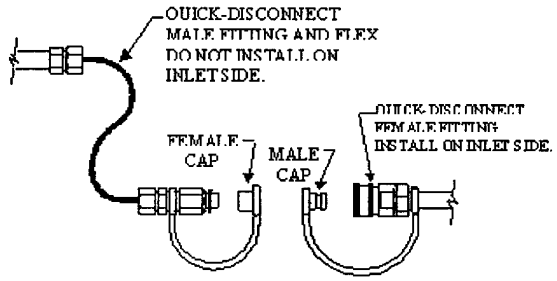


NOTE:
ANY EXPOSED NM CABLE MUST BE PROTECTED BY CONDUIT AND INSTALLED IN ACCORDANCE WITH THE N.E.C.

Figure: 10 TAC §80.240(b)(21)

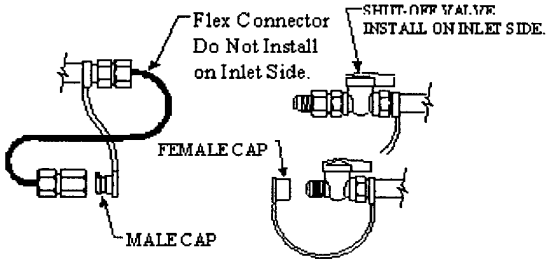
FUEL GAS PIPE CROSSOVER CONNECTIONS

Method A



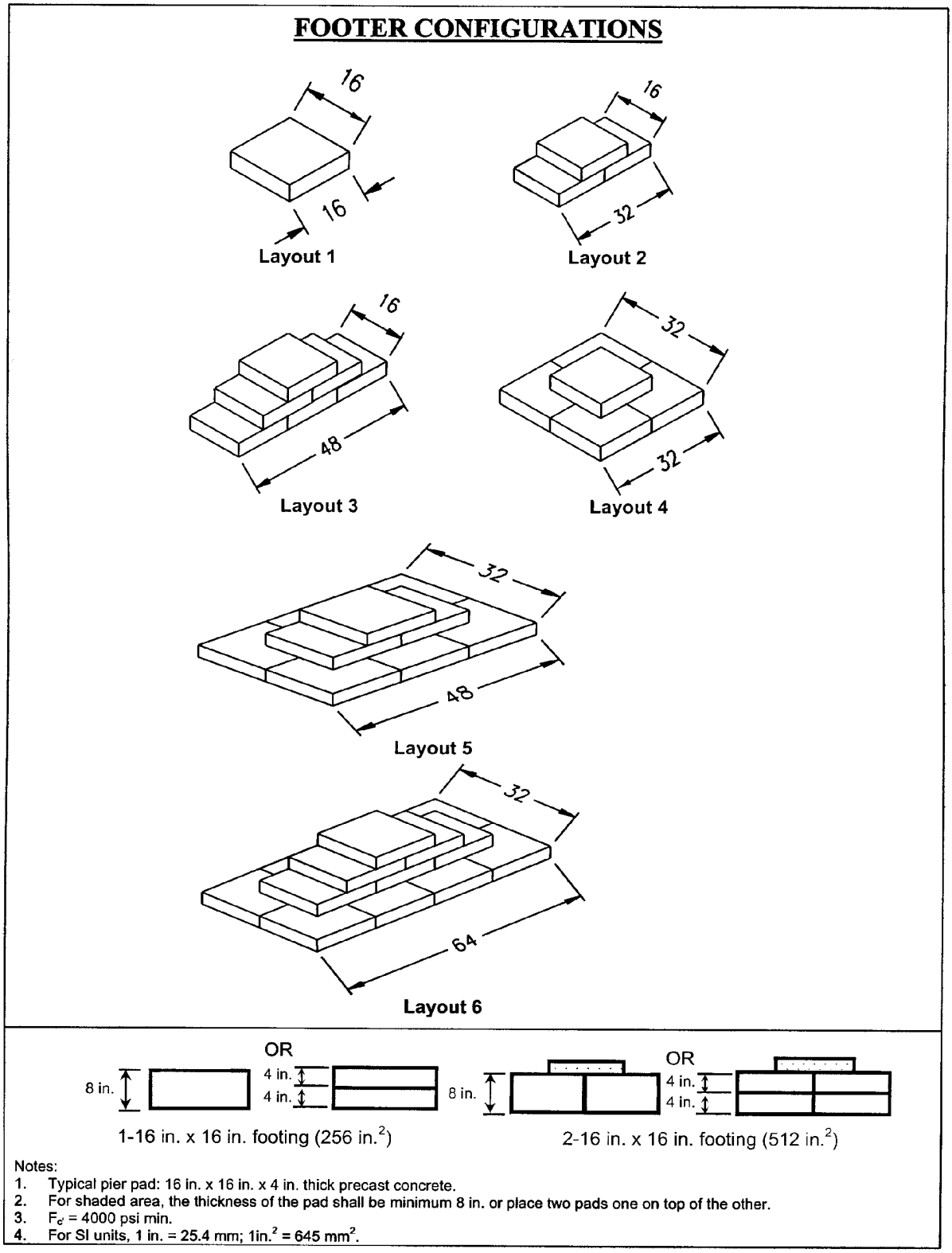
CROSSOVER MUST BE LISTED FOR EXTERIOR USE.

Method B



CROSSOVER MUST BE LISTED FOR EXTERIOR USE.

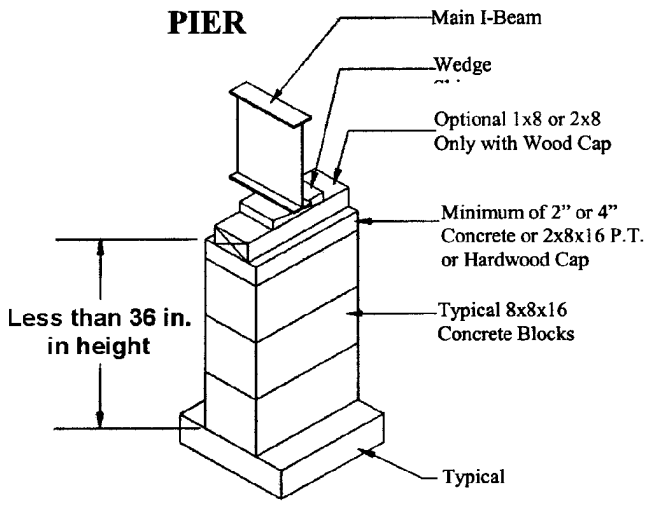
Figure: 10 TAC §80.240(b)(22)



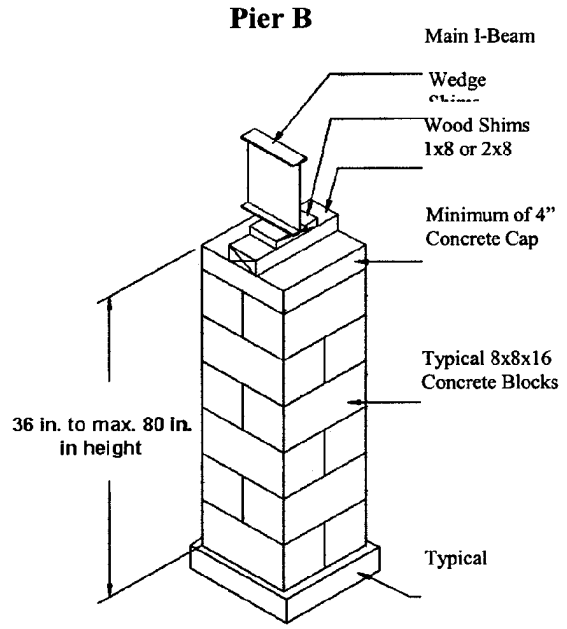
Notes:
1. Typical pier pad: 16 in. x 16 in. x 4 in. thick precast concrete.
2. For shaded area, the thickness of the pad shall be minimum 8 in. or place two pads one on top of the other.
3. $F_{c'}$ = 4000 psi min.
4. For SI units, 1 in. = 25.4 mm; $1in.^2$ = 645 mm^2.

Figure: 10 TAC §80.240(b)(23)

PIER DESIGN (SINGLE & MULTI-SECTION STACK)

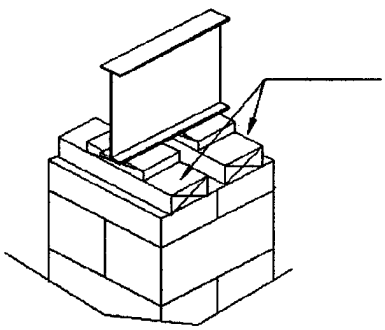


Pier A: Single stack of open cell, 8x8x16 concrete blocks. Maximum height is 36 inches as measured from the top of the footer to the top of the last concrete block. Concrete blocks are installed with their lengths perpendicular to the main I-Beam. Open cells must be vertical and in alignment.



Pier B: Interlocked double stack of open cell 8x8x16 concrete blocks. The maximum height is 80 inches as measured from the top of the footer to the top of the last concrete block. The pier is capped with a minimum 16x16x4 concrete cap. Open cells must be vertical and in alignment. Each course of open cell blocks must be perpendicular to the previous course.

Pier B-1

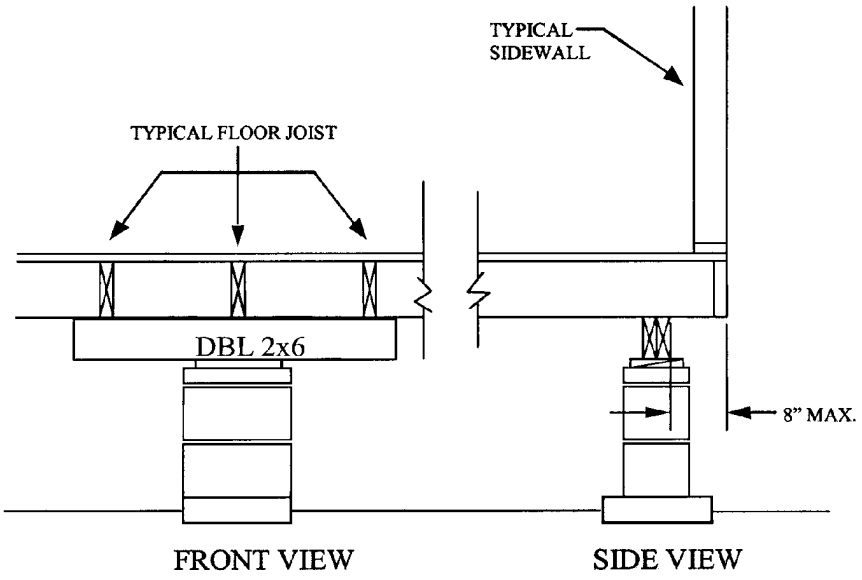


Note:

1) Open cell and solid concrete blocks shall meet ASTM-C90-99a, Standard Specification for Loadbearing Concrete Masonry Units.
2) Support system components are to be undamaged and installed in a manner to accomplish the purpose intended.
3) Either wood caps or shims must be used between I-Beam and concrete.

Figure: 10 TAC §80.240(b)(24)

PERIMETER PIER FRONT & SIDE VIEW



Notes:

1) Perimeter pier may be inset from edge of floor up to 8". The 2x6 brace may be omitted if the front face of a perimeter pier is flush with the perimeter joist and the perimeter pier supports the intersection of an interior joist and perimeter joist.
2) Dbl 2x6 are min. #3 Yellow Pine or pressure treated Spruce-Pine, nailed together with min. 16d nails 2-rows at maximum 8" o.c.
3) 2x6 brace must span at least two (2) but not more than three (3) floor joists.

Figure: 10 TAC §80.240(b)(25)

TYPICAL MULTI-SECTION PIER LAYOUT

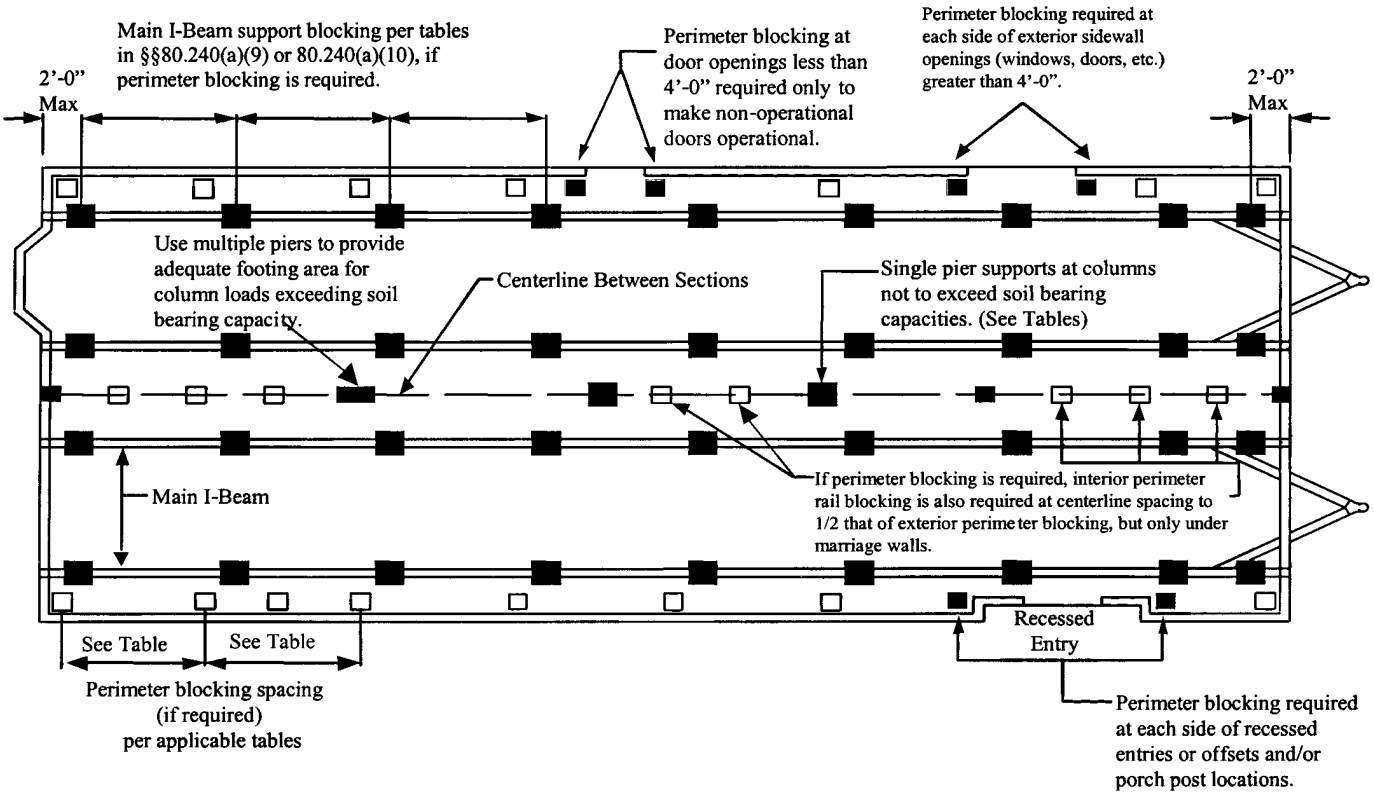


Figure: 10 TAC §80.240(b)(26)

TYPICAL SINGLE SECTION PIER LAYOUT

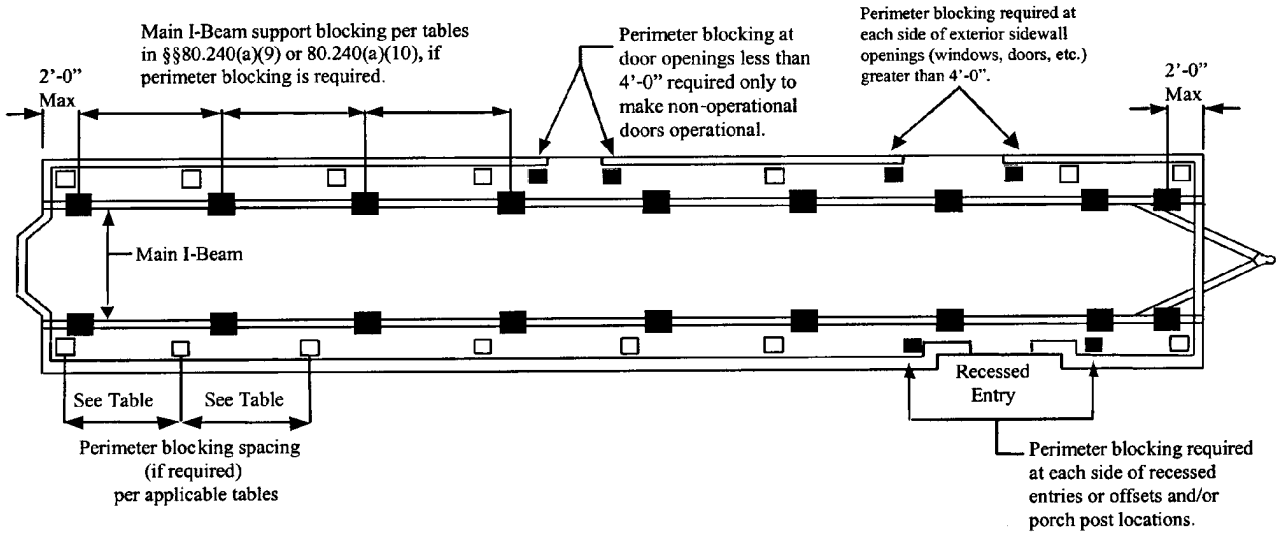


Figure: 10 TAC §80.240(b)(27)

DETERMINING COLUMN LOAD

To determine the column load for Column #1 at the endwall look up Span "A" in the table in §80.240(a)(11). To determine the column load for Column #2, look up the combined distance of both Span "A" and Span "B".

To determine the column load for Column #3 look up Span "B" in the table.
(NOTE: Mating line walls not supporting the beam must be included in the span distance.)

To determine the loads for Columns #4 and #5 look up Span "C". For Columns #6 and #7 look up load for span "D".

MARRIAGE LINE ELEVATION

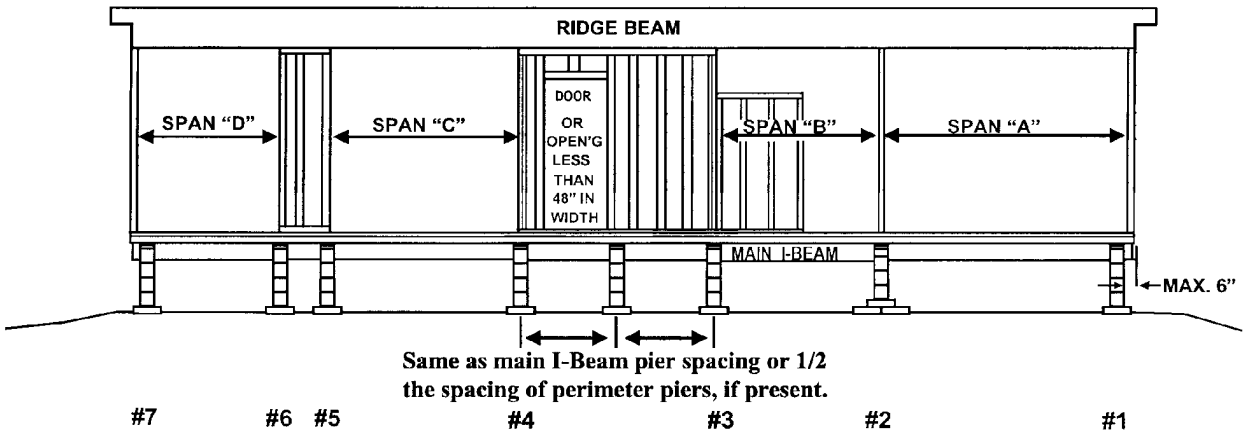


Figure: 10 TAC §80.260(a)(1)

SITE PREPARATION NOTICE

FAILURE TO PREPARE THE SITE PROPERLY BEFORE INSTALLING YOUR MANUFACTURED HOME MAY INVALIDATE YOUR WARRANTY AND MAY CAUSE PROBLEMS WITH YOUR HOME.

IF YOU ARE ACQUIRING LAND FOR A MANUFACTURED HOME AND WILL NOT HAVE THE ABILITY TO OVERSEE SITE PREPARATION YOURSELF, BE SURE THAT YOUR AGREEMENT WITH THE PARTY PROVIDING THE LAND COVERS THEIR RESPONSIBILITIES FOR SITE PREPARATION.

If you are acquiring a manufactured home you need to be sure that the site is properly prepared **BEFORE the home is installed**. If you will be having your home installed in a rental community, you should first be sure that the community has prepared the site properly and assumed that responsibility. If you are acquiring a manufactured home that is already installed, you should satisfy yourself that the site was properly prepared first.

Site Preparation includes AT LEAST the following: (1) selecting a site where the home will not be affected by rising or running water, as in the case of heavy rains, (2) grading the site, as needed, so that the land slopes away from the home, (3) making sure that the site will not create puddles or moisture build-up under the home by filling any depressions and, as needed, providing for drainage, (4) clearing away any plants, stumps, or debris on the site where the home will be placed, and (5) installing any required vapor retarder (and, if such a retarder is to be installed, trimming any grasses or other organic materials to a suitable height, not greater than 8").

The footing must be placed on firm, undisturbed soil, or fill compacted to at least 90% of its maximum relative density. Installation on loose, noncompacted fill may invalidate the home's limited warranty.

If your retailer is providing skirting, the retailer must also provide and install any required vapor retarder and insure that there is adequate ventilation under the home. If the retailer is not providing these things, you should be sure that you have provided for any required vapor retarder and that you have provided adequately for ventilation under the home.

FAILURE TO PREPARE THE SITE PROPERLY AND/OR FAILURE TO TAKE APPROPRIATE MEASURES TO GUARD AGAINST MOISTURE BUILD-UP MAY CAUSE SERIOUS PROBLEMS WITH YOUR MANUFACTURED HOME INCLUDING, BUT NOT LIMITED TO, MOISTURE IN THE HOME, DE-LAMINATION OF FLOOR DECKING, BUCKLING OF WALLS AND FLOORS, WARPAGE THAT WILL MAKE DOORS AND WINDOWS NOT OPERATE PROPERLY, FAILURE OF ANCHORS TO HOLD THE HOME AS INTENDED, AND EVEN SERIOUS STRUCTURAL DAMAGE.

_____	_____
purchaser/homeowner signature	purchaser/homeowner signature
_____	_____
type or print name	type or print name
_____	_____
date	date

Figure: 10 TAC §80.260(a)(2)

Consumer Disclosure Statement

Esta forma está disponible en Español a petición del vendedor o al llamar al 1-800-500-7074

"When buying a manufactured home, there are a number of important considerations, including price, quality of construction, features, floor plan, and financing alternatives. The United States Department of Housing and Urban Development (HUD) helps protect consumers through regulation and enforcement of HUD design and construction standards for manufactured homes. Manufactured homes that meet HUD standards are known as 'HUD-code manufactured homes.'

The Texas Department of Housing and Community Affairs, regulates Texas manufacturers, retailers, brokers, salespersons, installers, and rebuilders of manufactured homes.

If you plan to place a manufactured home on land that you own or will buy, you should consider items such as:

"ZONING AND RESTRICTIVE COVENANTS" Municipalities or subdivisions may restrict placement of manufactured homes on certain lots, may prohibit the placement of homes within a certain distance from property lines, may require that homes be a certain size, and may impose certain construction requirements. You may need to obtain building permits and homeowner association approval before you place a manufactured home on a certain lot. Contact the local municipality, county, and subdivision manager to find out if you can place the manufactured home of your choice on a certain lot.

"WATER" Be sure that your lot has access to water. If you must drill a well contact several driller's for bids. If water is available through a municipality, utility district, water district, or cooperative, you should inquire about the rates you will have to pay and the costs necessary to join the water system.

"SEWER" If your lot is not serviced by a municipal sewer system or utility district, you will have to install an on-site sewer facility (commonly known as a septic system). There are a number of concerns or restrictions that will determine if your lot is adequate to support an on-site sewer facility. Check with the local county or a licensed private installer to determine the requirements that apply to your lot and the cost to install such a system.

"HOMEOWNER ASSOCIATION FEES" Many subdivisions have mandatory assessments and fees that lot owners must pay. Check with the manager of the subdivision in which your lot is located to determine if any fees apply to your lot.

"TAXES" Your home will be appraised and subject to *ad valorem taxes* as are other single-family residential structures. These taxes MUST be escrowed with your monthly payment, except that your lender is not obligated to impose an escrow requirement in a real property transaction involving a manufactured home if the lender is a federally insured financial institution and does not otherwise require the escrow of taxes, insurance premiums, fees, or other charges in connection with loans secured by residential real property. On closing, you will be notified of all provisions pertaining to federal truth in lending disclosures.

"INSURANCE" Your lender may require you to obtain insurance that meets lender requirements and protects your investment. You should request quotes from the agent of your choice to obtain the insurance.

"TYPES OF MORTGAGES AVAILABLE" The acquisition of a manufactured home may be financed by a real estate mortgage or a chattel mortgage. A real estate mortgage may have a lower interest rate than a chattel mortgage.

"RIGHT OF RESCISSION" If you acquire a manufactured home, by purchase, exchange, or lease-purchase, you may, not later than the THIRD DAY after the date the applicable contract is signed, rescind the contract WITHOUT PENALTY OR CHARGE.

This **Disclosure** was provided by the retailer and/or lender shown below on this date and it was provided to me or us before I or we completed a credit application or before signing a contract to purchase a manufactured home.

_____.	_____.
Retailer Name / License # or Lender Date	Consumer Date
_____.	_____.
Street Address	Consumer Date
_____	_____.
City County State Zip	Street Address
	_____.
	City County State Zip

The disclosure must be given in writing in at least 12 point type. It may not be attached to any other disclosure or document or included in any other disclosure or document. The consumer must sign and date a copy of the disclosure to acknowledge that it was provided.

Figure: 10 TAC §80.260(a)(3)

CHOOSING A LOAN TO BUY A MANUFACTURED HOME

Esta forma está disponible en Español a petición del vendedor o al llamar al 1-800-500-7074

CONSUMER – Before you agree to any loan to buy a manufactured home, you must be given these – and other – disclosures. They are intended to help you make the best possible choice on this major purchase. You will also be required to sign papers to confirm that you actually received these disclosures. **THESE ARE IMPORTANT. The costs and obligations of home ownership are more than just monthly payments.**

If you want to obtain a loan to buy your manufactured home, you will need to apply for the loan and "qualify" or be approved. There are two basic types of loans to buy manufactured homes: mortgage loans and consumer loans. Mortgage loans, typically used for "site built" homes, use both the land and the home as security for the loan. Consumer loans are usually secured only by what is being purchased, in this case the home, and they do not have real estate as security. If you fail to make your required loan payments, you may lose your collateral.

How do you compare mortgage loans and consumer loans?

The main factors that will affect the amount of each monthly payment and the total of the payments that you will make over the life of the loan are the interest rate, the "term" (how long you are given to repay), and the amount that you borrow. In the past, mortgage loans have had lower interest rates than consumer loans, but you should ask about the interest rates for which YOU will qualify on different types of loans. There are things that lenders can do with the loan term to change the monthly payments. For example, they may calculate the payments based on a very long term but actually have a shorter term, meaning that when the last payment falls due it will be a large payment (a balloon payment). When you look at the options available, you should consider that the longer the term, the longer it will take to pay off the loan; but longer terms will also result in lower monthly payments. It is a trade-off between managing your monthly payments and owning your home debt-free sooner.

Most loans have other costs, and they may affect the amount you will need to come up with "out of pocket" or the amount that you will need to borrow. Some of these costs are "lender" costs that are incurred on almost all loans, such as underwriting and processing fees and filing fees. Some of these costs involve third party services that are obtained, such as surveys, appraisals, and title insurance policies. Typically these third party costs are associated with mortgage loans. ASK WHAT COSTS ARE – OR MAY BE – FINANCED AS PART OF THE LOAN AMOUNT.

Regardless of which type of loan you decide on, you will need to complete an application. Typically a loan application provides the lender with information about your employment and income and your financial condition (the things you own and the obligations you owe). Mortgage loans usually take longer to review and approve because these things must be verified and documented in greater detail than on a consumer loan. Also, obtaining third party services, such as title insurance, surveys, and appraisals, may take additional time.

What if I can't make my loan payments?

Regardless of whether you have a mortgage loan or a consumer loan, you will be asked to give your lender the right to protect itself by making the entire loan balance due and by taking control of the security so that they can sell it and apply the money from the sale to the unpaid loan balance. On a consumer loan, a private foreclosure is usually done. The lender finds a buyer for the home and sells it to them. The lender can usually repossess the home as long as they do not cause a breach of the peace. The lender may sell the home for whatever it is worth at the time and apply the proceeds of the sale first to the costs of repossession, and any remaining amounts are applied to your unpaid loan balance. If the proceeds of the sale are not enough to pay off what is owed on the home, the finance company may sue you to collect the "deficiency" which is the unpaid balance owed on your loan, including any unpaid interest and late charges.

On a mortgage loan, there is a process for posting notice and holding a public auction of the home. A lender on a mortgage loan cannot evict you. The lender will sell your home and the property at a foreclosure sale, and the new owners will have to go to court to have you evicted. You can lose the manufactured home and the property it is sitting on if you cannot make the payments on a mortgage loan. Any problems with your loan, including late payments and any foreclosures, can be reported and go on your credit record.

ASK QUESTIONS BEFORE YOU DECIDE ON A PARTICULAR TYPE OF LOAN. Understand the loan product you choose.

If you apply for a mortgage loan, the Real Estate Settlement Procedures Act requires you to be given a Good Faith Estimate that will describe your estimated closing costs. If you apply for a consumer loan, the section below must be completed to describe your estimated closing costs on a consumer loan:

Description of cost	*Estimated amount*	*Indicate if the cost will be included in the amount of the loan or if it must be paid "up front" or at closing*

If you apply for a consumer loan, your estimated MONTHLY payments would be as follows:

Principal and interest on an initial loan amount of $_____	**$_____**
1/12 of estimated annual premium for required insurance	**$_____**
1/12 of estimated property taxes on the manufactured home	**$_____**

This estimate is based on the following:

[ ] Installation in _____ County at the following specified location and information obtained from that county's tax assessor as to the current rates applicable at that location.

Location:

[ ] You have told us that the home will be installed in _____County, but you have not yet determined where in the county it will be installed. Therefore, this disclosure is based on the actual information obtained from that county's tax assessor as to current rates that are applicable throughout the county. If the home is ultimately located on a site subject to one or more additional tax entities that do not extend throughout the county, your actual taxes may be higher.

[ ] You have told us that you do not know in which county the home will be installed. Therefore, this disclosure is based on the actual information obtained from the county tax assessor for _____ County, being the county where this dealership is located, as to current rates that are applicable throughout this county. If the home is ultimately located in a different county and or in this county but on a site subject to one or more additional tax entities that do not extend throughout the county, your actual taxes may be higher.

NOTE: YOUR ACTUAL PROPERTY TAXES MAY DIFFER. CONTACT THE TAX ASSESSOR IN THE COUNTY WHERE YOUR HOME WILL BE LOCATED TO OBTAIN ADDITIONAL INFORMATION

CONSUMER:

IF YOUR LENDER DOES NOT ESCROW, YOU WILL STILL BE RESPONSIBLE FOR PROPERTY TAXES.

Other estimated costs (describe)

	$____
	$____
TOTAL ESTIMATED MONTHLY COSTS	**$**_____

HOME OWNERSHIP WILL INVOLVE OTHER COSTS, SUCH AS REPAIRS, MAINTENANCE, AND UTILITIES. ALSO, THERE MAY BE THINGS YOU WILL WANT THAT MAY NOT BE INCLUDED IN THE PRICE OF THE HOME.

[ ] IF THIS BOX IS CHECKED, the person who is selling you the manufactured home or someone affiliated with them will also be involved in making or placing the loan to buy the home and will be receiving compensation, such as a fee, commission, or premium, for providing this service. If all they are doing is originating the loan and selling it at no profit and they are not receiving any additional compensation, this box does not need to be checked. If it is checked, here is an ESTIMATE of their compensation:

Nature of compensation	**Estimated amount or range of compensation**
	$_____

At this time the following ADDITIONAL DISCLOSURES are being provided and are attached (list):

Each of us, by signing below, agree that we were given this disclosure on the date shown and it had been fully completed at the time it was given to us.

Name:_____ **Name:**_____

Signature:_____ **Signature:**_____

Date:_____ **Date:**_____

By signing below, I confirm that I am the person licensed under the Texas Manufactured Housing Standards Act who provided this disclosure (including any attachments) to the consumers named above.

Name:_____

Signature:_____

Date:_____

License number:_____

Figure: 10 TAC §80.260(a)(4)

Texas Department of Housing and Community Affairs
MANUFACTURED HOUSING DIVISION
P. O. BOX 12489 Austin, Texas 78711-2489
(800) 500-7074, (512) 475-2200 FAX (512) 475-1109
Pursuant to the Texas Manufactured Housing Standards Act, Chapter 1201 of the Occupations Code
Internet Address: www.tdhca.state.tx.us/mh/index.htm

NOTICE OF INSTALLATION (FORM T)

*HUD Label or Texas Seal # (s):*_____ *Serial # (s):*_____

*Manufacturer Name:*_____ *License No.*_____

Home Size - Width / Length: _____ *X* _____ *Weight* _____ *Date of Manufacture:* ____/____/____ *Model / Name:* _____

Draw A Map To Provide Directions To Home On Page 2

Consumer: _____ Phone Numbers: Home: (____) _____ Work: (____) _____

Mailing Address: _____ ZIP: _____

Site Address: _____ Within City Limits of _____ ZIP: _____

County Where Home is Installed: _____

Actual Installation Date: ____/____/____ Wind Zone on Data Plate: I (___) II (___) III (___)

	Name	Address	License #	Expiration Date	Phone #
Retailer					
Installer					

(___) **New** (___) **Used** **Does retailer or installer provide skirting? Yes (___) No (___)**

Is installation part of sales contract of used home? Yes (___) No (___) Not Applicable (___)

The home has been installed in accordance with:

(___) **1. Manufacturer's Home Installation Instructions (provide page number or option _____).**

(___) **2. State Generic Standards - Title 10 Texas Administrative Code (10 TAC) §§80.55, 56, 57, 58, and 59.**

(___) **3. A stabilization system registered with the department in accordance with 10 TAC §80.62 -** ***provide name of system or reference to MHD Approval Letter or registration*** **_____.**

(___) **4. A Special Foundation System** ***(attach a copy of the drawing for this system and provide a reference, if applicable, to any drawing previously submitted).***

IF NO METHOD IS CHECKED, IT WILL BE PRESUMED THAT OPTION 2 (STATE GENERIC STANDARDS) WAS USED.

To be filed with the department within 30 days of original sale or within 10 days of a secondary move.

I verify that I am a licensed installer, that I am responsible for the installation described, and that the information supplied is true and correct.

Signature (Retailer/Installer)	**Printed Name and Title**

DRAW MAP BELOW

Figure: 10 TAC §80.260(a)(5)

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
MANUFACTURED HOUSING DIVISION
507 SABINE, AUSTIN, TEXAS 78701
P. O. BOX 12489 Austin, Texas 78711-2489
(800) 500-7074, (512) 475-2200 FAX (512) 475-4706
Pursuant to the Texas Manufactured Housing Standards Act, Chapter 1201 of the Occupations Code
Internet Address: www.tdhca.state.tx.us/mh/index.htm

Estimate for Reassigned Warranty Work

Part I – Labor and Materials:
For each item on the inspection report, provide the information requested.

1) Description of proposed correction: _____

_____

_____

Estimated time: _____ Hourly rate: _____

Itemized cost of materials: _____

_____

2) Description of proposed correction: _____

_____

_____

Estimated time: _____ Hourly rate: _____

Itemized cost of materials: _____

_____

3) Description of proposed correction: _____

_____

_____

Estimated time: _____ Hourly rate: _____

Itemized cost of materials: _____

_____

Form: Estimate for Reassigned Warranty Work *Page 1 of 2*

Part II – Other Costs and Expenses

Block 1: Travel	
Starting location, which must be the closer of the nearest office to the site of the re-assigned warranty work or the in-state service center for the licensee. **Starting location:**	
Mileage is reimbursable at the greater of the rate of $0.35 per mile, not to exceed $75.00 per day, or the State of Texas approved rates from time to time in effect for reimbursement of state employees' travel expenses. **Estimated round-trip mileage:**	
Itemized list of any other travel costs:	

Block 2: Lodging	
Reimbursement for overnight lodging is to include the actual room rate and any applicable taxes but does not include any long distance telephone calls, entertainment, food, or beverages. Reimbursement may not exceed the State of Texas approved rates for reimbursement of state employees' lodging. **Name, location, and rate:**	

Block 3: Meals	
Reimbursement for meals (receipts are required) shall not exceed the greater of $25.00 per day or the State of Texas approved rate for reimbursement of state employees' meals while traveling. Alcoholic beverages are not subject to reimbursement. **Estimated cost of meals:**	

Block 4: Administrative and oversight costs
Administrative services may not exceed 20% of the total estimate. Provide an explanation of the necessary administrative services, including the number of hours required and the hourly rate of each person providing such services:

Part III – Certification

The undersigned represents that:

(1) the actual costs for labor charged to the Texas Department of Housing and Community Affairs, Manufactured Housing Division and/or the Manufactured Homeowner's Recovery Trust Fund will not exceed the actual number of hours expended, rounded to the nearest quarter of an hour increment, times the hourly rate specified above;

(2) the actual costs for materials charged to Texas Department of Housing and Community Affairs, Manufactured Housing Division and/or the Manufactured Homeowner's Recovery Trust Fund will not exceed the costs actually charged to the undersigned and such costs do not exceed the costs at which the undersigned is able to obtain such materials for its own account;

(3) the hourly rate being charged by the undersigned does not exceed the normal hourly rate at which the specified individuals customarily provide their services; and

(4) if the work to be performed involves any repair or alteration that would require DAPIA approval, such approval will be obtained and a copy of such approval, together with all DAPIA-approved drawings relating thereto, will be submitted when reimbursement is requested.

Name of Licensee: _____ This estimate submitted this ____ day of _____,

License number: _____

_____

Signature of licensee or duly authorized officer or representative

_____

Printed name of licensee or duly authorized officer or representative

Form: Estimate for Reassigned Warranty Work *Page 2 of 2*

Figure: 10 TAC §80.260(a)(6)

Texas Department of Housing and Community Affairs
MANUFACTURED HOUSING DIVISION
P. O. BOX 12489 Austin, Texas 78711-2489
(800) 500-7074, (512) 475-2200 FAX (512) 475-1109
Pursuant to the Texas Manufactured Housing Standards Act; Chapter 1201 of the Occupations Code
Internet Address: www.tdhca.state.tx.us/mh/index.htm

APPLICATION FOR STATEMENT OF OWNERSHIP AND LOCATION

BLOCK 1: Transaction Identification

This application is for:

- ☐ First time issuance of an SOL for a new home (first retail sale)
- ☐ Revised SOL to reflect changes in (check **all** that apply and complete the applicable blocks):
  - ☐ Location (Blocks 2, 3, 4b, 6, 7, and 10)
  - ☐ Ownership (Blocks 2, 3, 4a, 4b, 5, 6, 7, 8, 9, 10a, and 10b)
  - ☐ Personal/real property election (Blocks 2, 3, 4b, 6, 7, and 10b)
  - ☐ Residential/non-residential use (Blocks 2, 3, 4b, and 10b)
  - ☐ Lien information (Blocks 2, 3, 4b, 10b, and if **adding** a lien, Block 8)
- ☐ Correction (Blocks 2 and 10b **and** specify corrections to be made in other Blocks as appropriate)
- ☐ Quick Processing (requires additional fee **and** completed Quick Processing Form)
- ☐ Other _____

For Department Use Only
Codes:

Form T: Y / N
County Code:
Right of Surv.: Y / N
Wind Zone: I / II
Retailer #:
Manufacturer #:

BLOCK 2: Home Information

Manufacturer Name:		Model:	
Address:		Date of Manufacture:	
City, State, Zip:		Total Square Feet:	
License Number:		Wind Zone:	

	Label/Seal Number	*Serial Number*	*Weight*	*Size**
Section 1:				X
Section 2:				X
Section 3:				X
Section 4:				X

**NOTE: Size must be reported as the outside dimensions (length and width) of the home as measured to the nearest ½ foot at the base of the home, exclusive of the tongue or other towing device.*

BLOCK 3: Home Location

Was Home Moved? ☐ Yes ☐ No If yes, attach copy of moving permit.
Was Home Installed? ☐ Yes ☐ No

Physical Location: _____
Address *City* *State* *ZIP* *County*

BLOCK 4: Ownership Information **IF ownership changed, date of transfer:** _____

(4a) Seller(s) or Transferor(s)		(4b) Purchaser(s), Transferee(s), or Owner(s)	
Name	License # if Retailer:	Name	License # if Retailer:
Name		Name	
Mailing Address		Mailing Address	
City/State/Zip		City/State/Zip	
Daytime Phone Number ( ) -		Daytime Phone Number ( ) -	

BLOCK 5: Right of Survivorship (if no box is checked, joint owners will NOT have right of survivorship)

If joint owners desire right of survivorship, check the applicable box below:

- ☐ Husband and wife will be the only owners and agree that the ownership of the above described manufactured home shall, from this day forward, be held jointly and in the event of death, shall pass to the surviving owner.
- ☐ Joint owners are other than husband and wife, desire right of survivorship, **and** have attached a completed Affidavit of Fact for Right of Survivorship or other affidavits as necessary to meet the requirements of §1201.213 of the Standards Act.

Form: Application for Statement of Ownership and Location *Page 1 of 2*

BLOCK 6: Personal/Real Property Election - to be elected by purchaser(s), transferee(s), or owner(s)

☐ Personal Property – Applicant elects to treat this home as personal property. All documents affecting title to the home will be filed in the records of the department.

☐ Real Property – I (we) elect to treat this home as real property and certify that I am (we are) entitled to make this election in accordance with Section 1201.2055 of the Occupations Code because (**one** box **must** be checked):

- ☐ I (we) own the real property that the home is attached to.
- ☐ I (we) have a qualifying long-term lease for the land that the home is attached to.

I (We) understand that the home will not be considered to be real property until a certified copy of the SOL has been filed in the real property records of the county in which the home is located.

Legal description must be provided for real property: _____

_____

_____

☐ Inventory – Retailer number must be provided in Block 4b. (FOR RETAILER USE ONLY)

BLOCK 7: Designated Use - to be designated by purchaser(s), transferee(s), or owner(s)

☐ Residential Use (as a dwelling)

☐ Non-Residential - Check **one** of the following:

- ☐ Business Use
- ☐ Salvage

BLOCK 8: Personal Property Liens - Specify any liens, charges, or other encumbrances to be recorded on the SOL
*** A Lien cannot be recorded here if "Real Property" is elected in Block 6.**

Date of First Lien:		Date of Second Lien:	
Name of First Lienholder:		Name of Second Lienholder:	
Mailing Address:		Mailing Address:	
City/State/ZIP:		City/State/ZIP:	
Daytime Phone Number:	( ) -	Daytime Phone Number:	( ) -

BLOCK 9: Special Mailing Instructions.

IF you would like your certified copy mailed to someone else, please provide that mailing address here.

Name:	
Company:	
Street Address:	
City, State, Zip:	

BLOCK 10: Certification and Notarization - The statements set forth herein are made under oath and are true and correct.

(10a) Each seller/transferor must sign, and notary signature and seal are required.	(10b) Each purchaser/transferee or owner must sign, and notary signature and seal are required.
_____ *Signature of seller/transferor* *Sworn and subscribed before me this ____ day of _____, 20___* _____ *Signature of Notary* *SEAL*	_____ *Signature of purchaser/transferee or owner* *Sworn and subscribed before me this ____ day of _____, 20___* _____ *Signature of Notary* *SEAL*
_____ *Signature of seller/transferor* *Sworn and subscribed before me this ____ day of _____, 20___* _____ *Signature of Notary* *SEAL*	_____ *Signature of purchaser/transferee or owner* *Sworn and subscribed before me this ____ day of _____, 20___* _____ *Signature of Notary* *SEAL*

Figure: 10 TAC §80.260(a)(7)

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RELEASE OR FORECLOSURE OF LIEN
(Please type or print clearly.)

FORM B

BLOCK 1: Home Information (Must be completed)

Manufacturer Name:		License #:	
Manufacturer Address:			
Model :	Total Sq. Ft.:	Date of Manufacture:	

Label/Seal Number	Complete Serial Number	Weight	Size
Section One:			
Section Two:			
Section Three:			

BLOCK 2: For Release of Liens

(Name of Lienholder)	*(Address)*	*(City)*	*(State)*	*(Zip)*	*(Phone)*
(Name of Consumer)	*(Address)*	*(City)*	*(State)*	*(Zip)*	*(Phone)*

Release of Lien Effective Date:

BLOCK 3: For Foreclosure of Lien

Date of Repossession: _____ Release of Lien Effective Date: _____

***Method** of Repossession (MUST CHECK ONE):*

( ) Terms of Security (Lien) Agreement

( ) Judicial Order (Sequestration, Possessory Lien, etc.) If by judicial order, attach a copy of the Sheriff's Bill of Sale. If the lien was not recorded on the document of title, a COPY of the Security Agreement or Judicial Order must be attached.

BLOCK 4: Sale of Foreclosed Manufactured Home
MUST be completed IF foreclosure is being recorded

***Method** of Sale (MUST CHECK ONE):*

( ) I (We) will sell the home to or through a licensed retailer.

( ) I (We) will sell the home directly to a consumer and have the required retailer license.

( ) I (We) will sell the home directly to a consumer and I am (We are) not required to be licensed as a retailer under Subchapter C of the Standards Act.

If either of the first two items above is checked and this form is submitted in conjunction with an application to record the sale of the manufactured home, the name and license number of the retailer must be provided here: R-_____.

BLOCK 5: Notarized Signature Required

I (We) certify that the statements set forth hereinabove and the information attached hereto are true and correct.

_____
(Signature of Person Authorized to Sign for Lienholder)

_____ *Seal* _____
(Title of Person Signing) *(Phone)*

Sworn and subscribed before me this _____ day of _____, 20_____
(month) *(year)*

_____
(Signature of Notary)

_____ _____
(Typed Name of Notary) *(Date Commission Expires)*

Form: Release or Foreclosure of Lien (Form B) *Page 1*

Figure: 10 TAC §80.260(a)(8)

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QUICK PROCESSING

OF APPLICATION FOR STATEMENT OF OWNERSHIP AND LOCATION (SOL)

To receive Quick Processing, the application MUST:

- ☐ **be complete,**
- ☐ **be clearly labeled for Quick Processing or have this coversheet attached to the front,**
- ☐ **be delivered in person or by overnight mail to address above, and**
- ☐ **be accompanied by full payment of all fees, including additional Quick Processing fee.**

BLOCK 1: Select Return Method

☐ To be picked up. Call _____ at (____) ____ - _____ when ready.

☐ Return by regular mail

☐ Return using _____ overnight service. One of the following **MUST** be provided **(credit cards are NOT accepted)**:

- ☐ Requestor's overnight service account # _____
- ☐ Pre-paid return airbill enclosed with the application

BLOCK 2: Provide Address to Return Incomplete Applications to

Name:	
Company:	
Street Address:	
City, State, Zip:	

BLOCK 3: Specify person to contact with questions about the application

Name:	
Phone Number:	( ) -

Note: Quick Processing takes 3 business days from the date that the complete application is received in the Manufactured Housing Division (MHD) mailroom. Due to mail delivery and routing times, the date received by MHD may be later than the date it is received by TDHCA. Your certified copy of the SOL will be returned via **regular** mail unless a pre-paid return airbill or account number is provided.

Form: Quick Processing Form *Page 1*

Figure: 10 TAC §80.260(a)(9)

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FORM M

(Please type or print clearly.)

IMPORTANT NOTICE!
Place this form on top of the SOL application packet

This form is required when paying for multiple applications with one check, thereby enabling us to match refunds with applications.

	HUD #, Seal #, or Serial #	Purchaser / Owner Name(s)	Fee(s) Per Home
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			
13.			
14.			
15.			
16.			
17.			
18.			
19.			
20.			
21.			
22.			
23.			
24.			
25.			
26.			

_____
(Payor)

( ) _____ ( ) _____ _____ Total Fees: $ _____

(Phone Number) *(Fax Number)* *(Check Number)*

Figure: 10 TAC §80.260(a)(10)

Texas Department of Housing and Community Affairs

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AFFIDAVIT OF FACT
FOR RIGHT OF SURVIVORSHIP OWNERSHIP AGREEMENT

BLOCK 1: Home Information (Must be completed)

Manufacturer Name:		License #:	
Manufacturer Address:		City/State/Zip:	
Model :	Total Sq. Ft.:	Date of Manufacture:	

Label/Seal Number	Complete Serial Number	Weight	Size
Section One:			
Section Two:			
Section Three:			

BLOCK 2: Type of Mutual Agreement

The relationship that exists between the undersigned can be defined as (check one):

- ☐ Legally married (If this box is checked, complete Block 6 only)
- ☐ Common Law marriage (If this box is checked, complete Block 3 and Block 6)
- ☐ Co-owners are unmarried (If this box is checked, complete Block 4 and Block 6)
- ☐ Co-owners are married but not to each other (If this box is checked, complete Block 5 and Block 6)

BLOCK 3: Attestation of Common Law Marriage

We, the undersigned, acknowledge and affirm that we are married by common law to each other and that any previous marriage(s) legal or common law, between any of the undersigned and other party(ies) was legally terminated by a spouse in death or by a legal divorce.

Signature of Co-owner Date Signature of Co-owner Date

BLOCK 4: Attestation of Unmarried Status

I, the undersigned, acknowledge and affirm that I am not married, legally or by common law marriage.

Signature of Co-owner Date Signature of Co-owner Date

BLOCK 5: Attestation of Separate Property By the Undersigned Spouse

Spouse #1

In order to establish right of survivorship between the co-owners of said manufactured home, I, _____ the spouse of _____, do hereby acknowledge and attest that any and all property rights and interests in the above referenced manufactured home is the separate property of the co-owners exclusively.

Signature of spouse #1: _____ Date: _____

Spouse #2

In order to establish right of survivorship between the co-owners of said manufactured home, I, _____ the spouse of _____, do hereby acknowledge and attest that any and all property rights and interests in the above referenced manufactured home is the separate property of the co-owners exclusively.

Signature of spouse #2: _____ Date: _____

BLOCK 6: Signatures of Co-Owners
NOTARIZATION REQUIRED

We, the undersigned, hereby agree that the ownership of the above described manufactured home shall, from this day forward, be held jointly and in the event of death, shall pass to the surviving owner(s).

Signature of Co-owner Date Signature of Co-owner Date

Before me personally appeared the person (s) whose signature (s) appear above, who by being sworn, upon oath, say that the statements set forth hereinabove are true and correct. Subscribed and sworn before me this _____ day of _____ 20_____

_____ *SEAL*
(Notary Public)

_____ *Notary Public State of Texas*
(Commission Expires)

Form: Affidavit of Fact for Right of Survivorship *Page 1*

Figure: 10 TAC §80.260(b)(1)

Declaración de Divulgaciones para el Consumidor

Al comprar una vivienda prefabricada, hay varias consideraciones importantes, incluyendo el precio, la calidad de construcción, las características, el plano de piso, y las alternativas para financiamiento. El Departamento de Vivienda y Desarrollo Urbano de EE.UU. (HUD) ayuda a proteger los consumidores a través de la regulación y ejecución de normas de HUD para el diseño y la construcción de viviendas prefabricadas. Las viviendas prefabricadas construidas de acuerdo con las normas de HUD se conocen como "HUD-code manufactured homes".

El Departamento de Viviendas y Asuntos Comunitarios reglamenta los fabricantes, minoristas, agentes, vendedores, instaladores, y reconstructores de viviendas prefabricadas en Texas.

Si usted desea colocar una vivienda prefabricada en terreno que le pertenece o que comprará, usted debe considerar detalles como los siguientes:

"RESTRICCIONES Y CONVENIOS RESTRICTIVOS" Municipalidades o subdivisiones pueden restringir la colocación de viviendas prefabricadas en ciertos lotes, restringir su colocación a cierta distancia de linderos de propiedad, requerir que sean de cierto tamaño, y establecer ciertos requisitos para su tamaño y construcción. Puede que usted tenga que obtener permisos de construcción y aprobación de una asociación de propietarios antes de colocar una vivienda prefabricada en un lote en particular. Comuníquese con el gerente de la municipalidad, el condado, y la subdivisión local para determinar si la vivienda prefabricada que usted prefiere se puede colocar en un lote en particular.

"AGUA" Asegurase de que su lote tiene acceso al agua. Si tiene que perforar un pozo, comuníquese con varios perforadores para ofertas. Si agua está disponible a través de una municipalidad, un distrito de servicio público, un distrito de agua, o una cooperativa, usted debe preguntar sobre las tarifas que tendrá que pagar y los costos de ingresar con el sistema de agua.

"ALCANTARILLA" Si su lote no es servido por un sistema alcantarilla municipal o un distrito de servicio público, usted tendrá que instalar un sistema para aguas cloacales (conocido como una fosa séptica). Hay varias consideraciones o restricciones que determinarán si su lote es adecuado para soportar una fosa séptica. Para determinar los requisitos que se aplican a su lote y el costo de instalar tal sistema, comuníquese con el condado o un instalador privado que tiene licencia.

"HONORARIOS PARA UNA ASOSIACION DE DUENOS" Muchas subdivisiones tienen tasas y cuotas obligatorias que los propietarios de lotes tienen que pagar. Comuníquese con el gerente de la subdivisión donde está localizado su lote para determinar si hay honorarios asociados con su lote.

"IMPUESTOS" Su vivienda será evaluada y sujeto a impuestos "*al valórem*" igual que otras estructuras residenciales para una sola familia. Estos impuestos se tienen que poner en plica con su pago mensual las primas para aseguranza, honorarios, u otros cobros en conexión con los préstamos asegurados por los bienes raíces residenciales, excepto que su prestamista no está obligado a imponer un requisito de plica en una transacción de bienes raíces que incluyen una

vivienda prefabricada si el prestamista es una institución financiera asegurada por el gobierno federal y de otros modos no requiere la plica de los impuestos. En el cierre, le notificarán de todas las divulgaciones requeridas por el gobierno federal para préstamos honestos.

"ASEGURANZA" Su prestamista puede requerir que usted obtenga aseguranza que satisface los requisitos del prestamista y que protege su inversión. Usted debe de pedir cotización del agente que usted prefiere para obtener aseguranza.

"TIPOS DE HIPOTECAS DISPONIBLES" La compra de una vivienda prefabricada se puede financiar con una hipoteca para bienes raíces o con una hipoteca prendaria. Una hipoteca para bienes raíces puede tener una taza de interés mas baja que una hipoteca prendaria.

"DERECHO A RESCINDIR" Si usted adquiere una vivienda prefabricada, por medio de una compra, un intercambio, o un contrato para la compra tras arrendamiento, usted puede, hasta el TERCER DIA después de la fecha en que se firma el contrato pertinente, rescindir el contrato SIN PENA NI COBRO.

Esta **Divulgación** fue proveída por el minorista y/o el prestamista indicado abajo en esta fecha y me(nos) fue proveído antes de que completara(mos) una aplicación para crédito o antes de firmar un contrato para la compra de una vivienda prefabricada.

Nombre y # de licencia del minorista o prestamista **Fecha**	**Consumidor** **Fecha**
Dirección	**Consumidor** **Fecha**
Ciudad Condado Estado Código Postal	**Dirección**
	Ciudad Condado Estado Código Postal

Antes de completar una aplicación para crédito, el minorista o su agente tiene que dar al consumidor esta declaración en texto tipográfico de por lo menos tamaño 12, y no puede estar adjunto con, ni incluido en, ninguna otra divulgación u otro documento.

Figure: 10 TAC §80.260(b)(2)

ESCOGIENDO UN PRESTAMO PARA LA COMPRA DE UNA VIVIENDA PREFABRICADA

CONSUMIDOR – Antes de aceptar un préstamo para una vivienda prefabricada, se requiere que sea presentado con estas - y otras - advertencias. Sirven para ayudarle hacer la mejor decisión posible en esta compra importante. También se requiere que usted firme documentos confirmando que recibió estas advertencias. **ESTAS ADVERTENCIAS SON IMPORTANTES. Los costos y las obligaciones de ser dueño de un hogar son más que simplemente hacer los pagos mensuales.**

Si quiere obtener un préstamo para su vivienda prefabricada, usted tendrá que hacer aplicación para el préstamo y "calificar" o ser aprobado. Hay dos tipos básicos de préstamos para una vivienda prefabricada: los préstamos hipotecarios y los préstamos de consumidor. Los préstamos hipotecarios, típicamente usados para viviendas construidas en un terreno, usan el terreno y la vivienda como seguridad para el préstamo. Usualmente, los préstamos de consumidor se aseguran sólo con lo que se está comprando, en este caso la vivienda prefabricada, y no mantienen el terreno como seguridad.

Si usted no logra hacer los pagos, puede perder su vivienda.

¿Cómo se comparan los préstamos hipotecarios a los préstamos de consumidor?

Los factores principales que afectarán la cantidad de cada pago mensual y el total de los pagos que hará durante la duración del préstamo son la tasa de interés, el plazo (cuanto tiempo se le dará para pagar), y la cantidad que tomará prestado. En el pasado, los préstamos hipotecarios han llevado tasas de interés más bajos que los préstamos de consumidor. Usted debe preguntar sobre las tasas de interés de los diferentes tipos de préstamos por las que USTED puede calificar. Hay varias maneras en que los prestamistas, utilizando el plazo del préstamo, pueden cambiar los pagos mensuales. Por ejemplo, pueden calcular los pagos de manera que se basan en un plazo muy largo pero en realidad tiene un plazo más corto. Entonces cuando cumpla el último pago será una cantidad grande (un "balloon payment" o "pago aumentado"). Al considerar las alternativas disponibles, debe tomar en cuenta que mientras más largo sea el plazo, más tiempo le tomará pagar el préstamo; pero plazos más largos también resultarán en pagos mensuales más bajos. Es un intercambio entre administrar sus pagos mensuales y ser dueño de su hogar sin deuda más pronto.

La mayoría de los préstamos tienen otros costos. Estos pueden afectar la cantidad que tendrá que pagar de su bolsillo o la cantidad que tendrá que tomar prestado. Algunos de estos costos son costos del prestamista que se incurren en casi todos los préstamos, como cobros para endorsamiento, procesamiento, y registramiento. Algunos de estos costos son para servicios que se obtienen de otros individuos, como levantamiento topográfico, tasación, y póliza de seguros de título. Típicamente, estos costos están asociados con los préstamos hipotecarios. PREGUNTE CUALES COSTOS SON - O PUEDEN SER - FINANCIADOS COMO PARTE DE LA CANTIDAD DEL PRESTAMO.

Sin importar que tipo de préstamo elija, usted tendrá que llenar una aplicación. Típicamente, la aplicación para un préstamo le provee al prestamista información sobre su empleo e ingresos y su condición financiera (sus propiedades y las deudas que tiene). Usualmente, los préstamos hipotecarios toman más tiempo para revisar y aprobar porque estos datos se tienen que verificar y

documentar en mayor detalle que para un préstamo de consumidor. También el obtener servicios de otros individuos, como la póliza de seguros de título, levantamiento topográfico, y tasación, pueden tomar tiempo adicional.

¿Qué sucede si no puedo hacer los pagos?

Sin considerar si tienes un préstamo hipotecario o un préstamo de consumidor, se le pedirá dar a su prestamista el derecho a protegerse haciendo que la cantidad total aún sin pagar sea vencida y tomando control de la seguridad para que pueda vender la propiedad y asignar el dinero de la venta al saldo del préstamo. Usualmente, para un préstamo de consumidor se realiza una ejecución hipotecaria privada. El prestamista consigue un comprador para la vivienda y la vende. Usualmente, el prestamista puede recobrar posesión de la vivienda mientras no cause una violación de la paz. El prestamista puede vender la vivienda por el valor actual y asignar las ganancias de la venta primero a los costos de recobrar posesión, y el resto se asigna al saldo del préstamo. Si las ganancias no son suficientes para pagar la deuda entera, la compañía financiera puede entablar acción judicial para colectar la "deficiencia" que es el saldo del préstamo, incluyendo intereses e intereses moratorios que quedan sin pagar.

Para un préstamo hipotecario, hay un proceso para hacer noticia pública y tener una subasta pública para la vivienda. El prestamista de un préstamo hipotecario no lo puede desalojar. El prestamista venderá la propiedad, y los nuevos dueños tendrán que ir al corte para desalojarlo. Usted puede perder la vivienda prefabricada y el terreno en que está colocada si no puede hacer los pagos de su préstamo hipotecario. Cualquier problema con su préstamo, incluyendo pagos atrasados y ejecución hipotecaria, puede ser reportado y añadido a su reporte de crédito.

HAGA PREGUNTAS ANTES DE ESCOGER UN TIPO DE PRESTAMO EN PARTICULAR. Entienda el préstamo que usted escoge.

Si usted aplica para un préstamo hipotecario, el "Real Estate Settlement Procedures Act" (la ley de Procedimientos en el Cierre de Operaciones de Bienes Raíces) requiere que se le de una copia de una Estimación de Buena Fe que describe la cantidad estimada de los costos de cierre. Si usted aplica para un préstamo de consumidor, la sección abajo se tiene que llenar para describir sus costos de cierre estimados:

Descripción del costo	*Cantidad estimada*	*Indique si el costo será incluido en la cantidad del préstamo o si será un costo inicial o un costo de cierre.*

Si usted aplica para un préstamo de consumidor, la cantidad estimada de su pago mensual sería lo siguiente:

Capital e interés en una cantidad inicial de un préstamo de $_____** **$_____

1/12 de la prima anual estimada para aseguranza **$_____**

1/12 de los impuestos de propiedad estimados para la vivienda prefabricada **$_____**

Este estimado se basa en lo siguiente:

[ ] Instalación en el condado de _____ en la siguiente localización especificada e información obtenida del asesor de impuestos del condado sobre la tasa de impuestos actual aplicable en esa localización.

Localización:

[ ] Ha dicho que la vivienda se instalará en el condado de _____, pero no ha determinado donde se instalará en el condado. Por lo tanto, esta divulgación se basa en la información actual obtenida del asesor de impuestos del condado en cuanto a las tasas de interés actuales aplicadas por todo el condado. Si finalmente la vivienda está localizada en un sitio sujeto a uno o más entidades de impuestos adicionales que no son extendidos por todo el condado, sus impuestos en realidad pueden costarle más.

[ ] Ha dicho que no sabe en cual condado se instalará la vivienda. Por lo tanto, esta divulgación se basa en la información actual obtenida del asesor de impuestos del condado de _____, siendo el condado donde el negocio está localizado, en cuanto a las tasas actuales aplicadas por todo el condado. Si finalmente la vivienda está localizada en otro condado o un sitio sujeto a uno o más entidades de impuestos adicionales que no son extendidos por todo el condado, sus impuestos en realidad pueden costarle más.

NOTA: SUS IMPUESTOS DE PROPIEDAD ACTUALES PUEDEN DIFERIR. COMUNIQUESE CON EL ASESOR DE IMPUESTOS DEL CONDADO DONDE LA VIVIENDA SERA LOCALIZADA PARA OBTENER MAS INFORMACION.

CONSUMIDOR:

AUNQUE SU PRESTAMISTA NO PONGA EN PLICA LOS IMPUESTOS, USTED TODAVIA SERA RESPONSABLE POR ELLOS.

Otros costos estimados (describa)

$_____

$_____

TOTAL ESTIMADO DE LOS COSTOS MENSUALES	**$_____**

SER PROPIETARIO DE UNA VIVIENDA TIENE OTROS COSTOS, TALES COMO REPARACIONES, MANTENIMIENTO, Y UTILIDADES. TAMBIEN, PUEDE HABER OTRAS COSAS QUE USTED DESEA QUE NO PUEDEN SER INCUIDAS EN EL PRECIO DE SU VIVIENDA.

[ ] Si esta caja está marcada, la persona que le está vendiendo la vivienda prefabricada o alguien afiliado con ellos también tomará parte en hacer o someter el préstamo para comprar la vivienda y recibirá compensación, como un honorario, una comisión, o una prima, por este servicio. Si solamente están originando el préstamo y vendiéndolo sin ganancia y no están

recibiendo compensación adicional, esta caja no necesita ser marcada. Si está marcada, aquí está una ESTIMACION de su compensación:

Clase de compensación	**Cantidad estimada o gama de compensación**
	$_____

Adjunto también encuentre las siguientes DIVULGACIONES ADICIONALES (enumerar):

_____

Por medio de nuestra firma, cada uno de nosotros confirmamos que esta divulgación fue proveída en la fecha indicada y que estaba completo en ese momento.

Nombre:_____	**Nombre:**_____
Firma:_____	**Firma:**_____
Fecha:_____	**Fecha:**_____

Al firmar abajo, confirmo que soy la persona licenciada de acuerdo con el Texas Manufactured Housing Standards Act (el Acto de Normas Para Viviendas Prefabricadas de Texas) quien proporcionó esta divulgación (incluyendo cualquier documento adjunto) a los consumidores antedichos.

Nombre:_____

Firma:_____

Fecha:_____

Número de licencia:_____

Figure: 30 TAC §116.12(11)(A)

TABLE I

MAJOR SOURCE/MAJOR MODIFICATION EMISSION THRESHOLDS

POLLUTANT designation[1]	MAJOR SOURCE tons/year	MAJOR MODIFICATION[2] tons/year	OFFSET RATIO minimum
OZONE (VOC, NOx)[3,6]			
I marginal[7]	100	40	1.10 to 1
II moderate	100	40	1.15 to 1
III serious	50	25	1.20 to 1
IV severe	25	25	1.30 to 1
CO			
I moderate	100	100	1.00 to 1[4]
II serious	50	50	1.00 to 1[4]
SO_2	100	40	1.00 to 1[4]
PM_{10}			
I moderate	100	15	1.00 to 1[4]
II serious	70	15	1.00 to 1[4]
NO_x[5]	100	40	1.00 to 1[4]
Lead	100	0.6	1.00 to 1[4]

[1] Texas nonattainment area designations are specified in 40 Code of Federal Regulations §81.344.

[2] The major modification threshold is applicable only to existing major sources and shall be evaluated after netting, unless the applicant chooses to apply nonattainment new source review (NNSR) directly to the project. The appropriate netting triggers for existing major sources of NO_x and VOC are specified in §116.150 of this title (relating to New Major Source or Major Modification in Ozone Nonattainment Areas) and for other pollutants are equal to the major modification level listed in this table.

[3] VOC and NO_x are precursors to ozone formation and should be quantified individually to determine whether a source is subject to NNSR under §116.150 of this title. As specified in §116.150 of this title, for El Paso County, the NNSR rules apply to sources of VOC, but not to sources of NO_x.

[4] The offset ratio is specified to be greater than 1.00 to 1.

VOC = volatile organic compounds

NO_x = oxides of nitrogen

NO_2 = nitrogen dioxide

CO = carbon monoxide

SO_2 = sulfur dioxide

PM_{10} = particulate matter with an aerodynamic diameter less than or equal to ten microns

[5] Applies to the NAAQS for nitrogen dioxide (NO_2).

[6] For the Houston/Galveston/Brazoria, Dallas/Fort Worth, and Beaumont/Port Arthur eight-hour ozone nonattainment areas, if the United States Environmental Protection Agency promulgates rules requiring new source review permit applications in these areas to be evaluated for NNSR according to that area's one-hour standard classification, each application will be evaluated according to that area's one-hour standard classification. Evaluation includes both the threshold for determining if there is a major modification as well as the ratio of offsets required along with any other applicable requirement that depends upon an area's nonattainment classification.

[7] For areas designated as nonattainment for ozone under Federal Clean Air Act, Title I, Part D, Subpart 1 (42 United States Code, §7502), each application will be evaluated as if that area was designated as Marginal. Evaluation includes both the threshold for determining if there is a major modification as well as the ratio of offsets required along with any other applicable requirement that depends upon an area's nonattainment classification.

Figure: 31 TAC §57.500(2)

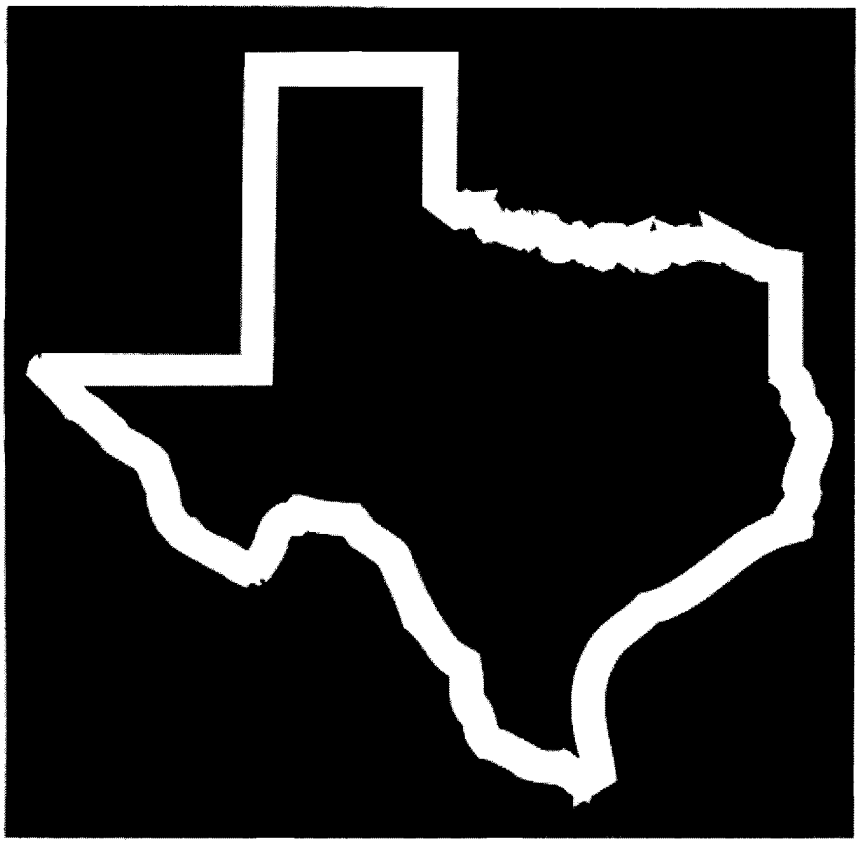

Figure: 31 TAC §65.72(b)(2)(C)(i)

Location (County)	Daily Bag	Minimum Length (Inches)	Special Regulation
Bass: largemouth, smallmouth, spotted and Guadalupe bass, their hybrids, and subspecies.			
Lake Texoma (Cooke and Grayson).	5 (in any combination)	14	
In all waters in the Lost Maples State Natural Area (Bandera)	0	No Limit	Catch and release only.
Bass: largemouth and smallmouth			
Lake Toledo Bend (Newton, Sabine and Shelby).	8 (in any combination with spotted bass)	14	Possession Limit is 10.
Bass: largemouth.			
Conroe (Montgomery and Walker), Fort Phantom Hill (Jones), Granbury (Hood), Possum Kingdom (Palo Pinto, Stephens, Young), Proctor (Comanche), and Ratcliff (Houston).	5	16	
Lakes Aquilla (Hill) , Bellwood (Smith), Braunig (Bexar), Bright (Williamson), Brushy Creek (Williamson), Bryan (Brazos), Calaveras (Bexar), Casa Blanca (Webb), Cleburne State Park (Johnson), Cooper (Delta and Hopkins), Fairfield (Freestone), Gilmer (Upshur), Jacksonville (Cherokee), Meridian State Park (Bosque), Old Mount Pleasant City (Titus), Pflugerville (Travis), Rusk State Park (Cherokee), and Welsh (Titus)	5	18	
Nelson Park Lake (Taylor) and Buck Lake (Kimble).	0	No Limit	Catch and release and only.
Lakes Alan Henry (Garza) and O.H. Ivie (Coleman, Concho, and Runnels).	5	No Limit	It is unlawful to retain more than two bass of less than 18 inches in length.

Location (County)	Daily Bag	Minimum Length (Inches)	Special Regulation
Purtis Creek State Park Lake (Henderson and Van Zandt), and Raven (Walker).	0	No Limit	Catch and release only except that any bass 21 inches or greater in length may be retained in a live well or other aerated holding device and immediately transported to the Purtis Creek or Huntsville State Park, or Gibbons Creek weigh stations. After weighing, the bass must be released immediately back into the lake or donated to the ShareLunker Program.
Lakes Bridgeport (Jack and Wise), Burke-Crenshaw (Harris), Caddo (Marion and Harrison), Davy Crockett (Fannin) , Grapevine (Denton and Tarrant), Georgetown (Williamson), Madisonville (Madison), San Augustine City (San Augustine), and Sweetwater (Nolan)	5	14 - 18 Inch Slot Limit	It is unlawful to retain largemouth bass between 14 and 18 inches in length.
Lakes Athens (Henderson), Bastrop (Bastrop), Buescher State Park (Bastrop), Houston County (Houston), Joe Pool (Dallas, Ellis, and Tarrant), Mill Creek (Van Zandt), Murvaul (Panola), Nacogdoches (Nacogdoches), Pinkston (Shelby), Timpson (Shelby), Town (Travis), and Walter E. Long (Travis).	5	14 - 21 Inch Slot Limit	It is unlawful to retain largemouth bass between 14 and 21 inches in length. No more than 1 bass 21 inches or greater in length may be retained each day.
Lakes Fayette County (Fayette), Gibbons Creek Reservoir (Grimes), Monticello (Titus), and Ray Roberts (Cooke, Denton, and Grayson).	5	14 - 24 Inch Slot Limit	It is unlawful to retain largemouth bass between 14 and 24 inches in length. No more than 1 bass 24 inches or greater in length may be retained each day.

Location (County)	Daily Bag	Minimum Length (Inches)	Special Regulation
Lake Fork (Wood, Rains and Hopkins)	5	16 - 24 Inch Slot Limit	It is unlawful to retain largemouth bass between 16 and 24 inches in length. No more than 1 bass 24 inches or greater in length may be retained each day.
Bass: smallmouth.			
Lakes O. H. Ivie (Coleman, Concho, and Runnels), Alan Henry (Garza), and Devil's River (Val Verde) from State Highway 163 bridge crossing near Juno downstream to Dolan Falls.	3	18	
Lake Meredith (Hutchinson, Moore, and Potter).	3	12 - 15 Inch Slot Limit	It is unlawful to retain smallmouth bass between 12 and 15 inches in length.
Bass: spotted			
Lake Alan Henry (Garza)	3	18	
Lake Toledo Bend (Newton, Sabine and Shelby).	8 (in any combination with largemouth bass)	No Limit	Possession Limit is 10.
Bass: striped and white bass, their hybrids, and subspecies.			
Lake Toledo Bend (Newton, Sabine and Shelby).	5	No Limit	No more than 2 striped bass 30 inches or greater in length may be retained each day.

Location (County)	Daily Bag	Minimum Length (Inches)	Special Regulation
Lake Texoma (Cooke and Grayson).	10 (in any combination)	No Limit	No more than 2 striped or hybrid striped bass 20 inches or greater in length may be retained each day. Striped or hybrid striped bass caught and placed on a stringer, in a live well or any other holding device become part of the daily bag limit and may not be released. Possession limit is 10.
Red River (Grayson) from Denison Dam downstream to and including Shawnee Creek (Grayson).	5 (in any combination)	No Limit	Striped bass caught and placed on a stringer, in a live well or any other holding device become part of the daily bag limit and may not be released.
Lake Possum Kingdom (Palo Pinto, Stephens, Young) and Trinity River (Polk and San Jacinto) from the Lake Livingston dam downstream to the F.M. Road 3278 bridge.	2 (in any combination)	18	
Bass: white			
Lakes Texoma (Cooke and Grayson) and Toledo Bend (Newton, Sabine, and Shelby).	25	No Limit	
Catfish: channel and blue catfish, their hybrids, and subspecies.			
Lake Livingston (Polk, San Jacinto, Trinity, and Walker).	50 (in any combination)	12	Possession limit is 50. The holder of a commercial fishing license may not retain channel or blue catfish less than 14 inches in length.
Trinity River (Polk and San Jacinto) from the Lake Livingston dam downstream to the F.M. Road 3278 bridge.	10 (in any combination)	12	No more than 2 channel or blue catfish 24 inches or greater in length may be retained each day.

Location (County)	Daily Bag	Minimum Length (Inches)	Special Regulation
Lake Texoma (Cooke and Grayson).	15 (in any combination)	12	
North Concho River (Tom Green) from O.C. Fisher Dam to Bell Street Dam, South Concho River (Tom Green) from Lone Wolf Dam to Bell Street Dam	5 (in any combination)	No limit	
Community fishing lakes	5 (in any combination)	No limit	
Bellwood (Smith), Dixieland (Cameron), and Tankersley (Titus).	5 (in any combination)	12	
Catfish: flathead			
Lake Texoma (Cooke and Grayson) and the Red River (Grayson) from Denison Dam to and including Shawnee Creek (Grayson).	5	20	
Crappie: black and white crappie, their hybrids and subspecies.			
Lake Toledo Bend (Newton, Sabine, and Shelby).	50 (in any combination)	10	Possession limit is 50. From December 1, through the last day in February, there is no minimum length limit. All crappie caught during this period must be retained.
Lake Fork (Wood, Rains, and Hopkins) and Lake O'The Pines (Camp, Harrison, Marion, Morris, and Upshur).	25 (in any combination)	10	From December 1, through the last day in February, there is no minimum length limit. All crappie caught during this period must be retained.
Lake Texoma (Cooke and Grayson).	37 (in any combination)	10	Possession limit is 50.
Drum, red.			

Location (County)	Daily Bag	Minimum Length (Inches)	Special Regulation
Lakes Braunig and Calaveras (Bexar), Coleto Creek Reservoir (Goliad and Victoria), Colorado City (Mitchell), Fairfield (Freestone), and Tradinghouse Creek (McLennan).	3	20	No maximum length limit.
Nasworthy (Tom Green)	No Limit	No Limit	
Shad: gizzard and threadfin shad.			
The Trinity River below Lake Livingston in Polk and San Jacinto Counties.	500 (in any combination)	No Limit	Possession Limit 1,000 in any combination.
Trout: Rainbow and brown trout, their hybrids, and subspecies.			
Guadalupe River (Comal) from the second bridge crossing on the River Road upstream to the easternmost bridge crossing on F.M. Road 306.	1	18	
Walleye.			
Lake Texoma (Cooke and Grayson).	5	18	

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas State Affordable Housing Corporation

Proposed Amendments to the 501(c)(3) Bond Program

The Texas State Affordable Housing Corporation proposes amendments to its 501(c)(3) Bond Program: General Information, Procedures, and Requirements for Submitting an Application for Financing (the "Procedures"). The Corporation issues tax-exempt 501(c)(3) bonds to finance multifamily affordable housing in the state of Texas under the authority granted to it under Government Code Title 10, Chapter 2306, Subchapter Y. The 78th Legislature amended Subchapter Y to require the Corporation to review its 501(c)(3) bond issuance policies, including the public benefit requirement implemented under Section 2306.563, and required that notice shall be given through the Texas Register when policy revisions are proposed.

The Corporation proposes amendments to the Procedures in accordance with amendments to the Corporation's statute, specifically Section 2306.563 of the Government Code, which requires that a Community Housing Development Organization that receives an issuance of qualified 501(c)(3) bonds from the Corporation to invest at least one dollar in projects and services that benefit income-eligible persons for each dollar of taxes that is not imposed on the property as a result of a property tax exemption received under Section 11.182 of the Tax Code. The proposed changes to the Procedures would require that any applicant for 501(c)(3) bonds comply with the public benefit requirement as described above.

Written Comments on the proposal may be sent to Katherine Closmann, Executive Vice President, 1005 Congress Ave, Suite 500, Austin, Texas 78701. For further information please contact Ms. Closmann at 512-477-3555. The proposed amended Procedures may be viewed in whole and in blackline format on the Corporation's website at www.tsahc.org. Comments will be accepted through March 31, 2005.

TRD-200500740
David Long
President
Texas State Affordable Housing Corporation
Filed: February 16, 2005

♦ ♦ ♦

Texas Department of Agriculture

Boll Weevil Quarantine Administrative Penalty Matrix

The Texas Agriculture Code (the Code) at Chapter 71, General Control, provides for the establishment of quarantines against dangerous insect pests and plant diseases at the boundaries of the state or in other areas within the state. The Code, Chapter 74, Subchapter D, also provides for the establishment of quarantine rules relating to boll weevil control. Quarantine regulations for boll weevil are found in Title 4, the Texas Administrative Code, Chapter 20. The department's authority for the enforcement of Chapter 71 and Chapter 74 is found in the Code, §12.020, whereby the department may assess administrative penalties up to $5,000 for each violation of these chapters. Each day a violation continues or occurs may be considered a separate violation for purposes of penalty assessments.

An administrative penalty may be levied for: (a) movement of a regulated article in violation of an applicable rule, statute or written directive of the department; (b) violation of the conditions of a compliance agreement, and (c) alteration or unauthorized use of a certificate issued by the department. For each type of offense, there is a penalty range for violations. The ranges were established by considering the following criteria set forth in the Code, §12.020. In determining the amount of the penalty, the department shall consider: (1) the seriousness of the violation, including but not limited to the nature, circumstances, extent, and gravity of the prohibited acts, and the hazard or potential or potential hazard created to the health or safety of the public; (2) the damage to property or the environment caused by the violation; (3) the history of previous violations; (4) the amount necessary to deter future violations; (5) efforts to correct the violation; and (6) any other matter that justice may require.

Depending on the violation, the hazard or potential hazard to the agricultural community, each violation will be considered on a case-by-case basis. Subject to the nature and circumstances of the violation, a penalty may be probated or adjusted as justice may require. The low end of the penalty range for "violation of the conditions of a compliance agreement" is the presumptive base penalty for each violation of a compliance agreement, and represents an appropriate penalty for the violations that are considered "minor" with respect to the criteria in the Code, §12.020. Penalties may be increased to the maximum within the range as the department considers the nature and circumstances of each violation in the context of the criteria in the Code, §12.020(d).

The department developed the boll weevil quarantine administrative penalty matrix so that enforcement actions for violations of Chapter 71 and 74 and rules found in 4 Texas Administrative Code, Chapter 20 are fair, uniform, consistent and appropriate. The matrix states the actions that constitute a violation of the boll weevil quarantine, thereby creating a risk of boll weevil re-infestation and threatening eradication efforts. The department believes this penalty matrix is both necessary and appropriate.

This filing updates penalty amounts in the matrix on the basis of current information, is effective upon publication, and supercedes the matrix published in the *Texas Register* issue of July 6, 2001 (26 TexReg 5101). As the enforcement of these types of violations continues and additional data are gathered, the matrix will be reviewed and, if necessary, adjusted to reflect any changes in the information on which the current matrix is based.

Offense	First Violation[1]	Second Violation[1]	Subsequent Violation[1]
Movement of regulated article in violation of an applicable rule, statute or written directive of the department.	Seizure and $5000	Seizure and $5000	Seizure and $5000
Violation of the conditions of a compliance agreement.	Seizure and $3000 - $5000[2]	Seizure and $4000 - $5000[2]	Seizure and $5000[2]
Violation of a notice of seizure.	Seizure and $5000	Seizure and $5000	Seizure and $5000
Alteration or unauthorized use of a certificate issued by the department.	Seizure and $5000	Seizure and $5000	Seizure and $5000

[1] Seized articles may be detained, treated, destroyed, or returned to the point of origin. Each day a violation continues or occurs may be considered a separate violation for purposes of penalty assessments.

[2] Compliance agreement is additionally subject to suspension/revocation.

TRD-200500742
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: February 16, 2005

♦ ♦ ♦

Office of the Attorney General

Chapter 154. Child Support, Subchapter C. Child Support Guidelines - 2005 Tax Chart

Pursuant to §154.061(b) of the Texas Family Code, the Attorney General of Texas, as the Title IV-D agency, has promulgated the following tax charts for 2005 to assist courts in establishing the amount of a child support order. These tax charts are applicable to employed and self-employed persons in computing net monthly income.

INSTRUCTIONS FOR USE

To use these tables, first compute the obligor's annual gross income. Then recompute to determine the obligor's average monthly gross income. These tables provide a method for calculating "monthly net income" for child support purposes, subtracting from monthly gross income the social security taxes and the federal income tax withholding for a single person claiming one personal exemption and the standard deduction.

Thereafter, in many cases the guidelines call for a number of additional steps to complete the necessary calculations. For example, §§154.061 - 154.070 provide for appropriate additions to "income" as that term is defined for federal income tax purposes, and for certain subtractions from monthly net income, in order to arrive at the net resources of the obligor available for child support purposes. If necessary, one may compute an obligee's net resources using similar steps.

This agency hereby certifies that the tax charts have been received by legal counsel and found to be within the agency's authority to publish.

SELF-EMPLOYED PERSONS
2005 TAX CHART

Monthly Net Earnings From Self-Employment *	Social Security Taxes: Old-Age, Survivors and Disability Insurance Taxes (12.4%)**	Social Security Taxes: Hospital (Medicare) Insurance Taxes (2.9%)**	Federal Income Taxes***	Net Monthly Income
$100.00	$11.45	$2.68	$0.00	$85.87
$200.00	$22.90	$5.36	$0.00	$171.74
$300.00	$34.35	$8.03	$0.00	$257.62
$400.00	$45.81	$10.71	$0.00	$343.48
$500.00	$57.26	$13.39	$0.00	$429.35
$600.00	$68.71	$16.07	$0.00	$515.22
$700.00	$80.16	$18.75	$0.00	$601.09
$800.00	$91.61	$21.43	$6.01	$680.95
$900.00	$103.06	$24.10	$15.31	$757.53
$1,000.00	$114.51	$26.78	$24.60	$834.11
$1,100.00	$125.97	$29.46	$33.90	$910.67
$1,200.00	$137.42	$32.14	$43.19	$987.25
$1,300.00	$148.87	$34.82	$52.48	$1,063.83
$1,400.00	$160.32	$37.49	$62.25	$1,139.94
$1,500.00	$171.77	$40.17	$76.19	$1,211.87
$1,600.00	$183.22	$42.85	$90.13	$1,283.80
$1,700.00	$194.67	$45.53	$104.07	$1,355.73
$1,800.00	$206.13	$48.21	$118.01	$1,427.65
$1,900.00	$217.58	$50.88	$131.95	$1,499.59
$2,000.00	$229.03	$53.56	$145.89	$1,571.52
$2,100.00	$240.48	$56.24	$159.83	$1,643.45
$2,200.00	$251.93	$58.92	$173.77	$1,715.38
$2,300.00	$263.38	$61.60	$187.71	$1,787.31
$2,400.00	$274.83	$64.28	$201.65	$1,859.24
$2,500.00	$286.29	$66.95	$215.59	$1,931.17
$2,600.00	$297.74	$69.63	$229.53	$2,003.10
$2,700.00	$309.19	$72.31	$243.47	$2,075.03
$2,800.00	$320.64	$74.99	$257.41	$2,146.96
$2,900.00	$332.09	$77.67	$271.35	$2,218.89
$3,000.00	$343.54	$80.34	$285.29	$2,290.83
$3,100.00	$354.99	$83.02	$299.23	$2,362.76
$3,200.00	$366.44	$85.70	$313.17	$2,434.69
$3,300.00	$377.90	$88.38	$327.11	$2,506.61
$3,400.00	$389.35	$91.06	$341.20	$2,578.39
$3,500.00	$400.80	$93.74	$364.43	$2,641.03
$3,600.00	$412.25	$96.41	$387.67	$2,703.67
$3,700.00	$423.70	$99.09	$410.90	$2,766.31
$3,800.00	$435.15	$101.77	$434.14	$2,828.94
$3,900.00	$446.60	$104.45	$457.37	$2,891.58
$4,000.00	$458.06	$107.13	$480.60	$2,954.21
$4,250.00	$486.68	$113.82	$538.69	$3,110.81
$4,500.00	$515.31	$120.52	$596.77	$3,267.40
$4,750.00	$543.94	$127.21	$654.86	$3,423.99
$5,000.00	$572.57	$133.91	$712.94	$3,580.58
$5,250.00	$601.20	$140.60	$771.03	$3,737.17
$5,500.00	$629.83	$147.30	$829.11	$3,893.76
$5,750.00	$658.46	$153.99	$887.19	$4,050.36
$6,000.00	$687.08	$160.69	$945.28	$4,206.95
$6,250.00	$715.71	$167.38	$1,003.36	$4,363.55
$6,500.00	$744.34	$174.08	$1,061.45	$4,520.13
$6,750.00	$772.97	$180.78	$1,119.53	$4,676.72
$7,000.00	$801.60	$187.47	$1,177.62	$4,833.31
$7,500.00	$858.86	$200.86	$1,302.51	$5,137.77
$8,000.00	$916.11	$214.25	$1,432.62	$5,437.02
$8,500.00	$930.00****	$227.64	$1,568.81	$5,773.55
$8,824.90*****	$930.00	$236.34	$1,658.56	$6,000.00
$9,000.00	$930.00	$241.03	$1,706.93	$6,122.04
$9,500.00	$930.00	$254.42	$1,845.06	$6,470.52
$10,000.00	$930.00	$267.82	$1,983.18	$6,819.00
$10,500.00	$930.00	$281.21	$2,121.31	$7,167.48
$11,000.00	$930.00	$294.60	$2,259.43	$7,515.97
$11,500.00	$930.00	$307.99	$2,397.56	$7,864.45
$12,000.00	$930.00	$321.38	$2,535.68	$8,212.94
$12,500.00	$930.00	$334.77	$2,673.81	$8,561.42
$13,000.00	$930.00	$348.16	$2,813.43	$8,908.41
$13,500.00	$930.00	$361.55	$2,956.03	$9,252.42
$14,000.00	$930.00	$374.94	$3,106.33	$9,588.73
$14,500.00	$930.00	$388.33	$3,274.40	$9,907.27
$15,000.00	$930.00	$401.72	$3,440.71	$10,227.57

Footnotes to Self-Employed Persons 2005 Tax Chart:

* Determined without regard to Section 1402(a)(12) of the Internal Revenue Code of 1986, as amended (26 U.S.C.) (the "Code").

** In calculating each of the Old-Age, Survivors and Disability Insurance tax and the Hospital (Medicare) Insurance tax, net earnings from self-employment are reduced by the deduction under Section 1402(a)(12) of the Code. The deduction under Section 1402(a)(12) of the Code is equal to net earnings from self-employment (determined without regard to Section 1402(a)(12) of the Code) multiplied by one-half (1/2) of the sum of the Old-Age, Survivors and Disability Insurance tax rate (12.4%) and the Hospital (Medicare) Insurance tax rate (2.9%). The sum of these rates is 15.3% (12.4% + 2.9% = 15.3%). One-half (1/2) of the combined rate is 7.65% (15.3% x 1/2 = 7.65%). The deduction can be computed by multiplying the net earnings from self-employment (determined without regard to Section 1402(a)(12) of the Code) by 92.35%. This gives the same deduction as multiplying the net earnings from self-employment (determined without regard to Section 1402(a)(12) of the Code) by 7.65% and then subtracting the result.

For example, the Social Security taxes imposed on monthly net earnings from self-employment (determined without regard to Section 1402(a)(12) of the Code) of $2,500.00 are calculated as follows:

(i) Old-Age, Survivors and Disability Insurance Taxes:

$2,500.00 x 92.35% x 12.4% = $286.29

(ii) Hospital (Medicare) Insurance Taxes:

$2,500.00 x 92.35% x 2.9% = $66.95

*** These amounts represent one-twelfth (1/12) of the annual Federal income tax calculated for a single taxpayer claiming one personal exemption ($3,200.00, subject to reduction in certain cases, as described below in this footnote) and taking the standard deduction ($5,000.00).

In calculating the annual Federal income tax, gross income is reduced by the deduction under Section 164(f) of the Code. The deduction under Section 164(f) of the Code is equal to one-half (1/2) of the self-employment taxes imposed by Section 1401 of the Code for the taxable year. For example, monthly net earnings from self-employment of $15,000.00 times 12 months equals $180,000.00. The Old-Age, Survivors and Disability Insurance taxes imposed by Section 1401 of the Code for the taxable year equal $11,160.00 ($90,000.00 x 12.4% = $11,160.00). The Hospital (Medicare) Insurance taxes imposed by Section 1401 of the Code for the taxable year equal $4,820.67 ($180,000.00 x .9235 x 2.9% = $4,820.67). The sum of the taxes imposed by Section 1401 of the Code for the taxable year equals $15,980.67 ($11,160.00 + $4,820.67 = $15,980.67). The deduction under Section 164(f) of the Code is equal to one-half (1/2) of $15,980.67 or $7,990.34.

For a single taxpayer with an adjusted gross income in excess of $145,950.00, the deduction for the personal exemption is reduced by two percent (2%) for each $2,500.00 or fraction thereof by which adjusted gross income exceeds $145,950.00. The reduction is completed (i.e., the deduction for the personal exemption is eliminated) for adjusted gross income in excess of $268,450.00. In no case is the deduction for the personal exemption reduced by more than 100%. For example, monthly net earnings from self-employment of $15,000.00 times 12 months equals $180,000.00. The $180,000.00 amount is reduced by $7,990.34 (i.e., the deduction under Section 164(f) of the Code -- see the immediately preceding paragraph of this footnote for the computation) to arrive at adjusted gross income of $172,009.66. The excess over $145,950.00 is $26,059.66. $26,059.66 divided by $2,500.00 equals 10.42. The 10.42 amount is rounded up to 11. The reduction percentage is 22% (11 x 2% = 22%). The $3,200.00 deduction for one personal exemption is reduced by $704.00 ($3,200.00 x 22% = $704.00) to $2,496.00 ($3,200.00 - $704.00 = $2,496.00).

**** For annual net earnings from self-employment (determined with regard to Section 1402(a)(12) of the Code) above $90,000.00, this amount represents a monthly average of the Old-Age, Survivors and Disability Insurance tax based on the 2005 maximum Old-Age, Survivors and Disability Insurance tax of $11,160.00 per person (12.4% of the first $90,000.00 of net earnings from self-employment (determined with regard to Section 1402(a)(12) of the Code) equals $11,160.00). One-twelfth (1/12) of $11,160.00 equals $930.00.

***** This amount represents the point where the monthly gross income of a self-employed individual would result in $6,000.00 of net resources.

* *

References Relating to Self-Employed Persons 2005 Tax Chart:

1. Old-Age, Survivors and Disability Insurance Tax

(a) Contribution Base

(1) Social Security Administration's notice dated October 19, 2004, and appearing in 69 Fed. Reg. 62,497 (October 26, 2004)

(2) Section 1402(b) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §1402(b))

(3) Section 230 of the Social Security Act, as amended (42 U.S.C. §430)

(b) Tax Rate

(1) Section 1401(a) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §1401(a))

(c) Deduction Under Section 1402(a)(12)

(1) Section 1402(a)(12) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §1402(a)(12))

2. Hospital (Medicare) Insurance Tax

(a) Contribution Base

(1) Section 1402(b) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §1402(b))

(2) Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, §13207, 107 Stat. 312, 467-69 (1993)

(b) Tax Rate

(1) Section 1401(b) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §1401(b))

(c) Deduction Under Section 1402(a)(12)

(1) Section 1402(a)(12) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §1402(a)(12))

3. Federal Income Tax

(a) Revised Tax Rate Schedule for 2004 for Single Taxpayers

(1) Revenue Procedure 2004-71, Section 3.01, Table 3 which appears in Internal Revenue Bulletin 2004-50, dated December 13, 2004

(2) Section 1(c), (f) and (i) of the Internal Revenue Code of 1986, as (26 U.S.C. §1(c), 1(f), 1(i))

(b) Standard Deduction

(1) Revenue Procedure 2004-71, Section 3.10(1), which appears in Internal Revenue Bulletin 2004-50, dated December 13, 2004

(2) Section 63(c) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §63(c))

(c) Personal Exemption

(1) Revenue Procedure 2004-71, Section 3.17, which appears in Internal Revenue Bulletin 2004-50, dated December 13, 2004

(2) Section 151(d) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §151(d))

(d) Deduction Under Section 164(f)

(1) Section 164(f) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §164(f))

EMPLOYED PERSONS
2005 TAX CHART

Monthly Gross Wages	Social Security Taxes: Old-Age, Survivors and Disability Insurance Taxes (6.2%)*	Social Security Taxes: Hospital (Medicare) Insurance Taxes (1.45%)*	Federal Income Taxes**	Net Monthly Income
$100.00	$6.20	$1.45	$0.00	$92.35
$200.00	$12.40	$2.90	$0.00	$184.70
$300.00	$18.60	$4.35	$0.00	$277.05
$400.00	$24.80	$5.80	$0.00	$369.40
$500.00	$31.00	$7.25	$0.00	$461.75
$600.00	$37.20	$8.70	$0.00	$554.10
$700.00	$43.40	$10.15	$1.67	$644.78
$800.00	$49.60	$11.60	$11.67	$727.13
$892.67***	$55.35	$12.94	$20.93	$803.45
$900.00	$55.80	$13.05	$21.67	$809.48
$1,000.00	$62.00	$14.50	$31.67	$891.83
$1,100.00	$68.20	$15.95	$41.67	$974.18
$1,200.00	$74.40	$17.40	$51.67	$1,056.53
$1,300.00	$80.60	$18.85	$62.08	$1,138.47
$1,400.00	$86.80	$20.30	$77.08	$1,215.82
$1,500.00	$93.00	$21.75	$92.08	$1,293.17
$1,600.00	$99.20	$23.20	$107.08	$1,370.52
$1,700.00	$105.40	$24.65	$122.08	$1,447.87
$1,800.00	$111.60	$26.10	$137.08	$1,525.22
$1,900.00	$117.80	$27.55	$152.08	$1,602.57
$2,000.00	$124.00	$29.00	$167.08	$1,679.92
$2,100.00	$130.20	$30.45	$182.08	$1,757.27
$2,200.00	$136.40	$31.90	$197.08	$1,834.62
$2,300.00	$142.60	$33.35	$212.08	$1,911.97
$2,400.00	$148.80	$34.80	$227.08	$1,989.32
$2,500.00	$155.00	$36.25	$242.08	$2,066.67
$2,600.00	$161.20	$37.70	$257.08	$2,144.02
$2,700.00	$167.40	$39.15	$272.08	$2,221.37
$2,800.00	$173.60	$40.60	$287.08	$2,298.72
$2,900.00	$179.80	$42.05	$302.08	$2,376.07
$3,000.00	$186.00	$43.50	$317.08	$2,453.42
$3,100.00	$192.20	$44.95	$332.08	$2,530.77
$3,200.00	$198.40	$46.40	$351.25	$2,603.95
$3,300.00	$204.60	$47.85	$376.25	$2,671.30
$3,400.00	$210.80	$49.30	$401.25	$2,738.65
$3,500.00	$217.00	$50.75	$426.25	$2,806.00
$3,600.00	$223.20	$52.20	$451.25	$2,873.35
$3,700.00	$229.40	$53.65	$476.25	$2,940.70
$3,800.00	$235.60	$55.10	$501.25	$3,008.05
$3,900.00	$241.80	$56.55	$526.25	$3,075.40
$4,000.00	$248.00	$58.00	$551.25	$3,142.75
$4,250.00	$263.50	$61.63	$613.75	$3,311.12
$4,500.00	$279.00	$65.25	$676.25	$3,479.50
$4,750.00	$294.50	$68.88	$738.75	$3,647.87
$5,000.00	$310.00	$72.50	$801.25	$3,816.25
$5,250.00	$325.50	$76.13	$863.75	$3,984.62
$5,500.00	$341.00	$79.75	$926.25	$4,153.00
$5,750.00	$356.50	$83.38	$988.75	$4,321.37
$6,000.00	$372.00	$87.00	$1,051.25	$4,489.75
$6,250.00	$387.50	$90.63	$1,113.75	$4,658.12
$6,500.00	$403.00	$94.25	$1,176.25	$4,826.50
$6,750.00	$418.50	$97.88	$1,240.88	$4,992.74
$7,000.00	$434.00	$101.50	$1,310.88	$5,153.62
$7,500.00	$465.00****	$108.75	$1,450.88	$5,475.37
$8,000.00	$465.00	$116.00	$1,590.88	$5,828.12
$8,243.62*****	$465.00	$119.53	$1,659.09	$6,000.00
$8,500.00	$465.00	$123.25	$1,730.88	$6,180.87
$9,000.00	$465.00	$130.50	$1,870.88	$6,533.62
$9,500.00	$465.00	$137.75	$2,010.88	$6,886.37
$10,000.00	$465.00	$145.00	$2,150.88	$7,239.12
$10,500.00	$465.00	$152.25	$2,290.88	$7,591.87
$11,000.00	$465.00	$159.50	$2,430.88	$7,944.62
$11,500.00	$465.00	$166.75	$2,570.88	$8,297.37
$12,000.00	$465.00	$174.00	$2,710.88	$8,650.12
$12,500.00	$465.00	$181.25	$2,853.86	$8,999.89
$13,000.00	$465.00	$188.50	$2,998.34	$9,348.16
$13,500.00	$465.00	$195.75	$3,158.40	$9,680.85
$14,000.00	$465.00	$203.00	$3,326.92	$10,005.08
$14,500.00	$465.00	$210.25	$3,497.20	$10,327.55
$15,000.00	$465.00	$217.50	$3,665.72	$10,651.78

Footnotes to Employed Persons 2005 Tax Chart:

* An employed person not subject to the Old-Age, Survivors and Disability Insurance/Hospital (Medicare) Insurance taxes will be allowed the reductions reflected in these columns, unless it is shown that such person has no similar contributory plan such as teacher retirement, federal railroad retirement, federal civil service retirement, etc.

** These amounts represent one-twelfth (1/12) of the annual Federal income tax calculated for a single taxpayer claiming one personal exemption ($3,200.00, subject to reduction in certain cases, as described in the next paragraph of this footnote) and taking the standard deduction ($5,000.00).

For a single taxpayer with an adjusted gross income in excess of $145,950.00, the deduction for the personal exemption is reduced by two percent (2%) for each $2,500.00 or fraction thereof by which adjusted gross income exceeds $145,950.00. The reduction is completed (i.e., the deduction for the personal exemption is eliminated) for adjusted gross income in excess of $268,450.00. In no case is the deduction for the personal exemption reduced by more than 100%. For example, monthly gross wages of $15,000.00 times 12 months equals $180,000.00. The excess over $145,950.00 is $34,050.00. $34,050.00 divided by $2,500.00 equals 13.62. The 13.62 amount is rounded up to 14. The reduction percentage is 28% (14 x 2% = 28%). The $3,200.00 deduction for one personal exemption is reduced by $896.00 ($3,200.00 x 28% = $896.00) to $2,304.00 ($3,200.00 - $896.00 = $2,304.00).

*** The amount represents one-twelfth (1/12) of the gross income of an individual earning the federal minimum wage ($5.15 per hour) for a 40 hour week for a full year. $5.15 per hour x 40 hours per week x 52 weeks per year equals $10,712.00 per year. One-twelfth (1/12) of $10,712.00 equals $892.67.

**** For annual gross wages above $90,000.00, this amount represents a monthly average of the Old-Age, Survivors and Disability Insurance tax based on the 2005 maximum Old-Age, Survivors and Disability Insurance tax of $5,580.00 per person (6.2% of the first $90,000.00 of annual gross wages equals $5,580.00). One-twelfth (1/12) of $5,580.00 equals $465.00.

***** This amount represents the point where the monthly gross income of an employed individual would result in $6,000.00 of net resources.

* *

References Relating to Employed Persons 2005 Tax Chart:

1. Old-Age, Survivors and Disability Insurance Tax

(a) Contribution Base

(1) Social Security Administration's notice dated October 19, 2004, and appearing in 69 Fed. Reg. 62,497 (October 26, 2004)

(2) Section 3121(a) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §3121(a))

(3) Section 230 of the Social Security Act, as amended (42 U.S.C. §430)

(b) Tax Rate

(1) Section 3101(a) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §3101(a))

2. Hospital (Medicare) Insurance Tax

(a) Contribution Base

(1) Section 3121(a) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §3121(a))

(2) Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, §13207, 107 Stat. 312, 467-69 (1993)

(b) Tax Rate

(1) Section 3101(b) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §3101(b))

3. Federal Income Tax

(a) Revised Tax Rate Schedule for 2005 for Single Taxpayers

(1) Revenue Procedure 2004-71, Section 3.01, Table 3 which appears in Internal Revenue Bulletin 2004-50, dated December 13, 2004

(2) Section 1(c), (f) and (i) of the Internal Revenue Code of 1986, as (26 U.S.C. §1(c), 1(f), 1(i))

(b) Standard Deduction

(1) Revenue Procedure 2004-71, Section 3.10(1), which appears in Internal Revenue Bulletin 2004-50, dated December 13, 2004

(2) Section 63(c) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §63(c))

(c) Personal Exemption

(1) Revenue Procedure 2004-71, Section 3.17, which appears in Internal Revenue Bulletin 2004-50, dated December 13, 2004

(2) Section 151(d) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §151(d))

For information regarding this publication you may contact A.G. Younger, Agency Liaison, at 512-463-2110.

TRD-200500641
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: February 11, 2005

♦ ♦ ♦

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of February 4, 2005, through February 10, 2005. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on February 16, 2005. The public comment period for these projects will close at 5:00 p.m. on March 18, 2005.

FEDERAL AGENCY ACTIONS:

Applicant: Davis Petroleum Corporation ; Location: The project is located in Corpus Christi Bayou in State Tract (ST) 284 (well location), Redfish Bay in Nueces County, Texas. The proposed well location is approximately 0.3 mile north of State Highway (SH) 361 and approximately 2 miles southeast of Aransas Pass, San Patricio County, Texas. The proposed pipeline would cross portions of STs 284 and 283, and end on Stedman Island, at an upland point. The project can be located on the U.S.G.S. quadrangle map entitled: Estes, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Well: Easting: 686000; Northing: 3085900, terminus of pipeline Easting: 686000; Northing: 3085900. Project Description: The applicant proposes to drill a well for the production of petroleum products in ST 284, utilizing a 240-foot-long by 100-foot-wide drilling pad of shell, gravel, or crushed rock. The project would include the installation of a typical marine barge and keyway, a production platform with attendant facilities, and flowlines between the well and production platforms. In addition, the applicant proposes to install an 8-inch-diameter pipeline from the proposed well to a point on Stedman Island, a distance of 3,222 feet. The pipeline would be installed by either jetting and/or trenching except for the portion that would cross the Aransas Channel and SH 361. This portion of the pipeline would be installed by directional drilling. A portion of this pipeline was previously reviewed and approved under Department of the Army (DA) Permit 22863; however, neither the well or pipeline that were permitted under that permit has been constructed. The applicant has stated that all special conditions outlined in DA Permit 22863 will be adhered to, including the installation of turbidity curtains to control silt/solids re-suspended during the drilling of the well and the installation of the pipeline. CCC Project No.: 05-0133-F1; Type of Application: U.S.A.C.E. permit application #23653 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Program Specialist, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200500718
Larry L. Laine
Chief Clerk, Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: February 15, 2005

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Sections 303.003 and 303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by Sections 303.003 and 303.009 for the period of 02/21/05 - 02/27/05 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit thru $250,000.

The weekly ceiling as prescribed by Sections 303.003 and 303.009 for the period of 02/21/05 - 02/27/05 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-200500689
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: February 15, 2005

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Credit Union Department

Application to Amend Articles of Incorporation

Notice is given that the following application has been filed with the Credit Union Department and is under consideration:

An application was filed by Coastal Community and Teachers Credit Union to amend is Articles of Incorporation relating to par value.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200500727

Harold E. Feeney
Commissioner
Credit Union Department
Filed: February 16, 2005

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Applications to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department and are under consideration:

An application was received from United Community Credit Union, Galena Park, Texas to expand its field of membership. The proposal would permit employees of the Crosby Independent School District in Crosby, Texas, to be eligible for membership in the credit union.

An application was received from Members Credit Union, Cleburne, Texas to expand its field of membership. The proposal would permit persons who live, work, worship, or attend school in and businesses located in zip codes 76028 and 76036, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at http://www.tcud.state.tx.us/applications.html. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200500726
Harold E. Feeney
Commissioner
Credit Union Department
Filed: February 16, 2005

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Notice of Final Action Taken

In accordance with the provisions of 7 TAC Section 91.103, the Credit Union Department provides notice of the final action taken on the following application(s):

Application(s) to Expand Field of Membership - Approved

Texans Credit Union, Richardson, Texas- See *Texas Register* issue dated August 27, 2004.

The Education Credit Union, Amarillo, Texas- See *Texas Register* issue dated November 26, 2004.

Texas Telcom Credit Union, Dallas, Texas (Amended)- Persons who live in, attend school in, or worship in, and businesses located within a 10-mile radius of Texas Telcom Credit Union's office located at: 8818 Garland Road, Dallas, TX 75218.

MemberSource Credit Union, Houston, Texas (#1)- See *Texas Register* issue dated October 29, 2004.

MemberSource Credit Union, Houston, Texas (#3) (Amended)- Persons who live, work, worship, or attend school in and businesses located within a 10-mile radius of the offices of MemberSource Credit Union located at: 10100 Richmond Avenue, Houston, Texas 77042 and 5400 Westheimer Court, Houston, Texas 77056.

MemberSource Credit Union, Houston, Texas (#4) (Amended)- Persons who live, work, worship, or attend school in and businesses located within a 10-mile radius of the office of MemberSource Credit Union located at: 1201 Lake Robbins Drive, The Woodlands, Texas 77056.

Application(s) to Amend Articles of Incorporation- Approved

Denton Area Teachers Credit Union, Denton, Texas- See *Texas Register* issue dated December 31, 2004.

MemberSource Credit Union, Houston, Texas- See *Texas Register* issue dated December 31, 2004.

Application(s) for a Merger or Consolidation- Approved

Tarrant Affiliated Contractors Credit Union (Fort Worth) and Family 1st of Texas Federal Credit Union (Fort Worth)- See *Texas Register* issue dated July 30, 2004.

TRD-200500728
Harold E. Feeney
Commissioner
Credit Union Department
Filed: February 16, 2005

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Texas Commission on Environmental Quality

Notice of an Administrative Order Pertaining to the J.C. Pennco Waste Oil Service State Superfund Site

This notice is issued by the Texas Commission on Environmental Quality (TCEQ) in accordance with Texas Health and Safety Code (THSC), §361.272, Administrative Orders Concerning Imminent and Substantial Endangerment. This notice is being published in the *Texas Register* on February 25, 2005 and in the following newspapers: *San Antonio Express News,New Braunfels Herald Zeitung,* and the *Seguin Gazette Enterprise* on February 25, 2005; in the *Eagle Pass News Guide* on February 24, 2004; and in the *Williamson County Sun* on February 23, 2005.

An administrative order (the order) concerning the J.C. Pennco Waste Oil Service State Superfund site (the site) was considered at the commission's public meeting on August 11, 2004, and was issued on August 18, 2004. The order primarily addresses the following matters: 1) identification of 52 parties as responsible for the solid wastes/hazardous substances at the site in accordance with THSC, §361.271; 2) settlement with 38 additional parties for any liability for the solid wastes/hazardous substances at the site, which amounts to $77,729 in settlement funds received by the TCEQ; 3) specification of the selected remedial action and appropriate land use for the site; 4) determination that the site poses an imminent and substantial endangerment to public health and safety or the environment; 5) order that the site be listed on the state registry of Superfund sites; 6) order that the responsible parties remediate the site, with specific deadlines for this activity to begin; and 7) order that the responsible parties reimburse the hazardous and solid waste remediation fee account for remedial investigation/feasibility study and remediation costs within a specified period of time.

The TCEQ attempted to deliver the order to all responsible parties. Due to the failure of delivery of the order by certified mail or hand delivery, the order is hereby served on the following parties: Aircraft Services; Alamo Transmissions; American Desk Manufacturing Company; American Hi-Lift Corporation; Associated Motors; Bobby's Auto Parts, Inc.; Broadway Radiator and Auto Repair; C & C Import Service Inc.; C & J Automotive; East Kelly Automotive; Ernie's Automotive; Faith Hill Automotive; Fitzgerald's Auto Service; Fox Alignment & Brake Service; Guarantee Auto & Truck Parts Inc.;

Northeast Wrecker Service; Redland Transportation Inc.; Rigsby Paint and Body; San Antonio Transportation Agency Inc.; Taxsor Meats; and Theo's Brake & Tire.

The order identifies these parties as persons responsible for solid waste and hazardous substances at the site and orders them to remediate the site and reimburse the hazardous and solid waste remediation fee account for remedial investigation/feasibility study and remediation costs within a specified period of time.

The site is located at 4927 Higdon Road, southeast of San Antonio, outside the city limits, in Bexar County, Texas. The land use at the site is residential. The remedial action selected for the site is monitored natural attenuation with a plume management zone.

A portion of the record for this site, including documents pertinent to the remedial action, is available for review during regular business hours at the San Antonio Public Library, McCreless Branch, 1023 Ada Street, San Antonio, Texas. Copies of the complete public record, including a copy of the administrative order, may be obtained during regular business hours at the TCEQ's Records Management Center, Records Customer Service, Building E, First Floor, MC 199, 12100 Park 35 Circle, Austin, Texas 78753, (800) 633-9363 or (512) 239-2920. Photocopying of file information is subject to payment of a fee. Parking for persons with disabilities is available on the east side of Building D, convenient to access ramps that are between Buildings D and E.

Information is also available regarding the state Superfund program at *http://www.tnrcc.state.tx.us/permitting/remed/superfund.html.*

For further information about the site or the order, please call Carol Boucher, Remediation Division, at (800) 633-9363, extension 2501.

TRD-200500717
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: February 15, 2005

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Notice of District Petition

Notices mailed February 10 through February 11, 2005

TCEQ Internal Control No. 01052005-D03; Lennar Homes of Texas Land and Construction, Ltd. and F. Irby Cobb Trust (Petitioners) filed a petition for creation of Fort Bend County Municipal Utility District No. 152 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioners are the owners of a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 327 acres located within Fort Bend County, Texas; (4) the proposed District is within the extraterritorial jurisdiction of the City of Rosenberg, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas; and (5) there is one tenant on land to be included in the proposed District and the Petitioners have provided TCEQ with a certificate evidencing its consent to the creation of the proposed District. By Ordinance No. 2004-27, effective December 14, 2004, the City of Rosenberg, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; (3) control, abate and amend local storm waters or other harmful excesses of water; and (4) purchase, construct, acquire, improve, maintain, and operate additional facilities, systems, plants, and enterprises and parks and recreational facilities, fire fighting facilities and road facilities consistent with the purposes for which the District is created, all as more particularly described in an engineer's report filed simultaneously with the filing of the petition. According to the petition, the Petitioners have conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately $22,685,000.

TCEQ Internal Control No. 12232004-D11; Ventana Development Reading, Ltd. (Petitioner) filed a petition for creation of Fort Bend County Municipal Utility District No. 158 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there is one lienholder, Texas State Bank, on the property to be included in the proposed District, and the Petitioner has provided the TCEQ with a certificate evidencing its consent to the creation of the proposed District; (3) the proposed District will contain approximately 158.54 acres located within Fort Bend County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Rosenberg, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Ordinance No. 2004-29, effective December 14, 2004, the City of Rosenberg, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; (3) control, abate and amend local storm waters or other harmful excesses of water; and (4) purchase, construct, acquire, improve, maintain, and operate additional facilities, systems, plants, and enterprises and parks and recreational facilities, fire fighting facilities and road facilities consistent with the purposes for which the District is created, all as more particularly described in an engineer's report filed simultaneously with the filing of the petition. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately $12,350,000.

TCEQ Internal Control No. 12202004-D02; BGM Land Investments, Ltd. (Petitioner) filed a petition for creation of Harris County Municipal Utility District No. 432 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there are four lienholders, James O. Morton, Ida May Morton, the Estate of Charles E. Morton, and The Morton Family Trust, on the property to be included in the

proposed District, and the Petitioner has provided the TCEQ with certificates evidencing their consent to the creation of the proposed District; (3) the proposed District will contain approximately 520.3204 acres located within Harris County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Houston, Texas, and is not within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Ordinance No. 2004-1175, effective November 23, 2004, the City of Houston, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain, and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; and (3) control, abate and amend local storm waters or other harmful excesses of water, as more particularly described in an engineer's report filed simultaneously with the filing of the petition; and (4) purchase, construct, acquire, improve, maintain, and operate additional facilities, systems, plants, and enterprises consistent with the purposes for which the District is created and permitted under State law. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately $30,000,000.

TCEQ Internal Control No. 12222004-D01; The Highlands at Mayfield Ranch, Ltd. (Petitioner) filed a petition for creation of Highlands at Mayfield Ranch Municipal Utility District (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there is one lienholder, Brushy Creek Reserve Investments, on the property to be included in the proposed District, and the Petitioner has provided the TCEQ with a certificate evidencing its consent to the creation of the proposed District; (3) the proposed District will contain approximately 345.79 acres located within Williamson County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Round Rock, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Resolution No. R-04-12-02-9D1, effective December 2, 2004, the City of Round Rock, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) construct, acquire, maintain and operate a waterworks and sanitary sewer system for domestic and commercial purposes; (2) construct, acquire, maintain and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; (3) control, abate and amend local storm waters or other harmful excesses of waters, as more particularly described in an engineer's report filed simultaneously with the filing of the petition; and (4) construct, acquire, improve, maintain, and operate any additional facilities, systems, plants and enterprises consistent with the purposes for which the District is created. According to the petition, the Petitioner have conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately $28,167,142.

TCEQ Internal Control No. 12232004-D08; Presidential Glen, Ltd. (Petitioner) filed a petition for creation of Presidential Glen Municipal Utility District (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner is the owners of a majority in value of the land to be included in the proposed District; 2) there is one lienholder, International Bank of Commerce, on the property to be included in the proposed District, and the Petitioner has provided the TCEQ with a certificate evidencing its consent to the creation of the proposed District; (3) the proposed District will contain approximately 212.438 acres located within Travis County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Manor, Texas, and is not within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Resolution No. 2004-08, effective May 19, 2004, the City of Manor, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) construct, acquire, maintain, and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; (3) control, abate and amend local storm waters or other harmful excesses of water, as more particularly described in an engineer's report filed simultaneously with the filing of the petition; and (4) construct, acquire, improve, maintain, and operate additional facilities, systems, plants, and enterprises consistent with the purposes for which the District is created and permitted under State law. According to the petition, the Petitioner have conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately $11,630,999.

INFORMATION SECTION

The TCEQ may grant a contested case hearing on a petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed district's boundaries. You may also submit your proposed adjustments to the petition which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

The Executive Director may approve a petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of the notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, the same address. For additional information, individual members of the general public may contact the Office of Public Assistance, at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200500734

LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 16, 2005

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapters 101 and 116 and the State Implementation Plan

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to 30 TAC Chapter 101, General Air Quality Rules; 30 TAC Chapter 116, Control of Air Pollution by Permits for New Construction or Modification; and the state implementation plan (SIP); under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Subchapter B, Chapter 2001; and 40 Code of Federal Regulations §51.102, of the United States Environmental Protection Agency regulations concerning SIPs.

The proposed rulemaking would amend the definition of nonattainment area in §101.1 to be consistent with current federal classifications under the eight-hour ozone standard. The proposed amendments to §116.12 and §116.150 would change new source review netting triggers and periods to be consistent with federal rules for areas classified under the eight-hour ozone standard.

A public hearing on this proposal will be held in Austin on March 17, 2005, at 10:00 a.m. at the Texas Commission on Environmental Quality in Building F, Room 2210, located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearing. Individuals may present oral statements when called upon in order of registration. A time limit may be established at the hearing to assure that enough time is allowed for every interested person to speak. There will be no open discussion during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

Persons planning to attend the hearing who have special communication or other accommodation needs, should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

Comments may be submitted to Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or by fax at (512) 239-4808. Copies of the proposed rules can be obtained from the commission's website at *http://www.tnrcc.state.tx.us/oprd/rules/propadop.html*. All comments should reference Rule Project Number 2005-009-116-AI. Comments must be received by 5:00 p.m. on March 28, 2005. For further information, please contact Michael Bame, Policy and Regulations Division at (512) 239-5658, or Beecher Cameron, Air Permits Division at (512) 239-1495.

TRD-200500623
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: February 11, 2005

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Notice of Water Quality Applications

The following notices were issued during the period of February 9, 2005 through February 14, 2005.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P O Box 13087, Austin Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

ALTO FRIO BAPTIST ENCAMPMENT has applied for a renewal of Permit No. 11683-001, which authorizes the disposal of treated domestic wastewater at a volume not to exceed a daily average flow of 20,000 gallons per day via irrigation of 2.0 acres of pasture land. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately 1.5 miles southeast of Ranch Road 1120 from its north intersection with U.S. Highway 83 and approximately 2 miles southeast of the City of Leakey in Real County, Texas.

ARANSAS COUNTY AIRPORT has applied for a renewal of Permit No. 11280-001, which authorizes the disposal of treated domestic wastewater at a volume not to exceed a daily average flow of 3,600 gallons per day via evaporation. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located on the east side of Farm-to-Market Road 1781 at a point approximately 3,000 feet north of the intersection of Farm-to-Market Road 1781 and Copano Village Road in Aransas County, Texas.

CITY OF AUSTIN, AUSTIN WATER UTILITY has applied for a renewal of TPDES Permit No. 105430-12, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 75,000,000 gallons per day. The facility is located between Onion Creek and the Colorado River, approximately 2 miles west of their confluence, approximately 2 miles east of the Farm-to-Market Road 973 crossing of the Colorado River and 2 miles north of State Highway 71 in Travis County, Texas.

BRAZORIA COUNTY FRESH WATER SUPPLY DISTRICT NO. 1 has applied for a renewal of TPDES Permit No. 11130-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 140,000 gallons per day. The facility is located on the east side of State Highway 36, approximately 1,100 feet southeast of the intersection of Farm-to-Market Road 1462 and State Highway 36, northeast of the City of Damon in Brazoria County, Texas.

CAPITOL AGGREGATES, LTD. which operates the San Antonio Portland Cement Plant, a portland and masonry cement manufacturer, has applied for a major amendment to TPDES Permit No. WQ0001510000 to authorize the discharge of material storage pile runoff, vehicle/plant wash water, road dust suppression water, and storm water via Outfalls 001, 002, and 003; an increase in total suspended solids effluent limitations at Outfalls 001, 002, and 003; removal of effluent limitations for total dissolved solids, chlorides, and sulfate at Outfalls 001 and 002; removal of effluent limitations for chlorides and sulfate at Outfall 003; and removal of flow limitations at Outfall 003. The current permit authorizes the discharge of process wastewater and storm water on an intermittent and flow variable basis via Outfall 001; plant and vehicle washdown water and storm water on an intermittent and flow variable basis via Outfall 002; and quarry water at a daily maximum flow not to exceed 10,000,000 gallons per day via Outfall 003. The facility is located at 11551 Nacogdoches Road, on the west side of Nacogdoches Road at the junction of Bulverde Road and Nacogdoches Road in the City of San Antonio, Bexar County, Texas.

CITY OF DILLEY has applied for a renewal of TPDES Permit No. 10404-002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day.

The facility is located approximately one mile southwest of the intersection of Interstate Highway 35 and State Highway 85 in Frio County, Texas.

CITY OF ODEM has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010237002, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 475,000 gallons per day. The facility will be located at the City of Odem Closed Municipal Solid Waste Landfill on the southeast side of Odem; approximately 200 feet from the end of County Road 49 and approximately 1.8 miles southeast of the intersection of U.S. Highway 77 and Farm-to-Market Road 631 in San Patricio County, Texas.

CITY OF ODESSA has applied for a renewal of TPDES Permit No. WQ0010238002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 11,000,000 gallons per day. The facility is located southeast of the City of Odessa, approximately four miles southeast of the intersection of Interstate Highway 20 and Loop Highway 338, and approximately six miles east-southeast of the intersection of Interstate Highway 20 and U.S. Highway 385 in Midland County, Texas.

TAPATIO SPRINGS SERVICE COMPANY has applied for a renewal of Permit No. 12404-001, which authorizes the disposal of treated domestic wastewater at a volume not to exceed a daily average flow of 150,000 gallons per day via irrigation. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately 3.5 miles west-southwest of the intersection of Interstate Highway 10 and Johns Road in Kendall County, Texas.

TRD-200500735
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 16, 2005

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Office of the Governor

Request for Grant Applications (RFA) for the Drug Court Program

The Criminal Justice Division (CJD) of the Governor's Office is soliciting applications for projects that support eligible drug court programs during the state fiscal year 2006 grant cycle.

Purpose: The purpose of the Drug Court Program is to support drug courts as defined in Chapter 469 of the Texas Health and Safety Code, which incorporate the following ten essential characteristics:

(1) The integration of alcohol and other drug treatment services in the processing of cases in the judicial system;

(2) The use of a non-adversarial approach involving prosecutors and defense attorneys to promote public safety and to protect the due process rights of program participants;

(3) Early identification and prompt placement of eligible participants in the program;

(4) Access to a continuum of alcohol, drug, and other related treatment and rehabilitative services;

(5) Monitoring of abstinence through weekly alcohol and other drug testing;

(6) A coordinated strategy to govern program responses to participants' compliance;

(7) Ongoing judicial interaction with program participants;

(8) Monitoring and evaluation of program goals and effectiveness;

(9) Continuing interdisciplinary education to promote effective program planning, implementation, and operations; and

(10) Development of partnerships with public agencies and community organizations.

Available Funding: State funding is authorized for these projects from amounts appropriated from the State of Texas General Revenue Fund. A minimum of $750,000 in funding is available for fiscal year 2006 under this RFA.

Standards: Grantees will comply with the standards applicable to this funding source cited Texas Administrative Code, Title 1, Part 1, Chapter 3.

Prohibitions: Grant funds may not be used to support the following services, activities, and costs:

(1) admission fees or tickets to any amusement park, recreational activity or sporting event;

(2) construction;

(3) food, meals, beverages, or other refreshments unless the expense is for a working event where full participation by participants mandates the provision of food and beverages and the event is not related to amusement and/or social activities in any way;

(4) fundraising;

(5) lobbying;

(6) medical services;

(7) membership dues for individuals;

(8) overtime pay;

(9) promotional gifts;

(10) proselytizing or sectarian worship;

(11) transportation, lodging, per diem or any related costs for participants, when grant funds are used to develop and conduct training;

(12) vehicles or equipment for government agencies that are for general agency use;

(13) weapons, ammunition, explosives or military vehicles; and

(14) any expense or service that is readily available at no cost to the grant project or that is provided by other federal, state or local funds (e.g., supplanting).

Eligible Applicants: Counties.

Requirements:

(1) The presiding judge of a drug court funded under this RFA must be an active judge holding elective office or a master. Persons eligible for appointment may not be a former or retired judicial officer.

(2) Pursuant to Texas Health and Safety Code §469.006 (House Bill 1287, 77th Legislature), counties with populations of more than 550,000 are required to establish a drug court. Applicants from these counties must:

(a) apply to the federal government for any funds available to pay the costs of the program; and

(b) have at least 100 participants during the first four months of operation. Applicants who do not achieve required participation levels may have their CJD grants reduced or terminated. Failure to comply may

also result in all grant payments for all CJD grant projects awarded to the county being placed on temporary hold.

(3) Applicants may apply to use state drug court funds to provide a portion of the required cash match for new federal drug court grants.

Project Period: Grant-funded projects will begin on or after September 1, 2005, and will expire on or before August 31, 2006.

Application Process: Eligible applicants can download an application kit from the Office of the Governor's web site address at http://www.governor.state.tx.us/divisions/cjd/formsapps/view.

Preferences: Preference will be given to mandated drug courts under Texas Health and Safety Code §469.006.

Closing Date for Receipt of Applications: Submit all applications electronically to the Office of the Governor, Criminal Justice Division via email at cjdapps@governor.state.tx.us on or before May 2, 2005.

Selection Process: Applications are reviewed by CJD staff members or a group selected by the Executive Director of CJD. CJD will make all final funding decisions based on eligibility, reasonableness of the project, availability of funding, and cost-effectiveness.

Contact Person: If additional information is needed, contact Colleen Benefield at cbenefield@governor.state.tx.us or at (512) 463-1919.

TRD-200500630
David Zimmerman
Assistant General Counsel
Office of the Governor
Filed: February 11, 2005

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Texas Health and Human Services Commission

Notice of Intent to Amend Consulting Contract

The Health and Human Services Commission (HHSC) currently contracts with Heritage Information Systems, Inc. (Heritage) to provide consulting services, as well as a data management system software, to help maximize efficiency and cost effectiveness in the Vendor Drug Program. Under the terms of the contract, Heritage has helped HHSC implement cost savings strategies by performing population-based interventions for identified therapeutic classes or drug issues. An intervention generally involves contacting health care providers listed in HHSC's Pharmaceutical Data Management System to suggest ways to reduce costs or increase efficiencies with respect to a particular health care practice.

The term of the original contract between HHSC and Heritage was from June 10, 2002 to June 10, 2003. The parties executed prior amendments that extended the term of the contract to August 31, 2005.

As required by the provisions of Texas Government Code, Chapter 2254, prior to amending its contract with Heritage, HHSC extends this invitation to qualified and experienced consultants interested in providing the consulting services described in this notice. Unless a better offer (as determined by HHSC) is received from another vendor in response to this notice, HHSC intends to enter into negotiations with Heritage to amend its consulting services contract to add additional "Interventions" (as described below) and other services during the current contract term, and to extend the contract through August 31, 2006.

Scope of Work/Offer Specifications:

Heritage Information Systems, Inc. provides pharmaceutical data management system services, including targeted "Interventions" designed to reduce Texas Vendor Drug Program expenditures while ensuring quality of care to recipients.

An "Intervention" is a cost savings strategy developed by Heritage and approved by HHSC. Interventions may target different therapeutic classes or drug usage issues. Interventions include, but are not limited to, communications with health care providers in person or in writing suggesting ways to reduce costs or increase efficiencies with respect to a particular health care practice.

Heritage Information Systems, Inc. has a pharmaceutical data management system that allows them to integrate and analyze HHSC claims data to enhance the Texas drug utilization review (DUR) program. Heritage's interventions must provide at least a 1:1 savings to cost ratio for the State. Federal law requires that each State Medicaid program have a DUR program. HHSC currently has limited DUR staff in house, and does not have the resources or the ability to integrate and analyze pharmacy claims data and acute care claims data in house.

Designated Point of Contact:

More detailed information regarding the Scope of Work Statement and specifications for submitting offers are available for review by potential interested consultants. Parties interested in reviewing the Scope of Work or submitting a competing offer should contact

Tim Seelig,

HHSC

P.O. Box 85200, Mail Code H-350

11209 Metric Boulevard, Building H

Austin, TX, 78708-5200,

Phone: 512-491-1328

Fax: 512-491-1972

tim.seelig@hhsc.state.tx.us.

To be considered, all competing offers must be received at the foregoing address on or before 5 pm, Central Time on Monday, March 21, 2005. Offers received after this time and date will not be considered. Any offers received will be evaluated in accordance with the criteria listed in the scope of work. Additional information will be placed on HHSC's website at

http://www.hhsc.state.tx.us/about_hhsc/BusOpp/BO_opportunities.html.

Finding of Fact:

HHSC has submitted a request to the Governor's Office of Budget, Planning, and Policy for a finding of fact that the requested consulting services are necessary. Execution of a contract or an amendment to the current contract is contingent upon receipt of such a finding.

Criteria for Selection:

HHSC intends to negotiate an amendment to the Heritage contract unless it receives a better offer for the desired services. HHSC will make its selection based on demonstrated competence, knowledge and qualifications, considering the reasonableness of the proposed fees for services.

How To Respond; Submittal Deadline:

All offers must be received no later than 5:00 pm, Central Time on Monday, March 21, 2005. Submissions received after the deadline will not be considered. Offers must be submitted to the designated point-of-contact provided above.

Questions:

Questions concerning this invitation and all offers in response to this notice should be directed to the designated point-of-contact provided above.

HHSC reserves the right to accept or reject any or all proposals submitted. HHSC is under no legal or other obligation to execute any contracts on the basis of this notice. HHSC will not pay for costs incurred by any entity in responding to this notice.

TRD-200500739
Carey E. Smith
General Counsel
Texas Health and Human Services Commission
Filed: February 16, 2005

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Notification of Consulting Procurement

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Health and Human Services Commission (HHSC) announces the release of its Request for Proposals (RFP) for Consultant Services to assist its Office of Inspector General, Utilization Review Unit in the developing an improved methodology for reviewing certain paid, Medicaid, inpatient hospital claims (as further described below) (RFP # 529-05-067). HHSC seeks to contract with a single vendor to fulfill the requirements pursuant to this RFP.

The Utilization Review (UR) Unit performs retrospective review of paid, Medicaid, inpatient hospital Diagnosis Related Group (DRG) claims, to validate the a) medical necessity of the inpatient stay b) accuracy of International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM) coding and subsequent DRG assignment, and c) quality of care. ICD-9-CM coding refers to the diagnosis and procedure coding system that hospitals use to maintain health care encounter data and file claims for reimbursement; the diagnoses and procedures are primary determinants of the DRG assignment. The primary objectives for this procurement are to assist HHSC in developing a methodology that can be replicated by the State for the identification of potentially erroneously ICD-9-CM coded claims, with subsequent erroneous DRG claim payment, in order to:

* Generate substantial, measurable and sustainable cost savings for taxpayers, and

* Generate opportunities to contain Medicaid program costs and reduce the occurrence of waste, abuse, and fraud.

The selected Vendor will develop a methodology that can be replicated by the State to identify the paid, inpatient hospital claims with the most potential for ICD-9-CM coding error and subsequent, inappropriate DRG assignment, resulting in erroneous claim payment.

The RFP is located in full on HHSC's Business Opportunities Page at http://www.hhsc.state.tx.us/about_hhsc/BusOpp/BO_opportunities.html. HHSC also posted notice of the procurement on the Texas Marketplace on February 25, 2005.

The successful contractor will be expected to provide the services described in the RFP beginning with the date of award through July 15, 2005.

Health and Human Services Commission's Sole Point-Of-Contact For Procurement

Dan McCullough, RN; Project Manager

Texas Health and Human Services Commission

Office of Inspector General

Quality Review/Utilization Review: Mail Code 1324

P.O. Box 85200

Austin, Texas 78708-5200

(512)-491-2069

Fax (512)-833-6520

Dan.McCullough@hhsc.state.tx.us

The physical address for overnight, commercial and hand deliveries is:

Texas Health and Human Services Commission

Office of Inspector General

c/o Dan McCullough, RN; Project Manager

11101 Metric Boulevard; Building I

Austin, Texas 78758

(512)-491-2069

All questions regarding the RFP must be sent in writing to the above-referenced contact by 5:00 p.m. Central Time on March 18, 2005. HHSC will post all written questions received with HHSC's responses on its website on April 1, 2005, or as they become available. All proposals must be received at the above-referenced address on or before 5:00 p.m. Central Time on April 8, 2005. Proposals received after this time and date will not be considered.

All proposals will be subject to evaluation based on the criteria and procedures set forth in the RFP. HHSC reserves the right to accept or reject any or all proposals submitted. HHSC is under no legal or other obligation to execute any contracts on the basis of this notice. HHSC will not pay for costs incurred by any entity in responding to this RFP.

TRD-200500729
Carey E. Smith
General Counsel
Texas Health and Human Services Commission
Filed: February 16, 2005

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Request for Proposals

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Health and Human Services Commission (HHSC) announces the release of its Request for Proposals (RFP) for Consultant Services to assist its Office of Inspector General, Utilization Review Unit in the developing an improved methodology for reviewing certain paid, Medicaid, inpatient hospital claims (as further described below) (RFP # 529-05-067). HHSC seeks to contract with a single vendor to fulfill the requirements pursuant to this RFP.

The Utilization Review (UR) Unit performs retrospective review of paid, Medicaid, inpatient hospital Diagnosis Related Group (DRG) claims, to validate the a) medical necessity of the inpatient stay b) accuracy of International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM) coding and subsequent DRG assignment, and c) quality of care. ICD-9-CM coding refers to the diagnosis and procedure coding system that hospitals use to maintain health care encounter data and file claims for reimbursement; the diagnoses and procedures are primary determinants of the DRG assignment. The primary objectives for this procurement are to assist HHSC in developing a methodology that can be replicated by the State for the identification of potentially erroneously ICD-9-CM coded claims, with subsequent erroneous DRG claim payment, in order to: 1) Generate substantial, measurable and sustainable cost savings for taxpayers, and 2) Generate opportunities to contain Medicaid program costs and reduce the occurrence of waste, abuse, and fraud.

The selected Vendor will develop a methodology that can be replicated by the State to identify the paid, inpatient hospital claims with the most potential for ICD-9-CM coding error and subsequent, inappropriate DRG assignment, resulting in erroneous claim payment.

The RFP is located in full on HHSC's Business Opportunities Page at http://www.hhsc.state.tx.us/about_hhsc/BusOpp/BO_opportunities.html. HHSC also posted notice of the procurement on the Texas Marketplace on February 25, 2005.

The successful contractor will be expected to provide the services described in the RFP beginning with the date of award through July 15, 2005.

The Health and Human Services Commission's Sole Point-Of-Contact for this Procurement is: Dan McCullough, RN, Texas Health and Human Services Commission, Office of Inspector General, Quality Review/Utilization Review, Mail Code 1324, P.O. Box 85200, Austin, Texas 78708-5200, (512)-491-2069, Fax (512)-833-6520, Dan.McCullough@hhsc.state.tx.us.

The physical address for overnight, commercial and hand deliveries is: Texas Health and Human Services Commission, Office of Inspector General, c/o Dan McCullough, RN, Project Manager, 11101 Metric Boulevard; Building I, Austin, Texas 78758, (512)-491-2069.

All questions regarding the RFP must be sent in writing to the above-referenced contact by 5:00 p.m. Central time on March 18, 2005. HHSC will post all written questions received with HHSC's responses on its website on April 1, 2005, or as they become available. All proposals must be received at the above-referenced address on or before 5:00 p.m. Central Time on April 8, 2005. Proposals received after this time and date will not be considered.

All proposals will be subject to evaluation based on the criteria and procedures set forth in the RFP. HHSC reserves the right to accept or reject any or all proposals submitted. HHSC is under no legal or other obligation to execute any contracts on the basis of this notice. HHSC will not pay for costs incurred by any entity in responding to this RFP.

TRD-200500737
Carey E. Smith
General Counsel
Texas Health and Human Services Commission
Filed: February 16, 2005

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Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	Houston Associates of Cardiovascular Med. DBA Houston Cardiac Association	L05840	Houston	00	02/02/05
Throughout Tx	Texas Department of State Health Services	L05865	Austin	00	02/04/05
Throughout Tx	T C Inspection Inc.	L05833	Oyster Creek	00	01/31/05

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Austin	Ambion Inc.	L04307	Austin	15	02/01/05
Austin	South Austin Cancer Center	L05108	Austin	09	02/08/05
Austin	PPD Development Inc DBA PPD Development	L04348	Austin	15	02/11/05
Austin	Cedra Corporation	L04427	Austin	13	02/14/05
Beaumont	Lamar University	L04047	Beaumont	20	02/08/05
Cleburne	Numed Imaging Centers Inc.	L05762	Cleburne	03	02/11/05
Corpus Christi	Coastal Bend Blood Center	L05694	Corpus Christi	02	02/02/05
Corpus Christi	Radiology Associates LLP	L04169	Corpus Christi	41	02/07/05
Corpus Christi	Spohn Health System	L02357	Corpus Christi	23	02/11/05
Dallas	Baylor University Medical Center	L01290	Dallas	69	02/03/05
Dallas	Truglo Inc	L05519	Dallas	02	02/10/05
Denton	Triad Denton Hospital LP DBA Denton Community Hospital	L04003	Denton	33	02/03/05
Denton	Metro North Clinic	L05235	Denton	06	02/04/05
Denton	Texas Oncology PA DBA Texas Cancer Center Denton	L05815	Denton	01	02/04/05
Edbinburg	Doctors Hospital at Renaissance LTD DBA Doctors Hospital at Renaissance	L05761	Edinburg	01	02/07/05
El Paso	Physicians Specialty Hosp of El Paso East LP DBA Physicians Hospital	L05676	El Paso	02	02/11/05
Floresville	Wilson Memorial Hospital	L03471	Floresville	13	02/08/05
Fort Worth	Adventist Health Sys Sunbelt Healthcare Corp DBA Huguley Health System	L02920	Fort Worth	27	02/03/05
Fort Worth	Heart Center of North Texas PA	L05338	Fort Worth	07	02/07/05
Frisco	Tenet Hospital LTD DBA Centennial Medical Center	L05768	Frisco	01	02/08/05
Harlingen	Valley Baptist Medical Center	L01909	Harlingen	60	02/10/05
Henrietta	Clay County Memorial Hospital	L03228	Henrietta	18	02/08/05
Hillsboro	Hill Regional Hospital	L01949	Hillsboro	31	02/02/05
Houston	Advanced Cardiovascular Care Center PA	L05413	Houston	01	01/31/05
Houston	CHCA West Houston LP DBA West Houston Medical Center	L05808	Houston	04	02/01/05

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	American Diagnostic Tech LLC	L05514	Houston	14	01/26/05
Houston	UT Physicians	L05465	Houston	02	02/02/05
Houston	Domingo G. Gonzalez Jr. M.D. PA	L05283	Houston	05	02/04/05
Houston	Mallinckrodt Medical Inc.	L03008	Houston	68	02/04/05
Houston	CHCA West Houston LP DBA West Houston Medical Center	L05808	Houston	05	02/10/05
Houston	Memorial Hermann Hospital System DBA Memorial Hospital Southwest	L00439	Houston	100	02/10/05
Houston	American Diagnostic Tech LLC	L05514	Houston	15	02/11/05
Humble	Houston Heart Clinic	L05671	Humble	03	02/07/05
Kilgore	Laird Memorial Hospital DBA Laird Memorial Hospital	L03496	Kilgore	17	02/03/05
La Porte	E I Dupont De Nemours & Company	L00314	La Porte	78	02/01/05
Livingston	Memorial Hospital of Polk County DBA Memorial Medical Center Livingston	L05552	Livingston	02	02/08/05
Longview	Diagnostic Clinic of Longview PA	L05817	Longview	01	02/11/05
Lubbock	Cardiologist of Lubbock PA	L05038	Lubbock	14	02/11/05
Midland	Permian Cardiology Associates	L05716	Midland	02	02/09/05
Midland	Midland County Hospital District DBA Midland Memorial Hospital	L00728	Midland	73	02/11/05
Mission	Valley Nuclear Incorporated	L04521	Mission	19	02/03/05
New Braunfels	McKenna Memorial Hospital	L02429	New Braunfels	42	01/31/05
New Braunfels	Cancer Care Network of South Texas PA	L05717	New Braunfels	03	02/04/05
North Richland Hills	Dallas Cardiology Associates DBA Heartplace North Richland Hills	L05548	North Richland Hills	07	02/11/05
Palestine	Palestine Principal Healthcare Limited Partnership DBA Palestine Regional Medical Center	L02728	Palestine	38	02/08/05
Pasadena	Chevron Phillips Chemical Company LP	L00230	Pasadena	72	01/31/05
Pasadena	Gulf Coast Cancer Inc.	L05194	Pasadena	05	02/11/05
Plainview	Plainview Cardiology PA	L05446	Plainview	03	02/04/05
Port Arthur	Huntsman Corporation	L04067	Port Arthur	16	02/01/05
Port Lavaca	Union Carebide Corporation	L00051	Port Lavaca	80	02/09/05
San Angelo	Shannon Clinic	L04216	San Angelo	33	02/04/05
San Antonio	San Antonio Nuclear Cardiovascular Serv Inc.	L05134	San Antonio	09	01/28/05
San Antonio	South Texas Radiology Imaging Centers	L00325	San Antonio	134	02/04/05
San Antonio	Christus Santa Rosa Health Care	L02237	San Antonio	81	02/08/05
San Antonio	The University of Texas Health Science Center at San Antonio	L05217	San Antonio	06	02/08/05
San Antonio	The Univ of TX Health Sci Ctr at San Antonio DBA UTSCSA Research Imaging Center	L05556	San Antonio	05	02/11/05
San Antonio	Texas Cancer Clinic	L05786	San Antonio	02	02/14/05
San Marcos	Austin Heart PA DBA Austin Heart San Marcos	L05452	San Marcos	10	02/03/05
Throughout Tx	Team Cooperheat-MQS Inc. DBA Cooperheat-MQS	L00087	Alvin	126	02/14/05
Throughout Tx	Rodriguez Engineering	L04700	Austin	12	02/02/05
Throughout Tx	Fugro Consultants LP	L03875	Austin	18	02/11/05

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Throughout Tx	Exxonmobil Oil Corporation	L00603	Beaumont	68	02/03/05
Throughout Tx	Phoenix Non Destructive Testing Co Inc	L04454	Channelview	43	02/11/05
Throughout Tx	APAC - Texas Inc.	L04503	Dallas	10	02/03/05
Throughout Tx	Rone Engineering LTD	L02356	Dallas	26	02/03/05
Throughout Tx	Sterigenics US Inc.	L03851	Fort Worth	34	02/10/05
Throughout Tx	The Dow Chemical Company	L00451	Freeport	74	02/11/05
Throughout Tx	Arias & Associates Inc	L04964	Hollywood Park	20	02/02/05
Throughout Tx	Arias & Associates Inc	L04964	Hollywood Park	21	02/10/05
Throughout Tx	Professional Service Industries Inc.	L00203	Houston	114	01/31/05
Throughout Tx	Texas Genco II LP	L02063	Houston	61	02/02/05
Throughout Tx	H & G Inspection Company Inc. ADBA Statewide Maintenance Company	L02181	Houston	194	02/03/05
Throughout Tx	Metco	L03018	Houston	150	02/07/05
Throughout Tx	Varco LP FKA Tuboscope Vetco International Inc.	L00287	Houston	116	01/27/05
Throughout Tx	French Engineering Inc.	L04572	Houston	04	02/10/05
Throughout Tx	Digirad Imaging Solutions Inc.	L05414	Houston	24	02/09/05
Throughout Tx	Gamma Surveys LLC	L05155	La Porte	08	02/03/05
Throughout Tx	Turner Speciality Services LLC	L05417	Nederland	13	01/31/05
Throughout Tx	Cottons Inspection Service Inc.	L02869	Odessa	15	02/08/05
Throughout Tx	Conam Inspection & Engineering Inc.	L05010	Pasadena	85	02/01/05
Throughout Tx	Texas Gamma Ray LLC	L05561	Pasadena	47	02/04/05
Throughout Tx	Alcoa Inc	L04316	Rockdale	17	02/03/05
Throughout Tx	Ludlum Measurements Inc.	L01963	Sweetwater	67	02/11/05
Weatherford	Medical and Heart Center PA	L05573	Weatherford	01	02/03/05
Wichita Falls	United Regional Health Care System Inc.	L00350	Wichita Falls	95	02/03/05

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Abilene	ARMC LP DBA Abilene Regional Medical Center	L02126	Abilene	16	02/10/05
Dallas	Methodist Hospitals of Dallas Radiology Serv.	L00659	Dallas	44	01/31/05
Denton	Triad Denton Hospital LP DBA Denton Community Hospital	L04003	Denton	34	02/09/05
El Paso	El Paso Healthcare System LTD DBA Del Sol Medical Center	L02551	El Paso	46	02/02/05
Lubbock	Covenant Medical Center	L00483	Lubbock	128	02/08/05
San Antonio	Christus Santa Rosa Cancer Center LLP	L00556	San Antonio	42	01/24/05

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Brady	McCulloch County Hospital District DBA Heart of Texas Memorial Hospital	L05074	Brady	03	02/09/05
Throughout Tx	O'Malley Engineers LLP	L02310	Brenham	20	02/09/05
Throughout Tx	Balfour Beatty Construction Inc.	L05130	Dallas	04	02/04/05

LICENSE EXEMPTION ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Harlingen	Texas Oncology PA DBA South Texas Cancer Center Harlingen	L00154	Harlingen		02/08/05
Houston	Kenneth E. Tand & Associates Inc.	L05137	Houston		02/07/05
Irving	Abbott Laboratories	L04841	Irving		02/10/05

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25 Texas Administrative Code (TAC), Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC, Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200500730
Cathy Campbell
Director, Legal Services
Department of State Health Services
Filed: February 16, 2005

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Notice of Agreed Order with Fairmont Diagnostic Center and Open MRI, Inc.

On February 8, 2005, the Radiation Program Officer, Department of State Health Services (department), approved the settlement agreement between the department and Fairmont Diagnostic Center and Open MRI, Inc. (registrant-R24938) of Pasadena. A total administrative penalty in the amount of $10,000 was assessed the registrant for violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200500731
Cathy Campbell
Director, Legal Services
Department of State Health Services
Filed: February 16, 2005

♦ ♦ ♦

Notice of Withdrawal of Preliminary Report for Assessment of Administrative Penalties to Scott Shepard, D.C., dba Shepard Family Chiropractic

Notice is hereby given that the Radiation Control Program, Department of State Health Services (department), withdrew the Preliminary Report for Assessment of Administrative Penalties in the amount of $8,000 issued on December 1, 2004, to Scott Shepard, D.C., doing business as Shepard Family Chiropractic, 950 West University Avenue, Suite 103, Georgetown, Texas.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200500732
Cathy Campbell
Director, Legal Services
Department of State Health Services
Filed: February 16, 2005

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Texas Department of Housing and Community Affairs

Multifamily Housing Revenue Bonds (Church Village Apartments) Series 2005

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Dunbar Middle School, 2901 23rd Street, Dickinson, Texas 77539, at 6:00 p.m. on March 15, 2005 with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed $1,250,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Church Village Preservation, L.P., a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing, rehabilitating and equipping a multifamily housing development (the "Development") described as follows: 100-unit multifamily residential rental development to be located at approximately 2902 Deats Road, Galveston County, Texas. The Development initially will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance

of the Bonds. Questions or requests for additional information may be directed to Robbye Meyer at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 475-2213; and/or robbye.meyer@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Robbye Meyer in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Robbye Meyer prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Robbye Meyer at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200500719
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: February 15, 2005

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Texas Department of Insurance

Company Licensing

Application to change the name of PRUDENTIAL SELECT LIFE INSURANCE COMPANY OF AMERICA to WILTON REASSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Minneapolis, Minnesota.

Application for admission to the State of Texas by AMCOMP PREFERRED INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in North Palm Beach, Florida.

Application for incorporation to the State of Texas by ELDER HEALTH TEXAS, INC., a domestic Health Maintenance Organization (HMO). The home office is in San Antonio, Texas.

Application for incorporation to the State of Texas by HOMEOWNERS OF AMERICA INSURANCE COMPANY, a domestic fire and/or casualty company. The home office is in Austin, Texas.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701, within 20 days after this notice is published in the *Texas Register*.

TRD-200500601
Brenda Caldwell
Special Regulatory Counsel
Texas Department of Insurance
Filed: February 9, 2005

♦ ♦ ♦

Company Licensing

Application for admission to the State of Texas by CORNERSTONE NATIONAL INSURANCE COMPANY, a foreign fire and/or casualty. The home office is in Columbia, Missouri.

Application for admission to the State of Texas by NORTHEAST INVESTORS TITLE INSURANCE COMPANY, a foreign title company. The home office is in Chapel Hill, North Carolina.

Application for admission to the State of Texas by OLD REPUBLIC TITLE INSURANCE COMPANY OF TEXAS, a domestic title company. The home office is in Houston, Texas.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas, 78701, within 20 days after this notice is published in the *Texas Register*.

TRD-200500736
Brenda Caldwell
Special Regulatory Counsel
Texas Department of Insurance
Filed: February 16, 2005

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Texas Department of Licensing and Regulation

Public Notice - Revised Enforcement Plan

The Texas Commission of Licensing and Regulation ("Commission") provides this public notice that at their regularly scheduled meeting held December 16, 2004, the Commission adopted the Texas Department of Licensing and Regulation's ("the Department) revised enforcement plan which was established in compliance with Texas Occupations Code, §51.302(c). The initial public notice regarding the establishment of the enforcement plan was filed with the Texas Register on March 5, 2004 and published in the March 19, 2004, issue of the *Texas Register* (29 TexReg 2957).

The enforcement plan gives license holders notice of the specific ranges of penalties and license sanctions that apply to specific alleged violations of the statutes and rules enforced by the Department. The enforcement plan also presents the criteria that are considered by the Department's Enforcement staff in determining the amount of a proposed administrative penalty or the magnitude of a proposed sanction.

Revisions to the enforcement plan include an explanation in the instructional portion describing the difference when using "plus" connectors versus "and/or" connectors when both a penalty and sanction are stated. Many "plus" connectors were changed to "and/or" connectors throughout the plan. Language was also added to clarify that where "revocation" is provided "denial" is also authorized if the licensee is in a renewal stage. Other revisions include an explanation of references to the Agency's enabling statute and rules; alleged violations have been added and some alleged violations have been moved to different classes; new classes were created for some statutes; and the section regarding Vehicle Protection Products was updated to cite the programs' governing statute, Texas Occupations Code, Chapter 2306.

A copy of the revised enforcement plan is posted on the Department's homepage and may be downloaded at www.license.state.tx.us. To receive a copy contact the Enforcement Division at (512) 463-2906 or by e-mail at enforcement@license.state.tx.us.

TRD-200500676
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: February 14, 2005

♦ ♦ ♦

Texas Lottery Commission

Instant Game Number 539 "Triple Bankroll"

1.0 Name and Style of Game.

A. The name of Instant Game No. 539 is "TRIPLE BANKROLL". The play style is "key number match with multiplier".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 539 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 539.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol- The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, $$ SYMBOL, $$$ SYMBOL, $1.00, $2.00, $3.00, $5.00, $10.00, $15.00, $20.00, $30.00, $60.00, $200, $1,000, and $20,000.

D. Play Symbol Caption- the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 539 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
$$ SYMBOL	DBL
$$$ SYMBOL	TPL

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 539 - 1.2E

CODE	PRIZE
TWO	$2.00
THR	$3.00
FIV	$5.00
TEN	$10.00
FTN	$15.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $2.00, $3.00, $5.00, $10.00, $15.00, or $20.00.

H. Mid-Tier Prize - A prize of $30.00, $60.00, or $200.

I. High-Tier Prize- A prize of $1,000 or $20,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (539), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 539-0000001-001.

L. Pack - A pack of "TRIPLE BANKROLL" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). Tickets 001 and 002 will be on the top page; tickets 003 and 004 on the next page; etc.; and tickets 249 and 250 will be on the last page. Please note the books will be in a A- B configuration.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "TRIPLE BANKROLL" Instant Game No. 539 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "TRIPLE BANKROLL" Instant Game is determined once the latex on the ticket is scratched off to expose 22 (twenty-two) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to either WINNING NUMBER play symbol the player wins prize indicated for that number. If a player reveals a double dollar play symbol player wins double the prize indicated. If a player reveals a triple dollar play symbol the player wins triple the prize indicated. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 22 (twenty-two) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 22 (twenty-two) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 22 (twenty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 22 (twenty-two) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical "spot for spot" play data.

B. No duplicate non-winning Your Numbers play symbols on a ticket.

C. No duplicate Winning Numbers play symbols on a ticket.

D. No 3 or more like non-winning prize symbols on a ticket.

E. The doubler and tripler symbols will only appear as dictated by the prize structure.

F. Non-winning prize symbols will never be the same as the winning prize symbol(s).

G. No prize amount in a non-winning spot will correspond with the Your Number play symbol (i.e. 5 and $5).

2.3 Procedure for Claiming Prizes.

A. To claim a "TRIPLE BANKROLL" Instant Game prize of $2.00, $3.00, $5.00, $10.00, $15.00, $20.00, $30.00, $60.00 or $200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $30.00, $60.00 or $200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "TRIPLE BANKROLL" Instant Game prize of $1,000 or $20,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "TRIPLE BANKROLL" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "TRIPLE BANKROLL" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "TRIPLE BANKROLL" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 11,040,000 tickets in the Instant Game No. 539. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 539 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$2	1,324,800	8.33
$3	839,040	13.16
$5	154,560	71.43
$10	132,480	83.33
$15	110,400	100.00
$20	44,160	250.00
$30	44,160	250.00
$60	26,128	422.54
$200	5,520	2,000.00
$1,000	250	44,160.00
$20,000	15	736,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.12. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 539 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 539, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200500733

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: February 16, 2005

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Manufactured Housing Division

Notice of Administrative Hearing

Thursday, March 24, 2005, 1:00 p.m.

State Office of Administrative Hearings, William P. Clements Building, 300 West 15th Street, 4th Floor,

Austin, Texas

AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of the complaint of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs vs. D & L W LLC DBA All American Mobile Homes, to hear alleged violations of Sections 1201.101(f), 1201.107(b), 1201.151(a), 1201.153(a), 1201.256(d), 1201.451(a) and (b), and 1201.455(a) of the Act and Sections 80.50(e), 80.54(b), and 80.180(b)of the Rules by selling a manufactured home and refusing to refund a consumer's deposit, failing to deliver a good and marketable title to a consumer after receiving written notice, selling manufactured homes without providing consumers with proper notices, warranties and disclosures and by employing a salesperson who was not obtaining, maintaining, or possessing a valid salesperson's license. SOAH 332-05-4153. Department MHD2004001333-LRV & MHD2004001393-I.

Contact: Jim R. Hicks, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-3589, james.hicks@tdhca.state.tx.us

TRD-200500688
Timothy K. Irvine
Executive Director
Manufactured Housing Division
Filed: February 15, 2005

♦ ♦ ♦

Notice of Public Hearing

Notice is hereby given of a public hearing to be held by the Manufactured Housing Division of the Texas Department of Housing and Community Affairs (the "Department") at 9:00 a.m. on Tuesday, March 29, 2005 at 507 Sabine Street, 4th Floor Boardroom, Austin, Texas 78701. The public hearing is to accept comments on proposed amendments to Title 10 Texas Administrative Code, Chapter 80 (West) ("Rules"). The proposed rules are published in the February 25, 2005 issue of the *Texas Register*.

All interested parties are invited to attend such public hearing to express their views with respect to the proposed amendments to the manufactured housing rules. Questions or requests for additional information may be directed to Sharon S. Choate at the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, 507 Sabine Street, 10th Floor, Austin, Texas 78701, telephone (512) 475-2206, or email at sharon.choate@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Sharon S. Choate in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their comments in writing to Sharon S. Choate prior to the date scheduled for the hearing. Written comments may be sent to the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, P.O. Box 12489, Austin, Texas 78711-2489, faxed to (512) 475-4250, or emailed to sharon.choate@tdhca.state.tx.us.

This notice is published and the above described hearing is to be held in satisfaction of the requirements of the Texas Manufactured Housing Standards Act, Occupations Code, Subtitle C, Chapter 1201 and Title 10 Texas Administrative Code (West).

Individuals who require auxiliary aids for this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943, or Relay Texas at 1 (800) 735-2989 at least two days prior to the meeting so that appropriate arrangements can be made.

TRD-200500647
Timothy K. Irvine
Executive Director
Manufactured Housing Division
Filed: February 14, 2005

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Texas Department of Public Safety

Driver Responsibility Program - Public Hearing Notice

The Texas Department of Public Safety (DPS), in accordance with Administrative Procedure and Texas Register Act, Texas Government Code, §§2001, et seq., is holding a public hearing on Thursday, March 10, 2005, at 10:00 a.m., in the Texas Department of Public Safety Criminal Law Enforcement Building (Building E) Auditorium, 6100 Guadalupe Street, Austin, Texas. Visitor parking is available, but limited, in the department parking lot.

The purpose of the hearing is to receive comments from all interested persons regarding adoption of proposed new Administrative Rules §15.161 and §15.162 regarding the Driver Responsibility Program. The rules are proposed for adoption under the authority of Texas Transportation Code, §708.002 and §708.153. The proposed rules were published in the November 12, 2004, issue of the *Texas Register* (29 TexReg 10467).

The hearing is in response to a request for public hearings received from the Texas Criminal Defense Lawyers Association.

The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing.

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print, Braille, are requested to contact Sherrie Zgabay at (512) 424-5001, three work days prior to the meeting so that appropriate arrangements can be made.

TRD-200500665
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Filed: February 14, 2005

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Public Utility Commission of Texas

Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on February 9, 2005, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Noble Phone Services, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 30746 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service and resale of dial-up 56 KBPS connections.

Applicant's requested SPCOA geographic area includes the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326,

Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than March 2, 2005. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 30746.

TRD-200500629
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 11, 2005

♦ ♦ ♦

Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on February 11, 2005, for a service provider certificate of operating authority (SPCOA), pursuant to Public Utility Regulatory Act (PURA) §§54.151 - 54.156. A summary of the application follows.

Docket Title and Number: Application of Northeast Texas Broadband, LLC for a Service Provider Certificate of Operating Authority, Docket Number 30750 before the Public Utility Commission of Texas.

Applicant intends to provide ADSL, HDSL, SDSL, RADSL, VDSL, and T1-Private line services.

Applicant's requested SPCOA geographic area includes the area currently served by all incumbent local exchange companies throughout the State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than March 2, 2005. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 30750.

TRD-200500691
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 15, 2005

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Notice of Petition for Waiver of Denial of Request for NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition on February 11, 2005, for waiver of denial by the North American Numbering Plan Administrator (NANPA) Pooling Administrator (PA) of Cbeyond Communications of Texas, L.P.'s request for a thousands block of numbers in the Grand Prairie and Pinehurst rate centers.

Docket Title and Number: Petition of Cbeyond Communications of Texas, L.P. for Waiver of Denial of Numbering Resources in the Grand Prairie and Pinehurst Rate Centers. Docket Number 30751 .

The Application: Cbeyond Communications of Texas, L.P. submitted an application to the Pooling Administrator (PA) for numbering resources in the Grand Prairie and Pinehurst rate centers. The PA denied the request based on the month-to-exhaust and utilization criteria in 47 C.F.R. §52.15.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than March 11, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 30751.

TRD-200500692
Adrianna A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 15, 2005

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Notice of Petition for Waiver of Denial of Request for NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition on February 11, 2005, for waiver of denial by the North American Numbering Plan Administrator (NANPA) Pooling Administrator (PA) of Cbeyond Communications of Texas, L.P.'s request for a thousands block of numbers in the Tomball rate center.

Docket Title and Number: Petition of Cbeyond Communications of Texas, L.P. for Waiver of Denial of Numbering Resources in the Tomball Rate Center. Docket Number 30752 .

The Application: Cbeyond Communications of Texas, L.P. submitted an application to the Pooling Administrator (PA) for numbering resources in the Tomball rate center. The PA denied the request based on the month-to-exhaust and utilization criteria in 47 C.F.R. §52.15.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than March 11, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 30752.

TRD-200500693
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 15, 2005

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Texas Department of Transportation

Request for Proposal for Aviation Engineering Services

The City of Fort Worth, through its agent, the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT, Aviation Division will solicit and receive proposals for professional aviation engineering design services described in this notice.

Airport Sponsor: City of Fort Worth, Fort Worth Meacham International Airport. TxDOT CSJ No.:0502MEACH Scope: Provide engineering/design services to Rehabilitate runway 16-34; Pave RW 16-34 Shoulders; Install Edge Drains RW 16-34; Replace High Intensity Runway Lights RW 16-34; Light and Mark TW "A" as a Temporary Runway; Restore TW "A" Lighting and Marking; Construct new aprons; improve runway safety area and reinstall MALSR.

The DBE goal is set at 10%. TxDOT Project Manager is Alan Schmidt, P.E.

To assist in your proposal preparation the most recent Airport Layout Plan, 5010 drawing and Project Description are available online by selecting "Fort Worth Meacham international Airport" at:

www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site, URL address:

http://www.dot.state.tx.us/avn/avn550.doc

The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

(Attention: To ensure utilization of the latest version of Form 550, firms are encouraged to download Form 550 from the TxDOT website as addressed above. Utilization of Form 550 from a previous download may not be the exact same format. Form 550 is an MS Word Template).

Four completed, unfolded copies of Form AVN 550 must be postmarked by U. S. Mail by midnight Friday, March 18, 2005. (CDST). Mailing address: TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. (CDST) on Monday, March 21, 2005; overnight address: TxDOT, Aviation Division, 200 E. Riverside Drive, Austin, Texas, 78704. Hand delivery must be received by 4:00 p.m. Monday, March 21, 2005 (CDST); hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Amy Slaughter.

The consultant selection committee will be composed of local government members.

The final selection by the sponsor's committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating engineering proposals can be found at :

www.dot.state.tx.us/business/avnconsultinfo.htm

All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews of the top rated firms if the committee deems it necessary. In such case, selection will be made following interviews.

If there are any procedural questions, please contact Amy Slaughter, Grant Manager, or Alan Schmidt, P.E., Project Manager for technical questions at 1-800-68-PILOT (74568).

TRD-200500741
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: February 16, 2005

♦ ♦ ♦

Texas Workers' Compensation Commission

Invitation to Apply to the Medical Advisory Committee (MAC)

The Texas Workers' Compensation Commission seeks to have a diverse representation on the MAC and invites qualified individuals from all regions of Texas to apply for openings on the MAC in accordance with the eligibility requirements of the *Procedures and Standards for the Medical Advisory Committee*. The Medical Review Division is currently accepting applications for the following Medical Advisory Committee representative vacancies:

Primary

* Public Health Care Facility

Alternate

* Public Health Care Facility

* Dentist

* Pharmacist

* Podiatrist

* Employer

* Employee

* General Public Representative 1

* General Public Representative 2

Commissioners for the Texas Workers' Compensation Commission appoint the Medical Advisory Committee members who are composed of 18 primary and 18 alternate members representing health care providers, employees, employers, insurance carriers, and the general public. Primary members are required to attend all Medical Advisory Committee meetings, subcommittee meetings, and work group meetings to which they are appointed. The alternate member may attend all meetings, however during a primary member's absence, the alternate member must attend meetings to which the primary member is appointed. Requirements and responsibilities of members are established in the Procedures and Standards for the Medical Advisory Committee as adopted by the Commission.

The Medical Advisory Committee meetings must be held at least quarterly each fiscal year during regular Commission working hours. Members are not reimbursed for travel, per diem, or other expenses associated with Committee activities and meetings. Voluntary service on the Medical Advisory Committee is greatly appreciated by the TWCC Commissioners and the TWCC Staff.

The purpose and task of the Medical Advisory Committee, which includes advising the Commission's Medical Review Division on the development and administration of medical policies, rules and guidelines, are outlined in the Texas Workers' Compensation Act, §413.005.

Applications and other relevant Medical Advisory Committee information may be viewed and downloaded from the Commission's website at *http://www/twcc.state.tx.us.* Click on 'Commission Meetings', then 'Medical Advisory Committee'. Applications may also be obtained by calling Jane McChesney, MAC Coordinator, at 512-804-4855 or Ruth Richardson, Manager of Monitoring, Analysis and Education, Medical Review Division at 512-804-4850 .

The qualifications as well as the terms of appointment for all positions are listed in the Procedures and Standards for the Medical Advisory Committee. These Procedures and Standards are as follows:

LEGAL AUTHORITY The Medical Advisory Committee for the Texas Workers' Compensation Commission, Medical Review Division

is established under the Texas Workers' Compensation Act, (the Act) §413.005.

PURPOSE AND ROLE The purpose of the Medical Advisory Committee (MAC) is to bring together representatives of health care specialties and representatives of labor, business, insurance and the general public to advise the Medical Review Division in developing and administering the medical policies, fee guidelines, and the utilization guidelines established under §413.011 of the Act.

COMPOSITION Membership. The composition of the committee is governed by the Act, as it may be amended. Members of the committee are appointed by the Commissioners and must be knowledgeable and qualified regarding work-related injuries and diseases.

Members of the committee shall represent specific health care provider groups and other groups or interests as required by the Act, as it may be amended. As of September 1, 2001, these members include a public health care facility, a private health care facility, a doctor of medicine, a doctor of osteopathic medicine, a chiropractor, a dentist, a physical therapist, a podiatrist, an occupational therapist, a medical equipment supplier, a registered nurse, and an acupuncturist. Appointees must have at least six (6) years of professional experience in the medical profession they are representing and engage in an active practice in their field.

The Commissioners shall also appoint the other members of the committee as required by the Act, as it may be amended. An insurance carrier representative may be employed by: an insurance company; a certified self-insurer for workers' compensation insurance; or a governmental entity that self-insures, either individually or collectively. An insurance carrier member may be a medical director for the carrier but may not be a utilization review agent or a third party administrator for the carrier.

A health care provider member, or a business the member is associated with, may not derive more than 40% of its revenues from workers compensation patients. This fact must be certified in their application to the MAC.

The representative of employers, representative of employees, and representatives of the general public shall not hold a license in the health care field and may not derive their income directly from the provision of health care services.

The Commissioners may appoint one alternate representative for each primary member appointed to the MAC, each of whom shall meet the qualifications of an appointed member.

Terms of Appointment: Members serve at the pleasure of the Commissioners, and individuals are required to submit the appropriate application form and documents for the position. The term of appointment for any primary or alternate member will be two years, except for unusual circumstances (such as a resignation, abandonment or removal from the position prior to the termination date) or unless otherwise directed by the Commissioners. A member may serve a maximum of two terms as a primary, alternate or a combination of primary and alternate member. Terms of appointment will terminate August 31 of the second year following appointment to the position, except for those positions that were initially created with a three-year term. For those members who are appointed to serve a part of a term that lasts six (6) months or less, this partial appointment will not count as a full term.

Abandonment will be deemed to occur if any primary member is absent from more than two (2) consecutive meetings without an excuse accepted by the Medical Review Division Director. Abandonment will be deemed to occur if any alternate member is absent from more than two (2) consecutive meetings which the alternate is required to attend because of the primary member's absence without an excuse accepted by the Medical Review Division Director.

The Commission will stagger the August 31st end dates of the terms of appointment between odd and even numbered years to provide sufficient continuity on the MAC.

In the case of a vacancy, the Commissioners will appoint an individual who meets the qualifications for the position to fill the vacancy. The Commissioners may re-appoint the same individual to fill either a primary or alternate position as long as the term limit is not exceeded. Due to the absence of other qualified, acceptable candidates, the Commissioners may grant an exception to its membership criteria, which are not required by statute.

RESPONSIBILITY OF MAC MEMBERS Primary Members. Make recommendations on medical issues as required by the Medical Review Division.

Attend the MAC meetings, subcommittee meetings, and work group meetings to which they are appointed.

Ensure attendance by the alternate member at meetings when the primary member cannot attend.

Provide other assistance requested by the Medical Review Division in the development of guidelines and medical policies.

Alternate Members. Attend the MAC meetings, subcommittee meetings, and work group meetings to which the primary member is appointed during the primary member's absence.

Maintain knowledge of MAC proceedings.

Make recommendations on medical issues as requested by the Medical Review Division when the primary member is absent at a MAC meeting.

Provide other assistance requested by the Medical Review Division in the development of guidelines and medical policies when the primary member is absent from a MAC meeting.

Committee Officers. The TWCC Commissioners designate the chairman of the MAC. The MAC will elect a vice chairman. A member shall be nominated and elected as vice chairman when he/she receives a majority of the votes from the membership in attendance at a meeting at which nine (9) or more primary or alternate members are present.

Responsibilities of the Chairman: Preside at MAC meetings and ensure the orderly and efficient consideration of matters requested by the Medical Review Division; prior to meetings, confer with the Medical Review Division Director, and when appropriate, the TWCC Executive Director to receive information and coordinate:

a. Preparation of a suitable agenda.

b. Planning MAC activities.

c. Establishing meeting dates and calling meetings.

d. Establishing subcommittees.

e. Recommending MAC members to serve on subcommittees.

If requested by the Commission, appear before the Commissioners to report on MAC meetings.

COMMITTEE SUPPORT STAFF The Director of Medical Review will provide coordination and reasonable support for all MAC activities. In addition, the Director will serve as a liaison between the MAC and the Medical Review Division staff of TWCC, and other Commission staff if necessary.

The Medical Review Director will coordinate and provide direction for the following activities of the MAC and its subcommittees and work groups:

Preparing agenda and support materials for each meeting.

Preparing and distributing information and materials for MAC use.

Maintaining MAC records.

Preparing minutes of meetings.

Arranging meetings and meeting sites.

Maintaining tracking reports of actions taken and issues addressed by the MAC.

Maintaining attendance records.

SUBCOMMITTEES The chairman shall appoint the members of a subcommittee from the membership of the MAC. If other expertise is needed to support subcommittees, the Commissioners or the Director of Medical Review may appoint appropriate individuals.

WORK GROUPS When deemed necessary by the Director of Medical Review or the Commissioners, work groups will be formed by the Director. At least one member of the work group must also be a member of the MAC.

WORK PRODUCT No member of the MAC, a subcommittee, or a work group may claim or is entitled to an intellectual property right in work performed by the MAC, a subcommittee, or a work group.

MEETINGS Frequency of Meetings. Regular meetings of the MAC shall be held at least quarterly each fiscal year during regular Commission working hours.

CONDUCT AS A MAC MEMBER Special trust has been placed in members of the Medical Advisory Committee. Members act and serve on behalf of the disciplines and segments of the community they represent and provide valuable advice to the Medical Review Division and the Commission. Members, including alternate members, shall observe the following conduct code and will be required to sign a statement attesting to that intent.

Comportment Requirements for MAC Members:

Learn their duties and perform them in a responsible manner;

Conduct themselves at all times in a manner that promotes cooperation and effective discussion of issues among MAC members;

Accurately represent their affiliations and notify the MAC chairman and Medical Review Director of changes in their affiliation status;

Not use their memberships on the MAC: a. in advertising to promote themselves or their business. b. to gain financial advantage either for themselves or for those they represent; however, members may list MAC membership in their resumes;

Provide accurate information to the Medical Review Division and the Commission;

Consider the goals and standards of the workers' compensation system as a whole in advising the Commission;

Explain, in concise and understandable terms, their positions and/or recommendations together with any supporting facts and the sources of those facts;

Strive to attend all meetings and provide as much advance notice to the Texas Workers' Compensation Commission staff, attn: Medical Review Director, as soon as possible if they will not be able to attend a meeting; and

Conduct themselves in accordance with the MAC Procedures and Standards, the standards of conduct required by their profession, and the guidance provided by the Commissioners, Medical Review Division or other TWCC staff.

TRD-200500687
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: February 15, 2005

How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 29 (2004) is cited as follows: 29 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "29 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 29 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back cover or call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC)*** is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 16, April 9, July 9, and October 8, 2004). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).

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