TEXAS REGISTER

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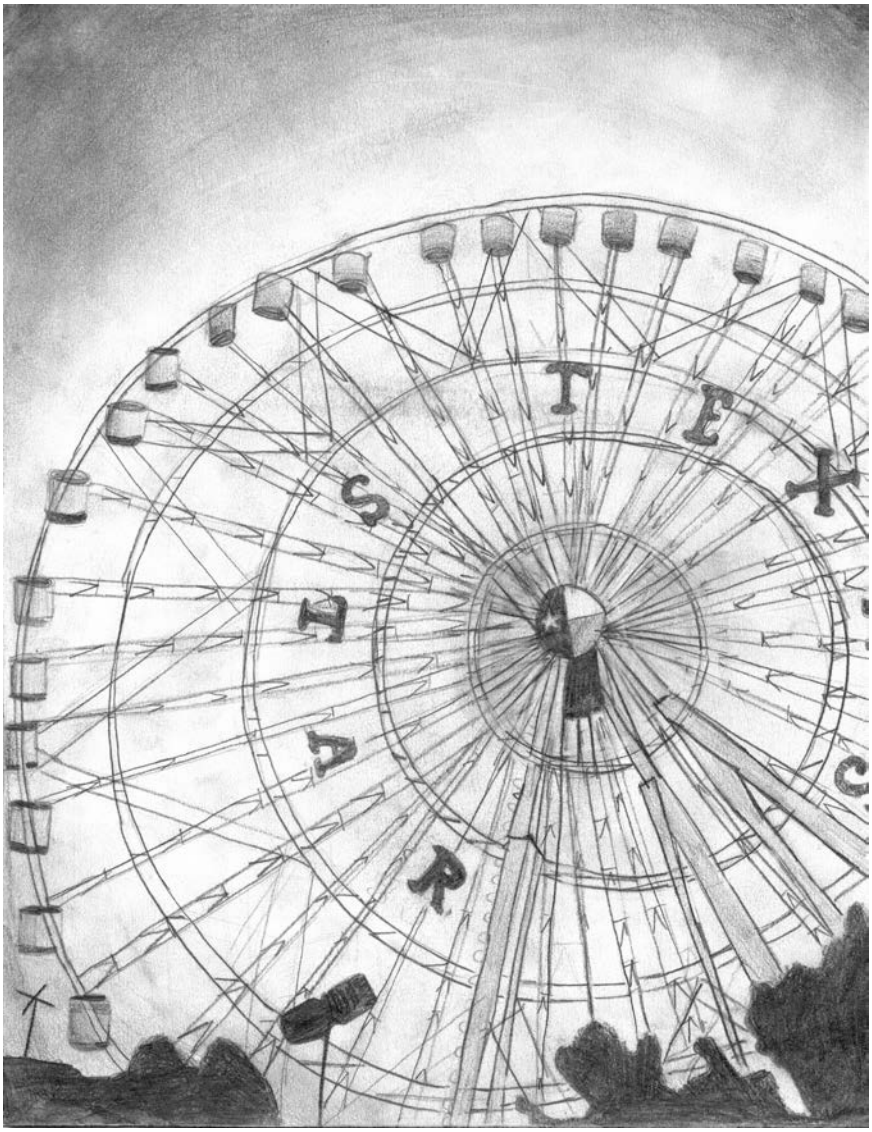

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but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

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

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In This Issue

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.

Appointments

Appointments for April 12, 2012

Appointed to the Railroad Commission of Texas for a term until the next General Election and until his successor shall be duly elected and qualified, H.S. Buddy Garcia of Austin. Commissioner Garcia is replacing Commissioner Elizabeth Ames Jones who resigned.

Appointed as Judge of the 90th Judicial District Court, Stephens and Young Counties, for a term until the next General Election and until his successor shall be duly elected and qualified, Stephen E. Bristow of Graham. Mr. Bristow is replacing Judge Stephen Crawford who resigned.

Designating William "Bert" Miller, III as presiding officer of the Brazos Valley Regional Review Committee for a term at the pleasure of the Governor. Mayor Miller is replacing Dorothy Morgan of Brenham as presiding officer.

Appointed to the South Texas Regional Review Committee for a term at the pleasure of the Governor, Hugo G. Villarreal of Rio Grande City (replacing Juan Cantu of Rio Grande City).

Appointed to the South East Texas Regional Review Committee for a term at the pleasure of the Governor, Kenneth E. Crawford of Vidor (replacing Ruth Dubuisson of Vidor).

Appointed to the Permian Basin Regional Review Committee for a term at the pleasure of the Governor, Skeet Lee Jones of Mentone (replacing Leo Smith, Jr. or Bangs).

Appointed to the East Texas Regional Review Committee for a term at the pleasure of the Governor, Lloyd A. Crabtree of Big Sandy (replacing Frank Parsons, III of Big Sandy).

Appointed to the East Texas Regional Review Committee for a term at the pleasure of the Governor, Raymond Dunlap of Elkhart (replacing Linda Bostick Ray of Elkhart).

Appointed to the Brazos Valley Regional Review Committee for a term at the pleasure of the Governor, John A. Brieden, III of Brenham (replacing Dorothy Morgan of Brenham).

Appointed to the Brazos Valley Regional Review Committee for a term at the pleasure of the Governor, Irma Cauley of Bryan (replacing Carey Cauley, Jr. of Bryan).

Appointed to the Brazos Valley Regional Review Committee for a term at the pleasure of the Governor, E. Duane Peters of Bryan (replacing Randy Sims of College Station).

Appointed to the Angelina and Neches River Authority Board of Directors for a term to expire September 5, 2017, Louis Alan Bronaugh of Lufkin (reappointed).

Appointed to the Angelina and Neches River Authority Board of Directors for a term to expire September 5, 2017, Patricia E. Dickey of Crockett (reappointed).

Appointed to the Angelina and Neches River Authority Board of Directors for a term to expire September 5, 2017, Julie Dowell of Bullard (reappointed).

Appointments for April 24, 2012

Appointed to the Texas Council on Purchasing from People with Disabilities for a term to expire January 31, 2017, Dietrich M. von Biedenfeld of West Columbia (replacing Chuck Brewton of San Antonio whose term expired).

Appointed as the Student Regent for the University of North Texas System, effective June 1, 2012, for a term to expire May 31, 2013, Alexandria C. Perez of Dallas. Ms. Perez is replacing Christian Dean of Benbrook whose term expired.

Appointed as the Student Regent for Texas Woman's University, effective June 1, 2012, for a term to expire May 31, 2013, Adriana A. Blanco of Fort Worth. Ms. Blanco is replacing Christina Wagoner of Carrollton whose term expired.

Appointed as the Student Regent for the Texas Tech University System, effective June 1, 2012, for a term to expire May 31, 2013, Suzanne Taylor of Lubbock. Ms. Taylor is replacing Jill Fadal of Lubbock whose term expired.

Appointed as the Student Regent for the Texas State University System, effective June 1, 2012, for a term to expire may 31, 2013, Andrew Greenberg of Rockwall. Mr. Greenberg is replacing Ryan Bridges of Huntsville whose term expired.

Appointed as the Student Regent for Texas Southern University, effective June 1, 2012, for a term to expire May 31, 2013, Juan A. Sorto of Houston. Mr. Sorto is replacing Steven Champion of Houston whose term expired.

Appointed as the Student Regent for Stephen F. Austin State University, effective June 1, 2012, for a term to expire May 31, 2013, Jourdan J. Dukes of Dallas. Ms. Dukes is replacing Sarah Feye of The Woodlands whose term expired.

Appointed as the Student Regent for the Texas A&M University System, effective June 1, 2012, for a term to expire May 31, 2013, John Quinten D. Womack of Mission. Mr. Womack is replacing Fernando Trevino, Jr. of Del Rio whose term expired.

Appointed as the Student Representative for the Higher Education Coordinating Board, effective June 1, 2012, for a term to expire May 31, 2013, Ryan T. Bridges of Huntsville. Mr. Bridges is replacing Amir Barzin of Dallas whose term expired.

Appointed as the Student Regent for the University of Houston System, effective June 1, 2012, for a term to expire May 31, 2013, Gage A. Raba of San Antonio. Mr. Raba is replacing Tamecia Harris of Houston whose term expired.

Appointed as the Student Regent for Midwestern State University, effective June 1, 2012, for a term to expire May 31, 2013, Holly Allsup of Wichita Fall. Ms. Allsup is replacing Linda Aguilera of Wichita Falls whose term expired.

Appointed as the Student Regent for the University of Texas System, effective June 1, 2012, for a term to expire May 31, 2013, Ashley Purgason of Galveston. Ms. Purgason is replacing John Davis Rutkauskas of Austin whose term expired.

Appointed to the Texas Historical Records Advisory Board for a term to expire February 1, 2014, Nelson H. Balido of San Antonio (replacing Jennifer Pickens of Dallas whose term expired).

Appointed to the Texas Historical Records Advisory Board for a term to expire February 1, 2015, Anne Raugh Keene of Austin (replacing J. P. "Pat" McDaniel of Midland whose term expired).

Appointed to the Brazos Valley Regional Review Committee for a term at the pleasure of the Governor, Norris L. McManus of Caldwell (replacing Bernard Rychlik of Caldwell).

Appointments for May 2, 2012

Appointed to the Texas Military Preparedness Commission for a term to expire February 1, 2013, William A. Heine, III of Austin (replacing Ronald Henson of Longview who resigned.

Appointed to the Texas Military Preparedness Commission for a term to expire February 1, 2015, Dennis L. Lewis of Texarkana (replacing Dora Alcala of Del Rio who resigned).

Rick Perry, Governor

TRD-201202316

♦ ♦ ♦

Proclamation 41-3299

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, RICK PERRY, Governor of the State of Texas, issued an Emergency Disaster Proclamation on July 5, 2011, certifying that exceptional drought conditions posed a threat of imminent disaster in specified counties in Texas.

WHEREAS, record high temperatures, preceded by significantly low rainfall, have resulted in declining reservoir and aquifer levels, threatening water supplies and delivery systems in many parts of the state; and

WHEREAS, prolonged dry conditions continue to increase the threat of wildfire across many portions of the state; and

WHEREAS, these exceptional drought conditions have reached historic levels and continue to pose an imminent threat to public health, property and the economy; and

WHEREAS, this state of disaster includes the counties of Andrews, Aransas, Archer, Armstrong, Atascosa, Austin, Bailey, Bandera, Bastrop, Baylor, Bee, Bell, Bexar, Blanco, Borden, Brazoria, Brewster, Briscoe, Brooks, Brown, Burnet, Caldwell, Calhoun, Callahan, Cameron, Carson, Castro, Childress, CIay, Cochran, Coke, Coleman, Collingsworth, Colorado, Comal, Concho, Coryell, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Dawson, Deaf Smith, DeWitt, Dickens, Dimmit, Donley, Duval, Eastland, Ector, Edwards, El Paso, Fayette, Fisher, Floyd, Foard, Fort Bend, Franklin, Frio, Gaines, Garza, Gillespie, Glasscock, Goliad, Gonzales, Gray, Gregg, Guadalupe, Hale, Hall, Hansford, Hardeman, Harrison, Hartley, Haskell, Hays, Hemphill, Hidalgo, Hockley, Howard, Hudspeth, Hutchinson, Irion, Jackson, Jeff Davis, Jim Hogg, Jim Wells, Jones, Karnes, Kendall, Kenedy, Kent, Kerr, Kimble, King, Kinney, Kleberg, Knox, Lamb, Lampasas, La Salle, Lavaca, Lee, Lipscomb, Live Oak, Llano, Loving, Lubbock, Lynn, Marion, Martin, Mason, Matagorda, Maverick, McCulloch, McLennan, McMullen, Medina, Menard, Midland, Milam, Mills, Mitchell, Moore, Motley, Nolan, Nueces, Ochiltree, Oldham, Panola, Parmer, Pecos, Potter, Presidio, Randall, Reagan, Real, Reeves, Refugio, Roberts, Runnels, Rusk, San Patricio, San Saba, Schleicher, Scurry, Shackelford, Sherman, Starr, Stephens, Sterling, Stonewall, Sutton, Swisher, Taylor, Terrell, Terry, Throckmorton, Tom Green, Travis, Upshur, Upton, Uvalde, Val Verde, Victoria, Ward, Webb, Wharton, Wheeler, Wichita, Wilbarger, Willacy, Williamson, Wilson, Winkler, Yoakum, Young, Zapata and Zavala.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the disaster proclamation and direct that all necessary measures, both public and private as authorized under Section 418.017 of the code, be implemented to meet that threat.

As provided in Section 418.016 of the code, all rules and regulations that may inhibit or prevent prompt response to this threat are suspended for the duration of the state of disaster.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

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 20th day of April, 2012.

Rick Perry, Governor of Texas

TRD-201202319

♦ ♦ ♦

THE ATTORNEY GENERAL

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

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

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

Opinions

Opinion No. GA-0921

The Honorable Aaron Pena

Chair, Committee on Technology

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether a member of the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments may sell hearing instruments at retail as part of his practice of otolaryngology (RQ-0984-GA)

S U M M A R Y

Subsection 402.053(d) of the Occupations Code prohibits the doctor member of the State Committee of the Examiners in the Fitting and Dispensing of Hearing Instruments from having a financial interest in a retail hearing instrument company. Absent statutory definitions of appropriate terms or other meaningful guidance from the Legislature or Texas courts on the meaning of the phrase "retail hearing instrument company," we cannot definitively determine the scope of that phrase. As the administrative agency that oversees the regulation of hearing instruments, the Committee is authorized to determine the scope of the meaning of the prohibition in subsection 402.053(d).

Opinion No. GA-0922

The Honorable Jim Jackson

Chair, Committee on Judiciary and Civil Jurisprudence

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether subsection 52.072(e) of the Election Code applies to all elections, including those governed by section 130.037 of the Education Code (RQ-1006-GA)

S U M M A R Y

Subsection 52.072(e) of the Election Code applies to all elections, including those governed by section 130.037 of the Education Code.

Opinion No. GA-0923

The Honorable Jeri Yenne

Brazoria County Criminal District Attorney

111 East Locust, Suite 408A

Angleton, Texas 77515

Re: Identity of the proper prosecutorial entity to prosecute violations of criminal regulations enacted by the Commodore Cove Improvement District (RQ-1007-GA)

S U M M A R Y

The proper prosecutorial entity to prosecute a violation of a water control and improvement district ordinance under chapter 51 of the Water Code will generally depend on the court in which the citation or complaint is filed. Prosecutions of such violations in justice court are to be conducted by the county attorney, district attorney, or deputy county attorney or district attorney. Prosecutions of such violations in municipal court are generally to be conducted by the city attorney or deputy city attorney.

Opinion No. GA-0924

The Honorable Harvey Hilderbran

Chair, Ways and Means Committee

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Evidence that must be submitted with regard to an application for a residence homestead exemption under section 11.43, Tax Code (RQ-1008-GA)

S U M M A R Y

Only a driver's license, personal identification certificate or vehicle registration receipt issued by this state may be used to meet the requirements of Tax Code subsection 11.43(j)(4).

We do not find any federal authority that would exempt military personnel from compliance with the documentation requirements of Tax Code subsection 11.43(j)(4).

The Legislature has prohibited a chief appraiser from granting a homestead exemption to an individual that does not possess a driver's license or a state-issued identification certificate.

A chief appraiser may not grant a residence homestead exemption based on an expired driver's license, state-issued identification certificate or vehicle registration receipt.

Opinion No. GA-0925

The Honorable R. Lowell Thompson

Navarro County Criminal District Attorney

300 West Third Avenue, Suite 203

Corsicana, Texas 75110

Re: Proper date for holding an election in Navarro County to establish an emergency services district (RQ-1010-GA)

S U M M A R Y

The next available date for holding an election to create an emergency services district in Navarro County is November 6, 2012, provided that such date "allows sufficient time to comply with other requirements of law," as required by subsection 775.018(e) of the Health and Safety Code.

Opinion No. GA-0926

The Honorable Mike Hamilton

Chair, Committee on Licensing and Administrative Procedures

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether a website may charge a fee to participants who answer questions for the opportunity to win prizes (RQ-1011-GA)

S U M M A R Y

The mere payment of an entry fee to participate in a contest that tests skill or speed, and that does not involve an element of chance, could be found not to constitute a bet under subsection 47.01(1)(B) of the Texas Penal Code.

Opinion No. GA-0927

The Honorable Jeri Yenne

Brazoria County Criminal District Attorney

111 East Locust, Suite 408A

Angleton, Texas 77515

Re: Whether article 4.19 of the Code of Criminal Procedure permits a child under the age of seventeen who has been transferred to criminal court for prosecution to be detained in a facility that does not comply with subsection 51.12(f) of the Family Code (RQ-1012-GA)

S U M M A R Y

Article 4.19 of the Code of Criminal Procedure does not authorize the detention of a child under the age of seventeen who has been transferred to criminal court for prosecution in a facility that does not comply with Family Code subsection 51.12(f).

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

TRD-201202335
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: May 8, 2012

♦ ♦ ♦

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 13. CULTURAL RESOURCES

PART 9. TEXAS HOLOCAUST AND GENOCIDE COMMISSION

CHAPTER 191. COMMISSION PROCEDURES

13 TAC §191.8

The Texas Holocaust and Genocide Commission (Commission) proposes new §191.8, concerning the grant program. The new section is proposed to describe and establish standards for grants awarded by the Commission.

Peter Berkowitz, Chair, has determined that for the first five-year period the new rule is in effect there will be no additional cost to the state or local governments as a result of enforcing or administering the new rule and procedures. Mr. Berkowitz has determined that there will be no economic costs to persons as a result of this procedural rule. Mr. Berkowitz has also determined that this proposed procedural rule will have no adverse economic effect on small or micro businesses as the rule will apply only to the Commission.

Mr. Berkowitz has also determined that for the first five-year period the new rule is in effect, the public benefit will be deliverance of further genocide and Holocaust-related programs for the public in addition to those already provided by the Commission.

The Commission will consider all public comments on the proposed new rule and any request for a public hearing that are received no later than 30 days from the date that this proposed rule is published in the *Texas Register.* Comments and requests may be submitted to Charles Sadnick, Coordinator, Texas Holocaust and Genocide Commission, 1511 Colorado Street, Austin, Texas 78711, or via facsimile (512) 475-3122, or to charles.sadnick@thc.state.tx.us.

The new rule is proposed under Texas Government Code §449.052(c), relating to general powers and duties of the Commission, which authorizes the Commission to adopt rules for its own procedures and Texas Government Code §572.051(c), which requires each state agency to adopt an ethics code.

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

§191.8. Grant Program.

(a) The purpose of this grant program is to provide funds for organizations and projects that support the Texas Holocaust and Genocide Commission's (THGC) mission.

(b) Only nonprofit organizations are eligible to apply for funds. Organizations must meet all program requirements to be eligible for grants.

(c) Grants may fund costs for staff, equipment, capital expenditures, supplies, professional services, and other operating expenses, as permitted by the Uniform Grant Management Standards.

(d) Except as specifically provided in this section, competitive grants may not fund the following costs:

(1) building construction or renovation;

(2) food, beverages, awards, honoraria, prizes, or gifts;

(3) equipment or technology not specifically needed to carry out the goals of the grant;

(4) transportation/travel for project participants or non-grant funded personnel; or

(5) advertising or public relations costs, unless identified by recipient and approved by the THGC.

(e) Applicants eligible to receive grant assistance must provide a minimum of 50% of the project's costs. In-kind services will not be counted toward the one-to-one match.

(f) To be considered for the grant program, organizations must submit an application form.

(1) Application schedules and deadlines will be set by the commission. Application forms must be received by the THGC by these deadlines or will be returned unopened to the sender.

(2) To be eligible for grants, applicants must complete the grant application form and include all required attachments as stated in the grant application.

(3) Grant applications that are incomplete or received after the application deadline are ineligible for funding.

(g) Representatives from the commission, THGC Friends, and commission staff will evaluate grant applications.

(1) Applications will be scored using the following process:

(A) The reviewers will review all complete and eligible grant applications forwarded to them by agency staff and complete a rating form for each. Each reviewer will evaluate the proposals in relation to the specific requirements of the criteria and will assign a numerical value, depending on the points assigned to each criterion.

(B) No reviewer who is associated with an applicant or with an application, or who stands to benefit directly from an application, may participate in the evaluation of applications for that grant. Any reviewer who feels unable to evaluate a particular application fairly may withdraw from the review process for that grant.

(C) Panel members must make their own individual decisions regarding the applications. The panel may discuss applications and make recommendations as the result of a collective decision or vote after the initial scoring of applications is complete.

(D) Reviewers may not discuss proposals with any applicant before the reviewing and scoring process is completed. Agency staff is available to provide technical assistance to reviewers. Agency staff will conduct all negotiations and communication with the applicants.

(E) Reviewers may recommend setting conditions for funding a given application or group of applications (e.g., adjusting the project budget, revising project objectives, modifying the timetable, amending evaluation methodology, etc.). The recommendation must include a statement of the reasons for setting such conditions.

(2) General selection criteria include:

(A) relevance to THGC mission;

(B) qualifications of the applying organization;

(C) potential impact of proposed project;

(D) project feasibility;

(E) estimated cost;

(F) timetable for project; and

(G) geographic diversity.

(h) All payments of grant funds are made on a reimbursable basis upon completion of the project, submission of a project report, and acceptable proof of incurred allowable expenses.

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 May 7, 2012.

TRD-201202293
Peter Berkowitz
Chair
Texas Holocaust and Genocide Commission
Earliest possible date of adoption: June 17, 2012
For further information, please call: (512) 463-8815

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

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

SUBCHAPTER C. TEXAS SUCCESS INITIATIVE

19 TAC §4.57

The Texas Higher Education Coordinating Board proposes an amendment to §4.57, concerning Minimum Passing Standards. Specifically, the amendment for this section concerns the expiration date of subsection (c). Subsection (c) expires academic year 2013-2014.

Dr. Judith Loredo, Assistant Commissioner, P-16 Initiatives, has determined that for each year of the first five years the section is in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rule.

Dr. Loredo has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the improvement of persistence and success of entering college freshmen determined not to be college ready. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Suzanne Morales-Vale, Director of Developmental and Adult Basic Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or suzanne.morales-vale@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendment is proposed under the Texas Education Code, §51.307, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules to implement the provisions of Texas Education Code, §51.3062, concerning the Texas Success Initiative.

The amendment affects Texas Education Code, §51.3062.

§4.57. Minimum Passing Standards.

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

(c) An institution may require higher passing standards. This subsection expires academic year 2013-2014.

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 May 7, 2012.

TRD-201202299
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: July 26, 2012
For further information, please call: (512) 427-6114

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19 TAC §4.62

The Texas Higher Education Coordinating Board proposes new §4.62, concerning Required Components of Developmental Education Programs, pursuant to House Bill 1244 (82nd Legislature). Specifically, §4.62 adds new required components of developmental education programs for Texas institutions of higher education.

Dr. Judith Loredo, Assistant Commissioner, P-16 Initiatives, has determined that for each year of the first five years the section is in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rule.

Dr. Loredo has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the improvement of persistence and success of entering college freshmen determined not to be college ready. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Suzanne Morales-Vale, Director of Developmental and Adult Basic Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or suzanne.morales-vale@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The new section is proposed under the Texas Education Code, §51.307, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules to implement the provisions of Texas Education Code, §51.3062, concerning the Texas Success Initiative.

The new section affects Texas Education Code, §51.3062.

§4.62. Required Components of Developmental Education Programs.

An institution of higher education must base developmental coursework on research-based best practices that include the following components:

(1) assessment;

(2) differentiated placement and instruction;

(3) faculty development;

(4) support services;

(5) program evaluation;

(6) integration of technology with an emphasis on instructional support programs;

(7) non-course-based developmental education interventions; and

(8) course pairing of developmental education courses with credit-bearing courses.

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 May 7, 2012.

TRD-201202298
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: July 26, 2012
For further information, please call: (512) 427-6114

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TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 108. PROFESSIONAL CONDUCT

SUBCHAPTER E. BUSINESS PROMOTION

22 TAC §§108.50 - 108.61

(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 State Board of Dental Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The State Board of Dental Examiners (SBDE) proposes the repeal of §§108.50 - 108.61. On April 15, 2011, the Presiding Officer of SBDE announced the formation of an ad hoc committee to review and revise existing rules relating to advertising by licensees. New §§108.50 - 108.63, addressing advertising, are presently being proposed and published concurrently in this issue of the *Texas Register.*

Mr. Glenn Parker, Interim Executive Director, has determined that for each year of the first five years these sections are repealed, there will be no fiscal implications for local or state government.

Mr. Parker has also determined that for each year of the first five years the sections are repealed, the public benefit anticipated as a result of enforcing the new sections will be protection of the public through updated advertising and business promotion rules that protect the public from false, deceptive, and misleading advertising.

Approximately 14,000 dentists hold active licenses to practice dentistry in Texas granted by SBDE. The Texas Comptroller estimates approximately 6,785 dental offices in the state of Texas are classified as a small or micro-business.

The projected economic impact of these proposed repeals on these small and micro-businesses is minimally negative to neutral. The proposed repealed rules do not implicate a loss of business opportunities as a consequence of their adoption; however, compliance with the proposed new rules may require modification of current business promotions to include required information and disclosures. These modifications may result in costs to the dentists and dental practices thereby having an economic effect.

Comments on the proposal may be submitted to Nycia Deal, Staff Attorney, State Board of Dental Examiners, 333 Guadalupe Street, Tower 3, Suite 800, Austin, Texas 78701 (by mail), (512) 463-7452 (by fax), or *nycia@tsbde.texas.gov* (by email). To be considered, comments must be in writing and received by the State Board of Dental Examiners no later than 30 days from the date that the sections are published in the *Texas Register.*

The repeals are proposed under Texas Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The repeals affect Texas Occupations Code, Title 3, Subtitle D and Texas Administrative Code, Title 22, Part 5.

§108.50. Objectives of Rules.
§108.51. Advertisements.
§108.52. False or Misleading Communications.
§108.53. Professional Announcements.
§108.54. Announcement of Services.
§108.55. Announcement of Credentials in Non-Specialty Areas.
§108.56. Specialty Announcement.
§108.57. Specialist Announcement of Credentials in Non-Specialty Areas.
§108.58. Degrees.
§108.59. Testimonials.
§108.60. False, Misleading or Deceptive Referral Schemes.
§108.61. Unlicensed Clinicians.

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 May 4, 2012.

TRD-201202291
Glenn Parker
Interim Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: June 17, 2012
For further information, please call: (512) 475-0972

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22 TAC §§108.50 - 108.63

The State Board of Dental Examiners (SBDE) proposes new §108.50, relating to Objectives of Rules; §108.51, relating to Definitions; §108.52, relating to Names and Responsibilities; §108.53, relating to Fees; §108.54, relating to Advertising for Specialties; §108.55, relating to Advertising for General Dentists; §108.56, relating to Advertising Credentials and Certifications; §108.57, relating to False, Misleading or Deceptive Advertising; §108.58, relating to Solicitation, Referral and Gift Schemes; §108.59, relating to Required Disclosure on a Website; §108.60, relating to Record Keeping of Advertisements; §108.61, relating to Grounds and Procedures for Disciplinary Action for Advertising Violations; §108.62, relating to Awards, Honors and Recognitions; and §108.63, relating to Advertisement and Education by Unlicensed Clinicians.

The SBDE's Advertising Rules Ad-Hoc Committee was convened to update the agency's advertising rules based on emerging technologies and issues in the business promotion of dentistry and dental practices. The committee met on August 4, 2011; October 7, 2011; November 10, 2011; January 27, 2012; and March 9, 2012.

The new sections developed by the committee (§§108.50 - 108.63) were written to update existing advertising rules (§§108.50 - 108.61) that are presently proposed for repeal and published concurrently in this issue of the *Texas Register.* The rules proposed for adoption are modeled in part after the American Association of Dental Board's (AADB) Guidelines on Advertising. In addition to the generally accepted guidelines promulgated by the AADB, the rules address the communication of specialty practices and dental credentials to the public, the inclusion of professional awards and honors in advertisements, and the requirements of website publications. A significant change in the rules is that the publication of patient testimonials will be allowed under the proposed rules.

Mr. Glenn Parker, Interim Executive Director, has determined that for each year of the first five years the new sections are in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering the sections.

Mr. Parker has also determined that for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of enforcing the new sections will be protection of the public through updated advertising and business promotion rules that protect the public from false, deceptive, and misleading advertising.

Approximately 14,000 dentists hold active licenses to practice dentistry in Texas granted by SBDE. The Texas Comptroller estimates approximately 6,785 dental offices in the state of Texas are classified as a small or micro-business.

The projected economic impact of this rule adoption on these small and micro-businesses is minimally negative to neutral. The proposed rules do not implicate a loss of business opportunities as a consequence of their adoption; however, compliance with the rules may require modification of current business promotions to include required information and disclosures. These modifications may result in costs to the dentists and dental practices thereby having an economic effect.

Comments on the proposal may be submitted to Nycia Deal, Staff Attorney, State Board of Dental Examiners, 333 Guadalupe Street, Tower 3, Suite 800, Austin, Texas 78701 (by mail), (512) 463-7452 (by fax), or *nycia@tsbde.texas.gov* (by email). To be considered, comments must be in writing and received by the State Board of Dental Examiners no later than 30 days from the date that the sections are published in the *Texas Register.*

The new sections are proposed under Texas Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The new sections affect Texas Occupations Code, Title 3, Subtitle D and Texas Administrative Code, Title 22, Part 5.

§108.50. Objectives of Rules.

(a) The purpose of this subchapter is to provide guidelines for communications to the public, including but not limited to, advertising, professional communications, and referral services.

(b) As professionals, dentists have the duty to communicate truthfully and without deception to the public.

(c) It is hereby declared that the sections, clauses, sentences and parts of this subchapter are severable, are not matters of mutual essential inducement, and any of them shall be removed if this subchapter would otherwise be unconstitutional or ineffective. If any one or more sections, clauses, sentences or parts shall for any reasons be questioned in any court, and shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provision or provisions so held unconstitutional or invalid, and the inapplicability or invalidity of any section, clause, sentence or part in any one or more instances shall not be taken to affect or prejudice in any way its applicability or validity in any other instance.

§108.51. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the contents clearly indicate otherwise.

(1) Advertisements--Information communications made directly or indirectly by publication, dissemination, solicitation, endorsement or circulation or in any other way to attract directly or indirectly any person to enter into an express or implied agreement to accept dental services or treatment related thereto. Advertising may include oral, written, broadcast, and other types of communications disseminated by or at the behest of a dentist. The communications include, but are not limited to, those made to patients, prospective patients, professionals or other persons who might refer patients, and to the public at large. Advertisements include electronic media and print media.

(2) Electronic Media--Means radio, television and the Internet.

(3) Print Media--Means newspapers, magazines, periodicals, professional journals, telephone directories, circulars, handbills, flyers and other similar documents or comparable publications, the content of which is disseminated by means of the printed word. "Printed media" shall also include stationery and business cards.

(4) Testimonial--An attestation or implied attestation to the competence of a dentist's services or treatment.

§108.52. Names and Responsibilities.

(a) Practice under name of licensee; full disclosure required.

(1) No person shall:

(A) Practice dentistry under the name of a corporation, company, association, limited liability company, or trade name without full and outward disclosure of his full name, which shall be the name used in his license or renewal certificate as issued by the board, or his commonly used name.

(B) Conduct, maintain, operate, own, or provide a dental office in the state of licensure, either directly or indirectly, under the name of a corporation, company, association, limited liability company, or trade name without full and outward disclosure of his full name as it appears on the license or renewal certificate as issued by the board or his commonly used name.

(C) Hold himself out to the public, directly or indirectly, as soliciting patronage or as being qualified to practice dentistry in the state of licensure under the name of a corporation, company, association, limited liability company, or trade name without full and outward disclosure of his full name as it appears on the license or renewal certificate as issued by the board or his commonly used name.

(D) Operate, manage, or be employed in any room or office where dental service is rendered or conducted under the name of a corporation, company, association, limited liability company, or trade name without full and outward disclosure of his full name as it appears on the license or renewal certificate as issued by the board or his commonly used name.

(E) Practice dentistry without displaying his full name or his commonly used name as it appears on the license or renewal certificate as issued by the board in front of each dental office location if the office is in a single-story and/or single-occupancy building, or without displaying his full name or his commonly used name as it appears on the license or renewal certificate as issued by the board on the outside of the entrance door of each dental office if the office is in a multi-occupancy and/or multi-story building.

(2) Name of Practice. Since the name under which a dentist conducts his or her practice may be a factor in the selection process of the patient, the use of a trade name or an assumed name that is false or misleading in any material respect is unethical.

(A) Each dental office shall post at or near the entrance of the office the name of, each professional degree received by, and each school attended by each dentist practicing in the office.

(B) The name of the owner shall be prominently displayed and only the names of the dentists who are engaged in the practice of the profession at a particular location shall be used.

(C) The name of a deceased, retired, or dentist leaving a practice shall not be used at such location more than one (1) year following departure from the practice.

(D) The name of a dentist who transfers his or her practice to another dentist may be used by the acquiring dentist if the transferring dentist continues practicing dentistry in the practice. If the transferring dentist discontinues practicing dentistry in the transferred practice, then the acquiring dentist may use the name of the transferring dentist for no more than forty (40) days after such transfer.

(E) If the names of auxiliary personnel, such as dental hygienists, dental assistants, etc., are displayed in any manner, the auxiliary personnel must be clearly identified by title, along with the name of the supervising dentist.

(F) A licensed Texas dentist, in any professional communication concerning dental services, shall include the dentist's dental degree or the dentist may use the words "general dentist," "general dentistry," or an ADA approved dental specialty, if the dentist is a specialist in the field designated.

(G) A licensed Texas dentist who is also authorized to practice medicine in Texas may use the initials "M.D." or "D.O.", along with the dentist's dental degree.

(3) Use of Trade Name.

(A) A dentist may practice under his or her own name, or use a corporation, company, association, or trade name as provided by §259.003 of the Occupations Code.

(B) A dentist practicing under a corporation, company, association, or trade name shall give each patient the name and license number of the treating dentist, in writing, either before or after each office visit, upon request of patient.

(C) An advertisement under a corporation, company, association, or trade name must include prominently the name of the owner(s) and at least one dentist actually engaged in the practice of dentistry under that trade name at each location advertised.

(D) Each dentist practicing under a corporation, company, association, or trade name shall file notice with the board of every corporation, company, association, or trade name under which that dentist practices upon initial application for licensure and upon annual license renewal.

(b) Responsibility. The responsibility for the form and content of an advertisement offering services or goods by a dentist shall be jointly and severally that of each licensed professional who is a principal, partner, officer, or associate of the firm or entity identified in the advertisement regardless whether the advertising has been generated by them personally, by their employees, or a third-party contractor.

§108.53. Fees.

(a) General: Dentists shall not represent or advertise the fees they charge in a false or misleading manner. Dentists shall state availability and price of goods, appliances or services in a clear and non-deceptive manner and include all material information to fully inform members of the general public about the nature of the goods, appliances or services offered at the announced price.

(b) Fee-Splitting: No dentist or any other licensee or registrant of the Board shall divide, share, split, or allocate, either directly or indirectly, any fee for dental services, appliances, or materials with another dentist or with a physician, except upon a division of services or responsibility and with the prior knowledge and written approval of the patient; provided, however, this section shall not be construed to prohibit partnerships for the practice of dentistry.

(c) Disclosures: An advertisement which includes the price of dental services shall disclose:

(1) the professional service being offered in the advertisement;

(2) any related services which are usually required in conjunction with the advertised services and for which additional fees may be charged;

(3) a disclaimer statement that the fee is a minimum fee and that the charges may increase depending on the treatment required;

(4) the dates upon which the advertised service will be available at the advertised price;

(5) when a service is advertised at a discount, the standard fee of the service and whether the discount is limited to a cash payment; and

(6) if the advertisement quotes a range of fees for a service, the advertisement shall contain all the basic considerations upon which the actual fee shall be determined.

(d) A dentist shall not:

(1) represent that health care insurance deductibles or copayments may be waived or are not applicable to dental services to be provided if the deductibles or copayments are required;

(2) represent that the benefits of a health benefit plan will be accepted as full payment when deductibles or copayments are required;

(3) refer to a fee for dental services without disclosing that additional fees may be involved in individual cases, if the possibility of additional fees may be reasonably predicted;

(4) offer a discount for dental services without disclosing the total fee to which the discount will apply; and

(5) represent that services are "free" when there is remuneration by a third-party payor, including Medicaid or Medicare.

§108.54. Advertising for Specialties.

(a) Recognized Specialties. A dentist may advertise as a specialist or use the terms "specialty" or "specialist" to describe professional services in recognized specialty areas only if the dentist limits the dentist's practice exclusively to one or more specialty areas that are:

(1) recognized by a board that certifies specialists in the area of specialty; and

(2) accredited by the Commission on Dental Accreditation of the American Dental Association.

(b) The following are recognized specialty areas and meet the requirements of subsection (a)(1) and (2) of this section:

(1) Endodontics;

(2) Oral and Maxillofacial Surgery;

(3) Orthodontics and Dentofacial Orthopedics;

(4) Pediatric Dentistry;

(5) Periodontics;

(6) Prosthodontics;

(7) Dental Public Health;

(8) Oral and Maxillofacial Pathology; and

(9) Oral and Maxillofacial Radiology.

(c) A dentist who wishes to advertise as a specialist or a multiple-specialist in one or more recognized specialty areas under subsection (a)(1) and (2) of this section and subsection (b)(1) - (9) of this section shall meet the criteria in one or more of the following categories:

(1) Educationally qualified is a dentist who has successfully completed an educational program of two or more years in a specialty area accredited by the Commission on Dental Accreditation of the American Dental Association, as specified by the Council on Dental Education of the American Dental Association;

(2) Board certified is a dentist who has met the requirements of a specialty board referenced in subsection (a)(1) and (2) of this section, and who has received a certificate from the specialty board, indicating the dentist has achieved diplomate status.

(A) A dentist is authorized to use the term 'board certified' in any advertising for his/her practice only if the specialty board that conferred the certification is referenced in subsection (a)(1) and (2) of this section.

(B) A dentist may advertise a field of interest if the specialist has been certified or a diplomate of a specialty, provided the special interest is within the scope of the recognized specialties listed in subsection (b)(1) - (9) of this section. For example: Tom Smith, DDS, Board Certified, Oral and Maxillofacial Surgery, Practice Limited to Oral Surgery, special interest in TMJ.

(C) A dentist who is not board certified may not advertise a field of interest except that the dentist may advertise that his/her 'practice is limited' to a designated specialty practice area listed in subsection (b)(1) - (9) of this section. For example: Tom Smith, DDS, practice limited to Oral Surgery.

(d) Dentists who choose to communicate specialization in a recognized specialty area as set forth in subsection (b)(1) - (9) of this section should use "specialist in" or "practice limited to" and should limit their practice exclusively to the advertised specialty area(s) of dental practice. Dentists may also state that the specialization is an "ADA recognized specialty." At the time of the communication, such dentists must have met the current educational requirements and standards set forth by the American Dental Association for each approved specialty. A dentist shall not communicate or imply that he/she is a specialist when providing specialty services, whether in a general or specialty practice, if he or she has not received a certification from an accredited institution. The burden of responsibility is on the practice owner to avoid any inference that those in the practice who are general practitioners are specialists as identified in subsection (b)(1) - (9) of this section.

(e) Standards for Multiple-Specialty Announcements in Recognized Specialty Areas. The educational criterion for communication of limitation of practice in additional specialty areas is the successful completion of an advanced educational program accredited by the Commission on Dental Accreditation (or its equivalent if completed prior to 1967) in each area for which the dentist wishes to communicate a specialty. Dentists who are presently ethically communicating limitation of practice in a specialty area and who wish to communicate an additional recognized specialty area must submit to the appropriate accredited body documentation of successful completion of the requisite education in specialty programs listed by the Council on Dental Education and Licensure or certification as a diplomate in each area for which they wish to communicate.

§108.55. Advertising for General Dentists.

(a) Post-Doctoral Advanced General Dentistry Education Programs. A dentist whose license is not limited to the practice of a recognized specialty identified under §108.54(b)(1) - (9) of this subchapter (relating to Advertising for Specialties) and who has successfully completed a post-doctoral advanced general dentistry education program accredited by Commission on Dental Accreditation (CODA) may announce to the public that he or she has completed advanced training in the area of special interest and may limit his/her practice to that specific interest so long as the dentist clearly discloses that the dentist is a general dentist or a specialist in a different specialty. For example: "Joe Smith, DDS, General Dentist, with a special interest in Orofacial Pain."

(b) Special interest in a non-ADA recognized specialty. The advertisement shall fully disclose to the public the type of training the dentist completed; and the dentist's experience in the non-ADA recognized areas of special interest.

(1) To determine if a dentist's disclosure regarding non-ADA recognized areas of special interest comports with this provision and is not misleading, the Board may consider the following factors:

(A) Whether the disclosure indicates that the dentist is a general dentist and that the dentist's practice is limited to the asserted special interest area;

(B) Whether the disclosure fully informs the public of the educational curriculum the dentist obtained in the asserted special interest area including the duration of the program. Full disclosure of education content shall further include a statement by the dentist who indicates whether the curriculum is:

(i) Formal or Informal; and/or

(ii) Full-time or Part-time; and/or

(iii) Graduate or Post-Graduate Level.

(C) Whether the disclosure sets forth the number of clinical and didactic classroom hours the dentist has successfully completed in the asserted special interest area. A licensee must maintain documentation that supports any disclosure.

(2) The following disclosures would be in compliance with this rule for dentists: "John Doe, DDS, General Dentist, with a special interest in Dental Implants. Dr. Doe received certification in Dental Implants from the Acme Implant Institute after successfully completing either an oral examination not based on psychometric principles or a written examination based on psychometric principles and following his successful completion of an informal, part-time, graduate level program lasting __ days and consisting of __ clinical hours of training and __ didactic classroom hours of instruction."

(3) Business cards and stationery are exempt from the requirements of paragraph (1)(B) and (C) of this subsection.

(c) Special interest in an ADA recognized specialty. A dentist whose license is not limited to the practice of an ADA recognized specialty identified under §108.54(b)(1) - (9) of this subchapter may advertise that the dentist performs the aforementioned services even if the dentist is not a specialist in the advertised area of practice so long as the dentist clearly discloses that the dentist is a general dentist or a specialist in a different specialty.

(1) To determine if a dentist's disclosure regarding non-ADA recognized areas of special interest comports with this provision and is not misleading, the Board may consider the following factors:

(A) Whether the disclosure indicates that the dentist is a general dentist and that the dentist's practice is limited to the asserted special interest area;

(B) Whether the disclosure fully informs the public of the educational curriculum the dentist obtained in the asserted special interest area including the duration of the program. Full disclosure of education content shall further include a statement by the dentist who indicates whether the curriculum is:

(i) Formal or Informal; and/or

(ii) Full-time or Part-time; and/or

(iii) Graduate or Post-Graduate Level.

(C) A dentist shall set forth the number of clinical and didactic classroom hours the dentist has successfully completed in the asserted special interest area. A licensee must maintain documentation that supports any disclosure.

(2) The following disclosures would be in compliance with this rule for dentists: "John Doe, DDS, General Dentist, with a special interest in Orthodontics. Dr. Doe completed an informal, part-time, graduate level program lasting 3-days, including 20 hours didactic classroom and 8 hours clinical, in Orthodontics every 6 weeks for 12 months."

(3) Business cards and stationery are exempt from the requirements of paragraph (1)(B) and (C) of this subsection.

§108.56. Advertising Credentials and Certifications.

(a) Unearned, Non-health Degrees. A dentist may use the title Doctor, Dentist, DDS, DMD or any additional earned, advanced academic degrees in health service areas in an announcement to the public. The announcement of an unearned academic degree, however, may be misleading because of the likelihood that it will indicate to the public the attainment of specialty or diplomate status. An unearned academic degree is one which is awarded by an educational institution not accredited by a generally recognized accrediting body or is an honorary degree.

(1) The use of a non-health degree in an announcement to the public may be a representation which is misleading because the public is likely to assume that any degree announced is related to the qualifications of the dentist as a practitioner.

(2) Some organizations grant dentists fellowship status as a token of membership in the organization or some other form of voluntary association. The use of such fellowships in advertising to the general public may be misleading because of the likelihood that it will indicate to the public attainment of education or skill in the field of dentistry.

(3) Generally, unearned or non-health degrees and fellowships that designate association, rather than attainment, should be limited to scientific papers and curriculum vitae. Dentists may also include these unearned or non-health degrees and fellowships on business cards and/or stationery but shall be accompanied by a definition of the acronym. For example: John Doe, D.D.S., F.I.C.D. Fellow of the International College of Dentistry

(b) Credentials in General Dentistry. General dentists may announce fellowships or other credentials earned in the area of general dentistry so long as they avoid any communications that express or imply specialization in a recognized specialty. In order to prevent a reasonable person from concluding that abbreviations indicate a designation of an academic degree, any use of abbreviations to designate credentials in non-ADA recognized specialty areas in an advertisement shall be accompanied by a definition of the acronym. For example: John Doe, D.D.S., F.A.G.D. Fellow Academy of General Dentistry

§108.57. False, Misleading or Deceptive Advertising.

(a) A dentist has a duty to communicate truthfully. Professionals have a duty to be honest and trustworthy in their dealings with people. The dentist's primary obligations include respecting the position of trust inherent in the dentist-patient relationship, communicating truthfully and without deception, and maintaining intellectual integrity. In order to properly serve the public, dentists should represent themselves in a manner that contributes to the esteem of the profession. Dentists should not misrepresent their training and competence in any way that would be false or misleading in any material respect. No dentist shall advertise or solicit patients in any form of communication in a manner that is false, misleading, deceptive, or not readily subject to verification.

(b) Published Communications. A dental health article, message or newsletter published in print or electronic media under a dentist's byline to the public must make truthful disclosure of the source

and authorship. If it fails to make truthful disclosure of the source and authorship or is designed to give rise to questionable expectations for the purpose of inducing the public to utilize the services of the sponsoring dentist, the dentist is engaged in making a false or misleading representation to the public in a material respect.

(c) Examples. In addition to the plain and ordinary meaning of the provision set forth throughout this subchapter, additional examples of advertisements that may be false, misleading, deceptive, or not readily subject to verification include but are not limited to:

(1) making a material misrepresentation of fact or omitting a fact necessary to make a statement as a whole not materially misleading;

(2) intimidating or exerting undue pressure or undue influence over a prospective patient;

(3) appealing to an individual's anxiety in an excessive or unfair way;

(4) claiming to provide or perform dental work without pain or discomfort to the patient;

(5) implying or suggesting superiority of materials or performance of professional services;

(6) comparing a health care professional's services with another health care professional's services unless the comparison can be factually substantiated;

(7) communicating an implication, prediction or suggestion of any guarantee of future satisfaction or success of a dental service or otherwise creating unjustified expectations concerning the potential result of dental treatment. The communication of a guarantee to return a fee if the patient is not satisfied with the treatment rendered is not considered false, misleading deceptive or not readily subject to verification under this rule;

(8) containing a testimonial from a person who is not a patient of record or that includes false, misleading or deceptive statements, or which is not readily subject to verification, or which fails to include disclaimers or warnings as to the identity and credentials of the person making the testimonial;

(9) referring to benefits or other attributes of dental procedures or products that involve significant risks without including realistic assessments of the safety and efficacy of those procedures or products;

(10) causing confusion or misunderstanding as to the credentials, education, or licensing of a health care professional;

(11) representing in the use of a professional name a title or professional identification that is expressly or commonly reserved to or used by another profession or professional;

(12) failing to make truthful disclosure of the source and authorship of any message published under a dentist's byline;

(13) misrepresenting or misnaming any dental method or system;

(14) communicating an implication or suggestion that a service is free or discounted when the fee is built in to a companion procedure provided to the patient and charged to the patient; or

(15) communicating statistical data, representations, or other information that is not subject to reasonable verification by the public.

(d) Photographs or other representations may be used in advertising of actual patients of record of the licensee. Written patient consent must be obtained prior to the communication of facts, data, or information which may identify the patient. The advertising must include language stating "Actual results may vary."

(e) Advertising or promotion of products from which the dentist receives a direct remuneration or incentive is prohibited.

(f) Any and all advertisements are presumed to have been approved by the licensee named therein.

§108.58. Solicitation, Referral and Gift Schemes.

(a) This rule prohibits conduct which violates §§102.001 - 102.011, and §259.008(8), of the Occupations Code. A licensee shall not offer, give, dispense, distribute or make available to any third party or directly to a potential patient, or aid or abet another so to do, any cash, gift, premium, chance, reward, ticket, item, or thing of value for securing or soliciting patients.

(b) This rule shall not be construed to prohibit a licensee from offering, giving, dispensing, distributing or making available to any patient of record any cash premium, chance, reward, ticket, item or thing of value for the continuation of that relationship as a patient of that licensee. The cash premium, chance, reward, ticket, item or thing of value cannot be for the purpose of soliciting new patients.

(c) This rule shall not be construed to prohibit remuneration for advertising, marketing, or other services that are provided for the purpose of securing or soliciting patients, provided the remuneration is set in advance, is consistent with the fair market value of the services, and is not based on the volume or value of any patient referrals.

§108.59. Required Disclosure on a Website.

(a) Dental practice websites must clearly disclose:

(1) ownership of the website;

(2) specific services provided;

(3) office addresses and contact information; and

(4) licensure and qualifications of dentist(s) and associated health care providers.

(b) Dental practice websites should disclose:

(1) appropriate uses and limitations of the site, including providing health advice and emergency health situations;

(2) uses and response time for e-mails, electronic messages, and other communications transmitted via the site;

(3) to whom patient health information may be disclosed and for what purpose;

(4) rights of patients with respect to patient health information; and

(5) information collected and any passive tracking mechanisms utilized.

§108.60. Record Keeping of Advertisements.

(a) Retention of broadcast, print and electronic advertising. A pre-recorded copy of all broadcast advertisements, a copy of print advertisements and a copy of electronic advertisements shall be retained for five years following the final appearance or communication of the advertisement. In addition, the dentist shall document the date the dentist discovered that he or she had placed a false or misleading advertisement, as well as the date and substance of all corrective measures the dentist took to rectify false or misleading advertisements. The dentist shall maintain documentation of all corrective measures for five years following the most recent appearance or communication of the advertisement which the dentist discovered was inaccurate.

(b) The advertising dentist shall be responsible for making copies of the advertisement available to the board if requested.

§108.61. Grounds and Procedures for Disciplinary Action for Advertising Violations.

(a) In accordance with the Board's statutory and regulatory authority authorizing disciplinary action and denial of licensure for advertising violations as set forth in this subchapter, the Board may refuse to issue or renew a license, may suspend or revoke a license, may issue a warning or reprimand, restrict or impose conditions on the practice of a licensee or applicant for licensure. "Advertising violations" consist of expressions explicitly or implicitly authorized by a licensee, or applicant for licensure, which are false or misleading as otherwise referenced in this subchapter.

(b) A licensee or applicant for licensure explicitly or implicitly authorizes advertising when the individual permits or fails to correct statements that are false or misleading. Failure to attempt to retract or otherwise correct advertising violations as directed by the Board may constitute a willful violation of these provisions and may be a separate and distinct independent violation of the Board's statutory or regulatory authority. A willful violation of the Board's directive, may subject the licensee or applicant to disciplinary action, nonrenewal or denial of licensure.

(c) When determining whether an "advertising violation" has occurred, the Board shall proceed in accordance with due process and its statutory and regulatory provisions which govern investigations and contested case proceedings.

§108.62. Awards, Honors and Recognitions.

(a) A licensee may publicize the receipt of a professional award, honor, recognition, or rating in an advertisement or otherwise, if the publication is not false, misleading, or deceptive, and is subject to reasonable verification by the public. Any advertisement must comply with all laws and rules governing advertisement by licensees.

(b) The publication of an award, honor, recognition or rating must reflect truth, state the specific year or time period of receipt and clearly name the awarding organization or entity.

(1) Proper: John Doe, DDS - Included in Anytown Quarterly's Fall 2012 Top Dentists

(2) Improper: John Doe, DDS - Top Dentist

(3) Proper: John Doe, DDS - Selected as Anytown's 2012 Dentist of the Year by the Anytown

(4) Improper: John Doe, DDS - Dentist of the Year

(c) The publication must state the licensee's receipt of an award, honor, recognition or rating as inclusion or selection in a listing of other licensees, if applicable.

(1) Proper: John was selected for inclusion in 2012 Anytown Yearly's Super Dentists List

(2) Improper: John is an Anytown Super Dentist

(d) The publication may include the trademark or logo of the award, honor, recognition or rating, so long as the advertisement conforms to all laws and rules governing advertisement by licensees.

(e) The publication of an award, honor, recognition or rating is false, misleading or deceptive if the licensee compensated a third party for the inclusion of the licensee's name in the survey, ballot, or poll that determined the recipients of the award, honor, recognition or rating. This does not preclude licensees from purchasing advertisements to communicate the receipt of an award, honor, recognition or rating.

(f) The publication of an award, honor, recognition or rating is false, misleading or deceptive if the publication imputes an individual licensee's selection or inclusion to an entire practice, clinic or office. An advertisement for an entire dental practice, clinic or office at which more than one licensee engages in the practice of dentistry, must clearly denote the specific licensees within in the practice who received the award, honor, recognition or rating.

§108.63. Advertisement and Education by Unlicensed Clinicians.

(a) Any advertisement placed by a person who is not domiciled and located in this state and subject to the laws of this state may not advertise or cause or permit to be advertised, published, directly or indirectly, printed, or circulated in this state a notice, statement, or offer of any service, drug, or fee relating to the practice of dentistry, unless the advertising conspicuously discloses that the person is not licensed to practice dentistry in this state.

(b) Licensees of other jurisdictions may be permitted to demonstrate their professional technique and ability on live patients at scientific and clinical meetings upon prior approval by the State Board of Dental Examiners. The State Board of Dental Examiners must approve any and all courses, seminars, clinics, or demonstrations that involve live patients, including those pertaining to anesthesia or anesthetic agents and duties of auxiliary personnel except those sponsored by recognized dental schools, medical schools or colleges.

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 May 4, 2012.

TRD-201202290
Glenn Parker
Interim Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: June 17, 2012
For further information, please call: (512) 475-0972

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PART 11. TEXAS BOARD OF NURSING

CHAPTER 213. PRACTICE AND PROCEDURE

22 TAC §213.23

Introduction. The Texas Board of Nursing (Board) proposes amendments to §213.23 (relating to Decision of the Board). These amendments are proposed under the authority of the Occupations Code §§301.151, 301.452, and 301.459(a) and the Government Code §§2001.004, 2001.058, 2001.062, 2001.141, and 2003.021(a) and are necessary to: (i) clarify the Board's existing requirements for submitting written materials to the Board and making oral presentations to the Board; (ii) facilitate fully informed Board deliberation and decisions; and (iii) specify that proposals for decision (PFDs) may not contain recommendations for sanctions, in accordance with applicable law.

Clarification of Existing Requirements

The Board adopted rules in the November 6, 2009, issue of the *Texas Register* (34 TexReg 7818) establishing specific procedures and requirements for individuals wishing to make an oral presentation to the Board regarding a PFD. The adoption of these requirements stemmed from Board deliberation and discussion at its regularly scheduled April 2009 meeting regarding its practice of allowing individuals to make oral presentations re-

garding PFDs. Historically, the Board permitted an individual affected by a PFD to make an oral presentation to the Board prior to its final deliberation and decision on the PFD. This practice was originally intended to provide individuals with an additional opportunity to be heard and to maintain a sense of fairness in Board decisions, despite the fact that the law did not require that such an opportunity be provided to the individual once the individual was afforded a hearing at the State Office of Administrative Hearings (SOAH). Over time, it became clear that most individuals utilized the oral forum to present information to the Board that was not considered during the administrative hearing. The Board determined that the receipt and consideration of such potentially problematic information should be controlled. As a result, the Board re-considered its policy of permitting individuals to make oral presentations regarding PFDs at its April 2009 Board meeting and voted to amend its policy to allow individuals to make oral presentations prior to the Board's deliberation and decision on a PFD only if the individual provided, in advance of the Board meeting, written argument, exceptions, and briefs for the Board's consideration. Not only were these requirements designed to guard against potential agency error, but the requirements were consistent with the intent of the Government Code §2001.062, which contemplates the presentation of legal argument through the submission of written exceptions and briefs and written responses to exceptions and briefs. Rule amendments implementing these requirements were formally proposed by the Board in August 2009 and became effective on November 15, 2009. These amendments were consistent with the Occupations Code §301.151, which authorizes the Board to adopt rules necessary to conduct proceedings before it.

Since the adoption of these requirements in 2009, individuals have continued to submit written materials to the Board outside of the rule's prescribed timelines. Further, several individuals have commented that the rule's requirements are confusing as written. As a result, the proposed amendments to §213.23(f) are intended to clarify the procedures and requirements first adopted by the Board in 2009.

The proposed amendments to §213.23(f) do not dramatically alter the existing requirements of the rule. However, the formatting and wording of the subsection has been altered in an effort to clarify the applicability of the requirements to certain factual situations. First, the proposed amendments recognize that some individuals may not wish to make an oral presentation to the Board. These individuals, however, may wish to submit written exceptions and briefs to the Board and are entitled to do so under the Government Code §2001.062. As such, and in compliance with §2001.062, proposed amended §213.23(f)(1) affords all individuals the opportunity to file written materials regarding a PFD with the Board. However, in order to ensure that Board members have an adequate amount of time to review the written materials prior to the Board's deliberation on the matter, the proposed amendment also requires the individuals to submit the written materials to the Board no later than ten days prior to the date of the next regularly scheduled Board meeting where the Board will deliberate on the PFD. The proposed amendment also makes clear that the Board will not consider any written materials submitted outside of this prescribed timeline. These requirements facilitate thoughtful preparation by the individuals submitting the written materials to the Board, as well as by the Board members who will be deliberating and voting on the PFD, and ensure an orderly presentation of materials to the Board.

The proposed amendments to §213.23(f)(2) also do not alter the existing requirements of the rule as they apply to individuals wishing to make an oral presentation to the Board regarding a PFD. Rather, the proposed amendments clarify the applicability of the existing requirements. First, under the proposed amendments, as well as the existing rule, all individuals wishing to make an oral presentation to the Board regarding a PFD must file written materials with the Board. However, the timelines for submitting the written materials differ depending upon whether a modification is being proposed to the PFD. For those PFDs where a modification is not being recommended, the proposed amendments to §213.23(f)(2) clarify that the individual must submit his/her written materials to the Board no later than 21 days prior to the date of the next regularly scheduled Board meeting where the Board will deliberate on the PFD. For those PFDs where a modification to the PFD is being recommended, proposed amended §213.23(f)(2) clarifies that the individual must submit his/her written materials to the Board no later than ten days prior to the date of the next regularly scheduled Board meeting where the Board will deliberate on the PFD. These timelines are necessary to ensure that the Board members have enough time to review the written materials prior to the Board's deliberation on the matter and to facilitate thoughtful preparation by the individual submitting the written material to the Board, as well as the Board members who will be deliberating and voting on the PFD. Proposed amended §213.23(f)(2) also reiterates that an individual will not be permitted to make an oral presentation to the Board if the individual does not timely submit his/her written materials to the Board in compliance with the rule's requirements. This requirement ensures an orderly presentation of materials to the Board.

Proposed New Requirements

The proposed amendments to §213.23(b) and (c) include two new requirements related to contested case proceedings at SOAH. First, proposed amended §213.23(b) provides any party to a contested case proceeding the opportunity, prior to the issuance of a PFD, to submit proposed findings of fact and conclusions of law to the administrative law judge (ALJ). The proposed amendments further require the judge to issue a ruling on each of the submitted proposed findings of fact and conclusions of law and, in the event the judge declines to adopt a particular finding of fact or conclusion of law, to explain why he/she declined to adopt the finding or conclusion. Proposed amended §213.23(c) limits the PFD to findings of fact and conclusions of law and prohibits the inclusion of recommendations for sanction in the PFD. These amendments are intended to assist the Board in its deliberation on PFDs and to properly delineate the roles of the Board and ALJs in contested case matters.

The Board's mission is to protect and promote the welfare of the people of Texas by ensuring that each individual holding a nursing license is competent to practice safely. In accordance with the Nursing Practice Act (NPA), particularly §301.452, the Board is responsible for establishing, interpreting, and enforcing policy and standards of practice for the nursing profession in the State of Texas. The proposed amendments to §213.23(b) seek to establish a party's right to submit proposed findings of fact and conclusions of law during the contested case process and to have those specific submissions discussed in the PFD. Because the Board alone is vested with the ultimate decision making authority in contested case matters, it is important that the Board receive all of the relevant information in a contested case matter prior to its deliberation and final decision on the PFD. Further, because the Board does not participate in the administrative hearing process, the Board relies heavily upon the information

contained in the PFD to guide its final decision. A single ALJ, often without any agency expertise, may omit or ignore appropriate analysis or explanation from the PFD that would be relevant and/or significant to the Board during its deliberation. The proposed amendments, therefore, are designed to ensure that all relevant information from the contested case hearing, including an ALJ's explanation and analysis of proposed findings of fact and conclusions of law, are included within the context of the PFD. Requiring the inclusion of this additional information should better assist the Board during its deliberation and decision making process. Further, proposed amended §213.23(b) is consistent with the provisions of the Government Code §2001.141(d), which requires findings of fact set forth in statutory language to be accompanied by a concise and explicit statement of the underlying facts supporting the findings and §2001.141(e), which recognizes an agency's right to submit proposed findings of fact to the ALJ and receive a ruling on those proposed findings, provided the proposed findings are submitted under agency rule.

During the 82nd Legislative Session, Governor Perry commented on the proper roles of agencies and ALJs in contested case matters. Regarding the veto of Senate Bill 191, a bill which would have prohibited the Texas Medical Board from modifying an ALJ's findings of fact or conclusions of law, but would have prohibited the ALJ from recommending a sanction in a contested case matter, Governor Perry stated:

"I am vetoing Senate Bill 191 because I have serious concerns regarding over reliance on the State Office of Administrative Hearings (SOAH) in the disposition of contested case hearings at the Texas Medical Board. This provision is also included in House Bill 680. The Board is charged with regulating the practice of medicine in Texas by, among other things, enforcing physicians' standards of conduct and imposing appropriate sanctions when those standards are violated. When the Board is unable to resolve a case, it is referred to an administrative law judge (ALJ) at SOAH. Senate Bill 191 requires the Board to accept an ALJ's findings of fact on whether a physician has committed a violation. This provision weakens the Board's authority to oversee physicians, and vests that authority instead in the ALJ. This bill treats the Texas Medical Board differently from every other occupational licensing agency by mandating that the Board accept the ALJ's findings. The responsibility for deciding whether a physician has violated a standard of conduct should belong to the multi member Board, and not to a single ALJ. ALJs serve the important role of providing an independent forum for conducting adjudicative hearings to determine the facts, but their role is to assist agencies in reaching a proper decision, not to supplant them or relieve them of that duty."

The Board agrees with the concerns of the Governor. As such, the Board is proposing amendments to §213.23(c) to preserve the Board's authority to enforce its standards of conduct and to impose appropriate sanctions when those standards are violated.

Under the Government Code §2003.021(a), SOAH is authorized to perform adjudicative functions in a contested case matter that are separate from the investigative, prosecutorial, and policymaking functions of the Board. Consistent with this statutory delineation, the proposed amendments to §213.23(c) properly reflect the appropriate role and responsibilities of the Board and SOAH in contested case matters. Although the Board has gone to considerable effort to develop rules and written policies that express the Board's application and interpretation of its standards, individual ALJ opinions have repeatedly resulted in inconsistent and/or incorrect application of the Board's written disciplinary sanction policies and rules. The proposed amendments to §213.23(c) are intended to preserve the Board's ability to properly interpret and apply its standards and disciplinary sanction policies and rules in contested case matters and to guard against inconsistent and inappropriate application of those standards, policies, and rules. Further, the proposed amendments are consistent with the law and policy in this state regarding the imposition of sanctions in contested case matters. It is well settled that agencies, and not ALJs, retain the ultimate authority to impose appropriate sanctions in contested case matters. *(See Texas State Board of Dental Examiners vs. Brown,* 281 S.W. 3d 692 (Tex. App. - Corpus Christi 2009, pet. filed); *Sears vs. Tex. State Bd. of Dental Exam'rs,* 759 S.W.2d 748, 751 (Tex.App. - Austin 1988, no pet); *Firemen's & Policemen's Civil Serv. Comm'n vs. Brinkmeyer,* 662 S.W.2d 953, 956 (Tex. 1984); *Granek vs. Tex. State Bd. of Med. Exam'rs,* 172 S.W.3d 761, 781 (Tex.App. - Austin 2005, pet. denied); *Fay-Ray Corp. vs. Tex. Alcoholic Beverage Comm'n,* 959 S.W.2d 362, 369 (Tex.App. - Austin 1998, no pet.) The proposed amendments reiterate this standard in Board rule.

Remaining Amendments

The proposed amendment to §213.23(d) eliminates potentially redundant and unnecessary wording from the subsection and, instead, includes reference to the regulations adopted by SOAH, which control the submission to ALJs of written exceptions and replies to exceptions in contested case matters. The remaining proposed amendments to §213.23(e) and (g) - (m) are necessary to clarify existing language within the section and to re-letter the section correctly.

Section-by-Section Overview. Proposed amended §213.23(b) states that, prior to the issuance of a PFD, a party may submit proposed findings of fact and conclusions of law to the judge. Further, the judge shall issue a ruling on each proposed finding of fact and conclusion of law and shall set forth the specific reason for not adopting a particular proposed finding of fact or conclusion of law.

Proposed amended §213.23(c) states that a PFD shall include proposed findings of fact and conclusions of law, but shall not include a judge's recommendation for sanction.

Proposed amended §213.23(d) states that any party of record who is adversely affected by the PFD of the judge shall have the opportunity to file with the judge exceptions to the PFD and replies to exceptions to the PFD in accordance with 1 TAC §155.507. Further, the PFD may be amended by the judge in accordance with 1 TAC §155.507 without again being served on the parties.

Proposed amended §213.23(e) states that the PFD may be acted on by the Board or the Eligibility and Disciplinary Committee, in accordance with §213.12, after the expiration of 10 days after the filing of replies to exceptions to the PFD or upon the day following the day exceptions or replies to exceptions are due if no such exceptions or replies are filed.

Proposed amended §213.23(f)(1) provides that, following the issuance of a PFD, parties shall have an opportunity to file written exceptions and/or briefs with the Board concerning a PFD. Further, an opportunity shall be given to file a response to written exceptions and/or briefs. For individuals who wish to file written exceptions and/or briefs with the Board, but do not wish to make an oral presentation to the Board, the individual's written exceptions and/or briefs must be submitted to the Board no later than

10 days prior to the date of the next regularly scheduled Board meeting where the Board will deliberate on the PFD. If written exceptions and/or briefs are submitted to the Board in violation of this requirement, the Board will not consider the written materials.

Pursuant to §213.23(f)(2), if an individual wishes to make an oral presentation to the Board regarding a PFD, and no modification is proposed to the PFD, the individual must file written exceptions and/or briefs with the Board at least 21 days prior to the date of the next regularly scheduled Board meeting where the Board will deliberate on the PFD. If an individual wishes to make an oral presentation to the Board regarding a PFD and a modification is proposed to the PFD, the individual must file a written response to the proposed modification, written exceptions, and/or briefs with the Board at least 10 days prior to the date of the regularly scheduled Board meeting where the Board will deliberate on the PFD. An individual will not be permitted to make an oral presentation to the Board if the individual does not comply with these requirements.

Proposed amended §213.23(g) states that it is the policy of the Board to change a finding of fact or conclusion of law in a PFD or to vacate or modify the proposed order of a judge when, the Board determines: (i) that the judge did not properly apply or interpret applicable law, agency rules, written policies provided by staff or prior administrative decisions; (ii) that a prior administrative decision on which the judge relied is incorrect or should be changed; or (iii) that a technical error in a finding of fact should be changed.

Proposed amended §213.23(h) states that, if the Board modifies, amends, or changes the recommended PFD or order of the judge, an order shall be prepared reflecting the Board's changes as stated in the record of the meeting and stating the specific reason and legal basis for the changes made according to §213.23(g).

Proposed amended §213.23(i) provides that an order of the Board shall be in writing and may be signed by the executive director on behalf of the Board.

Proposed amended §213.23(j) states that a copy of the order shall be mailed to all parties and to the party's last known employer as a nurse.

Proposed amended §213.23(k) provides that the decision of the Board is immediate, final, and appealable upon the signing of the written order by the executive director on behalf of the Board where: (i) the Board finds and states in the order that an imminent peril to the public health, safety, and welfare requires immediate effect of the order; and (ii) the order states it is final and effective on the date rendered.

Proposed amended §213.23(l) states that a motion for rehearing shall not be a prerequisite for appeal of the decision where the order of the Board contains the finding set forth in §213.23(k).

Proposed amended §213.23(m) states that motions for rehearing under §213.23 are controlled by the Government Code §2001.145.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments are in effect, there will be no additional fiscal implications for state or local government as a result of implementing the proposal.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefits will be the adoption of requirements that: (i) promote fair and efficient regulation; (ii) facilitate fully informed Board decisions; and (iii) preserve the Board's authority to interpret and apply its standards and disciplinary policies and rules in a manner that is consistent with its mission to protect and promote the welfare of the people of Texas.

Under the Board's existing rule, individuals are afforded an opportunity to submit written materials, including briefs and exceptions, to the Board prior to its deliberation and final decision on a PFD. Individuals are also permitted to make oral presentations to the Board prior to its deliberation and final decision on a PFD. The rule also requires individuals to meet certain requirements, such as timely submitting the written materials to the Board. The proposal does not dramatically alter the current rule's requirements in this regard. Rather, the proposed amendments clarify the language of the existing rule. The proposed amendments promote fairness and openness in the Board's deliberative process and ensure the Board adequate time to consider relevant legal arguments and objections concerning a PFD prior to its deliberation and final decision in open forum, which promotes well reasoned and error-free agency decisions. Further, the proposal clarifies that individuals must meet the rule's requirements or the individual will not be permitted to make an oral presentation to the Board and the Board will not consider any information that is provided outside of the rule's prescribed timelines. This requirement ensures the orderly presentation of materials to the Board, which effectuates efficient Board regulation.

The proposal is also intended to facilitate more fully informed Board deliberation and decisions by requiring additional information to be included in PFDs. Under the proposal, parties to a contested case hearing are permitted to submit proposed findings of fact and conclusions of law to the ALJ prior to the issuance of the PFD. Once submitted, the ALJ is required to rule on each proposed finding of fact and conclusions of law. This proposed requirement is designed to elicit additional ALJ discussion and analysis of the case so that the Board can better determine the particular importance of the information in the PFD.

Finally, the proposal properly delineates the roles of the Board and SOAH in contested case matters. The proposal clarifies that a PFD should contain proposed findings of fact and conclusions of law, but not recommendations for sanctions. This proposed requirement is consistent with applicable law, which reserves the imposition of disciplinary sanctions in contested case matters to state agencies, and not ALJs. The Board is charged with protecting the public from the unsafe, illegal, and incompetent practice of its licensees. In an effort to meet this responsibility, the Board has adopted written disciplinary policies and rules designed to protect the public from such conduct. When an individual breaches these standards, the Board alone retains the responsibility for determining and imposing a disciplinary sanction that is likely to minimize and/or eliminate future risk of harm to the public. The proposed amendments are designed to ensure that the Board's disciplinary policies and rules are applied appropriately and consistently in each case and in a manner that seeks to protect the public from recidivist conduct.

There are no anticipated economic costs associated with proposed amended §213.23(d) - (m). The proposed amendments to these subsections clarify the existing requirements of the rule, and none of the proposed amendments to these subsections

impose new or additional requirements or restrictions that are anticipated to result in any new economic costs to individuals who comply with the requirements. Further, because the proposed amendments are so similar in nature to the existing requirements of these subsections, the Board does not anticipate that any individual's method of compliance will be altered due to the proposal. Likewise, the Board does not anticipate that any individual will experience any new or additional associated costs of compliance as a result of the proposed amendments to these subsections.

Proposed amended §213.23(b) and (c) include two new requirements. However, the Board anticipates that any cost of compliance associated with these new requirements will be minimal. First, proposed amended §213.23(b) provides parties to a contested case proceeding the opportunity to file proposed findings of fact and conclusions of law with the ALJ. No party, however, is required to submit proposed findings of fact and conclusions of law to the ALJ under the proposal. For those individuals who choose to do so, the Board anticipates that the costs of compliance will result from preparing the written materials and submitting them to the ALJ. The estimated compliance costs associated with preparing proposed findings of fact and conclusions of law will vary among individuals, depending upon a number of factors, including the length and complexity of the written material prepared by the individual and whether the individual chooses to retain an attorney to prepare the written material. Proposed amended §213.23(b) does not prescribe the specific content or the specific format of the written material that must be submitted to the ALJ. As such, each individual is free to choose the most efficient and economical manner of preparing the written material. Further, the proposed amendments do not require an individual to utilize an attorney to prepare the written material submitted to the ALJ. For those individuals who choose to utilize the services of an attorney, the associated economic costs will vary substantially among individual attorneys, depending upon a number of factors, including the complexity and length of the contested case proceeding. However, each individual is free to choose the most economic method of preparing the written material for the ALJ. The proposed amendments also do not prescribe the specific delivery method that an individual must utilize when submitting his or her written materials to the ALJ. Currently, SOAH permits written materials to be submitted via regular U.S. mail, fax, e-filing, or by hand delivery, including the use of a private carrier, such as UPS or FEDEX. Each individual is free to choose the most efficient and economical manner of submitting the written materials to the ALJ. Further, each individual has the information necessary to estimate his or her own compliance costs with proposed amended §213.23(b) and (c). Any other costs to comply with the proposed amendments result from the enactment of the Occupations Code Chapter 301 and the Government Code Chapter 2001 and are not a result of the adoption, enforcement, or administration of the proposal.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f), the Board has determined that the proposed amendments will not have an adverse economic effect on any individual, Board regulated entity, or other entity required to comply with the proposal because no individual, Board regulated entity, or other entity required to comply with the proposal meets the definition of a small or micro business under the Government Code §2006.001(1) or §2006.001(2).

The Government Code §2006.001(1) defines a micro business as a legal entity, including a corporation, partnership, or sole proprietorship that: (i) is formed for the purpose of making a profit; (ii) is independently owned and operated; and (iii) has not more than 20 employees. The Government Code §2006.001(2) defines a small business as a legal entity, including a corporation, partnership, or sole proprietorship, that: (i) is formed for the purpose of making a profit; (ii) is independently owned and operated; and (iii) has fewer than 100 employees or less than $6 million in annual gross receipts. Each of the elements in §2006.001(1) and §2006.001(2) must be met in order for an entity to qualify as a micro business or small business.

The only entities subject to or affected by the proposal are individual licensees or applicants and ALJs. Neither individual licensees, applicants, or ALJs qualify as small or micro businesses under the Government Code §2006.001(1) or (2). Therefore, in accordance with the Government Code §2006.002(c) and (f), the Board is not required to prepare a regulatory flexibility analysis.

Takings Impact Assessment. The Board has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Request for Public Comment. To be considered, written comments on the proposal or any request for a public hearing must be submitted no later than 5:00 p.m. on June 18, 2012, to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.texas.gov or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The amendments are proposed under the Occupations Code §§301.151, 301.452, and 301.459(a) and the Government Code §§2001.004, 2001.058, 2001.062, 2001.141, and 2003.021(a).

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (1) perform its duties and conduct proceedings before the Board; (2) regulate the practice of professional nursing and vocational nursing; (3) establish standards of professional conduct for license holders under Chapter 301; and (4) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 301.452(a) defines intemperate use as including practicing nursing or being on duty or on call while under the influence of alcohol or drugs.

Section 301.452(b) provides that a person is subject to denial of a license or to disciplinary action under Chapter 301, Subchapter J for: (i) a violation of Chapter 301, a rule or regulation not inconsistent with Chapter 301, or an order issued under Chapter 301; (ii) fraud or deceit in procuring or attempting to procure a license to practice professional nursing or vocational nursing; (iii) a conviction for, or placement on deferred adjudication community supervision or deferred disposition for, a felony or for a misdemeanor involving moral turpitude; (iv) conduct that results in the revocation of probation imposed because of conviction for a felony or for a misdemeanor involving moral turpitude; (v) use of a nursing license, diploma, or permit, or the transcript of such a document, that has been fraudulently purchased, issued, counterfeited, or materially altered; (vi) impersonating or acting as a proxy for another person in the licensing examination required

under §301.253 or §301.255; (vii) directly or indirectly aiding or abetting an unlicensed person in connection with the unauthorized practice of nursing; (viii) revocation, suspension, or denial of, or any other action relating to, the person's license or privilege to practice nursing in another jurisdiction; (ix) intemperate use of alcohol or drugs that the Board determines endangers or could endanger a patient; (x) unprofessional or dishonorable conduct that, in the Board's opinion, is likely to deceive, defraud, or injure a patient or the public; (xi) adjudication of mental incompetency; (xii) lack of fitness to practice because of a mental or physical health condition that could result in injury to a patient or the public; or (xiii) failure to care adequately for a patient or to conform to the minimum standards of acceptable nursing practice in a manner that, in the Board's opinion, exposes a patient or other person unnecessarily to risk of harm.

Section 301.452(c) states that the Board may refuse to admit a person to a licensing examination for a ground described under §301.452(b).

Section 301.452(d) states that the Board by rule shall establish guidelines to ensure that any arrest information, in particular information on arrests in which criminal action was not proven or charges were not filed or adjudicated, that is received by the Board under §301.452 is used consistently, fairly, and only to the extent the underlying conduct relates to the practice of nursing.

Section 301.459(a) requires the Board, by rule, to adopt procedures under the Government Code Chapter 2001 governing formal disposition of a contested case.

Section 2001.004 states that, in addition to other requirements under law, a state agency shall: (1) adopt rules of practice stating the nature and requirements of all available formal and informal procedures; (2) index, cross-index to statute, and make available for public inspection all rules and other written statements of policy or interpretations that are prepared, adopted, or used by the agency in discharging its functions; and (3) index, cross-index to statute, and make available for public inspection all final orders, decisions, and opinions.

Section 2001.058(a) states that the section applies only to an ALJ employed by SOAH.

Section 2001.058(b) states that an ALJ who conducts a contested case hearing shall consider applicable agency rules or policies in conducting the hearing, but the state agency deciding the case may not supervise the ALJ.

Section 2001.058(c) provides that a state agency shall provide the ALJ with a written statement of applicable rules or policies.

Section 2001.058(d) states that a state agency may not attempt to influence the finding of facts or the ALJ's application of the law in a contested case except by proper evidence and legal argument.

Section 2001.058(e) provides that a state agency may change a finding of fact or conclusion of law made by the ALJ, or may vacate or modify an order issued by the ALJ, only if the agency determines: (i) that the ALJ did not properly apply or interpret applicable law, agency rules, written policies provided under §2001.058(c), or prior administrative decisions; (ii) that a prior administrative decision on which the ALJ relied is incorrect or should be changed; or (iii) that a technical error in a finding of fact should be changed. Further, the agency shall state in writing the specific reason and legal basis for a change made under §2001.058(e).

Section 2001.058(f) states that a state agency by rule may provide that, in a contested case before the agency that concerns licensing in relation to an occupational license and that is not disposed of by stipulation, agreed settlement, or consent order, the ALJ shall render the final decision in the contested case. If a state agency adopts such a rule, the following provisions apply to contested cases covered by the rule: (i) the ALJ shall render the decision that may become final under §2001.144 not later than the 60th day after the latter of the date on which the hearing is finally closed or the date by which the judge has ordered all briefs, reply briefs, and other posthearing documents to be filed, and the 60-day period may be extended only with the consent of all parties, including the occupational licensing agency; (ii) the ALJ shall include in the findings of fact and conclusions of law a determination whether the license at issue is primarily a license to engage in an occupation; (iii) SOAH is the state agency with which a motion for rehearing or a reply to a motion for rehearing is filed under §2001.146 and is the state agency that acts on the motion or extends a time period under §2001.146; (iv) SOAH is the state agency responsible for sending a copy of the decision that may become final under §2001.144 or an order ruling on a motion for rehearing to the parties, including the occupational licensing agency, in accordance with Section 2001.142; and (v) the occupational licensing agency and any other party to the contested case is entitled to obtain judicial review of the final decision in accordance with Chapter 2001.

Section 2001.062(a) provides that, in a contested case, if a majority of the state agency officials who are to render a final decision have not heard the case or read the record, the decision, if adverse to a party other than the agency itself, may not be made until: (1) a PFD is served on each party; and (2) an opportunity is given to each adversely affected party to file exceptions and present briefs to the officials who are to render the decision.

Section 2001.062(b) states that, if a party files exceptions or presents briefs, an opportunity shall be given to each other party to file replies to the exceptions or briefs.

Section 2001.141(a) states that decision or order that may become final under §2001.144 that is adverse to a party in a contested case must be in writing or stated in the record.

Section 2001.141(b) provides that a decision that may become final under §2001.144 must include findings of fact and conclusions of law, separately stated.

Section 2001.141(c) states that findings of fact may be based only on the evidence and on matters that are officially noticed.

Section 2001.141(d) states that findings of fact, if set forth in statutory language, must be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

Section 2001.141(e) states that, if a party submits under a state agency rule proposed findings of fact, the decision shall include a ruling on each proposed finding.

Section 2003.021(a) provides that the SOAH is a state agency created to serve as an independent forum for the conduct of adjudicative hearings in the executive branch of state government. The purpose of the office is to separate the adjudicative function from the investigative, prosecutorial, and policymaking functions in the executive branch in relation to hearings that the office is authorized to conduct.

Cross Reference to Statute. The following statutes are affected by this proposal: Occupations Code §§301.151, 301.452,

and 301.459(a); Government Code §§2001.004, 2001.058, 2001.062, 2001.141, and 2003.021(a).

§213.23. Decision of the Board.

(a) (No change.)

(b) Prior to the issuance of a proposal for decision, a party may submit proposed findings of fact and conclusions of law to the judge. The judge shall issue a ruling on each proposed finding of fact and conclusion of law and shall set forth the specific reason for not adopting a particular proposed finding of fact or conclusion of law.

(c) A proposal for decision shall include proposed findings of fact and conclusions of law, but shall not include a judge's recommendation for sanction.

(d) [~~(b)~~] Any party of record who is adversely affected by the proposal for decision of the judge shall have the opportunity to file with the judge exceptions to the proposal for decision and replies to exceptions to the proposal for decision in accordance with 1 TAC §155.507 [~~a brief to the proposal for decision within 15 days after the date of service of the proposal for decision. A reply to the exceptions may be filed by the other party within 15 days of the filing of the exceptions. Exceptions and replies shall be filed with the judge with copies served on the opposing party~~]. The proposal for decision may be amended by the judge in accordance with 1 TAC §155.507 [~~pursuant to the exceptions, replies, or briefs submitted by the parties~~] without again being served on the parties.

(e) [~~(c)~~] The proposal for decision may be acted on by the Board or the Eligibility and Disciplinary Committee, in accordance with this section, after the expiration of 10 days after the filing of replies to exceptions to the proposal for decision or upon the day following the day exceptions or replies to exceptions are due if no such exceptions or replies are filed.

(f) Following the issuance of a proposal for decision, parties shall have an opportunity to file written exceptions and/or briefs with the Board concerning a proposal for decision. An opportunity shall be given to file a response to written exceptions and/or briefs. The following requirements govern the submission of written exceptions and/or briefs to the Board:

(1) Individuals wishing to file written exceptions and/or briefs with the Board, but not wishing to make an oral presentation to the Board concerning a proposal for decision. A Respondent wishing to file written exceptions and/or briefs with the Board concerning a proposal for decision must do so no later than 10 days prior to the date of the next regularly scheduled Board meeting where the Board will deliberate on the proposal for decision. The Board will not consider any written exceptions and/or briefs submitted in violation of this requirement.

(2) Individuals wishing to make an oral presentation to the Board concerning a proposal for decision. An individual wishing to make an oral presentation to the Board must file written exceptions and/or briefs with the Board. If no modification is proposed to the proposal for decision, an individual must file written exceptions and/or briefs with the Board at least 21 days prior to the date of the next regularly scheduled Board meeting where the Board will deliberate on the proposal for decision. If a modification is proposed to the proposal for decision, an individual must file a written response to the proposed modification, written exceptions, and/or briefs with the Board at least 10 days prior to the date of the regularly scheduled Board meeting where the Board will deliberate on the proposal for decision. An individual will not be permitted to make an oral presentation to the Board if the individual does not comply with these requirements.

[~~(d) Parties shall have an opportunity to file written exceptions and briefs with the Board concerning a proposal for decision. An opportunity shall be given to file a response to written exceptions and briefs. However, a Respondent shall not be permitted to make an oral presentation to the Board concerning a proposal for decision unless the Respondent has first filed written exceptions or briefs with the Board at least 21 days prior to the date of the next regularly scheduled Board meeting where the Board will deliberate on the proposal for decision. A Respondent shall not be permitted to make an oral presentation to the Board concerning a proposed modification to a proposal for decision unless the Respondent has first filed a written response to the proposed modification with the Board at least 10 days prior to the date of the regularly scheduled Board meeting where the Board will deliberate on the proposal for decision.~~]

(g) [~~(e)~~] It is the policy of the Board to change a finding of fact or conclusion of law in a proposal for decision or to vacate or modify the proposed order of a judge when, the Board determines:

(1) that the judge did not properly apply or interpret applicable law, agency rules, written policies provided by staff or prior administrative decisions;

(2) that a prior administrative decision on which the judge relied is incorrect or should be changed; or

(3) that a technical error in a finding of fact should be changed.

(h) [~~(f)~~] If the Board modifies, amends, or changes the recommended proposal for decision or order of the judge, an order shall be prepared reflecting the Board's changes as stated in the record of the meeting and stating the specific reason and legal basis for the changes made according to subsection (g) [~~(e)~~] of this section.

(i) [~~(g)~~] An order of the Board shall be in writing and may be signed by the executive director on behalf of the Board.

(j) [~~(h)~~] A copy of the order shall be mailed to all parties and to the party's last known employer as a nurse.

(k) [~~(i)~~] The decision of the Board is immediate, final, and appealable upon the signing of the written order by the executive director on behalf of the Board where:

(1) the Board finds and states in the order that an imminent peril to the public health, safety, and welfare requires immediate effect of the order; and

(2) the order states it is final and effective on the date rendered.

(l) [~~(j)~~] A motion for rehearing shall not be a prerequisite for appeal of the decision where the order of the Board contains the finding set forth in subsection (k) [~~(i)~~] of this section.

(m) [~~(k)~~] Motions for rehearing under this section are controlled by Texas Government Code §2001.145.

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 May 4, 2012.

TRD-201202281
Jena Abel
Assistant General Counsel
Texas Board of Nursing
Earliest possible date of adoption: June 17, 2012
For further information, please call: (512) 305-6822

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22 TAC §213.33

Introduction. The Texas Board of Nursing (Board) proposes amendments to §213.33 (relating to Factors Considered for Imposition of Penalties/Sanctions). These amendments are proposed under the authority of the Occupations Code §§301.151, 301.304, 301.452, 301.453, 301.4531, and 301.502 and are necessary to: (i) implement the requirements of House Bill (HB) 2975 and Senate Bill (SB) 1360, both enacted by the 82nd Legislature, R.S., effective September 1, 2011; and (ii) clarify the proper application of the mitigating factors enumerated in the existing subsection.

During the past legislative session, the Legislature passed companion bills, HB 2975 and SB 1360, addressing continuing education for physicians and nurses whose practice includes the treatment of tick-borne diseases. Pursuant to the legislation, license holders whose practice includes the treatment of tick-borne diseases are encouraged, but not required, to participate in continuing education relating to the treatment of tick-borne diseases during each two-year licensing period. Under the bills' requirements, the Board is required to adopt rules that establish the content of the continuing education courses and identify the license holders who will be encouraged to complete the continuing education. Also subject to the bills' requirements, continuing education courses that represent an appropriate spectrum of relevant medical clinical treatment relating to tick-borne diseases must qualify as approved continuing education courses for license renewal. The legislation also requires the Board to consider, if relevant, a license holder's participation in a continuing education course meeting the Board's content requirements if the license holder is being investigated by the Board for his/her selection of clinical care for the treatment of tick-borne diseases and the license holder completed the continuing education course not more than two years prior to the beginning of the Board's investigation. In adopting its rules, the legislation also requires the Board to consult and cooperate with the Texas Medical Board, seek input from affected parties, and review relevant courses, including courses that have been approved in other states.

Consistent with the bills' mandate, the proposed amendments to §213.33(c) require an individual's completion of a continuing education course relating to the treatment of tick-borne disease to be considered as a potentially mitigating factor in an eligibility or disciplinary matter involving the individual's selection of clinical care for the treatment of tick-borne diseases, provided the individual completed the course no more than two years before the start of the Board's investigation. This proposed amendment is consistent with the specific requirements of §301.304(c). Proposed amendments implementing the remaining requirements of HB 2975 and SB 1360 are published elsewhere in this issue of the *Texas Register.*

Section 213.33(c) prescribes the factors that must be utilized when determining the appropriate sanction in an eligibility or disciplinary matter. The factors prescribed by the rule must be used in conjunction with the Board's Disciplinary Matrix, and both aggravating factors and mitigating factors must be analyzed in determining the appropriate tier and sanction level of the Disciplinary Matrix for a particular violation or multiple violations of the Nursing Practice Act (Occupations Code Chapter 301) and/or Board rules. The proposed amendments clarify, however, that the mere existence of mitigating factors in a particular matter does not necessary mean that a dismissal of the matter is required or appropriate. Rather, the aggravating and mitigating factors in each matter must be carefully considered. The existence of appropriate mitigating factors may reduce the severity of the sanction in a particular matter, but it does not automatically or necessarily equate to a dismissal of the matter. Any presumption to the contrary is a misapplication of the Board's rule. The proposed amendments are designed to reiterate the appropriate application of the factors enumerated in §213.33(c) and to encourage consistent application of the Board's Disciplinary Matrix in all eligibility and disciplinary matters.

Section-by-Section Overview. Proposed amended §213.33(c)(17) provides that an individual's participation in a continuing education course described in §216.3(f) (relating to Requirements) must be considered when determining the appropriate sanction in a matter where the individual is being investigated by the Board for the individual's selection of clinical care for the treatment of tick-borne diseases, provided the individual completed the course not more than two years before the start of the Board's investigation. Proposed amended §213.33(c)(18) renumbers the paragraphs correctly and states that the presence of mitigating factors does not constitute a requirement of dismissal of a violation of the Nursing Practice Act and/or Board rules.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments are in effect, there will be no additional fiscal implications for state or local government as a result of implementing the proposal.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefits will be the adoption of requirements that: (i) effectuate compliance with HB 2975 and SB 1360; and (ii) clarify the proper application of the Board's existing rule, which should result in well reasoned and consistent decisions in eligibility and disciplinary matters.

First, the legislation requires the Board to consider an individual's completion of a continuing education course relating to the treatment of tick-borne diseases if the individual is being investigated by the Board for his/her selection of clinical care for the treatment of tick-borne diseases, and the individual completed the course not more than two years before the beginning of the Board's investigation. The proposed amendments not only implement this legislative requirement, but also ensure that all appropriate mitigating factors are considered prior to the determination of a particular sanction in an eligibility and disciplinary matter. Further, the proposed amendments are designed to ensure that the Board's disciplinary policies and rules are applied appropriately and consistently by clarifying the proper application of the factors enumerated in §213.33(c).

There are no anticipated economic costs associated with the proposal. The proposed amendments specify an additional factor that must be considered in eligibility and disciplinary matters and clarify the appropriate application of the Board's existing rule. There are no anticipated economic costs associated with the enumeration of factors in §213.33(c), nor are there any anticipated economic costs associated with clarifying the appropriate application of those factors. The Board does not anticipate that any individual's method of compliance with the proposed amendments will be altered due to the proposal. Likewise, the Board does not anticipate that any individual will experience any new or additional associated costs of compliance as a result of the proposed amendments. Finally, any costs that may be incurred in

order to comply with the proposed amendments result from the enactment of the Occupations Code Chapter 301 and are not a result of the adoption, enforcement, or administration of the proposal.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f), the Board has determined that the proposed amendments will not have an adverse economic effect on any small or micro business because there are no anticipated economic costs to any person who is required to comply with the proposal.

Takings Impact Assessment. The Board has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Request for Public Comment. To be considered, written comments on the proposal or any request for a public hearing must be submitted no later than 5:00 p.m. on June 18, 2012, to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.texas.gov or faxed to (512) 305-8101. An additional copy of the comments on the proposal or any request for a public hearing must be simultaneously submitted to Denise Benbow, Practice Consultant, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to denise.benbow@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The amendments are proposed under the Occupations Code §§301.151, 301.304, 301.452, 301.453, 301.4531,and 301.502.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (1) perform its duties and conduct proceedings before the Board; (2) regulate the practice of professional nursing and vocational nursing; (3) establish standards of professional conduct for license holders under Chapter 301; and (4) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 301.304(a) states that, as part of the continuing education requirements under §301.303, a license holder whose practice includes the treatment of tick-borne diseases shall be encouraged to participate, during each two-year licensing period, in continuing education relating to the treatment of tick-borne diseases.

Section 301.304(b) states that the Board shall adopt rules to identify the license holders who are encouraged to complete continuing education under §301.304(a) and establish the content of that continuing education. In adopting rules, the Board shall seek input from affected parties and review relevant courses, including courses that have been approved in other states. Further, rules adopted under §301.304 must provide that continuing education courses representing an appropriate spectrum of relevant medical clinical treatment relating to tick-borne diseases qualify as approved continuing education courses for license renewal.

Section 301.304(c) states that, if relevant, the Board shall consider a license holder's participation in a continuing education course approved under §301.304(b) if: (i) the license holder is being investigated by the Board regarding the license holder's selection of clinical care for the treatment of tick-borne diseases; and (ii) the license holder completed the course not more than two years before the start of the investigation.

Section §301.304(d) states that the Board may adopt other rules to implement §301.304, including rules under §301.303(c) for the approval of education programs and providers.

Section 301.452(a) defines intemperate use as including practicing nursing or being on duty or on call while under the influence of alcohol or drugs.

Section 301.452(b) provides that a person is subject to denial of a license or to disciplinary action under Chapter 301, Subchapter J for: (i) a violation of Chapter 301, a rule or regulation not inconsistent with Chapter 301, or an order issued under Chapter 301; (ii) fraud or deceit in procuring or attempting to procure a license to practice professional nursing or vocational nursing; (iii) a conviction for, or placement on deferred adjudication community supervision or deferred disposition for, a felony or for a misdemeanor involving moral turpitude; (iv) conduct that results in the revocation of probation imposed because of conviction for a felony or for a misdemeanor involving moral turpitude; (v) use of a nursing license, diploma, or permit, or the transcript of such a document, that has been fraudulently purchased, issued, counterfeited, or materially altered; (vi) impersonating or acting as a proxy for another person in the licensing examination required under §301.253 or §301.255; (vii) directly or indirectly aiding or abetting an unlicensed person in connection with the unauthorized practice of nursing; (viii) revocation, suspension, or denial of, or any other action relating to, the person's license or privilege to practice nursing in another jurisdiction; (ix) intemperate use of alcohol or drugs that the Board determines endangers or could endanger a patient; (x) unprofessional or dishonorable conduct that, in the Board's opinion, is likely to deceive, defraud, or injure a patient or the public; (xi) adjudication of mental incompetency; (xii) lack of fitness to practice because of a mental or physical health condition that could result in injury to a patient or the public; or (xiii) failure to care adequately for a patient or to conform to the minimum standards of acceptable nursing practice in a manner that, in the Board's opinion, exposes a patient or other person unnecessarily to risk of harm.

Section 301.452(c) states that the Board may refuse to admit a person to a licensing examination for a ground described under §301.452(b).

Section 301.452(d) states that the Board by rule shall establish guidelines to ensure that any arrest information, in particular information on arrests in which criminal action was not proven or charges were not filed or adjudicated, that is received by the Board under §301.452 is used consistently, fairly, and only to the extent the underlying conduct relates to the practice of nursing.

Section 301.453(a) states that, if the Board determines that a person has committed an act listed in §301.452(b), the Board shall enter an order imposing one or more of the following: (i) denial of the person's application for a license, license renewal, or temporary permit; (ii) issuance of a written warning; (iii) administration of a public reprimand; (iv) limitation or restriction of the person's license, including: (A) limiting to or excluding from the person's practice one or more specified activities of nursing; or (B) stipulating periodic Board review; (v) suspension of the

person's license; (vi) revocation of the person's license; or (vii) assessment of a fine.

Section 301.453(b) states that, in addition to or instead of an action under §301.453(a), the Board, by order, may require the person to: (i) submit to care, counseling, or treatment by a health provider designated by the Board as a condition for the issuance or renewal of a license; (ii) participate in a program of education or counseling prescribed by the Board, including a program of remedial education; (iii) practice for a specified period under the direction of a registered nurse or vocational nurse designated by the Board; or (iv) perform public service the Board considers appropriate.

Section 301.453(c) states that the Board may probate any penalty imposed on a nurse and may accept the voluntary surrender of a license. Further, the Board may not reinstate a surrendered license unless it determines that the person is competent to resume practice.

Section 301.453(d) states that, if the Board suspends, revokes, or accepts surrender of a license, the Board may impose conditions for reinstatement that the person must satisfy before the Board may issue an unrestricted license.

Section 301.4531(a) states that the Board by rule shall adopt a schedule of the disciplinary sanctions that the Board may impose under Chapter 301. In adopting the schedule of sanctions, the Board shall ensure that the severity of the sanction imposed is appropriate to the type of violation or conduct that is the basis for disciplinary action.

Section 301.4531(b) states that, in determining the appropriate disciplinary action, including the amount of any administrative penalty to assess, the Board shall consider: (i) whether the person: (A) is being disciplined for multiple violations of either Chapter 301 or a rule or order adopted under Chapter 301; or (B) has previously been the subject of disciplinary action by the Board and has previously complied with Board rules and Chapter 301; (ii) the seriousness of the violation; (iii) the threat to public safety; and (iv) any mitigating factors.

Section 301.4531(c) states that, in the case of a person described by: (i) §301.4531(b)(1)(A), the Board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a single violation; and (ii) §301.4531(b)(1)(B), the Board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a person who has not previously been the subject of disciplinary action by the Board.

Section 301.502(a) states that the administrative penalty may not exceed $5,000 for each violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

Section 301.502(b) states that the amount of the penalty shall be based on: (i) the seriousness of the violation, including: (A) the nature, circumstances, extent, and gravity of any prohibited acts; and (B) the hazard or potential hazard created to the health, safety, or economic welfare of the public; (ii) the economic harm to property or the environment caused by the violation; (iii) the history of previous violations; (iv) the amount necessary to deter a future violation; (v) efforts made to correct the violation; and (vi) any other matter that justice may require.

Cross Reference to Statute. The following statutes are affected by this proposal: Occupations Code §§301.151, 301.304, 301.452, 301.453, 301.4531, 301.502.

§213.33. Factors Considered for Imposition of Penalties/Sanctions.

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

(c) The Board and SOAH shall consider the following factors in conjunction with the Disciplinary Matrix when determining the appropriate penalty/sanction in disciplinary and eligibility matters. The following factors shall be analyzed in determining the tier and sanction level of the Disciplinary Matrix for a particular violation or multiple violations of the Nursing Practice Act (NPA) and Board rules:

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

(16) evidence of good professional character as set forth and required by §213.27 of this chapter (relating to Good Professional Character); [~~and~~]

(17) participation in a continuing education course described in §216.3(f) of this title (relating to Requirements) completed not more than two years before the start of the Board's investigation, if the nurse is being investigated by the Board regarding the nurse's selection of clinical care for the treatment of tick-borne diseases; and [~~any other matter that justice may require.~~]

(18) any other matter that justice may require. The presence of mitigating factors does not constitute a requirement of dismissal of a violation of the NPA and/or Board rules.

(d) - (m) (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 May 7, 2012.

TRD-201202296
Jena Abel
Assistant General Counsel
Texas Board of Nursing
Earliest possible date of adoption: June 17, 2012
For further information, please call: (512) 305-6822

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CHAPTER 216. CONTINUING COMPETENCY

22 TAC §216.3

Introduction. The Texas Board of Nursing (Board) proposes amendments to §216.3 (relating to Requirements). These amendments are proposed under the authority of the Occupations Code §§301.151, 301.303, and 301.304 and are necessary to implement the requirements of House Bill (HB) 2975 and Senate Bill (SB) 1360, both enacted by the 82nd Legislature, R.S., effective September 1, 2011.

During the past legislative session, the Legislature passed companion bills, HB 2975 and SB 1360, addressing continuing education for physicians and nurses whose practice includes the treatment of tick-borne diseases. Pursuant to the legislation, license holders whose practice includes the treatment of tick-borne diseases are encouraged, but not required, to participate in continuing education relating to the treatment of tick-borne diseases during each two-year licensing period. Under the bills' requirements, the Board is required to adopt rules that establish the content of the continuing education courses and identify the

license holders who will be encouraged to complete the continuing education. Also subject to the bills' requirements, continuing education courses that represent an appropriate spectrum of relevant medical clinical treatment relating to tick-borne diseases must qualify as approved continuing education courses for license renewal. The legislation also requires the Board to consider, if relevant, a license holder's participation in a continuing education course meeting the Board's content requirements if the license holder is being investigated by the Board for his/her selection of clinical care for the treatment of tick-borne diseases and the license holder completed the continuing education course not more than two years prior to the beginning of the Board's investigation. In adopting its rules, the legislation also requires the Board to consult and cooperate with the Texas Medical Board, seek input from affected parties, and review relevant courses, including courses that have been approved in other states.

Collaboration

The Board closely monitored the Texas Medical Board's implementation of HB 2975 and SB 1360 and communicated with the Medical Board routinely regarding its progress on the proposed rules. The Texas Medical Board formally proposed amendments to implement the requirements of the legislation in the March 9, 2012, issue of the *Texas Register* (37 TexReg 1639). In an effort to elicit stakeholder input prior to proposing its own rules, the Board provided copies of the rules proposed by the Texas Medical Board to several interested APRN advisory committee members and organizations and requested comment and feedback on the proposed rules. In response, the Board received only one written comment from an APRN, who supported the implementation of the legislation and reiterated that it is within the scope of a nurse practitioner to treat diseases for which she/he has specialized training. Further, because there are alternative standards of care for the treatment of tick-borne diseases, the APRN stated that it makes sense that patients should be allowed to choose their treatment protocol based upon an informed choice, just as they do with many other diseases. The Board also reviewed a variety of educational courses related to the treatment of tick-borne diseases and attempted to locate other nursing board's rules and regulations related to tick-borne diseases. The Board did not locate any other regulations related to tick-borne diseases, but did find several state and federal advisories related to the prevention, detection, and treatment of tick-borne diseases.

Proposed Amendments

The proposed amendments apply the legislation to advanced practice registered nurses (APRNs) whose practice includes the treatment of tick-borne diseases. Although registered nurses or vocational nurses may occasionally administer medications for the treatment of tick-borne diseases pursuant to a physician's order, APRNs are more likely to be involved in the regular diagnosis and treatment of individuals suffering from tick-borne diseases as part of their ongoing practice. Further, since the legislation also affects physicians whose practice includes the treatment of tick-borne diseases, the proposal is intended to apply the legislation consistently among APRNs and their collaborating physicians. As such, and consistent with the legislation, APRNs whose practice includes the treatment of tick-borne diseases are encouraged to participate in continuing education relating to the treatment of tick-borne diseases. Further, the proposal requires that the continuing education courses contain information relevant to the treatment of the disease within the role and population focus area applicable to the APRN. This requirement is necessary to maintain the APRN's appropriate scope of practice and to ensure that APRNs maintain an expertise that is relevant and applicable to their individual area of practice. This requirement is also consistent with the Board's current rules regarding a nurse's continuing competency. The proposed amendments, pursuant to the legislation's mandate, further permit continuing education courses representing a spectrum of relevant medical clinical treatment relating to tick-borne disease to qualify as approved continuing education courses. Finally, in recognizing that APRNs will consult and collaborate with physicians regarding the treatment of tick-borne diseases, the proposed amendments permit APRNs to receive credit for the completion of continuing medical education related to the treatment of tick-borne diseases, provided the continuing medical education contains information that is appropriate and relevant to the role and population focus area of the APRN. This requirement provides APRNs the opportunity to explore additional sources of information related to the treatment of tick-borne diseases, while ensuring that the information appropriately relates to the APRN's scope of practice. Other proposed amendments implementing the remaining requirements of HB 2975 and SB 1360 are published elsewhere in this edition of the *Texas Register.*

Section-by-Section Overview. Proposed amendment §216.3(f) states that an APRN, whose practice includes the treatment of tick-borne diseases, is encouraged to participate in continuing education relating to the treatment of tick-borne diseases. The continuing education course(s) should contain information relevant to treatment of the disease within the role and population focus area applicable to the APRN and may represent a spectrum of relevant medical clinical treatment relating to tick-borne disease. Further, completion of continuing medical education in the treatment of tick-borne disease that meets the requirements of §216.3(f) shall be credited as continuing education under Chapter 216.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments are in effect, there will be no additional fiscal implications for state or local government as a result of implementing the proposal.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefits will be the adoption of requirements that: (i) implement HB 2975 and SB 1360; and (ii) encourage APRNs whose practice includes the treatment of tick-borne diseases to further their nursing expertise in their area of practice by completing continuing education related to the treatment of tick-borne diseases, thereby resulting in a higher quality of care for their patients.

Potential Costs of Compliance

The proposed amendments encourage APRNs whose practice includes the treatment of tick-borne diseases to participate in continuing education relating to treatment of tick-borne diseases. The proposed amendments, however, do not require APRNs to do so. For those APRNs who choose to do so, there may be associated costs of compliance. The estimated compliance costs will vary significantly among individuals, however, depending upon the type of continuing education the individual completes. Further, educational courses will vary significantly from one another, depending upon several factors, including the length of the course; the type of the course; the location of the course; and the content of the course. Based upon a sampling

of continuing education courses relating to tick-borne diseases, the Board estimates that the cost of a continuing education course could range from $0 to several hundred dollars. This estimate is based upon the following information. Several continuing education courses were located in Massachusetts, North Carolina, Minnesota, and Oklahoma. These courses included a variety of content and credit hours, ranging from .75 credit hours to 7 credit hours, depending upon the type of course. Further, these courses ranged from 1 hour to 8 hours in length. Several of these courses were free and were offered as webinars or online classes, while others were offered as all day seminars. The Board also located an online case study course, with each case study credited at .25 credit hours. Although proposed amended §216.3 prescribes the criteria that a continuing education course must meet, the proposed amendment does not prescribe the specific educational course that an individual must complete. As such, each individual is free to choose the most efficient and economical manner of completing the continuing education course. Further, each individual has the information necessary to estimate his/her own compliance costs. Any other costs to comply with the proposed amendments result from the enactment of the Occupations Code Chapter 301 and are not a result of the adoption, enforcement, or administration of the proposal.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. The Government Code §2006.002(c) and (f) require that, if a proposed rule may have an economic impact on small businesses or micro businesses, state agencies must prepare, as part of the rulemaking process, an economic impact statement that assesses the potential impact of the proposed rule on these businesses and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule.

The Government Code §2006.001(1) defines a micro business as a legal entity, including a corporation, partnership, or sole proprietorship that: (i) is formed for the purpose of making a profit; (ii) is independently owned and operated; and (iii) has not more than 20 employees. The Government Code §2006.001(2) defines a small business as a legal entity, including a corporation, partnership, or sole proprietorship, that: (i) is formed for the purpose of making a profit; (ii) is independently owned and operated; and (iii) has fewer than 100 employees or less than $6 million in annual gross receipts. Each of the elements in §2006.001(1) and (2) must be met in order for an entity to qualify as a micro business or small business.

As required by the Government Code §2006.002(c) and (f), the Board has determined that the proposed amendments will not have an adverse economic effect on any individual, Board regulated entity, or other entity required to comply with the proposal because no individual, Board regulated entity, or other entity required to comply with the proposal meets the definition of a small or micro business under the Government Code §2006.001(1) or (2). The only entities subject to or affected by the proposal are individual licensees. These individuals do not qualify as a micro business or small business under the Government Code §2006.001(1) or (2). Therefore, in accordance with the Government Code §2006.002(c) and (f), the Board is not required to prepare a regulatory flexibility analysis.

Takings Impact Assessment. The Board has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Request for Public Comment. To be considered, written comments on the proposal or any request for a public hearing must be submitted no later than 5:00 p.m. on June 18, 2012, to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.texas.gov or faxed to (512) 305-8101. An additional copy of the comments on the proposal or any request for a public hearing must be simultaneously submitted to Denise Benbow, Practice Consultant, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to denise.benbow@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The amendments are proposed under the Occupations Code §§301.151, 301.303, and 301.304.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (1) perform its duties and conduct proceedings before the Board; (2) regulate the practice of professional nursing and vocational nursing; (3) establish standards of professional conduct for license holders under Chapter 301; and (4) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 301.303(a) provides that the Board may recognize, prepare, or implement continuing competency programs for license holders under Chapter 301 and may require participation in continuing competency programs as a condition of renewal of a license. The programs may allow a license holder to demonstrate competency through various methods, including: (i) completion of targeted continuing education programs; and (ii) consideration of a license holder's professional portfolio, including certifications held by the license holder.

Section 301.303(b) states that the Board may not require participation in more than a total of 20 hours of continuing education in a two-year licensing period.

Section 301.303(c) states that, if the Board requires participation in continuing education programs as a condition of license renewal, the Board by rule shall establish a system for the approval of programs and providers of continuing education.

Section 301.303(e) states that the Board may adopt other rules as necessary to implement §301.303.

Section 301.303(f) provides that the Board may assess each program and provider under §301.303 a fee in an amount that is reasonable and necessary to defray the costs incurred in approving programs and providers.

Section 301.303(g) states that the Board by rule may establish guidelines for targeted continuing education under Chapter 301. The rules adopted under §301.303(g) must address: (i) the nurses who are required to complete the targeted continuing education program; (ii) the type of courses that satisfy the targeted continuing education requirement; (iii) the time in which a nurse is required to complete the targeted continuing education; (iv) the frequency with which a nurse is required to meet the targeted continuing education requirement; and (v) any other requirement considered necessary by the Board.

Section 301.304(a) states that, as part of the continuing education requirements under §301.303, a license holder whose prac-

tice includes the treatment of tick-borne diseases shall be encouraged to participate, during each two-year licensing period, in continuing education relating to the treatment of tick-borne diseases.

Section 301.304(b) states that the Board shall adopt rules to identify the license holders who are encouraged to complete continuing education under §301.304(a) and establish the content of that continuing education. In adopting rules, the Board shall seek input from affected parties and review relevant courses, including courses that have been approved in other states. Further, rules adopted under §301.304 must provide that continuing education courses representing an appropriate spectrum of relevant medical clinical treatment relating to tick-borne diseases qualify as approved continuing education courses for license renewal.

Section 301.304(c) states that, if relevant, the Board shall consider a license holder's participation in a continuing education course approved under §301.304(b) if: (i) the license holder is being investigated by the Board regarding the license holder's selection of clinical care for the treatment of tick-borne diseases; and (ii) the license holder completed the course not more than two years before the start of the investigation.

Section §301.304(d) states that the Board may adopt other rules to implement §301.304, including rules under §301.303(c) for the approval of education programs and providers.

Cross Reference to Statute. The following statutes are affected by this proposal: Occupations Code §§301.151, 301.303, and 301.304.

§216.3. Requirements.

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

(f) Tick-Borne Diseases. An APRN, whose practice includes the treatment of tick-borne diseases, is encouraged to participate in continuing education relating to the treatment of tick-borne diseases. The continuing education course(s) should contain information relevant to treatment of the disease within the role and population focus area applicable to the APRN and may represent a spectrum of relevant medical clinical treatment relating to tick-borne disease. Completion of continuing medical education in the treatment of tick-borne disease that meets the requirements of this subsection shall be credited as continuing education under 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 May 7, 2012.

TRD-201202294
Jena Abel
Assistant General Counsel
Texas Board of Nursing
Earliest possible date of adoption: June 17, 2012
For further information, please call: (512) 305-6822

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER N. MIGRATORY GAME BIRD PROCLAMATION

31 TAC §§65.315, 65.318 - 65.321

The Texas Parks and Wildlife Department (the department) proposes amendments to §§65.315 and 65.318 - 65.321, concerning the Migratory Game Bird Proclamation. The United States Fish and Wildlife Service (Service) issues annual frameworks for the hunting of migratory game birds in the United States. Regulations adopted by individual states may be more restrictive than the federal frameworks, but may not be less restrictive. Responsibility for establishing seasons, bag limits, means, methods, and devices for harvesting migratory game birds within Service frameworks is delegated to the Texas Parks and Wildlife Commission (Commission) under Parks and Wildlife Code, Chapter 64, Subchapter C. Parks and Wildlife Code, §64.022, authorizes the Executive Director, after notification of the Chairman of the Commission, to engage in rulemaking. At present, the Service has not issued the annual regulatory frameworks for migratory game birds. Typically, the Service issues the preliminary early-season (dove, teal, snipe, rails, gallinules) frameworks in late June and the preliminary late-season (ducks, geese, cranes) frameworks in early August. The Service typically issues the final early-season frameworks in early August and the final late-season frameworks in late September. Because no Commission meetings occur between May and August, the early-season regulations are adopted by the Executive Director in early July.

The proposed amendment to §65.315, concerning Open Seasons and Bag and Possession Limits--Early Season, would retain the season structure and bag limits from last year and adjust the season dates for early-season species of migratory game birds other than dove to account for calendar shift (i.e., to ensure that seasons open on the desired day of the week, since dates from a previous year do not fall on the same days in following years). The proposed amendment would implement a structure for dove seasons in the North and Central zones that is slightly different from years past, ending the first segment on a weekday and the second segment on a Sunday. The proposed change is intended to offer an additional weekend of hunting in January.

The proposed amendment to §65.315 also would implement a 16-day statewide teal season to run from September 15 - 30, 2012, which must be approved by the Service before it can be implemented. If the Service does not approve a 16-day season, the department would instead adopt a 9-day season to run from September 22 - 30, 2012. The department cautions that the federal frameworks could close the season on teal if population data warrant. By federal law, the number of days in the September teal season count against the 107 days of total hunting opportunity allowed for ducks, coots, and mergansers. In addition, the proposed amendment would implement a 16-day early Canada goose season in the Eastern zone to run from September 15 - 30, 2012.

The proposed amendment to §65.318, concerning Open Seasons and Bag and Possession Limits--Late Season, would retain the season structure and bag limits from last year and adjust the season dates to account for calendar shift.

The proposed amendment to §65.319, concerning Extended Falconry Season--Early Season Species, would adjust season dates to reflect calendar shift and clarifies that white-tipped doves can be taken.

The proposed amendment to §65.320, concerning Extended Falconry Season--Late Season Species, would adjust season dates to reflect calendar shift.

The proposed amendment to §65.321, concerning Special Management Provisions, would adjust the dates for the conservation season on light geese to account for calendar shift.

The proposed amendments are generally necessary to implement commission policy to provide the greatest hunter opportunity possible, consistent with hunter and landowner preference for starting dates and segment lengths, under frameworks issued by the Service. The Service has not issued regulatory frameworks for the 2012-2013 hunting seasons for migratory game birds; thus, the department cautions that the proposed regulations are tentative and may change significantly, depending on federal actions prior to the release of the early-season frameworks in late June and the late-season frameworks in August. However, it is the policy of the commission to adopt the most liberal provisions possible, consistent with hunter preference, under the Service frameworks in order to provide maximum hunter opportunity.

Clayton Wolf, Wildlife Division Director, has determined that for the first five years that the amendments as proposed are in effect, there will be no additional fiscal implications to state or local governments as a result of enforcing or administering the rules as proposed.

Mr. Wolf also has determined that for each of the first five years the proposed rules are in effect, the public benefit anticipated as a result of enforcing the rules as proposed will be the department's discharge of its statutory obligation to manage and conserve the state's populations of migratory game birds for the use and enjoyment of the public, consistent with the principles of sound biological management.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. The department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that the proposed rules regulate various aspects of recreational license privileges that allow individual persons to pursue and harvest migratory game bird resources in this state and therefore do not directly affect small businesses or micro-businesses. Therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

There also will be no adverse economic effect on persons required to comply with the rules as proposed.

The department has not filed a local impact statement with the Texas Workforce Commission as required by Government Code, §2001.022, as the department 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 2008, as a result of the proposed rules.

Comments on the proposed rules may be submitted to Robert Macdonald, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4775 or 1-800-792-1112 (e-mail: robert.macdonald@tpwd.state.tx.us).

The amendments are proposed under Parks and Wildlife Code, Chapter 64, which authorizes the Commission and the Executive Director to provide the open season and means, methods, and devices for the hunting and possessing of migratory game birds.

The proposed amendments affect Parks and Wildlife Code, Chapter 64.

§65.315. Open Seasons and Bag and Possession Limits--Early Season.

(a) Rails.

(1) Dates: September 15 - 30, 2012 and November 3 - December 26, 2012 [~~September 10 - 25, 2011 and November 5 - December 28, 2011~~].

(2) Daily bag and possession limits:

(A) king and clapper rails: 15 in the aggregate per day; 30 in the aggregate in possession.

(B) sora and Virginia rails: 25 in the aggregate per day; 25 in the aggregate in possession.

(b) Dove seasons.

(1) North Zone.

(A) Dates: September 1 - October 24, 2012 and December 22, 2012 - January 6, 2013 [~~September 1 - October 23, 2011 and December 23, 2011 - January 8, 2012~~].

(B) Daily bag limit: 15 mourning doves, white-winged doves, and white-tipped (white-fronted) doves in the aggregate, including no more than two white-tipped doves per day.

(C) Possession limit: 30 mourning doves, white-winged doves, and white-tipped doves in the aggregate, including no more than four white-tipped doves in possession.

(2) Central Zone.

(A) Dates: September 1 - October 24, 2012 and December 22, 2012 - January 6, 2013 [~~September 1 - October 23, 2011 and December 23, 2011 - January 8, 2012~~].

(B) Daily bag limit: 15 mourning doves, white-winged doves, and white-tipped (white-fronted) doves in the aggregate, including no more than two white-tipped doves per day.

(C) Possession limit: 30 mourning doves, white-winged doves, and white-tipped doves in the aggregate, including no more than four white-tipped doves in possession.

(3) South Zone.

(A) Dates: Except in the special white-winged dove area as defined in §65.314 of this title (relating to Zones and Boundaries for Early Season Species), September 21 - October 28, 2012 and December 22, 2012 - January 22, 2013 [~~September 23 - October 30, 2011 and December 23, 2011 - January 23, 2012~~].

(B) Daily bag limit: 15 mourning doves, white-winged doves, and white-tipped (white-fronted) doves in the aggregate, including no more than two white-tipped doves per day.

(C) Possession limit: 30 mourning doves, white-winged doves, and white-tipped doves in the aggregate, including no more than four white-tipped doves in possession.

(4) Special white-winged dove area.

(A) Dates: September 1, 2, 8, and 9, 2012 [~~September 3, 4, 10, and 11, 2011~~].

(i) Daily bag limit: 15 white-winged doves, mourning doves, and white-tipped (white-fronted) doves, in the aggregate to include no more than four mourning doves and two white-tipped doves per day.

(ii) Possession limit: 30 white-winged doves, mourning doves, and white-tipped doves in the aggregate to include no more than eight mourning doves and four white-tipped doves in possession.

(B) Dates: September 21 - October 28, 2012 and December 22, 2012 - January 18, 2013 [~~September 23 - October 30, 2011 and December 23, 2011 - January 19, 2012~~].

(i) Daily bag limit: 15 white-winged doves, mourning doves, and white-tipped (white-fronted) doves, in the aggregate to include no more than two white-tipped doves per day;

(ii) Possession limit: 30 white-winged doves, mourning doves, and white-tipped doves in the aggregate to include no more than four white-tipped doves in possession.

(c) Gallinules.

(1) Dates: September 15 - 30, 2012 and November 3 - December 26, 2012 [~~September 10 - 25, 2011 and November 5 - December 28, 2011~~].

(2) Daily bag and possession limits: 15 in the aggregate per day; 30 in the aggregate in possession.

(d) September teal-only season.

(1) Dates: September 15 - 30, 2012 [~~September 10 - 25, 2011~~].

(2) Daily bag and possession limits: four in the aggregate per day; eight in the aggregate in possession.

(e) Red-billed pigeons, and band-tailed pigeons. No open season.

(f) Shorebirds. No open season.

(g) Woodcock: December 18, 2012 - January 31, 2013 [~~December 18, 2011 - January 31, 2012~~]. The daily bag limit is three. The possession limit is six.

(h) Wilson's snipe (Common snipe): November 3, 2012 - February 17, 2013 [~~November 5, 2011 - February 19, 2012~~]. The daily bag limit is eight. The possession limit is 16.

(i) Canada geese: September 15 - 30, 2012 [~~September 10 - 25, 2011~~] in the Eastern Goose Zone as defined in §65.317(b) of this title (relating to Zones and Boundaries for Late Season Species). The daily bag limit is three. The possession limit is six.

§65.318. Open Seasons and Bag and Possession Limits--Late Season.

Except as specifically provided in this section, the possession limit for all species listed in this section shall be twice the daily bag limit.

(1) Ducks, mergansers, and coots. The daily bag limit for ducks is six, which may include no more than five mallards (only two of which may be hens); three wood ducks; two scaup (lesser scaup and greater scaup in the aggregate); two redheads; two pintail; one canvasback; and one "dusky" duck (mottled duck, Mexican like duck, black duck and their hybrids) during the seasons established in subparagraphs (A)(ii), (B)(ii), and (C)(ii) of this paragraph. For all other species not listed, the bag limit shall be six. The daily bag limit for coots is 15. The daily bag limit for mergansers is five, which may include no more than two hooded mergansers.

(A) High Plains Mallard Management Unit:

(i) all species other than "dusky ducks": October 27 - 28, 2012 and November 2, 2012 - January 27, 2013 [~~October 29 - 30, 2011 and November 4, 2011 - January 29, 2012~~].

(ii) "dusky ducks": November 5, 2012 - January 27, 2013 [~~November 7, 2011 - January 29, 2012~~].

(B) North Zone:

(i) all species other than "dusky ducks": November 3 - 25, 2012 and December 8, 2012 - January 27, 2013 [~~November 5 - 27, 2011 and December 10, 2011 - January 29, 2012~~].

(ii) "dusky ducks": November 8 - 25, 2012 and December 8, 2012 - January 27, 2013 [~~November 10 - 27, 2011 and December 10, 2011 - January 29, 2012~~].

(C) South Zone:

(i) all species other than "dusky ducks": November 3 - 25, 2012 and December 8, 2012 - January 27, 2013 [~~November 5 - 27, 2011 and December 10, 2011 - January 29, 2012~~].

(ii) "dusky ducks": November 8 - 25, 2012 and December 8, 2012 - January 27, 2013 [~~November 10 - 27, 2011 and December 10, 2011 - January 29, 2012~~].

(2) Geese.

(A) Western Zone.

(i) Light geese: November 3, 2012 - February 3, 2013 [~~November 5, 2011 - February 5, 2012~~]. The daily bag limit for light geese is 20, and there is no possession limit.

(ii) Dark geese: November 3, 2012 - February 3, 2013 [~~November 5, 2011 - February 5, 2012~~]. The daily bag limit for dark geese is five, to include not more than one white-fronted goose.

(B) Eastern Zone.

(i) Light geese: November 3, 2012 - January 27, 2013 [~~November 5, 2011 - January 29, 2012~~]. The daily bag limit for light geese is 20, and there is no possession limit.

(ii) Dark geese:

(I) White-fronted geese: November 3, 2012 - January 13, 2013 [~~November 5, 2011 - January 15, 2012~~]. The daily bag limit for white-fronted geese is two.

(II) Canada geese: November 3, 2012 - January 27, 2013 [~~November 5, 2011 - January 29, 2012~~]. The daily bag limit for Canada geese is three.

(3) Sandhill cranes. A free permit is required of any person to hunt sandhill cranes in areas where an open season is provided under this proclamation. Permits will be issued on an impartial basis with no limitation on the number of permits that may be issued.

(A) Zone A: November 3, 2012 - February 3, 2013 [~~November 5, 2011 - February 5, 2012~~]. The daily bag limit is three. The possession limit is six.

(B) Zone B: November 23, 2012 - February 3, 2013 [~~November 25, 2011 - February 5, 2012~~]. The daily bag limit is three. The possession limit is six.

(C) Zone C: December 22, 2012 - January 27, 2013 [~~December 24, 2011 - January 29, 2012~~]. The daily bag limit is two. The possession limit is four.

(4) Special Youth-Only Season. There shall be a special youth-only waterfowl season during which the hunting, taking, and possession of geese, ducks, mergansers, and coots is restricted to licensed hunters 15 years of age and younger accompanied by a person 18 years of age or older, except for persons hunting by means of falconry under the provisions of §65.320 of this chapter (relating to Extended Falconry Season--Late Season Species). Bag and possession limits in any given zone during the season established by this paragraph shall be as provided for that zone by paragraphs (1) and (2) of this section. Season dates are as follows:

(A) High Plains Mallard Management Unit: October 20 - 21, 2012 [~~October 22 - 23, 2011~~];

(B) North Zone: October 27 - 28, 2012 [~~October 29 - 30, 2011~~]; and

(C) South Zone: October 27 - 28, 2012 [~~October 29 - 30, 2011~~].

§65.319. Extended Falconry Season--Early Season Species.

(a) It is lawful to take the species of migratory birds listed in this section by means of falconry during the following Extended Falconry Seasons:

(1) mourning doves, [~~and~~] white-winged doves, and white-tipped doves: November 15 - December 21, 2012 [~~November 16 - December 22, 2011~~].

(2) rails and gallinules: January 28 - February 11, 2013 [~~January 30 - February 13, 2012~~].

(3) woodcock: January 28 - February 11, 2013 [~~January 30 - February 13, 2012~~].

(b) The daily bag and possession limits for migratory game birds under this section shall not exceed three and six birds respectively, singly or in the aggregate.

§65.320. Extended Falconry Season--Late Season Species.

It is lawful to take the species of migratory birds listed in this section by means of falconry during the following Extended Falconry Seasons.

(1) Ducks, coots, and mergansers:

(A) High Plains Mallard Management Unit: no extended season;

(B) North Duck Zone: January 28 - February 11, 2013 [~~January 30 - February 13, 2012~~];

(C) South Duck Zone: January 28 - February 11, 2013 [~~January 30 - February 13, 2012~~].

(2) The daily bag and possession limits for migratory game birds under this section shall not exceed three and six birds, respectively, singly or in the aggregate.

§65.321. Special Management Provisions.

The provisions of paragraphs (1) - (3) of this section apply only to the hunting of light geese. All provisions of this subchapter continue in effect unless specifically provided otherwise in this section; however, where this section conflicts with the provisions of this subchapter, this section prevails.

(1) Means and methods. The following means and methods are lawful during the time periods set forth in paragraph (4) of this section:

(A) shotguns capable of holding more than three shells; and

(B) electronic calling devices.

(2) Possession. During the time periods set forth in paragraph (4) of this section:

(A) there shall be no bag or possession limits; and

(B) the provisions of §65.312 of this title (relating to Possession of Migratory Game Birds) do not apply; and

(C) a person may give, leave, receive, or possess legally taken light geese or their parts, provided the birds are accompanied by a wildlife resource document (WRD) from the person who killed the birds. A properly executed WRD satisfies the tagging requirements of 50 CFR Part 20. The WRD is not required if the possessor lawfully killed the birds; the birds are transferred at the personal residence of the donor or donee; or the possessor also possesses a valid hunting license, a valid waterfowl stamp, and is HIP certified. The WRD shall accompany the birds until the birds reach their final destination, and must contain the following information:

(i) the name, signature, address, and hunting license number of the person who killed the birds;

(ii) the name of the person receiving the birds;

(iii) the number and species of birds or parts;

(iv) the date the birds were killed; and

(v) the location where the birds were killed (e.g., name of ranch; area; lake, bay, or stream; county).

(3) Shooting hours. During the time periods set forth in paragraph (4) of this section, shooting hours are from one half-hour before sunrise until one half-hour after sunset.

(4) Special Light Goose Conservation Period.

(A) From January 28 - March 24, 2013 [~~January 30 - March 25, 2012~~], the take of light geese is lawful in Eastern Zone as defined in §65.317 of this title (relating to Zones and Boundaries for Late Season Species).

(B) From February 4 - March 24, 2013 [~~February 6 - March 25, 2012~~], the take of light geese is lawful in the Western Zone as defined in §65.317 of this title.

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 May 2, 2012.

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Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: June 17, 2012
For further information, please call: (512) 389-4775

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER O. STATE SALES AND USE TAX

34 TAC §3.346

The Comptroller of Public Accounts proposes amendments to §3.346, concerning use tax. The agency has determined that amendments to this section effective February 9, 2011 relating to direct pay permit holders and local tax allocations are inconsistent with the Tax Code and do not clearly state agency policy. Accordingly, subsections (f) and (g) are updated to reflect the correct information and a cross reference is added to subsection (b)(2) of this section.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by clarifying the applicability and accrual of the use tax. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

This amendment implements Tax Code, §§321.205(c) and (d), 322.105(c), and 323.205(c) and (d).

§3.346. Use Tax.

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

(1) Storage--The keeping or retention of tangible personal property in Texas for any purpose other than:

(A) transporting property out of state to a location outside Texas for use solely outside of Texas; or

(B) processing, fabricating, or manufacturing of tangible personal property into other property or attaching the tangible personal property to or incorporating the tangible personal property into other property that will be transported outside Texas for use solely outside of Texas.

(2) Use--The exercise of a right or power incidental to the ownership of tangible personal property over tangible personal property, including tangible personal property other than printed material that has been processed, fabricated, or manufactured into other property or attached to or incorporated into other property transported into this state. With respect to a taxable service, use means the derivation in this state of direct or indirect benefit from the service. The term does not include the following:

(A) the sale of tangible personal property or a taxable service in the regular course of business;

(B) the transfer of a taxable service as an integral part of the transfer of tangible personal property in the regular course of business;

(C) the transfer of tangible personal property as an integral part of the transfer of a taxable service in the regular course of business;

(D) the exercise of a right or power over tangible personal property for the purpose of subsequently transporting the property outside Texas for use solely outside of Texas; or

(E) the exercise of a right or power over tangible personal property for the purpose of processing, fabricating, or manufacturing of tangible personal property into other property or attaching the tangible personal property to or incorporating the tangible personal property into other property that will be transported outside Texas for use solely outside of Texas.

(3) Use tax--A nonrecurring tax that is complementary to the sales tax and is imposed on the storage, use, or other consumption of a taxable item in this state.

(b) Imposition of the use tax.

(1) Out-of-state purchases. Use tax is due on taxable items purchased out of state that are stored, used or consumed in Texas.

(2) Direct payment permit purchases. Use tax is due on taxable items purchased under a direct payment permit that are stored, used or consumed in Texas. See §3.288 of this title (relating to Direct Payment Procedures and Qualifications) and subsection (g) of this section.

(3) Construction contracts.

(A) Use tax is due on taxable items used, consumed or incorporated into real property in Texas by a contractor in the performance of a lump-sum contract for construction of a new improvement to realty or for repair and remodeling of a residential improvement to realty. See §3.291 of this title (relating to Contractors).

(B) Use tax is due on taxable items used or consumed in Texas by a person in the performance of a lump sum or separated contract for nonresidential repair or remodeling, or in the performance of a separated contract for construction of a new improvement to realty or for repair or remodeling of a residential improvement to realty. See §3.357 of this title (relating to Nonresidential Real Property Repair, Remodeling, and Restoration; Real Property Maintenance) and §3.291 of this title.

(4) Shipments of taxable items from out-of-state suppliers and sellers to purchaser's designees. Use tax is due on taxable items, such as gifts, catalogs and promotional goods purchased outside this state by a purchaser engaged in business in this state if the taxable items are delivered at the direction of the purchaser to a location in Texas designated by the purchaser.

(A) A purchaser is engaged in business in Texas if the purchaser is required to collect sales or use tax under Tax Code, Chapter 151 or if the purchaser has nexus or is engaged in business in Texas as defined in §3.286 of this title (relating to Seller's and Purchaser's Responsibilities, including Nexus, Permits, Returns and Reporting Periods, Collection and Exemption Rules, and Criminal Penalties).

(B) Local use taxes (city, county, transit, special purpose district) are also due, but only to the extent that the purchaser is engaged in business in the local taxing jurisdictions into which deliveries are made.

(5) Raw materials manufactured or incorporated into other tangible personal property. Use tax is due on raw materials (tangible personal property), other than printed materials as provided under paragraph (6) of this subsection, purchased outside this state that have been processed, fabricated, or manufactured into other property or attached to or incorporated into other property outside this state and subsequently transported into this state, and, except as provided by Tax Code, §151.056(b) regarding property incorporated under a separated contract for the improvement of realty, includes the incorporation of tangible personal property into real estate or into improvements of real estate whether or not the real estate is subsequently sold.

(6) Printed materials.

(A) Use tax is due on the total cost of printed materials, including printing, paper and ink, purchased out of state, such as a book, brochure or catalog, and then shipped or delivered into Texas. An example of such printed material is a catalog where either the purchaser or the printer of the catalog first purchased ink and paper outside of Texas that was then printed and bound before being mailed to Texas residents in the form of a catalog. The item being used by the purchaser in this state is the catalog and since the catalog is not incorporated into another item, use tax is due on the total cost of the catalogs delivered into Texas.

(B) Use tax does not apply to printed materials purchased outside of this state that have been processed, fabricated, or manufactured into other property or attached to or incorporated into other property transported into this state. An example would include the purchase of printed pages by a Texas customer from an out-of-state printer who ships the items directly to another out-of-state firm that binds the items into a manual or book. The charge by the out-of-state binder to the Texas customer is subject to tax. The charge by the vendor that sold the printed materials to the Texas customer is not taxable since the printed materials have been processed, fabricated, or manufactured into other property or attached to or incorporated into other property transported into this state.

(7) Occasional sales.

(A) A person who holds or is required to hold a sales and use tax permit must accrue use tax on the purchase of a taxable item from a person entitled to the occasional sale exemption from sales tax provided by Tax Code, §151.304(b)(1) and remit it to the comptroller. Tax Code, §151.304(b)(1) relates to one or two sales during a 12-month period by a person who does not habitually engage, or hold himself out as engaging, in the business of selling taxable items at retail.

(B) A purchaser who holds or is required to hold a sales and use tax permit is not required to accrue use tax and remit it to the comptroller on a purchase from a person entitled to claim the occasional sales exemption from sales tax provided by Tax Code, §151.304(b)(2) - (5). Tax Code, §151.304(b)(2) relates to the sale of the entire operating assets of a business or of a separate division, branch, or identifiable segment of a business; Tax Code, §151.304(b)(3) relates to the transfer of all or substantially all the property used by a person in the course of an activity if after the transfer the real or ultimate ownership of the property is substantially similar to that which existed before the transfer; Tax Code, §151.304(b)(4) relates to the sale of not more than 10 admissions for amusement services during a 12-month period by a person who does not hold himself out as engaging, or does not habitually engage, in providing amusement services; Tax Code, §151.304(b)(5) relates to sales of items purchased for use by an individual who does not hold, and is not required to obtain a sales and use tax permit. In order to be exempt from sales tax, total sales by the individual must not exceed $3,000 per calendar year. See §3.316 of this title (relating to Occasional Sales; Joint Ownership Transfers; Sales by Senior Citizens' Organizations; Sales by University and College Student Organizations; and Sales by Nonprofit Animal Shelters).

(c) Inapplicability of use tax.

(1) Use tax is not applicable if the purchaser of a taxable item paid sales tax to a Texas seller or owes sales tax to a Texas seller who failed to collect it. The comptroller may proceed against the seller or the purchaser for the sales tax owed by either.

(2) Use tax is not applicable to the storage, use, or other consumption of taxable items in this state if the sale, lease, or rental of the taxable items would be exempt from the sales tax had the items been purchased within Texas.

(d) User liability, payment of the tax and credit for tax paid to another state.

(1) The person storing, using, or consuming a taxable item in this state is liable for the tax imposed under this section, and except as provided by paragraph (2) of this subsection, the liability continues until the tax is paid to the state.

(2) The liability may be extinguished by payment of the Texas use tax directly to the comptroller or to a seller authorized to collect it. See the use tax permit requirements for out-of-state sellers in §3.286 of this title.

(3) The basis of the use tax is the total purchase price of the taxable item, including any related charges such as shipping and handling fees, regardless of whether such fees are separately stated. See §3.303 of this title (relating to Transportation and Delivery Charges).

(4) The tax must be reported and remitted to the comptroller with the return covering the period in which the taxable items are first stored, used, or otherwise consumed in Texas as provided by §3.286 of this title. Purchasers without a sales and use tax permit should refer to §3.286 of this title to view the tax responsibilities of non-permitted purchasers.

(5) Credit is allowed against the use tax liability to the extent that a similar sales or use tax was legally due and paid to another state under the conditions provided in Tax Code, Chapter 141 and Chapter 151, §151.303. See §3.338 of this title (relating to Multistate Tax Credits and Allowance of Credit for Tax Paid to Suppliers).

(e) Presumption.

(1) Tangible personal property that is shipped or brought into this state by, or at the direction of, a purchaser is presumed, in the absence of evidence to the contrary, to have been purchased from a seller for storage, use, or consumption in this state. A taxable service used in this state is presumed, in the absence of evidence to the contrary, to have been purchased from a seller for use in this state.

(2) Tangible personal property purchased out of state and used for its intended purpose outside of Texas for more than one year before the date of entry into Texas will not be presumed to have been purchased for use in Texas. This presumption applies only if the use outside Texas is substantial and constitutes a primary use for which the property was purchased. Either the comptroller or the purchaser may introduce evidence to establish the intent or absence of intent to use the taxable items in Texas at the time of purchase.

(3) If tangible personal property is shipped outside of Texas by the seller such that the transaction is exempt from sales tax under Tax Code, §151.330(a), and the property is outside of Texas for less than

one year before reentering Texas, the presumption is that the property is purchased for use in Texas.

(f) Local use tax is due to the jurisdictions where taxable items are first stored, used, or consumed.

(g) Direct payment permit holders - election to pay use tax at time of first storage or upon first removal from storage for use in Texas. If, at the time an item is purchased and stored in the state, it is not known if the item will be used in Texas or removed from the state for use elsewhere, a direct payment permit holder can elect to either pay state and local use tax at the time an item is first removed from storage for use in Texas or elect to pay state and local use tax on the item when first stored in Texas. This election must consistently apply to all stored items once the election is made and consistently apply to all state and local taxes that are due. Local tax is due to the jurisdictions where the item is first stored regardless of which election is chosen. A direct pay permit holder who elects to pay Texas use tax when items are first stored may claim a refund as provided by other sections of this title of taxes paid on items that are removed from storage in Texas for use elsewhere.

~~[(f) Storage of property purchased out of state or under a direct payment permit.]~~

~~[(1) If storage facilities contain property purchased out of state or under a direct payment permit, and the purchaser does not know at the time the property is stored whether the property will be used in Texas or will be removed from the state, then the purchaser may elect to report the use tax either when the property is first stored in Texas or when the property is first removed from inventory for use in Texas, as long as use tax is reported in a consistent manner.]~~

~~[(2) If use tax is paid on stored property that is subsequently removed from Texas, the tax may be recouped in accordance with the refund and credit provisions in §3.338 of this title and §3.325 of this title (relating to Refunds, Interest, and Payments under Protest).]~~

~~[(g) Local Tax.]~~

~~[(1) Local use tax is due on the purchase or lease price of taxable items purchased out of state or under a direct payment permit to the local taxing jurisdictions in which the taxable items are first stored in a taxing jurisdiction, or if not stored, where the taxable items are first used, or otherwise consumed.]~~

~~[(2) A direct pay permit holder who does not know at the time of storage whether the taxable items being stored will be used in Texas may elect to accrue and report both state use tax and local use taxes based on either first storage or first use, as long as the use tax is reported in a consistent manner. A direct pay permit holder must use the same method for the accrual of local use taxes that is used for accrual of state use tax. In other words, if a taxpayer elects to accrue state use tax based on the location of first use, then the local use taxes due must also be accrued and allocated based on the location in this state where first use occurs. For the purpose of direct pay use tax accruals only, first storage is not considered a use if the purchaser does not know at the time of storage whether the taxable items being stored will be used in Texas.]~~

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

Filed with the Office of the Secretary of State on May 3, 2012.

TRD-201202277

Ashley Harden
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: June 17, 2012
For further information, please call: (512) 475-0387

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CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER H. TAX RECORD REQUIREMENTS

34 TAC §9.3052

The Comptroller of Public Accounts proposes an amendment to §9.3052, concerning request form for separate taxation of stockholders' interest in cooperative housing. This section is being amended to delete outdated language regarding penalties associated with Penal Code, §37.10.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be improving the administration of local property valuation and taxation. The proposed amendment would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the amendment may be submitted to Deborah Cartwright, Director, Property Tax Assistance Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

This amendment is proposed pursuant to Tax Code, §5.07, which provides for the comptroller to prescribe the contents of all forms necessary for the administration of the property tax system.

This amendment implements Tax Code, §5.07.

§9.3052. Request Form for Separate Taxation of Stockholders' Interest in Cooperative Housing.

(a) All appraisal offices shall prepare and make available a form for use by a cooperative housing cooperation in requesting separate taxation of stockholders' interests as provided in Texas Property Tax Code, §23.19.

(b) The form shall contain spaces for the corporation to provide the following information:

(1) the name and address of the cooperative housing corporation;

(2) the property description and street address of the property for which separate appraisal is requested;

(3) the name and address of the corporation's agent;

(4) a statement that the corporation must attach to the form the following documents:

(A) a list of names, addresses, and proportionate share of all stockholders in the corporation, and those stockholders that reside at the designated property;

(B) a resolution from the corporation's board of directors certifying that the stockholders have approved the request for separate appraisal;

(C) a diagrammatic floor plan of the improvements on the property; and

(D) a survey plot map of the land showing location of the improvements on the land;

(5) the signature of the corporation's agent; and

(6) the date of the request.

(c) The form for separate appraisal shall contain a statement indicating that by signing the form the applicant states that he/she is qualified to sign for the corporation, and must include the following statement in bold type: "If you make a false statement on this form, you could be found guilty of a Class A misdemeanor or a state jail felony under Penal Code, §37.10." [~~a statement that under the Penal Code, §37.10, if the applicant intentionally makes a false statement on the application, he or she could receive a jail term of up to one year and a fine of up to $2,000, or a prison term of two to 10 years and a fine of up to $5,000.~~]

(d) The form shall contain statements to indicate:

(1) that the corporation need not request separate appraisal annually;

(2) that the applicant must file the initial request for separate appraisal in writing before March 1; and

(3) that the chief appraiser may require the corporation to submit or verify a list of stockholders, their interests, and residency at least annually.

(e) Where the appraisal office requests additional information, the appraisal office shall note the type(s) of information requested on the form. Otherwise, the form shall be prepared as a separate form from any other form.

(f) The appraisal office shall note on the form the amount of fee, if any, that the office will charge for separately appraising the interests in a cooperative housing corporation.

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 May 3, 2012.

TRD-201202278
Ashley Harden
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: June 17, 2012
For further information, please call: (512) 475-0387

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), the repeal of §§700.1301, 700.1302, 700.1320 - 700.1323, 700.1330 - 700.1334, 700.1340, 700.1342, 700.1343, and 700.1350 - 700.1355; new §§700.1301, 700.1303, 700.1305, 700.1307, 700.1309, 700.1311, 700.1313, 700.1315, 700.1317, 700.1319, 700.1321, 700.1323, 700.1325, 700.1327, 700.1329, 700.1331, and 700.1333; and amendments to §§700.1502, 700.1718, and 700.1726, concerning substitute-care services, in its chapter governing Child Protective Services. The provisions in Subchapter M, Substitute Care Services, were transferred to DFPS from the Texas Department of Human Services when DFPS became a stand-alone agency in 1994. While relevant state and federal laws have undergone numerous revisions in the ensuing years, only minor adjustments have been made to the rules in this subchapter. Moreover, many of the provisions in this subchapter merely restate legal duties imposed on DFPS by Titles IV-B and IV-E of the Social Security Act, Subtitle E of Title V of the Texas Family Code, and Child Care Licensing (CCL) minimum standards adopted under authority of Chapter 42 of the Human Resources Code. Because many of the provisions in this subchapter are redundant, unnecessary, or no longer accurately reflect controlling state or federal laws or CCL minimum standards, DFPS is repealing the entire subchapter and replacing it with a more streamlined subchapter that improves readability, replaces outdated terminology with current terminology, more clearly identifies the controlling state and federal laws, and more accurately sets forth the core principles that necessarily guide DFPS in the provision of substitute care services. A summary of the changes is described below:

Section 700.1301 is repealed. The definition of substitute care services is contained in new §700.1301. The guiding principles for when DFPS seeks to place a child in substitute care have been deleted, because the legal standards for removal are mandated by state and federal laws. The "goals" and "objectives" reflected in current subsections (c) and (d) are revised and incorporated into new §700.1305 and §700.1309.

Section 700.1302 is repealed. The provisions in this section that describe DFPS responsibilities when providing substitute care services are revised and incorporated into new §700.1305 and §700.1309.

Section 700.1320 is repealed. The description of the acceptable settings in which DFPS may place children is moved to new §700.1307 and revised to: (1) eliminate some placement settings that no longer exist; and (2) add placement settings that are currently used, i.e. placement of a child in the child's own home; placement in a residential child-care setting properly licensed or approved by another state or Tribal licensing authority; placement of youth 18 years and older in "supervised independent living" (SIL) settings; and any other placement setting ordered by a court. The preference for relative placements is moved to new §700.1309 and reworded for consistency with federal law. The provisions relating to "unauthorized placements" (i.e. children on runaway status whose whereabouts are known) are moved to new §700.1333 and revised to incorporate DFPS duties under the Texas Family Code with respect to missing children and to clarify DFPS responsibilities when youth in an unauthorized placement are located.

Section 700.1321 is repealed. Provisions describing the types of residential child-care settings are eliminated, as this information can be found in greater and more accurate detail in CCL rules in Chapter 748, General Residential Operations, and Chapter 749, Child-Placing Agencies. However, the different types of settings that a child in DFPS conservatorship may be placed in are contained in new §700.1307. In addition, the considerations that dictate when a child may be placed in a residential child-care setting that is more restrictive than a foster home are contained in new §700.1311, including limitations regarding placement of children under five years in a general residential operation that provides emergency care. Other provisions restricting placement settings by age are eliminated because all children, regardless of age, must be placed in the least restrictive setting available that can meet the child's needs and serve the child's best interest.

Section 700.1322 is repealed. Provisions describing the "types of care" provided in various residential child-care settings are no longer consistent with types of care described in CCL minimum standards. This information is not added to a new rule, as this information can be found in greater and more accurate detail in CCL rules in Chapters 748 and 749. In addition, information regarding the Level-of-Care system can be found in greater and more accurate detail in Subchapter W of this chapter (relating to Level-of-Care Service System).

Section 700.1323 is repealed. Provisions relating to notification of parents regarding placement are included in new §700.1317. Provisions relating to how Child Protective Services (CPS) resolves placement disputes with foster parents are eliminated because they are not consistent with current practice. Federal law requires that the child welfare agency have ultimate discretion to determine placement of a child, subject only to the authority of the court to order a different placement after considering the agency's recommendations.

Section 700.1330 is repealed. Provisions defining the "case plan" and contents of the plan are revised and included in new §700.1319, along with references to the state and federal statutory requirements relating to case planning. Provisions relating to revisions of the case plan are added to new §700.1325.

Section 700.1331 is repealed. Provisions that describe the contents of the "child service plan" are included in new §700.1321, with minor revisions for conformity with current law and CPS practice. The 45 day-time frame for initial development of the child service plan is covered in new §700.1319.

Section 700.1332 is repealed. Provisions describing the family service plan are revised for greater conformity with current law and included in new §700.1323. Some procedural requirements that are detailed in Chapter 263 of the Texas Family Code (such as documenting a parent's refusal to participate in the planning process) are not included because they are already controlled by Chapter 263 of the Texas Family Code and incorporated into policy. The 45-day time frame for initial development of the family service plan is covered in new §700.1319.

Section 700.1333 is repealed. Provisions concerning review and updates of the case plan are revised for greater conformity with state and federal law, as well as CCL minimum standards, and included in new §700.1325, with redundant provisions omitted. Provisions concerning participation in case plan reviews are included with minor revisions in new §700.1321.

Section 700.1334 is repealed. The requirement that a case plan be revised after every change in placement is covered in new §700.1325. The 30-day time frame is omitted, because some service planning time frames are controlled by CCL minimum standards relating to the admission of a new child by a child-care facility, and thus DFPS must retain the flexibility to comply with CCL minimum standards. Federal law allows up to 60 days for revision of the case plan following a change in placement.

Section 700.1340 is repealed. Provisions relating to visitation by parents are deleted, as this issue is interrelated with the "reasonable efforts" requirements of Title IV-E and the Texas Family Code, and is ultimately controlled by court orders. Provisions relating to travel are deleted because §264.122 of the Texas Family Code controls out-of-country travel procedures, and most courts have their own local rules or practices concerning out-of-state travel. Provisions relating to acceptable forms of discipline are revised and included in new §700.1331. Provisions relating to disaster planning are deleted because disaster planning has undergone substantial revisions under state law over the past decade and continues to be refined. Accordingly, this issue is better handled in policy than rule.

Section 700.1342 is repealed. None of the provisions in this rule are proposed in new Subchapter M because the provisions merely restate requirements in the Texas Family Code relating to providing prospective adoptive parents with copies of a child's Health, Social, Educational and Genetic History (HSEG) and other DFPS case records or restate detailed internal policies and procedures more appropriate for policy than rule.

Section 700.1343 is repealed. None of the provisions in this rule are proposed in new Subchapter M because the provisions merely restate requirements in the Texas Family Code relating to the redaction of confidential information from adoption records or restate detailed internal policies and procedures more appropriate for policy than rule.

Section 700.1350 is repealed. Provisions stating the circumstances under which child day-care services can be provided are repealed due to the need for maximum flexibility to establish eligibility criteria in policy when funding availability changes over time. The provision relating to consent for contraceptive services is repealed because this provision as currently worded is too broad, and this issue is controlled by Chapters 32 and 266 of the Texas Family Code.

Section 700.1351 is repealed. Provisions relating to medical and dental services are moved with only minor, non-substantive drafting changes to new §700.1329.

Section 700.1352 is repealed. Provisions relating to placement of children with intellectual disabilities and related conditions in child-care facilities that provide treatment services are condensed and added to new §700.1313.

Section 700.1353 is repealed. Provisions relating to placement of children with intellectual disabilities and related conditions in an intermediate care facility for persons with intellectual disabilities (ICF-ID), or a home and community-based services (HCS) setting, are condensed and added to new §700.1313. CPS's current policy requiring approval by the Assistant Commissioner for CPS, or that person's designee, of all placements in an ICF-ID or HCS four-bed group home is added to the new rule.

Section 700.1354 is repealed. Provisions relating to placement of children in nursing homes are condensed and added to new §700.1315. CPS's current policy, requiring approval by the Assistant Commissioner for CPS, or that person's designee, of all placements in a nursing home is added to the new rule.

Section 700.1355 is repealed. Provisions relating to sibling visitation and contact are included in new §700.1327, with only minor revisions to more closely reflect requirements in federal law.

New §700.1301 defines substitute care services, which are the placement, case management, treatment, and other services provided to support children in DFPS conservatorship, as well as their parents and caretakers. The term also includes the services provided to young adults in extended foster care.

New §700.1303 provides definitions for some of the terms used in this subchapter.

New §700.1305 identifies the state and federal statutory provisions that control the delivery of substitute care services and articulates core requirements from Title IV-E of the Social Security Act.

New §700.1307 describes all of the acceptable placement options in which DFPS may place a child.

New §700.1309 describes the factors that must be considered when determining whether a placement is in the child's best interest and can meet the child's special needs, consistent with requirements in state and federal law. Federal law requires that children be placed in the least restrictive, most family-like setting consistent with the best interest and special needs of the child.

New §700.1311 describes considerations that apply when selecting a placement other than a relative or other person with whom the child has a long-standing and significant relationship (fictive kin). Pursuant to requirements in Title IV-E of the Social Security Act, DFPS must consider giving preference to placement of children with relatives, which may include fictive kin. When such a placement is not available or in the child's best interest for other reasons, this rule sets forth the factors that may require placement in a more restrictive setting than a foster home.

New §700.1313 describes the special considerations that must be followed when placing children with intellectual disabilities or related conditions, including a requirement for approval of the Assistant Commissioner of CPS or her designee before placing a child in an ICF-ID or HCS four-bed group home.

New §700.1315 describes the special considerations that must be followed when placing children with life-threatening medical conditions in a nursing home, including a requirement for approval of the Assistant Commissioner of CPS or her designee.

New §700.1317 requires notification of parents regarding a child's current placement, subject to limited exceptions in accordance with state and federal law.

New §700.1319 defines the term "case plan" and sets forth a few basic requirements relating to the case plan. Title IV-E of the Social Security Act requires each child in the state's conservatorship to have a "case plan" that meets certain requirements. Texas satisfies the federal case plan requirements through a combination of a "child service plan" and a "family service plan."

New §700.1321 describes the child service plan requirements, including the persons who must participate in the development of the plan and are entitled to a copy of the plan.

New §700.1323 describes the family service plan requirements, which are the same as the service plan requirements in Chapter 263, Texas Family Code. The rule also specifies when the family service plan can be waived or discontinued, as provided under the Texas Family Code and Title IV-E of the Social Security Act.

New §700.1325 specifies the required frequency for reviews and updates of a case plan, as required by state and federal law, CCL minimum standards, and, in some instances, a residential child-care contract.

New §700.1327 restates requirements in Title IV-E of the Social Security Act for frequent visitation or other ongoing interaction between siblings who are not placed together, unless such visitation or interaction is not in a sibling's best interest.

New §700.1329 states DFPS's duty to ensure appropriate medical care for a child in DFPS conservatorship and specifies certain types of medical care that must be provided. The rule also cites the state law controlling consent for medical services.

New §700.1331 states DFPS's philosophy regarding appropriate forms of discipline for a child in DFPS conservatorship.

New §700.1333 states DFPS responsibilities, as provided under the Texas Family Code, when a child in substitute care is missing or abducted and provides that in the case of a child on runaway status who is living in an unauthorized placement, DFPS may not pay the costs of that placement.

The amendments to §§700.1502, 700.1718, and 700.1726 update and delete obsolete cross references.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown also has determined 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 that DFPS's rules concerning substitute care services are streamlined for greater usability and updated to accurately reflect both state and federal law concerning substitute care services. There will be no effect on large, small, or micro-businesses because the proposed changes do not impose new requirements on any business and do not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

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

Questions about the content of the proposal may be directed to Phoebe Knauer at (512) 438-2910 in DFPS's Legal Services Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-458, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030 within 30 days of publication in the *Texas Register.*

SUBCHAPTER M. SUBSTITUTE-CARE SERVICES

40 TAC §§700.1301, 700.1302, 700.1320 - 700.1323, 700.1330 - 700.1334, 700.1340, 700.1342, 700.1343, 700.1350 - 700.1355

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Family and Protective Services or in the Texas Register

office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement Title IV-E of the federal Social Security Act, which sets forth the state's obligations with respect to the provision of substitute care services, including case planning, for children removed into the state's conservatorship; and Chapter 263, Texas Family Code, which sets forth state requirements for service planning for children in Department of Family and Protective Services conservatorship.

§700.1301. Definition, Criteria, Goals, and Objectives.

§700.1302. The Texas Department of Protective and Regulatory Services' (TDPRS's) Primary Responsibilities When a Child is in Substitute Care.

§700.1320. Types of Placements.

§700.1321. Types of Licensed Caregivers.

§700.1322. Types of Care.

§700.1323. Subsequent Placements.

§700.1330. The Case Plan.

§700.1331. The Child's Service Plan.

§700.1332. The Family's Service Plan.

§700.1333. Case Plan Review.

§700.1334. Case Planning in Subsequent Placements.

§700.1340. Special Issues.

§700.1342. Presenting Records to Prospective Adoptive Parents before Placing a Child for Adoption.

§700.1343. Deleting Confidential Information before Releasing a Child's Records to Authorized Parties.

§700.1350. Special Services.

§700.1351. Medical and Dental Services for Children in DFPS Conservatorship.

§700.1352. Texas Department of Protective and Regulatory Services (TDPRS) Licensed Institutions Serving Children with Mental Retardation.

§700.1353. Intermediate Care Facilities for Persons with Mental Retardation/Related Conditions (ICF-MR/RC).

§700.1354. Nursing Homes.

§700.1355. Sibling Contact.

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 May 1, 2012.

TRD-201202226
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: June 17, 2012
For further information, please call: (512) 438-3437

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40 TAC §§700.1301, 700.1303, 700.1305, 700.1307, 700.1309, 700.1311, 700.1313, 700.1315, 700.1317, 700.1319, 700.1321, 700.1323, 700.1325, 700.1327, 700.1329, 700.1331, 700.1333

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement Title IV-E of the federal Social Security Act, which sets forth the state's obligations with respect to the provision of substitute care services, including case planning, for children removed into the state's conservatorship; and Chapter 263, Texas Family Code, which sets forth state requirements for service planning for children in Department of Family and Protective Services conservatorship.

§700.1301. What are substitute care services?

Substitute care services are the case management services, residential care services, treatment services, and other supportive services provided to ensure the safety, well being, and permanency of a child in the conservatorship of DFPS or a young adult in extended foster care. Substitute care services include the services provided to parents, caregivers, or prospective adoptive parents to achieve the permanency plan in effect for a child.

§700.1303. How are some of the key terms used in this subchapter defined?

As used in this subchapter, the following words have the following meanings, unless the context clearly indicates otherwise:

(1) The term "child" means:

(A) a person under the age of 18 years in the managing conservatorship of DFPS; and

(B) a young adult who was in the conservatorship of DFPS on the child's 18th birthday and who receives extended foster care services pursuant to a voluntary agreement conferring placement and care responsibility for the young adult on DFPS;

(2) The terms "child care services," "treatment services," "emergency care services," and "additional programmatic services" have the same meanings as provided in Child Care Licensing minimum standards at §748.61 of this title (relating to What types of services does Licensing regulate?);

(3) The term "DFPS" means Department of Family and Protective Services; and

(4) The terms "foster home," "foster group home," and "general residential operation" have the same meanings as provided in §42.002, Human Resources Code.

§700.1305. What principles guide DFPS in the provision of substitute care services?

DFPS provides substitute care services that meet the requirements of Titles IV-B and IV-E of the Social Security Act, the Child Abuse Prevention and Treatment Act, and the Texas Family Code, including requirements that:

(1) a child is placed in a safe setting that is the least restrictive (most family-like) and most appropriate setting available, in close proximity to the parent's home when the child's permanency goal is reunification, consistent with the best interest and special needs of the child;

(2) a child is returned to the family from which the child was removed whenever safe and appropriate; and

(3) when it has been determined that a child cannot be safely reunified with the family from which the child was removed, the child is placed in a safe and permanent placement as soon as possible, consistent with the best interest of the child.

§700.1307. In what kinds of settings may a child in DFPS conservatorship be placed?

DFPS may place a child in any of the following settings:

(1) the home of a relative of the child or other person with whom the child has a long standing and significant relationship, regardless of whether the relative or other person is a licensed or verified child-care provider;

(2) any "residential child-care facility" as that term is defined in Chapter 42, Human Resources Code, including a foster home, foster group home, prospective adoptive home, or general residential operation; or a comparable facility licensed or approved by another state or by an Indian Tribal licensing authority;

(3) a facility, group home or foster/companion home operated, licensed, certified, or verified by another state agency, including the following:

(A) the Texas Department of Aging and Disability Services;

(B) the Texas Juvenile Justice Department;

(C) the Texas Department of State Health Services;

(D) the Texas Department of Assistive and Rehabilitative Services;

(E) the Texas School for the Deaf; or

(F) the Texas School for the Blind and Visually Impaired;

(4) an independent living arrangement, such as an apartment, that is approved by DFPS for a child who is at least 16 years of age and is a planned aspect of the child's participation in preparation for adult living (PAL) services;

(5) the home from which the child was removed as ordered by the court or as part of a plan for the reunification of the child;

(6) an approved "supervised independent living" (SIL) setting that contracts with DFPS for the provision of SIL services to young adults 18 and older in extended foster care; and

(7) another living arrangement as ordered by the court.

§700.1309. What factors does DFPS consider when selecting the most appropriate living arrangement for a child?

As mandated by §475 of Title IV-E of the Social Security Act, DFPS must place a child in the least restrictive (most family-like) and most appropriate setting available, and in close proximity to the parents' home when the child's permanency goal is reunification, consistent with the best interest and special needs of the child. When determining whether a placement is consistent with the best interest and special needs of a child, DFPS considers the following factors:

(1) First and foremost, a child's placement must be safe;

(2) Placement with a relative or other person with whom the child has a long-standing and significant relationship is generally preferred over placement with a non-related caregiver, provided the relative or other person can provide a safe and appropriate home;

(3) Siblings removed from their home should be placed together unless such placement would be contrary to the safety or well-being of any of the siblings;

(4) Consideration must be given to the appropriateness of the child's current educational setting and the proximity of the placement to the school in which the child is enrolled at the time of placement;

(5) The placement must be able to meet the physical and emotional needs of the child, including any special needs that the child may have, taking into consideration any available support services that might assist the placement in meeting the child's needs; and

(6) Consideration must be given to the child's desires and needs for a loving and permanent home.

§700.1311. What special considerations apply when selecting a placement other than a relative or other person with whom the child has a long-standing and significant relationship?

(a) If a child cannot be placed with a relative or other person with whom the child has a long-standing and significant relationship, DFPS will seek to place the child in a foster or adoptive home that can meet the child's needs. If DFPS is unable to locate a foster or adoptive home that can provide safe and appropriate care to the child, DFPS may place the child in any of the settings described in §700.1307 of this title (relating to In what kinds of settings may a child in DFPS conservatorship be placed?), when:

(1) the child needs treatment services or additional programmatic services, other than child care services, that are not available or cannot be provided to the child in a foster home;

(2) the child is placed with a sibling or parent who needs the services described in paragraph (1) of this subsection, and placement of the child with the sibling or parent in a foster group home or general residential operation is deemed to be in the child's best interest;

(3) the child is placed temporarily in a foster group home or general residential operation because of the proximity of the placement to the child's home or school of origin, and such placement is deemed to be in the child's best interest;

(4) there is no foster home immediately available for the child to be placed; or

(5) the placement is ordered by a court of competent jurisdiction.

(b) A child receiving emergency care services from a general residential operation may not remain in such operation beyond the maximum lengths of stay set forth in the following chart unless the child's caseworker obtains supervisory approval to extend the placement and documents the reasons for extending the placement in the child's case record:

Figure: 40 TAC §700.1311(b)

(c) Notwithstanding any other provision in this section, unless ordered by a court to do so, DFPS does not place a child in:

(1) a general residential operation that Child Care Licensing has placed on probation unless the placement is approved by the Assistant Commissioner for Child Protective Services; or

(2) a foster home or foster group home whose verification has been placed on inactive status by the child-placing agency that verifies the home.

§700.1313. What special considerations apply when selecting a placement for a child with intellectual disabilities and related conditions?

(a) DFPS seeks to place children with intellectual disabilities and related conditions with a family whenever possible, with support services provided as needed to assist the child in functioning as independently as possible within the community. When DFPS is not able to find a suitable placement with a family that can meet the child's needs, DFPS may place the child with one of the following:

(1) a group home or general residential operation regulated by DFPS that provides treatment services and any other specialized services that are necessary to meet the child's needs;

(2) a Home and Community Based Services (HCS) foster or companion home;

(3) an HCS group home; or

(4) an intermediate care facility for persons with intellectual disabilities or related conditions (ICF-ID), which may include an ICF-ID operated by a local mental retardation authority, a private ICF-ID, or a state supported living center.

(b) Unless ordered by a court, a child under the age of 18 years may not be placed in an HCS four-bed group home or an ICF-ID unless the placement has been approved by the Assistant Commissioner for Child Protective Services or that person's designee.

(c) Regardless of where a child with intellectual disabilities or related conditions is placed, DFPS must immediately seek to place the child on all Medicaid Waiver lists for which the child is eligible.

(d) When a child is placed in a group home, general residential operation or ICF-ID, DFPS must review the child's placement at least every six months and continue to seek a placement for the child in a less restrictive, more family-like setting.

§700.1315. What special considerations apply when placing a child in a nursing home?

(a) DFPS seeks to place children with serious and complex medical needs in a family setting or other setting that is less restrictive than a nursing home when DFPS determines that the child's needs can be met in such less restrictive setting.

(b) DFPS may place a child in a nursing home only when:

(1) the child's health needs cannot be met in a foster home, even with intensive support services;

(2) the child requires 24-hour nursing supervision and frequent medical intervention to sustain life;

(3) the child's physician recommends nursing home placement as the most appropriate setting to meet the child's medical needs; and

(4) all of the Department of Aging and Disability Services requirements for placing a child in a nursing home are met.

(c) Unless ordered by a court, a child under the age of 18 years may not be placed in a nursing home unless the placement has been approved by the Assistant Commissioner for Child Protective Services or that person's designee.

(d) When a child is placed in a nursing home, DFPS must review the child's placement at least every six months and continue to seek a placement for the child in a less restrictive, more family-like setting.

§700.1317. How are parents notified of their child's current placement?

(a) Except as provided in this subsection, DFPS must keep the parents of a child in substitute care apprised of the current placement of their child, including any changes in placement, unless:

(1) the parent's parental rights to the child have been terminated;

(2) the parent cannot be located despite reasonable efforts; or

(3) DFPS has been named the child's permanent managing conservator in a suit in which parental rights were not terminated and the parent is no longer involved in the life of the child.

(b) DFPS is not required to provide a parent with any information regarding a child's placement that DFPS determines will pose a risk to the health or safety of the child, the child's caregiver, or any other person.

§700.1319. What is a case plan?

DFPS must develop a case plan for every child in DFPS conservatorship no later than 45 days from the date DFPS was appointed temporary managing conservator of the child. The case plan is comprised of a "child service plan" and, when applicable, a "family service plan." The case plan must conform to all relevant requirements in Titles IV-B and IV-E of the Social Security Act, and Chapter 263 of the Texas Family Code.

§700.1321. What are the requirements for a child service plan?

(a) Except as otherwise provided in this section, DFPS develops a child service plan for every child in DFPS conservatorship and each young adult in extended foster care. At a minimum, the child service plan must address all case plan requirements in §475 of Title IV-E of the Social Security Act that are not addressed in the family service plan. If the child resides in a residential child-care facility regulated by DFPS, the child service plan may incorporate the service plan required to be developed for the child under Child Care Licensing minimum standards in Chapter 748 of this title (relating to General Residential Operations), or Chapter 749 of this title (relating to Child-Placing Agencies), as applicable.

(b) DFPS involves each of the following in the development of the child service plan, and in all reviews and updates of the plan:

(1) the child's caseworker in the DFPS conservatorship unit and the DFPS worker supervising the child's placement, if different than the child's conservatorship caseworker;

(2) the child, unless the child is too young to participate or cannot participate in any meaningful way because of a physical or mental illness or disability;

(3) each parent of the child, unless such parent:

(A) cannot be located, despite due diligence;

(B) has had parental rights to the child terminated; or

(C) refuses to participate;

(4) the child's substitute caregiver (e.g., a relative, the child's foster parent, or a representative of the general residential operation where the child is placed);

(5) each person appointed by the court to serve as the child's attorney ad litem, guardian ad litem, or court-appointed special advocate (CASA);

(6) a prospective adoptive family with whom the child has been placed for adoption; and

(7) when appropriate, other family members, professionals, and volunteers who are or will be providing services or supports to the child or the child's family.

(c) DFPS provides a copy of the relevant portions of the child service plan to:

(1) each person described in subsection (b)(2) - (6) of this section, regardless of whether such person participated in the development of the plan; and

(2) each person described in subsection (b)(7) of this section who participated in the development of the plan.

(d) When a child in DFPS conservatorship is placed in the home of a parent from whom the child was removed, DFPS is not required to develop a child service plan, but must ensure that all case plan requirements in §475 of Title IV-E of the Social Security Act are addressed in the family service plan.

§700.1323. Under what circumstances does DFPS develop a family service plan and what are the requirements for the plan?

(a) DFPS must develop an initial family service plan unless the court has waived the requirement for a service plan as provided under the following provisions of the Texas Family Code:

(1) §262.2015, based on a finding that the parent has subjected the child to aggravated circumstances; or

(2) §263.1015, based on a finding that the child was abandoned without identification and the child's identity cannot be determined.

(b) The family service plan must meet all the service plan requirements under Chapter 263, Texas Family Code, including requirements for parental participation in the development of the plan and any subsequent reviews and updates of the plan.

(c) If DFPS locates a parent whose identity or location was previously unknown despite due diligence, DFPS must develop an initial family service plan with such parent within 45 days of learning the parent's whereabouts.

(d) DFPS is no longer required to develop a family service plan for any parent whose rights to a child in substitute care have been terminated.

(e) Following a final order awarding permanent managing conservatorship to DFPS without termination of parental rights, DFPS may continue to develop a family service plan that is consistent with the child's permanency goals and any orders of the court, but is not required to develop a service plan for a parent who is no longer involved in the life of the child.

§700.1325. How frequently is a case plan reviewed and updated?

DFPS reviews and updates a case plan when the child has been in care for five months, nine months, and at least every six months thereafter, and more often as necessary to comply with Child Care Licensing minimum standards or the residential child-care contract relating to service planning, or to address a change in placement, change in permanency goal, or other significant change in circumstances. The case plan review includes a review of the:

(1) child service plan; and

(2) family service plan unless DFPS is no longer developing a family service plan as provided under §700.1323 of this title (relating to Under what circumstances does DFPS develop a family service plan and what are the requirements for the plan?).

§700.1327. What are DFPS's responsibilities to siblings who are not placed together following a removal from the home?

DFPS must provide for frequent visitation or other ongoing interaction between siblings, unless:

(1) the court has ordered otherwise; or

(2) DFPS has determined and documented in the child service plan that frequent visitation or other ongoing interaction would be contrary to the safety or well-being of any of the siblings and the court has not ordered that visitation or contact between the siblings occur.

§700.1329. What are DFPS's responsibilities for ensuring appropriate medical care for children in DFPS conservatorship?

(a) DFPS has a duty to ensure that every child in DFPS conservatorship receives appropriate medical care, including appropriate physical, dental, behavioral, vision, and allied health care such as physical therapy, occupational therapy, speech therapy, dietetic and other health-related services. Each child's medical care must include:

(1) emergency medical care whenever needed;

(2) timely examinations and treatments of non-emergency injuries and illness; and

(3) regular preventive care appropriate to the child's age and condition, including immunizations and tuberculin (TB) tests.

(b) Consent for medical care provided to children in DFPS conservatorship must be provided in accordance with Chapter 266, Texas Family Code, and relevant court orders or agreements between DFPS and the person designated to provide consent.

§700.1331. What are DFPS's responsibilities relating to discipline of a child in DFPS conservatorship?

(a) As the managing conservator of the child, DFPS has the right and duty under the Texas Family Code to maintain reasonable discipline of the child. When determining appropriate methods of discipline for a child in DFPS conservatorship, DFPS must adhere to the following principles:

(1) Children must be treated with dignity and respect at all times;

(2) The primary purpose of discipline must be to encourage safe and appropriate behavior, not to punish the child;

(3) Discipline must suit the particular child's needs and circumstances and must take into account the child's age, developmental level, specific misbehavior, previous reaction to discipline, and history, including any history of physical or emotional abuse; and

(4) No child in DFPS's managing conservatorship may be deprived of basic necessities or subjected to cruel, harsh, unusual, or unnecessary punishment.

(b) DFPS has the right and the duty to ensure that any caregiver with whom a child is placed is informed of any special considerations that should be observed when disciplining the child, provided that DFPS may not require that a caregiver violate any Child Care Licensing minimum standards or other law related to discipline.

§700.1333. What are DFPS's responsibilities for a child in its conservatorship who is missing or abducted from a placement?

(a) When a child in DFPS's conservatorship runs away, is abducted, or is otherwise missing from the child's authorized placement, DFPS must follow all procedures outlined in §264.123, Texas Family Code, to locate the child and cooperate with law enforcement if the child has been the victim of any suspected crime while missing from the child's authorized placement.

(b) When an older youth in DFPS conservatorship refuses to remain in a foster care placement, but the older youth's whereabouts are known, the child's caseworker must:

(1) maintain as much face-to-face contact with the youth as possible;

(2) attempt to convince the youth to return to foster care;

(3) make all reasonable efforts to locate an authorized placement that can meet the child's needs; and

(4) take any other steps as appropriate to ensure the child's safety and well-being.

(c) Notwithstanding any other provisions of this chapter, DFPS does not pay the costs of an unauthorized independent-living arrangement, which consists of a child or youth living in a residential situation without the permission of DFPS or the court.

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

Filed with the Office of the Secretary of State on May 1, 2012.

TRD-201202227
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: June 17, 2012
For further information, please call: (512) 438-3437

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SUBCHAPTER O. FOSTER AND ADOPTIVE HOME DEVELOPMENT

40 TAC §700.1502

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements Title IV-E of the federal Social Security Act, which sets forth the state's obligations with respect to the provision of substitute care services, including case planning, for children removed into the state's conservatorship; and Chapter 263, Texas Family Code, which sets forth state requirements for service planning for children in Department of Family and Protective Services conservatorship.

§700.1502. Foster and Adoptive Home Inquiry and Screening.

The Department of Family and Protective Services' (DFPS') [~~Texas Department of Protective and Regulatory Services' (TDPRS')~~] policies for responding to inquiries and screening and approval of foster and adoptive homes are as follows:

(1) (No change.)

(2) Screening and approval of foster and adoptive homes.

(A) - (J) (No change.)

(K) Discipline. Physical discipline may not be used on a child in any DFPS [~~TDPRS~~] foster or adoptive home prior to consummation. DFPS [~~TDPRS~~] evaluates applicants based on their willingness and ability to:

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

(iii) employ methods of discipline that conform to the policies specified in §700.1331 of this title (relating to What are DFPS's responsibilities relating to discipline of a child in DFPS conservatorship?) [~~§700.1340(c) of this title (relating to Special Issues)~~].

(L) - (N) (No change.)

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

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Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: June 17, 2012
For further information, please call: (512) 438-3437

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SUBCHAPTER Q. PURCHASED PROTECTIVE SERVICES

40 TAC §700.1718, §700.1726

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement Title IV-E of the federal Social Security Act, which sets forth the state's obligations with respect to the provision of substitute care services, including case planning, for children removed into the state's conservatorship; and Chapter 263, Texas Family Code, which sets forth state requirements for service planning for children in Department of Family and Protective Services conservatorship.

§700.1718. Purchased Adoption Services.

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

(f) The plan of operation for purchased legal risk or adoption services. In addition to including the elements specified in §700.1705(b) of this title (relating to Contract Documentation), the plan of operation in contracts for purchased adoption services must include the statements, agreements, and stipulations specified in this subsection:

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

(4) Placement services.

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

(C) A stipulation that CPS must give the contractor a complete copy of each referred child's case records [~~record~~], including all legal documents pertinent to the child's adoption, after CPS redacts the records to remove any information that is confidential under the Texas Family Code or other law.

~~f(i)~~ ~~Under the Texas Family Code, §162.005 and §162.018, before presenting any of a child's records to the child's legal risk or adoptive parents or other parties authorized to see them, CPS (or the contractor) must delete all information that might identify the child's biological parents or anyone else whose identity must be kept confidential.]~~

~~f(ii)~~ ~~To this end, as specified in §700.1343 of this title (relating to Deleting Confidential Information Before Releasing a Child's Records to Authorized Parties), CPS deletes all such identifying information from the records that the contractor will present to the legal risk or adoptive parents.]~~

(D) - (I) (No change.)

(5) - (6) (No change.)

§700.1726. Postadoption Services.

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

(c) Client eligibility.

(1) (No change.)

(2) Access to the child's case record. To help the contractor determine eligibility and assess a child's needs, DFPS gives the contractor a copy of the child's case records, after the records are redacted to remove any information that is confidential under the Texas Family Code or other law. [~~a contractor determine eligibility and assess a child's needs, PSFC gives the contractor a copy of the child's case record. As specified in the Texas Family Code, §162.005 and §162.018, and in §700.1343 of this title (relating to Deleting Confidential Information Before Releasing a Child's Records to Authorized Parties), the department must delete identifying information from the contractor's copy of the case record before giving it to the contractor.~~]

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 May 1, 2012.

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Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: June 17, 2012
For further information, please call: (512) 438-3437

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SUBCHAPTER Y. CONTRACTING WITH LICENSED RESIDENTIAL CHILD-CARE PROVIDERS

40 TAC §§700.2501, 700.2502, 700.2505

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), the repeal of §§700.2501, 700.2502, and 700.2505, concerning general requirements for contracting with licensed residential child-care providers, enrollment requirements, and authority to remove children and stop making placements, in its chapter governing Child Protective Services. Subchapter Y, Contracting with Licensed Residential Child-Care Providers, was originally enacted in 1996. Although there have been updates to the subchapter since the time of its original enactment, state law governing procurement, contract remedies and contract dispute resolution has changed significantly while the rules have been in effect. Also, DFPS is consolidating all of the rules pertinent to its contracts into Chapter 732 of this title (relating to Contracted Services), in an ongoing effort to consolidate the rules, which will make the agency's overall policies governing contracts clearer for the public. In this issue of the *Texas Register,* DFPS is incorporating relevant parts of these repealed rules into Chapter 732.

Section 700.2501 is repealed. Subsection (a) did not provide any substantive clarification to the public and is unnecessary. The content of subsections (b) and (c), regarding Licensing and general service requirements, will be included in any public notice of a DFPS procurement for residential child-care services. The content of subsection (d), regarding contract term, renewal, and amendment, is already covered in Chapter 732.

Section 700.2502 is repealed. In accordance with §2155.083 and §2155.144 of the Government Code, prerequisites to a residential child-care contract will be set forth in the agency's procurement for the contract.

Section 700.2505 is repealed. The content of subsection (a) and relevant portions of subsection (b) are moved to §732.269 of this title (relating to What contract remedies does DFPS use?). The content of subsection (f) is moved to §732.267 of this title (relating to What is the status of a contract action during disputes?). Portions of subsection (b) are deleted because they no longer reflect current terminology or practice related to contract remedies. Subsections (c) - (e) are repealed because they are covered by and partially in conflict with the DFPS residential contract for child-care services.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed repeals will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Ms. Brown also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be increased clarity to the public regarding DFPS's requirements and remedies for all agency contracts. There will be no effect on large, small, or micro-businesses because the proposed repeals do not impose new requirements on any business and do not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed repeals.

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

Questions about the content of the proposal may be directed to Jared Davis at (512) 438-5647 in DFPS's Legal Division. Electronic comments may be submitted to Marianne.Mcdon-

ald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-456, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030 within 30 days of publication in the *Texas Register.*

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement Texas Government Code, Chapter 2155, which sets forth a statutory scheme governing state procurements; and Texas Government Code, Chapter 2260, which sets forth a statewide contract dispute resolution process.

§700.2501. General Requirements for Contracting with Licensed Residential Child-Care Providers.

§700.2502. Enrollment Requirements.

§700.2505. Authority To Remove Children and Stop Making Placements.

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 May 1, 2012.

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Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: June 17, 2012
For further information, please call: (512) 438-3437

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CHAPTER 705. ADULT PROTECTIVE SERVICES

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), the repeal of §§705.1001, 705.2915, 705.2916, 705.2940, and 705.4101; new §§705.1001, 705.1003, 705.1005, 705.1007, 705.1009, 705.1011, 705.2101, 705.2103, 705.2105, 705.2107, 705.4101, 705.4103, 705.4105, 705.4107, 705.4109, and 705.4111; and amendments to §§705.3101, 705.3102, 705.6101, and 705.8101, in its Adult Protective Services (APS) chapter. The purpose of the changes is to establish in rule the statutory definitions of abuse, neglect and exploitation (ANE). The current ANE definitions for the APS in-home program, by and large, reflect the statutory language. Senate Bill (S.B.) 221, 82nd Legislature, Regular Session, 2011, gave authority to the Health and Human Services Executive Commissioner to establish definitions of ANE in rule in lieu of the current statutory definitions for the APS in-home program. DFPS sought this change for two reasons.

First, due to increasing intakes and decreasing staff, DFPS desires to target who it serves more effectively. APS plays the de facto role of the safety net for certain aspects of the Texas health and human services delivery system. Through rule change, DFPS hopes to clarify and refine its role by targeting investigations and services to APS clients who agree to these services and by not using scarce resources on clients better served by others. DFPS is proposing three types of changes: (1) eliminate cases when the APS investigation will not alleviate the root cause of the ANE; (2) eliminate duplication of cases in which other entities have clearer responsibility and resources; and (3) streamline cases in which an expedited investigation would be more efficient.

The second reason DFPS requested this authority is a need to make changes to definitions for paid caretakers, particularly employees of home and community support services agencies (HCSSAs). The current APS in-home ANE definitions apply in situations in which a caretaker is paid or non-paid. DFPS believes a distinction is needed between paid and non-paid caretakers based on the premise that paid caretakers have a higher duty or responsibility than non-paid caretakers, which should be reflected in the definitions. In addition to these changes, DFPS is also clarifying and updating the language of the other rules in this chapter. A summary of the changes follows:

Section 705.1001 is repealed and proposed as new. The new section: (1) adds definitions for APS, DFPS, emotional harm, intimidation, ongoing relationship, paid caretaker, person with a disability, physical injury, serious harm, substantially impairs, and unreasonable confinement; (2) deletes definitions of abuse, aged or disabled person, CAPS, collateral contact, emotional or verbal abuse, exploitation, family violence, least restrictive alternative, neglect, personal care facility, primary worker, principal, secondary worker, and sexual abuse; and (3) updates the definitions of some of the remaining terms that were contained in the repealed rule.

New §705.1003 defines physical abuse and differentiates between caretakers and paid caretakers.

New §705.1005 defines sexual abuse and revises the previous definition by clarifying what does not constitute consent.

New §705.1007 defines emotional or verbal abuse and differentiates between caretakers and paid caretakers.

New §705.1009 defines neglect, including self-neglect.

New §705.1011 defines financial exploitation and differentiates between caretakers and paid caretakers. The definition includes attempted exploitation and identity theft, as required by S.B. 221.

Sections 705.2915, 705.2916, and 705.2940 are repealed.

New §705.2101 updates the information previously contained in §705.2916 regarding how investigations are prioritized.

New §705.2103 updates what qualifies as emergency client services by clarifying information previously contained in §705.2940.

New §705.2105 adds who is eligible for emergency client services as previously contained in §705.2940.

New §705.2107 states when emergency client services are available as previously contained in §705.2940.

The amendment to §705.3101 clarifies the role of APS when a person is a victim of domestic violence and updates a reference to the Texas Family Code.

The amendment to §705.3102 updates the language of the rule and a reference to the Texas Family Code.

Section 705.4101 is repealed and proposed as new. For clarity and to update the rule language, the previous information contained in the repealed rule has been revamped into four new rules (§§705.4101, 705.4103, 705.4105 and 705.4107). This specific new rule relates to the terms defined in this subchapter.

New §705.4103: (1) clarifies the rights of the designated perpetrator to appeal APS findings; and (2) clarifies what due process hearings are available to a designated perpetrator.

New §705.4105 clarifies the responsibility of DFPS to notify the designated perpetrator when intending to release investigation findings.

New §705.4107 addresses the role of the designated perpetrator during the administrative review process.

New §705.4109 clarifies that administrative reviews (release hearings) are closed to the public.

New §705.4111 clarifies who receives notification of the final decision.

The amendment to §705.6101 adds the word "financial" before all references to "exploitation."

The amendment to §705.8101 updates the language of the rule to be consistent with other changes being made in this chapter.

In addition, throughout the rules, the terms "elderly person" and "disabled person" are replaced with person first language; the term "aged and disabled adults" is replaced with "alleged victims"; the term "elderly person or an adult with a disability" is replaced with "alleged victim"; the agency name is changed to Department of Family and Protective Services; and the word "financial" is added before the term "exploitation" to clarify that exploitation refers to financial exploitation.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown also has determined 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 that APS will focus on targeting services to the most vulnerable adults that it can most effectively serve. There will be no effect on large, small, or micro-businesses because the proposed changes do not impose new requirements on any business and do not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

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

Questions about the content of the proposal may be directed to Kathleen Dickens at (682) 323-7708 in DFPS's Adult Protective Services Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-457, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030 within 30 days of publication in the *Texas Register.*

SUBCHAPTER A. DEFINITIONS

40 TAC §705.1001

(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 Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements Senate Bill 221, 82nd Legislature, Regular Session, 2011.

§705.1001. Definitions.

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 May 1, 2012.

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Gerry Williams
General Counsel
Department of Family and Protective Services
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40 TAC §§705.1001, 705.1003, 705.1005, 705.1007, 705.1009, 705.1011

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement Senate Bill 221, 82nd Legislature, Regular Session, 2011.

§705.1001. How are the terms in this chapter defined?

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

(1) Adult--A person aged 18 or older, or an emancipated minor.

(2) Allegation--An assertion that an alleged victim is in a state of or at risk of harm due to abuse, neglect, or financial exploitation.

(3) Alleged perpetrator--A person who is reported to be responsible for the abuse, neglect, or financial exploitation of an alleged victim.

(4) Alleged victim--An adult with a disability or aged 65 or older who has been reported to adult protective services to be in a state of or at risk of harm due to abuse, neglect, or financial exploitation.

(5) Alleged victim/perpetrator--An adult with a disability or aged 65 or older who has been reported to adult protective services to be in a state of or at risk of self neglect.

(6) APS--Adult Protective Services, a division of DFPS.

(7) Authorized representative--A person appointed by an alleged victim or a client to speak for him or act on his behalf.

(8) Capacity to consent to protective services--Having the mental and physical ability to understand the services offered and to accept or reject those services knowing the consequences of the decision.

(9) Caretaker--A guardian, representative payee, or other person who by act, words, or course of conduct has acted so as to cause a reasonable person to conclude that he has accepted the responsibility for protection, food, shelter, or care for an alleged victim. This excludes paid caretakers as defined by this chapter.

(10) Client--An alleged victim who has been determined in a validated finding to be in need of protective services. The alleged victim does not have to meet financial eligibility requirements.

(11) Community care--Services provided within the client's own home, neighborhood, or community, as alternatives to institutional care. Community care is sometimes called alternate care.

(12) Designated perpetrator--An alleged perpetrator who has been determined in a validated finding to have abused, neglected, or financially exploited a designated victim.

(13) Designated victim--An alleged victim with a valid abuse, neglect, or financial exploitation finding.

(14) Designated victim/perpetrator--An alleged victim/perpetrator with a validated self-neglect finding.

(15) DFPS--Department of Family and Protective Services.

(16) Emancipated minor--A person under 18 years of age who has the power and capacity of an adult. This includes a minor who has had the disabilities of minority removed by a court of law or a minor who, with or without parental consent, has been married. Marriage includes common-law marriage.

(17) Emotional harm--A highly unpleasant mental reaction with observable signs of distress, such as anguish, grief, fright, humiliation, or fury.

(18) Institution--An establishment that furnishes, in one or more facilities, food and shelter to four or more persons who are unrelated to the proprietor of the establishment, and provides minor treatment under the direction and supervision of a physician licensed by the Texas Medical Board, or other services that meet some need beyond the basic provision of food, shelter, and laundry. (Health and Safety Code, §242.002(10))

(19) Intimidation--Behavior by actions or words creating fear of physical injury, death, or abandonment.

(20) Ongoing relationship--A personal relationship that includes:

(A) frequent and regular interaction;

(B) a reasonable assumption that the interaction will continue;

(C) an establishment of trust; and

(D) an awareness of the circumstances in which the alleged victim is living.

(21) Paid caretaker--An employee of a home and community support services agency licensed under Chapter 142, Health and Safety Code, or an individual or family member privately hired and receiving monetary compensation to provide personal care services to an alleged victim.

(22) Person with a disability--An adult with a physical, mental, or developmental disability that substantially impairs the adult's ability to adequately provide for his own care or protection.

(23) Physical injury--Physical pain, harm, illness, or any impairment of physical condition.

(24) Protective services--The services furnished by DFPS or by a protective services agency to a designated victim (including a designated victim/perpetrator) or to the designated victim's relative or caretaker if DFPS determines the services are necessary to prevent the designated victim from returning to a state of abuse, neglect, or financial exploitation. These services may include social casework, case management, and arranging for psychiatric and health evaluation, home care, day care, social services, health care, respite services, and other services consistent with Human Resources Code, Chapter 48. The term does not include the services of DFPS or another protective services agency in conducting an investigation regarding an allegation of abuse, neglect, or financial exploitation. (Human Resources Code, §48.002)

(25) Provider agency or entity (contractor)--An agency or entity that has contracted with DFPS to provide authorized protective services to clients.

(26) Reporter--A person who makes a referral to DFPS about a situation of alleged abuse, neglect, or financial exploitation of an alleged victim.

(27) Serious harm--In danger of sustaining significant physical injury or death; or danger of imminent impoverishment or deprivation of basic needs.

(28) Substantially impairs--When a disability grossly and chronically diminishes an adult's physical or mental ability to live independently or provide self-care as determined through observation, diagnosis, evaluation, or assessment.

(29) Sustained perpetrator--A designated perpetrator whose validated finding of abuse, neglect, or financial exploitation of a designated victim has been sustained by an administrative law judge in a due process hearing, including a release hearing or Employee Misconduct Registry (EMR) hearing, or the designated perpetrator has waived the right to a hearing.

(30) Unreasonable confinement--An act that results in a forced isolation from the people one would normally associate with, including friends, family, neighbors, and professionals; an inappropriate restriction of movement; or the use of any inappropriate restraint.

§705.1003. How is physical abuse defined?

(a) In this chapter, when an alleged perpetrator is a caretaker, family member, or other individual who has an ongoing relationship with the alleged victim, physical abuse is defined as any knowing, reckless, or intentional act or failure to act, including unreasonable confinement, corporal punishment, inappropriate or excessive force, or intimidation, which caused physical injury, death, or emotional harm.

(b) In this chapter, when an alleged perpetrator is a paid caretaker, physical abuse is defined as any knowing, reckless, or inten-

tional act or failure to act, including unreasonable confinement, corporal punishment, inappropriate or excessive force, or intimidation, which caused or may have caused physical injury, death, or emotional harm.

§705.1005. How is sexual abuse defined?

(a) In this chapter, when an alleged perpetrator is a caretaker or paid caretaker, family member, or other individual who has an ongoing relationship with the alleged victim, sexual abuse is defined as nonconsensual sexual activity, which may include, but is not limited to, any activity that would be a sexually-oriented offense per Texas Penal Code, Chapters 21, 22, or 43.

(b) There is no consent when:

(1) the alleged perpetrator knows or should know that the alleged victim is incapable of consenting because of impairment in judgment due to mental or emotional disease or defect;

(2) consent is induced by force or threat against any person;

(3) the alleged victim is unconscious or physically unable to resist;

(4) the alleged perpetrator has intentionally impaired the alleged victim by administering any substance without the person's knowledge; or

(5) consent is coerced due to fear of retribution or hardship, or by exploiting the emotional dependency of alleged victim on the alleged perpetrator.

§705.1007. How is emotional or verbal abuse defined?

(a) In this chapter, when an alleged perpetrator is a caretaker, family member, or other individual who has an ongoing relationship with the alleged victim, emotional or verbal abuse is defined as any act or use of verbal or other communication to threaten violence that makes a person fearful of imminent physical injury.

(b) In this chapter, when an alleged perpetrator is a paid caretaker, emotional or verbal abuse is defined as any act or communication that is:

(1) used to curse, vilify, humiliate, degrade, or threaten and that results in emotional harm; or

(2) of such a serious nature that a reasonable person would consider it emotionally harmful.

§705.1009. How is neglect defined?

(a) In this chapter, when the alleged perpetrator is an alleged victim/perpetrator, neglect is defined as the failure of one's self to provide the protection, food, shelter, or care necessary to avoid emotional harm or physical injury.

(b) In this chapter, when an alleged perpetrator is a caretaker or paid caretaker, neglect is defined as:

(1) the failure to provide the protection, food, shelter, or care necessary to avoid emotional harm or physical injury; or

(2) a negligent act or omission that caused or may have caused emotional harm, physical injury, or death.

§705.1011. How is financial exploitation defined?

(a) In this chapter, when an alleged perpetrator is a caretaker, family member, or other individual who has an ongoing relationship with the alleged victim, financial exploitation is defined as the illegal or improper act or process of an alleged perpetrator using, or attempting to use, the resources of the person, including the person's social security number or other identifying information, for monetary or personal benefit, profit, or gain without the informed consent of the alleged victim. Financial exploitation excludes theft of property. There is no informed consent when it is:

(1) not voluntary;

(2) induced by deception or coercion; or

(3) given by an alleged victim who the actor knows or should have known to be unable to make informed and rational decisions because of diminished capacity or mental disease or defect.

(b) In this chapter, when an alleged perpetrator is a paid caretaker, financial exploitation is defined as the illegal or improper act or process of an alleged perpetrator using, or attempting to use, the resources of the person, including the person's social security number or other identifying information, for monetary or personal benefit, profit, or gain. This includes, but is not limited to, offenses against property found in Texas Penal Code, Chapters 31 and 32.

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

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Gerry Williams
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SUBCHAPTER D. ELIGIBILITY

40 TAC §§705.2101, 705.2103, 705.2105, 705.2107

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §40.021.

§705.2101. How are investigations prioritized?

Alleged victims receive protective services according to the following priorities:

(1) Priority I--Reports which allege that the victim is in a state of serious harm or is in danger of death from abuse or neglect.

(2) Priority II--Reports which allege that the victim is abused, neglected, or financially exploited and, as a result, is at risk of serious harm.

(3) Priority III--All other reports which allege that the victim is in a state of abuse or neglect.

(4) Priority IV--Reports which allege financial exploitation when there is no serious harm.

§705.2103. What are emergency client services?

Emergency client services are services provided in accordance with Human Resources Code, §48.002(a)(5), including, but not limited to,

emergency shelter, medical and psychiatric assessments, in-home care, residential care, heavy housecleaning, minor home repairs, money management, transportation, emergency food, medication, and other supplies.

§705.2105. Who is eligible for emergency client services?

To be eligible for emergency client services, an alleged victim must be receiving adult protective services in accordance with Human Resources Code, §48.002(a)(5) and §48.205. The alleged victim must have a service plan developed by DFPS under these sections indicating that emergency client services are needed to remedy abuse, neglect, or financial exploitation.

§705.2107. When are emergency client services available?

(a) State and local resources must be used before emergency client services are expended.

(b) Not all emergency client services are available in all geographic areas of the state. DFPS may limit the units of service or length of time that clients can receive emergency client services, based upon service plans, availability of funds, and availability of service providers.

(c) If the region does not have sufficient funds to provide emergency client services to all eligible clients, the client will not be able to receive emergency client services at the time the client is determined eligible. Clients who are still in need of emergency client services when services are available will be given priority based upon the date of the service plan indicating the need for emergency client services.

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

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40 TAC §§705.2915, 705.2916, 705.2940

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC §40.021.

§705.2915. Eligibility for Adult Protective Services.

§705.2916. Protective Services Priorities.

§705.2940. Adult Protective Emergency Client Services.

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

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SUBCHAPTER G. FAMILY VIOLENCE

40 TAC §705.3101, §705.3102

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.021.

§705.3101. What actions does APS perform when alleged victims are also victims of family violence? [~~Validation of Allegations.~~]

(a) When APS [~~Texas Department of Protective and Regulatory Services (TDPRS)~~] staff validate an allegation that an alleged victim [~~elderly person or an adult with a disability~~] is a victim of family violence as specified in the Texas Family Code, §71.004 [~~§71.01(b)(2)~~], the adult protective services caseworker:

(1) documents that the alleged victim is a victim of family violence [~~the findings~~]; and

(2) (No change.)

(b) Statistical compilations of the documented findings are included in DFPS's [~~TDPRS's~~] annual report.

§705.3102. Can DFPS apply for protective orders? [~~Protective Orders.~~]

When APS [~~Texas Department of Protective and Regulatory Services (TDPRS)~~] staff validate an allegation that an alleged victim [~~elderly person or an adult with a disability~~] is a victim of family violence as specified in the Texas Family Code, §71.004, DFPS [~~§71.01(b)(2), TDPRS~~] may apply for a protective order to protect the victim. Before filing the protective order, the APS [~~adult protective services~~] caseworker contacts the victim and a nonabusive adult member of the household, if available:

(1) to notify them of DFPS's [~~TDPRS's~~] intent to file a protective order; and

(2) (No change.)

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

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SUBCHAPTER J. RELEASE HEARINGS

40 TAC §705.4101

(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 Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements HRC §40.021.

§705.4101. Adult Protective Services Release Hearings.

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

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40 TAC §§705.4101, 705.4103, 705.4105, 705.4107, 705.4109, 705.4111

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §48.101 and HRC §40.021.

§705.4101. How are terms in this subchapter defined?

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

(1) Emergency--Abuse, neglect, or financial exploitation which, without immediate intervention, would result in a child or an alleged or designated victim being in a state of or at risk of serious harm.

(2) Release--The release of data outside of DFPS without the designated perpetrator's consent, except for data released as allowed by law or in accordance with this chapter.

§705.4103. Does the designated perpetrator have the right to appeal?

(a) When APS staff validates an allegation of abuse, neglect, or financial exploitation of a designated victim and an entity such as a provider agency, home health agency, senior center, or other employer allows the designated perpetrator to have access to adults with disabilities, adults aged 65 or older, or children, then the APS caseworker may notify the entity of the findings by complying with this subchapter. If the findings are to be released to the entity, the designated perpetrator must be given prior written notification, except in emergencies, and an opportunity to request an Administrative Review of Investigative Findings and a hearing before the State Office of Administrative Hearings.

(b) If the designated perpetrator is an employee of a home and community support services agency (HCSSA) and subject to placement on the Employee Misconduct Registry established under Health and Safety Code, Chapter 253, he may request a hearing as described in Chapter 711 of this title (relating to Investigations in DADS and DSHS Facilities and Related Programs), Subchapter O (relating to Employee Misconduct Registry).

(c) A designated perpetrator who is offered a due process hearing under subsection (b) of this section may not also request a release hearing, as described in this chapter, relating to the same allegations of abuse, neglect, or financial exploitation.

(d) DFPS may elect to offer due process for an emergency release in an EMR hearing, as described in Chapter 711 of this title.

§705.4105. How is the designated perpetrator notified of the intent to release?

(a) The caseworker must give written notification to each designated perpetrator if:

(1) allegations of abuse, neglect, or financial exploitation are validated;

(2) the findings are to be released outside of DFPS to an entity which allows the designated perpetrator access to adults with disabilities, adults aged 65 or older, or children; and

(3) the designated perpetrator, as a result of the release, may be denied a right or privilege, such as employment.

(b) Written notification must include:

(1) the findings to be released;

(2) the entity to which the findings will be released;

(3) the designated perpetrator's right to request a copy of the investigation documentation, from which the reporter's name has been removed;

(4) a warning that the request for a copy of the investigation documentation may be denied if release of the investigation documentation would jeopardize an ongoing criminal investigation, or if the attorney representing DFPS in a lawsuit has determined that the information should be withheld;

(5) DFPS's decision that an emergency exists and that the findings have already been released, if applicable;

(6) the designated perpetrator's right to an administrative review and a release hearing to appeal the findings, and a warning that the findings will be released without the designated perpetrator's consent if the designated perpetrator does not request an appeal and the findings have not already been released in an emergency;

(7) the requirement that the designated perpetrator must request the appeal in writing and that the request must be postmarked within 20 days after the official notice is mailed by DFPS; and

(8) a statement that the designated perpetrator is responsible for keeping DFPS timely informed of the designated perpetrator's current address and to immediately notify DFPS of any change of address or contact information throughout the investigation and any period of time during which an appeal is pending.

§705.4107. What is the designated perpetrator's role during an administrative review?

(a) The designated perpetrator may:

(1) appear in person at the administrative review and may be accompanied by a representative;

(2) submit written material that is relevant to the case; or

(3) have a certified interpreter provided by DFPS if the designated perpetrator does not speak English or is deaf, or may provide his own interpreter.

(b) The designated perpetrator is responsible for:

(1) any costs he incurs for the review, except for interpreter services provided by DFPS.

(2) keeping DFPS timely informed of his current address at all times during the review period.

§705.4109. Are administrative reviews open to the general public?

Administrative reviews are closed to the general public consistent with the required statutory confidentiality of DFPS records. Only the designated perpetrator and the designated perpetrator's representative may be present.

§705.4111. Who is notified of the confidential decision?

If the final outcome of the appeal or any subsequent litigation alters or reverses the APS findings, everyone notified of the original findings must be notified of the final decision. Notification may be in the same form as the original notification. The decision is confidential and may be disclosed only as allowed by law or this chapter.

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

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Gerry Williams
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SUBCHAPTER L. RISK ASSESSMENT

40 TAC §705.6101

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §48.004 and HRC §40.021.

§705.6101. What is a risk assessment for in-home cases? [~~Risk Assessment for In-Home Cases.~~]

(a) An assessment shall be completed during an in-home investigation of abuse, neglect, or financial exploitation to assist in determining whether the client is at imminent risk of abuse, neglect, or financial exploitation; is in a state of abuse, neglect, or financial exploitation; or needs protective services. The assessment includes the following criteria:

(1) - (6) (No change.)

(b) A caseworker must consult with a supervisor when:

(1) Abuse, neglect, or financial exploitation is validated;

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

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

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SUBCHAPTER N. PUBLIC AWARENESS

40 TAC §705.8101

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §40.0527.

§705.8101. How does DFPS educate the public about APS? [~~Public Awareness.~~]

(a) DFPS [~~The Department of Family and Protective Services (DFPS)~~] conducts a statewide public awareness campaign to educate the public regarding abuse, neglect, and financial exploitation of alleged victims [~~the elderly and adults with disabilities~~] and to reduce

the incidences of maltreatment involving [~~vulnerable~~] adults with disabilities and adults aged 65 or older.

(b) (No change.)

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

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Gerry Williams
General Counsel
Department of Family and Protective Services
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For further information, please call: (512) 438-3734

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CHAPTER 711. INVESTIGATIONS IN DADS AND DSHS FACILITIES AND RELATED PROGRAMS

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§711.1, 711.3, 711.13, 711.405, 711.611, 711.613, 711.1013, 711.1201, 711.1203, 711.1207, 711.1402, 711.1406, 711.1408, 711.1413, 711.1421, 711.1426, 711.1427, and 711.1429; new §§711.1015, 711.1209, and 711.1404; and the repeal of §711.1404, in its Investigations in DADS and DSHS Facilities and Related Programs chapter. The purpose of the amendments, new sections and repeal is to update names and expand or clarify terms. The changes also bring conformity with the in-home abuse, neglect and exploitation definitions being proposed in Chapter 705 of this title (relating to Adult Protective Services), the current practice related to how reviews and appeals are conducted, how Employee Misconduct Registry cases are handled, and how findings in cases may be changed upon review after the case is closed. Also, the name of the chapter is revised to delete the words "mental retardation" and "mental health."

The amendment to §711.1 adds that adult protective services (APS) investigates allegations in licensed intermediate care facilities for persons with intellectual disabilities and related conditions (ICF-ID).

The amendment to §711.3 adds the definition of ICF-ID and revises the name of the home and community-based services waiver (HCSW) program to the home and community-based services (HCS) program.

The amendment to §711.13 clarifies that DFPS, for good cause shown, may find that consensual sexual activity in an ongoing relationship begun prior to the provision of services is not sexual abuse.

The amendments to §§711.405, 711.611, 711.613, and 711.1013 replace ICF-MR with ICF-ID, update several rule references, and replace HCSW with HCS.

New §711.1015 clarifies the right of DFPS to conduct a review of an investigation without a request for a review of finding or methodology and the responsibility to notify all involved parties of any change in the finding.

The amendments to §711.1201 and §711.1203 update the name of Advocacy, Inc. to Disability Rights Texas.

The amendment to §711.1207: (1) clarifies that APS may review the "methodology used" during a requested appeal of findings; and (2) removes the requirement that APS notify the "victim, or alleged victim, guardian or parent (if victim is a child)," which is the provider's responsibility.

New §711.1209 clarifies the right of DFPS to conduct a review of an investigation without an appeal request and the responsibility to notify all involved parties of any change in the finding.

The amendment to §711.1402: (1) defines "facility investigation" and clarifies the entities under the investigatory responsibility of DFPS; (2) revises the HCS definition to incorporate use of people first (respectful) language; (3) changes HCSW to HCS; (4) changes ICF-MR to the current term ICF-ID; and (5) replaces "mental retardation" with "intellectual disabilities."

Section 711.1404 is repealed and proposed as new. The new section clarifies which physical abuse, sexual abuse, emotional or verbal abuse, neglect, and financial exploitation in-home definitions that are being proposed in Chapter 705 apply to the Employee Misconduct Registry (EMR).

The amendment to §711.1406 clarifies that DFPS, for good cause shown, may find that consensual sexual activity in an ongoing relationship begun prior to the provision of services is not sexual abuse and removes MHMR in reference to facility investigations.

The amendment to §711.1408 removes MHMR in reference to facility investigations.

The amendment to §711.1413 makes the rule consistent with other rules on emergency releases.

The amendment to §711.1421 clarifies that EMR hearings may be postponed until the criminal case resolves and updates the name of hearings examiner to administrative law judge.

The amendment to §711.1426 makes a grammatical correction.

The amendment to §711.1427 clarifies that EMR hearings are confidential and closed to the public and updates the name of hearings examiner to administrative law judge.

The amendment to §711.1429 clarifies that EMR decisions will now be final and not a Proposal for Decision in accordance with Human Resources Code, §48.405 as modified by the 82nd Legislature in Senate Bill 221.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown also has determined 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 public access to updated information. There will be no effect on large, small, or micro-businesses because the proposed changes do not impose new requirements on any business and do not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

HHSC has determined that the proposed amendments, new sections and repeal do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of gov-

ernment action and, therefore, do not constitute a taking under §2007.043, Government Code.

Questions about the content of the proposal may be directed to Kathleen Dickens at (682) 323-7708 in DFPS's Adult Protective Services Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-457, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030 within 30 days of publication in the *Texas Register.*

SUBCHAPTER A. INTRODUCTION

40 TAC §§711.1, 711.3, 711.13

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement House Bill 1481, 82nd Legislature, Regular Session, and HRC §48.251.

§711.1. What is the purpose of this chapter?

The purpose of this chapter is to:

(1) (No change.)

(2) describe Adult Protective Services investigations of allegations involving adults and children in the following programs:

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

(D) home and community-based services waiver programs; [~~and~~]

(E) licensed intermediate care facilities for persons with intellectual disabilities and related conditions (ICF-ID); and

(F) [~~(E)~~] a contractor or agent of one of the programs listed in subparagraphs (A) through (E) [~~(D)~~] of this paragraph;

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

§711.3. How are the terms in this chapter defined?

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

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

(11) Contractor--Any organization, entity, or individual who contracts with a facility, local authority, community center, or HCS [~~HCSW~~] to provide mental health and/or mental retardation services directly to a person served. The term includes a local independent school district with which a facility, local authority, or community center has a memorandum of understanding (MOU) for educational services.

(12) - (16) (No change.)

(17) Emergency services in Home and Community-Based Services (HCS) [~~Waiver (HCSW)~~]--Services provided by APS in-home staff necessary to immediately protect a person served by an HCS [~~HCSW~~] from serious physical harm or death. Examples include, but are not limited to, arranging for:

(A) - (D) (No change.)

(18) Emergency Services in Licensed ICFs-ID [~~ICFs-MR~~]--Services provided by DADS if DADS determines, based on information from the DFPS investigator, that immediate removal is necessary to protect the resident from further abuse, neglect, or exploitation. DADS will file a petition for temporary care and protection of a resident.

(19) Facility--A state hospital, state supported living center, or Rio Grande State Center that is operated by DADS or DSHS, and unless the context indicates otherwise licensed ICFs-ID [~~ICFs-MR~~].

(20) Home and community-based services (HCS) waiver [~~(HCSW)~~] programs--The Home and Community-based Services and the Texas Home Living Medicaid waiver programs authorized under the Social Security Act, §1915(c), operated by DADS under the authority of the Texas Health and Human Services Commission, that are exempt from licensure in accordance with Health and Safety Code, §142.003(a)(19).

(21) HCS [~~HCSW~~] CEO/Administrator Designee--The person designated to perform the duties of the CEO/Administrator for the purposes of the investigation when the CEO/Administrator is the alleged perpetrator in an investigation.

(22) ICF-ID--A licensed intermediate care facility for persons with intellectual disabilities, also known as ICF-MR.

(23) [~~(22)~~] Incitement--To spur to action or instigate into activity; implies responsibility for initiating another's actions.

(24) [~~(23)~~] Individual with a disability receiving services--A disabled person as defined in the Human Resources Code, Chapter 48, receiving services from a:

(A) facility, local authority, community center, HCS [~~HCSW~~]; or

(B) contractor or agent of one of the programs listed in subparagraph (A) of this paragraph.

(25) [~~(24)~~] Investigator--An employee of the division of Adult Protective Services who has:

(A) demonstrated competence and expertise in conducting investigations; and

(B) received training on techniques for communicating effectively with individuals with a disability.

(26) [~~(25)~~] Licensed ICF-ID [~~ICF-MR~~] Administrator (designee)--The person designated to perform the duties of the CEO/Administrator for the purposes of the investigation when the CEO/Administrator is the alleged perpetrator in an investigation.

(27) [~~(26)~~] Local authority--An entity designated by the HHSC Executive Commissioner in accordance with the Texas Health and Safety Code, §533.035(a).

(28) [~~(27)~~] Mental health services provider--In accordance with the Texas Civil Practice and Remedies Code, §81.001, an individual, licensed or unlicensed, who performs or purports to perform mental health services, including a:

(A) licensed social worker as defined by §505.002, Occupations Code;

(B) chemical dependency counselor as defined by §504.001, Occupations Code;

(C) licensed professional counselor as defined by §503.002, Occupations Code;

(D) licensed marriage and family therapist as defined by §502.002, Occupations Code;

(E) member of the clergy;

(F) physician who is practicing medicine as defined by §151.002, Occupations Code;

(G) psychologist offering psychological services as defined by §501.003, Occupations Code; or

(H) special officer for mental health assignment certified under §1701.404, Occupations Code.

(29) [~~(28)~~] Non-serious physical injury (in Community Centers, Local Authorities, licensed ICFs-ID [~~ICFs-MR~~] and HCS [~~HCSW~~] Programs)--Any injury determined not to be serious by the appropriate medical personnel. Examples of non-serious physical injury include the following:

(A) superficial laceration;

(B) contusion two and one-half inches in diameter or smaller; or

(C) abrasion.

(30) [~~(29)~~] Non-serious physical injury (in DADS and DSHS facilities only)--Any injury requiring minor first aid and determined not to be serious by a registered nurse, advanced practice nurse (APN), or physician.

(31) [~~(30)~~] Peer review--A review of clinical and/or:

(A) medical practice(s) by peer physicians;

(B) dental practice(s) by peer dentists;

(C) pharmacy practice(s) by peer pharmacists; or

(D) nursing practice(s) by peer nurses.

(32) [~~(31)~~] Perpetrator--An employee, agent, or contractor of a facility, local authority, community center, or HCS [~~HCSW~~] who has committed an act of abuse, neglect, or exploitation.

(33) [~~(32)~~] Person served--An individual with a disability receiving services, or a child receiving services in a:

(A) facility or HCS [~~HCSW~~] who is registered or assigned in the Client Assignment and Registration (CARE) system; or

(B) community center or local authority who is registered or assigned in CARE or who is otherwise receiving services from a community center or local authority, either directly or by contract.

(34) [~~(33)~~] Preponderance of evidence--The greater weight of evidence, or evidence which is more credible and convincing to the mind.

(35) [~~(34)~~] Prevention and management of aggressive behavior (PMAB)--DADS and DSHS' proprietary risk management program that uses the least intrusive, most effective options to reduce the risk of injury for persons served and staff from acts or potential acts of aggression.

(36) [~~(35)~~] Professional review--A review of clinical and/or professional practice(s) by peer professionals.

(37) [~~(36)~~] Program--A facility, local authority, community center, or HCS [~~HCSW~~].

(38) [~~(37)~~] Reporter--The person, who may be anonymous, making an allegation.

(39) [~~(38)~~] Serious physical injury (in Community Centers, Local Authorities, licensed ICFs-ID [~~ICFs-MR~~] and HCS [~~HCSW~~] Programs)--Any injury determined to be serious by the appropriate medical personnel. Examples of serious physical injury include the following:

(A) fracture;

(B) dislocation of any joint;

(C) internal injury;

(D) contusion larger than two and one-half inches in diameter;

(E) concussion;

(F) second or third degree burn; or

(G) any laceration requiring sutures.

(40) [~~(39)~~] Serious physical injury (in DADS and DSHS facilities only)--Any injury requiring medical intervention or hospitalization or any injury determined to be serious by a physician or advanced practice nurse (APN). Medical intervention is treatment by a licensed medical doctor, osteopath, podiatrist, dentist, physician's assistant, or advanced practice nurse (APN). For the purposes of this subchapter, medical intervention does not include first aid, an examination, diagnostics (e.g., x-ray, blood test), or the prescribing of oral or topical medication.

(41) [~~(40)~~] Sexually transmitted disease--Any infection with or without symptoms or clinical manifestations that can be transmitted from one person to another by sexual contact.

(42) [~~(41)~~] Victim--A person served who is alleged to have been abused, neglected, or exploited.

§711.13. How is sexual abuse defined?

(a) In this chapter, when the alleged perpetrator is an employee, agent, or contractor, sexual abuse is defined as any sexual activity, including but not limited to:

(1) kissing a person served with sexual intent;

(2) hugging a person served with sexual intent;

(3) stroking a person served with sexual intent;

(4) fondling a person served with sexual intent;

(5) engaging in with a person served:

(A) sexual conduct as defined in the Texas Penal Code, §43.01; or

(B) any activity that is obscene as defined in the Texas Penal Code, §43.21;

(6) requesting, soliciting, or compelling a person served to engage in:

(A) sexual conduct as defined in the Texas Penal Code, §43.01; or

(B) any activity that is obscene as defined in the Texas Penal Code, §43.21;

(7) in the presence of a person served:

(A) engaging in or displaying any activity that is obscene, as defined in the Texas Penal Code §43.21; or

(B) requesting, soliciting, or compelling another person to engage in any activity that is obscene, as defined in the Texas Penal Code §43.21;

(8) committing sexual exploitation as defined in §711.15 of this title (relating to How is sexual exploitation defined?) against a person served;

(9) committing sexual assault as defined in the Texas Penal Code §22.011, against a person served;

(10) committing aggravated sexual assault as defined in the Texas Penal Code, §22.021, against a person served; and

(11) causing, permitting, encouraging, engaging in, or allowing the photographing, filming, videotaping, or depicting of a person served if the employee, agent, or contractor knew or should have known that the resulting photograph, film, videotape, or depiction of the person served is obscene as defined in the Texas Penal Code, §43.21, or is pornographic.

(b) DFPS, for good cause shown, may find that consensual sexual activity in an ongoing relationship, as defined in §705.1001(20) of this title (relating to How are the terms in this chapter defined?) begun prior to the provision of services is not sexual abuse.

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

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SUBCHAPTER E. CONDUCTING THE INVESTIGATION

40 TAC §711.405

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §48.255 and House Bill 1481, 82nd Legislature, Regular Session.

§711.405. What action does the investigator take if the alleged perpetrator is a physician, dentist, registered nurse, licensed vocational nurse, or pharmacist for a state-operated facility or a licensed ICF-ID [~~ICF-MR~~] that maintains a peer review committee?

(a) The investigator consults [~~meets~~] with the administrator, and the facility medical, dental, nursing or pharmacy director, as appropriate, to determine whether the allegation involves clinical practice, in accordance with 25 TAC §417.509(a) [~~and 40 TAC §7.509(a)~~] (relating to Peer Review) and 40 TAC §3.305(i) (relating to Completion of an Investigation).

(b) If it is determined that the allegation involves clinical practice, then the investigator refers the allegation to the administrator for peer review in accordance with 25 TAC §417.509(a)(2) and 40 TAC §3.305(i) [~~§7.509(a)(2)~~].

(c) (No change.)

(d) If it is determined that the allegation involves both clinical practice and non-clinical issues, then the investigator refers the allegation to the administrator for peer review in accordance with 25 TAC §417.509(a)(3) and 40 TAC §3.305(i) [~~§7.509(a)(3)~~] and conducts an investigation.

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

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SUBCHAPTER G. RELEASE OF REPORT AND FINDINGS

40 TAC §711.611, §711.613

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §48.255 and House Bill 1481, 82nd Legislature, Regular Session.

§711.611. Is the victim or alleged victim, guardian, or parent notified of the finding?

Yes. The victim or alleged victim, guardian, or parent (if the victim or alleged victim is a child) is notified of the finding of the investigation and the method to appeal the finding, in accordance with the following rules of DADS and DSHS:

(1) (No change.)

(2) for state supported living centers and the ICF-ID [~~ICF-MR~~] component of the Rio Grande State Center--40 TAC §3.305(c) [~~§7.510~~] (relating to Completion of an [~~the~~] Investigation);

(3) (No change.)

(4) for HCS [~~HCSW~~] programs--40 TAC Chapter 9, Subchapter D (relating to Home and Community-based Services (HCS) program and 40 TAC Chapter 9, Subchapter N (relating to Texas Home Living (TxHmL) program); or

(5) for licensed ICFs-ID [~~ICFs-MR~~]--40 TAC Chapter 90, Subchapter G (relating to Abuse, Neglect, and Exploitation; Complaint

and Incident Reports and Investigations) [~~Incidents of Abuse and Neglect Investigated and Reported by Facilities to the Texas Department of Aging and Disability Services (DADS)~~].

§711.613. Can the investigative report be released by the State Supported Living Centers, the State Hospitals, licensed ICFs-ID [~~ICFs-MR~~], local authorities, or HCSs [~~HCSW~~]?

Upon request, the investigative report (with any information concealed that would reveal the identities of the reporter and any person served who is not the victim or alleged victim) may be released:

(1) for facilities and their contractors, to the victim or alleged victim, guardian, or parent (if the victim or alleged victim is a child), in accordance with 25 TAC §417.511(b) [~~and 40 TAC §7.511(b)~~] (relating to Confidentiality of Investigative Process and Report), and 40 TAC §3.305(k) (relating to Completion of an Investigation), or perpetrator in accordance with 25 TAC §417.512(d) [~~and 40 TAC §7.512(d)~~] (relating to Classifications and Disciplinary Actions) and 40 TAC §3.305(e);

(2) (No change.)

(3) for HCSs [~~HCSWs~~] and their contractors, to the victim or alleged victim, guardian, or parent (if the victim or alleged victim is a child), in accordance with 40 TAC Chapter 9, Subchapter D (relating to Home and Community-based Services (HCS) Program) and 40 TAC Chapter 9, Subchapter N (relating to Texas Home Living (TxHmL) Program).

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

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Gerry Williams
General Counsel
Department of Family and Protective Services
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SUBCHAPTER K. REQUESTING A REVIEW OF FINDING IF YOU ARE THE ADMINISTRATOR OR CONTRACTOR CEO

40 TAC §711.1013, §711.1015

The amendment and new section are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment and new section implement HRC §48.255 and HRC §40.021.

§711.1013. What if the administrator of a state-operated facility disagrees with the finding review decision?

If the administrator of a state-operated facility disagrees with the finding review decision, as referenced in §711.1007 of this title (relating to How is the review of a finding conducted?), then he or she may contest the decision in accordance with 25 TAC §417.510(g)(2) [~~and 40 TAC §7.510(g)(2)~~] (relating to Completion of the Investigation) and 40 TAC §3.305(b) (relating to Completion of an Investigation).

§711.1015. Is a finding ever changed without a request for review of finding or methodology?

DFPS, in its sole discretion, may designate a person to conduct a review of the investigation records. If a review of the records results in a change of the finding, DFPS will notify the appropriate parties in writing.

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

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SUBCHAPTER M. REQUESTING AN APPEAL IF YOU ARE THE REPORTER, ALLEGED VICTIM, LEGAL GUARDIAN, OR WITH DISABILITY RIGHTS TEXAS

40 TAC §§711.1201, 711.1203, 711.1207, 711.1209

The amendments and new section are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new section implement HRC §48.255 and HRC §40.021.

§711.1201. Who may request an appeal?

The following individuals may request an appeal of the finding:

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

(4) Disability Rights Texas [~~Advocacy, Incorporated~~], only if Disability Rights Texas [~~Advocacy, Inc.~~] represents the victim or alleged victim or is authorized by law to represent the victim or alleged victim [~~(i.e., when Advocacy, Inc. suspects abuse or neglect of a person served who lacks the capacity to make decisions in his or her own best interest due to a physical or mental condition, although the person has not been determined to be legally incapacitated by a court)~~].

§711.1203. How does the reporter, victim or alleged victim, legal guardian or parent, or Disability Rights Texas [~~Advocacy, Inc.~~] request an appeal?

An appeal is requested by:

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

§711.1207. How is the appeal conducted?

The appeal of a finding is conducted by a reviewer, designated by the Assistant Commissioner of Adult Protective Services, who:

(1) analyzes the investigative report, including the methodology used;

(2) makes a decision to sustain, alter, or reverse the original finding based on the preponderance of the evidence or altered methodology;

(3) (No change.)

(4) notifies the following individuals in writing of the appeal decision:

(A) the requestor; and

[~~(B) the victim or alleged victim, guardian, or parent (if the victim is a child); and~~]

(B) [~~(C)~~] as appropriate, the administrator, contractor CEO, or Consumer Rights and Services.

§711.1209. Is a finding ever changed without a request for appeal?

DFPS, in its sole discretion, may designate a person to conduct a review of the investigation records. If a review of the records results in a change of the finding, DFPS will notify the appropriate parties in writing.

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

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SUBCHAPTER O. EMPLOYEE MISCONDUCT REGISTRY

40 TAC §§711.1402, 711.1404, 711.1406, 711.1408, 711.1413, 711.1421, 711.1426, 711.1427, 711.1429

The amendments and new section are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new section implement HRC §40.021 and §48.101 and Senate Bill 221 and House Bill 1481, 82nd Legislature, Regular Session.

§711.1402. How are the terms in this subchapter defined? [~~Definitions.~~]

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

(1) - (9) (No change.)

(10) Facility investigation--An investigation conducted by APS under Subchapters F and H, Chapter 48, Human Resources Code, that involves an employee of one of the following agency types:

(A) a home and community-based services (HCS) provider;

(B) a community center as defined in §531.002, Health and Safety Code;

(C) a licensed intermediate care facility for persons with intellectual disabilities and related conditions (ICF-ID);

(D) a local authority as defined in this chapter;

(E) the Rio Grande State Center;

(F) a state-supported living center; or

(G) a state hospital;

(11) [~~(10)~~] HCSSA--A home and community support services agency, sometimes referred to as a home health agency, licensed under Chapter 142, Health and Safety Code;

(12) [~~(11)~~] HCS [~~or HCSW~~]--A person or an agency exempt from licensure under §142.003(a)(19), Health and Safety Code, that provides home and community-based services to persons with intellectual disabilities [~~mental retardation~~] or related conditions;

(13) [~~(12)~~] ICF-ID [~~ICF-MR~~]--An intermediate care facility for individuals with intellectual disabilities [~~mental retardation~~] and related conditions. A licensed ICF-ID [~~ICF-MR~~] is a privately owned and operated facility licensed by the Department of Aging and Disability Services under Chapter 252, Health and Safety Code. A state supported living center operated by DADS or DSHS is also an ICF-ID [~~ICF-MR~~]. A local [~~mental retardation~~] authority may also operate an ICF-ID [~~ICF-MR~~];

(14) [~~(13)~~] In-home investigation--An investigation conducted by APS under §48.151, Human Resources Code, that involves an employee of a home and community support services agency (HCSSA);

[~~(14) MH&MR investigation--An investigation conducted by APS under Subchapters F and H, Chapter 48, Human Resources Code, that involves an employee of one of the following agency types:~~]

[~~(A) a home and community-based services provider (HCS);~~]

[~~(B) a community center as defined in §531.002, Health and Safety Code;~~]

[~~(C) a licensed intermediate care facility (ICF-MR) for persons with mental retardation and related conditions;~~]

[~~(D) a local authority as defined in this chapter, including a mental health authority (MHA) and a mental retardation authority (MRA);~~]

[~~(E) the Rio Grande State Center;~~]

[~~(F) a state-supported living center; or~~]

[~~(G) a state hospital;~~]

(15) - (16) (No change.)

(17) Rio Grande State Center--A facility operated by the Department of State Health Services that provides in-patient mental health services and services through an ICF-ID [~~ICF-MR~~];

(18) (No change.)

(19) State supported living center--An ICF-ID [~~ICF-MR~~] operated by the Department of Aging and Disability Services.

§711.1404. How are the terms physical abuse, sexual abuse, emotional or verbal abuse, neglect, and financial exploitation defined for In-home investigations?

For In-home investigations, the definitions of physical abuse, sexual abuse, emotional or verbal abuse, neglect, and financial exploitation are contained in rules adopted pursuant to §48.002(c) of the Human Resources Code. Additional guidance for some of the terms used in these definitions can be found at §705.1001 of this title (relating to How are the terms in this chapter defined?). The following definitions apply:

(1) "Physical abuse" means any knowing, reckless, or intentional act or failure to act, including unreasonable confinement, corporal punishment, inappropriate or excessive force, or intimidation, which caused or may have caused physical injury, death, or emotional harm.

(2) "Sexual abuse" means any nonconsensual sexual activity, which may include, but is not limited to, any activity that would be a sexually-oriented offense per Texas Penal Code, Chapters 21, 22, or 43. There is no consent when:

(A) the alleged perpetrator knows or should know that the alleged victim is incapable of consenting because of impairment in judgment due to mental or emotional disease or defect;

(B) consent is induced by force or threat against any person;

(C) the alleged victim is unconscious or physically unable to resist;

(D) the alleged perpetrator has intentionally impaired the alleged victim by administering any substance without the person's knowledge; or

(E) consent is coerced due to fear of retribution or hardship, or by exploiting the emotional dependency of alleged victim on the alleged perpetrator.

(3) "Emotional or verbal abuse" means any act or communication that is:

(A) used to curse, vilify, humiliate, degrade, or threaten and that results in emotional harm; or

(B) of such a serious nature that a reasonable person would consider it emotionally harmful.

(4) "Neglect" means:

(A) the failure to provide the protection, food, shelter, or care necessary to avoid emotional harm or physical injury; or

(B) a negligent act or omission that caused or may have caused emotional harm, physical injury, or death.

(5) "Financial exploitation" means the illegal or improper act or process of an alleged perpetrator using, or attempting to use, the resources of the person, including the person's social security number or other identifying information, for monetary or personal benefit, profit, or gain. This includes, but is not limited to, offenses against property found in Texas Penal Code, Chapters 31 and 32.

§711.1406. How are the terms abuse, neglect, and financial exploitation defined for Facility [~~MH&MR~~] investigations?

(a) For Facility [~~MH&MR~~] investigations, the definitions of abuse, neglect, and exploitation are contained in rules adopted pursuant to §48.251, Human Resources Code, and §261.404, Family Code. The following definitions apply:

(1) "Abuse" includes physical abuse, sexual abuse, sexual exploitation, and emotional or verbal abuse, as those terms are defined in this section.

(2) "Physical abuse" means:

(A) an act or failure to act performed knowingly, recklessly, or intentionally, including incitement to act, which caused or may have caused physical injury or death to a person served;

(B) an act of inappropriate or excessive force or corporal punishment, regardless of whether the act results in a physical injury to a person served; or

(C) the use of chemical or bodily restraints on a person served not in compliance with federal and state laws and regulations (including the laws and regulations listed in §711.11(3) of this title (relating to How is physical abuse defined?).

(3) "Neglect" means a negligent act or omission by any individual responsible for providing services to a person served, which caused or may have caused physical or emotional injury or death to a person served or which placed a person served at risk of physical or emotional injury or death. Examples of neglect are listed in §711.19(1) - (3) of this title (relating to How is neglect defined?).

(4) "Sexual" abuse means any sexual activity, including but not limited to:

(A) kissing a person served with sexual intent;

(B) hugging a person served with sexual intent;

(C) stroking a person served with sexual intent;

(D) fondling a person served with sexual intent;

(E) engaging in with a person served:

(i) sexual conduct as defined in §43.01, Penal Code; or

(ii) any activity that is obscene as defined in §43.21, Penal Code;

(F) requesting, soliciting or compelling a person served to engage in:

(i) sexual conduct as defined in §43.01, Penal Code; or

(ii) any activity that is obscene as defined in §43.21, Penal Code;

(G) in the presence of the person served:

(i) engaging in or displaying an activity that is obscene as defined in §43.21, Penal Code; or

(ii) requesting, soliciting or compelling another person to engage in any activity that is obscene as defined in §43.21, Penal Code;

(H) committing sexual exploitation against a person served;

(I) committing sexual assault as defined in §22.011, Penal Code, against a person served;

(J) committing aggravated sexual assault as defined in §22.021, Penal Code, against a person served; and

(K) causing, permitting, encouraging, engaging in, or allowing the photographing, filming, videotaping or depicting of a person served if the employee agent or contractor knew or should have known that the resulting photograph, film, videotape, or depiction of the person served is obscene as defined in §43.21, Penal Code, or is pornographic.

(5) "Sexual exploitation" means a pattern, practice or scheme of conduct against a person served, which may include sexual contact, that can reasonably be construed as being for the purposes of sexual arousal or gratification or sexual abuse of any person; the term does not include obtaining information about a patient's sexual history within standard accepted clinical practice.

(6) "Financial exploitation" means the illegal or improper act or process of using a person served or the resources of a person served for monetary or personal benefit, profit or gain.

(7) "Verbal or emotional abuse" means any act or use of verbal or other communication, including gestures, to curse, vilify, or degrade a person served; or threaten a person served with physical or emotional harm. The act or communication must result in observable distress or harm to the person served or be of such a serious nature that a reasonable person would consider it harmful or causing distress.

(b) For "sexual abuse" DFPS, for good cause shown, may find that consensual sexual activity in an ongoing relationship, as defined in §705.1001(20) of this title (relating to How are the terms in this chapter defined?), begun prior to the provision of services is not sexual abuse.

§711.1408. What is reportable conduct?

(a) (No change.)

(b) For purposes of subsection (a) of this section, the terms abuse, neglect, sexual abuse, and financial exploitation have the meanings provided in §711.1404 of this title (relating to How are the terms physical abuse, sexual abuse, emotional or verbal abuse, neglect, and financial exploitation defined for In-home investigations? [~~How are the terms abuse, sexual abuse, neglect, and financial exploitation defined for In-home investigations~~?]) and §711.1406 of this title (relating to How are the terms abuse, neglect, and financial exploitation defined for Facility [~~MH&MR~~] investigations?), depending upon the type of agency for which the employee worked.

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

§711.1413. What notice must DFPS give to an employee before the employee's name is submitted to the Employee Misconduct Registry?

When DFPS determines that an employee committed reportable conduct, DFPS must provide a written "Notice of Finding" to the employee. The notice must include:

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

(6) a statement that DFPS may determine that [~~deems~~] this situation is an emergency and that the case information or [~~and/or~~] finding may [~~will~~] be released immediately to the agency where the employee is or was employed so that the agency may take any precautions it determines necessary to protect clients or persons served;

(7) - (9) (No change.)

§711.1421. When and where will the EMR hearing take place and who conducts the hearing?

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

(c) The hearing will usually be held in the same DFPS region where the alleged reportable conduct took place. The administrative law judge [~~hearings examiner~~] reserves the right to take all or some of the testimony at the hearing by telephone- or video-conference and may consider a request by any party to have the hearing conducted in a different location for good cause.

(d) If a criminal case against the employee arises because of the same reportable conduct, DFPS may postpone the EMR hearing until the criminal case resolves.

§711.1426. What happens if a party fails to appear at a pre-hearing conference or a hearing on the merits?

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

(f) If a default judgment rendered against DFPS becomes the final Hearing Order, DFPS shall amend its records to reverse the findings at issue in the EMR hearing and shall issue an [~~and~~] amended Notice of Finding to the employee reflecting that change.

§711.1427. How is the EMR hearing conducted?

(a) (No change.)

(b) The hearing is conducted by an administrative law judge [~~a hearings examiner~~] who has the duty to provide a fair and impartial hearing and to ensure that the available and relevant testimony and evidence is presented in an orderly manner. The administrative law judge [~~hearings examiner~~] has authority to administer oaths, issue subpoenas, and order discovery.

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

(g) Presentation of evidence at the hearing is not restricted under the rules of evidence used in civil cases. The administrative law judge [~~hearings examiner~~] will admit evidence if it is of a type on which a reasonably prudent person commonly relies in the conduct of the person's affairs. Evidence will not be admitted if it is irrelevant, immaterial, unduly repetitious, or precluded by statutory law.

(h) (No change.)

(i) The administrative law judge [~~hearings examiner~~] will assist either party in presenting their evidence and testimony, as needed, to ensure that a complete and proper record is developed at the hearing.

(j) The administrative law judge [~~hearings examiner~~] will arrange to have an interpreter available for the hearing if a party or witness requires an interpreter in order to effectively participate in the hearing.

(k) (No change.)

(l) The hearing is closed to the general public consistent with the required statutory confidentiality of DFPS records. Only the employee, the employee's representative, and any testifying witnesses may attend the hearing.

§711.1429. How and when is the decision made after the EMR hearing?

[~~(a) The administrative law judge will prepare a proposed decision which includes findings of fact and conclusions of law based on a preponderance of the evidence presented at the hearing. The proposal for decision must recommend whether to affirm, reverse, or modify DFPS's findings as to whether:~~]

[~~(1) the employee committed abuse, neglect, or financial exploitation of a client or person served; and~~]

[~~(2) the abuse, neglect, or financial exploitation committed by the employee meets the definition of reportable conduct.~~]

[(b) A copy of the proposed decision will be sent to both parties and both parties will be given an opportunity to submit written exceptions to the administrative law judge stating why the party disagrees with any finding of fact or conclusion of law contained in the proposed decision. If a party chooses to submit written exceptions, they must be submitted within 10 business days of receipt of the proposed decision.]

[(c) Upon expiration of the deadline for receipt of written exceptions, and taking into consideration any written exceptions submitted, the administrative law judge will issue a final proposed decision to the commissioner, with or without modification to the findings of facts and conclusions of law contained in the original proposed decision sent to the parties.]

[(d) The commissioner may accept or reject the final proposed decision in whole or in part. If deemed necessary for a proper decision, the commissioner may review all or part of the hearing record, and may direct the administrative law judge to take such additional testimony or evidence as the commissioner deems necessary.]

(a) [(e)] The administrative law judge will prepare a [After review of the proposed decision and any evidence described in subsection (d) of this section, the commissioner must issue a written] "Hearing Order" which will be mailed to the employee at the employee's last known mailing address. The Hearing Order must contain the following:

(1) separate statements of the findings of fact and conclusions of law that uphold, reverse, or modify the findings as to whether:

(A) the employee committed abuse, neglect, or financial exploitation of a client or person served; and

(B) the abuse, neglect, or financial exploitation committed by the employee meets the definition of reportable conduct; and

(2) if reportable conduct is found to have occurred:

(A) a statement of the right of the employee to seek judicial review of the order; and

(B) a statement that the finding of reportable conduct will be forwarded to the Department of Aging and Disability Services to be recorded in the Employee Misconduct Registry unless the employee makes a timely request for judicial review and the court reverses the finding of reportable conduct.

(b) [(f)] The commissioner may designate a Hearing Order to be published in an Index of Hearing Orders that are deemed to have precedential authority for guiding future decisions and DFPS policy. A Hearing Order must be edited to remove all personal identifying information before publication in the Index of Hearing Orders.

[(g) The parties may, by stipulated agreement, waive the opportunity to review the Proposal for Decision, and file exceptions, in which event the commissioner may delegate authority to the administrative law judge to sign the final decision.]

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 May 1, 2012.

TRD-201202244
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: June 17, 2012
For further information, please call: (512) 438-3437

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40 TAC §711.1404

(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 Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements HRC §40.021 and §48.101 and Senate Bill 221 and House Bill 1481, 82nd Legislature, Regular Session.

§711.1404. How are the terms abuse, sexual abuse, neglect, and financial exploitation defined for In-home investigations?

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 May 1, 2012.

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Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: June 17, 2012
For further information, please call: (512) 438-3437

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CHAPTER 732. CONTRACTED SERVICES
SUBCHAPTER L. CONTRACT ADMINISTRATION

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), the repeal of §§732.267 - 732.269, 732.274, 732.276, and 732.277; and new §732.267 and §732.269, concerning contract administration, in its Contracted Services chapter. DFPS plans to move all rules pertinent to contracts into this chapter. Consolidating all the contracting rules into one chapter, and in particular condensing all the contract remedy provisions into one subchapter, puts the public more clearly on notice of the agency's overall policies governing contracts. In this issue of the *Texas Register,* DFPS is repealing Subchapter Y, Contracting with Licensed Residential Child-Care Providers, in Chapter 700, Child Protective Services (CPS), and proposing relevant portions of that subchapter into this chapter governing contracts. Also, DFPS is updating the two new rules because of changes in agency practice and state and federal law related to contract remedies and contract dispute resolution.

Section 732.267 is repealed and proposed as new. The appeal process is now governed by Government Code, Chapter 2260, and Subchapter N of this chapter (relating to Dispute Resolution). This rule replaces repealed §700.2505(f), and any remedy

DFPS enforces against a contractor will remain in effect during the appeal process.

Section 732.268 is repealed. The authority for DFPS to terminate a contract is just one of several remedies available to DFPS when there is a contract violation, and any notice requirements regarding a termination will be contained in the agency's procurement and contract. New §732.269 of this title (relating to What contract remedies does DFPS use?) sets forth the DFPS available remedies.

Section 732.269 is repealed and proposed as new. The authority for DFPS to terminate a contract is just one of several remedies available to DFPS when there is a contract violation, and the types of termination will be contained in the agency's procurement and contract. The new rule revamps §700.2505(a) and (b) to accurately reflect current law and agency practice regarding contract remedies, including a list of the remedies available to DFPS.

Section 732.274 is repealed. Termination as a contract remedy is contained in new §732.269. The specific terms for terminating a contract will be contained in DFPS's procurement and contract for the service.

Section 732.276 and §732.277 are repealed. "Removal of contractual rights" and "abeyance" are no longer current terminology for agency contractual remedies. They have been replaced by debarment and suspension (for applying for a contract), respectively, which are governed by other state and federal law. All of the procedural requirements and other governing principles are set forth in such other law.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown has also determined 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 increased clarity to the public regarding DFPS's requirements and remedies for all agency contracts. There will be no effect on large, small, or micro-businesses because the proposed changes do not impose new requirements on any business and do not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

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

Questions about the content of the proposal may be directed to Jared Davis at (512) 438-5647 in DFPS's Legal Services Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-456, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030 within 30 days of publication in the *Texas Register.*

40 TAC §§732.267 - 732.269, 732.274, 732.276, 732.277

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement Government Code, Chapter 2155, which sets forth a statutory scheme governing state procurements; and Government Code, Chapter 2260, which sets forth a statewide contract dispute resolution process.

§732.267. Status of Payments to Contractor During Disputes.
§732.268. Notice of Termination.
§732.269. Contract Terminations.
§732.274. Termination for Cause.
§732.276. Causes and Conditions for Removal of Contractual Rights and for Abeyance.
§732.277. Notice Requirements for Removal of Contractual Rights and for Abeyance.

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 May 1, 2012.

TRD-201202247
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: June 17, 2012
For further information, please call: (512) 438-3437

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40 TAC §732.267, §732.269

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement Government Code, Chapter 2155, which sets forth a statutory scheme governing state procurements; and Government Code, Chapter 2260, which sets forth a statewide contract dispute resolution process.

§732.267. What is the status of a contract action during disputes?

If a DFPS contractor is disputing a contract action by DFPS under Subchapter N of this chapter (relating to Dispute Resolution), the contract action will remain in effect during the contract dispute resolution process and will not change unless the contract dispute resolution process results in an agreement or order to reverse the action.

§732.269. What contract remedies does DFPS use?

(a) DFPS is responsible for identifying and investigating contract deficiencies and violations. DFPS reserves the right to implement those contract remedies which are necessary to rectify contract deficiencies and violations.

(1) If DFPS finds that performance issues, problems, or deficiencies exist with a contract provider of services, DFPS may investigate to determine whether there is a contract violation, including violations that have already occurred, violations that currently exist, or imminent violations.

(2) If DFPS determines that there is a contract violation, then DFPS will decide on the appropriate contract remedy to be imposed.

(3) As required by the contract, DFPS will give written notice to the contracted provider, describing the contract violation, the contract remedy to be imposed, the method by which reimbursement (if applicable) to DFPS will be made, and the time frame for resolution of the issue.

(b) DFPS reserves the right to use the following remedies, including, but not limited to:

(1) assessment of liquidated damages;

(2) assessment of consequential damages;

(3) imposition of a corrective action plan;

(4) suspension or debarment;

(5) involuntary suspension of a contract or portion of a contract;

(6) involuntary termination of a contract or portion of a contract;

(7) a vendor hold or similar temporary delay in payment; or

(8) any agreed temporary remedial measure intended to facilitate contract compliance.

(c) When a licensed residential child-care provider contracts with DFPS to provide substitute care to children in DFPS's managing conservatorship, the provider must ensure that each child-care facility operating under the contract secures and protects the health, safety, and welfare of each child in placement there. If at any time DFPS discovers that conditions exist in a contracted or subcontracted residential child-care facility which constitute an immediate threat to the health, safety, or welfare of any child currently or prospectively in placement there, DFPS has the authority to take any actions necessary to protect that child. The actions that DFPS may take in such circumstances include, but are not limited to:

(1) the immediate removal from the facility of any or all of the children whom DFPS has placed there; and/or

(2) the cessation of any or all new DFPS placements in the facility.

(d) In addition to taking the actions specified in this section, DFPS has the authority to impose any lesser remedies available to remove conditions constituting a threat to the health, safety, or welfare of clients under a contract or to monitor and protect public funds.

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 May 1, 2012.

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Gerry Williams
General Counsel
Department of Family and Protective Services
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For further information, please call: (512) 438-3437

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TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 217. VEHICLE TITLES AND REGISTRATION

The Texas Department of Motor Vehicles (department) proposes the repeal of §217.26, Golf Carts, amendments to §217.2, Definitions, §217.3, Motor Vehicle Certificates of Title, §217.21, Definitions, §217.22, Motor Vehicle Registration, §217.23, Temporary Registration Permits, §217.24, Disabled Person License Plates and Identification Placards, §217.28, Specialty License Plates, Symbols, Tabs, and Other Devices, §217.29, Vehicle Registration Renewal via the Internet, §217.30, Commercial Vehicle Registration, §217.31, Vehicle Emissions Enforcement System, §217.37, Equipment and Vehicles Within Road Construction Projects, §217.39, Water Well Drilling Vehicles, §217.40, Marketing of Specialty License Plates through a Private Vendor, §217.41, Removal of License Plates and Registration Insignia upon Sale of Motor Vehicle, §217.42, Registration of Fleet Vehicles, §217.43, Exempt and Alias Vehicle Registration, §217.53, Automated Vehicle Registration and Certificate of Title System, and §217.54, Automated Equipment, and new §217.26, Military Specialty License Plates, all relating to Vehicle Titles and Registration.

EXPLANATION OF PROPOSED REPEAL, AMENDMENTS AND NEW SECTION

The proposed repeal, amendments and new section are necessary to comply with the requirements of House Bill (HB) 2357, 82nd Legislature, Regular Session, 2011, which reorganized Transportation Code, Chapters 501, 502, 504, and 520, the motor vehicle statutes, including updating them to reflect automation capability in systems and payment. Many contain amendments that update citation changes made due to the reorganization. Throughout the rules "certificate of title" has been replaced with "title" in accordance with HB 2357 simplification.

In addition, Senate Bill 461, 82nd Legislature, Regular Session, 2011, added United States Paratrooper specialty license plates, HB 3580 and HB 2357, 82nd Legislature, Regular Session, 2011, added Surviving Spouses of Disabled Veterans specialty license plates, HB 1178, 82nd Legislature, Regular Session, 2011, added Woman Veteran specialty license plates, HB 191, 82nd Legislature, Regular Session, 2011, added Distinguished Service Medal specialty license plates, and HB 559, 82nd Legislature, Regular Session, 2011, added Bronze Star Medal and Bronze Star Medal with Valor specialty license plates. HB 1674, 82nd Legislature, Regular Session, 2011, allows registration renewal to be denied if a child support agency gives the department notice that the obligor failed to pay child support. This changed from the requirement that the department had to be given a final order.

Section 217.26, Golf Carts, is repealed because the department issues a very limited amount of golf cart plates and the eligibility for these plates is clearly stated in Transportation Code, §504.510.

Section 217.2 is amended to delete definitions contained in Transportation Code, §501.002.

Section 217.3(g) is amended to update citations and provide for a $15 administrative fee and appraisal process in accordance with HB 2357. The remainder of subsection (g) is deleted as it repeats the statutory language of Transportation Code, §501.051. Under HB 2357, the expired bonds no longer need to be returned to the title owner as expired bonds do not have value. In accordance with HB 2357, a new procedure is provided in subsection (i) that can be utilized when all parties agree to rescind a new sales transaction. Currently, even if all parties agree to rescind the sale, a court order must be sought. The department may rescind, cancel, or revoke an application for a title if a signed, notarized affidavit is presented within 21 days of initial sale containing: a statement that the vehicle involved was a new motor vehicle in the process of a first sale; a statement that the dealer, the applicant, and any lienholder have canceled the sale; a statement as to whether the vehicle was in possession of the title applicant; and an odometer disclosure statement if appropriate. The 21-day time period was chosen as adequate time to prepare and submit the affidavits. Furthermore, the time frame accommodates denial of rescission if the vehicle has had an owner for a significant length of time. Form affidavits will be available on the TxDMV.gov website.

Following this procedure does not negate the fact that the vehicle has been subject to a previous retail sale. A dealer shall obtain written acknowledgment from the subsequent purchaser that discloses the vehicle was subject to a prior retail sale and the effect, if any, the prior retail sale has on the warranty coverage of the vehicle. A copy of the written acknowledgment shall be provided to the subsequent purchaser and the dealer shall retain a copy.

Section 217.21 is amended to delete definitions contained in Transportation Code, §502.001, and to update definitions to correspond with changes in §502.001. The definition of "bus" is added to help clarify between a private and a public bus, and the definition of "nominating state agency" is added to clarify what type of entity may ask for a specialty plate.

Section 217.22 is amended to update citations. Transportation Code, §504.943, requires the department to set the placement of license plates by rule. Amendments to subsection (b) add that a registration application may also be supported by a registration receipt that is not more than six months past the date of expiration or a title receipt. The six month time frame was chosen to align with current Texas Department of Public Safety policy. Owners are considered to be legitimate if they have a registration sticker that is not more than six months past expiration.

The amendments to subsection (c) require that a motor vehicle must display two license plates, one at the exterior front and one at the exterior rear of the vehicle that are securely fastened at the exterior front and rear of the vehicle in a horizontal position of not less than 12 inches from the ground, measuring from the bottom, except that a vehicle described by Transportation Code, §621.2061, may have its rear plate placed so that it is clearly visible. However, if the vehicle is a road tractor, motorcycle, trailer or semitrailer, the vehicle must display one plate that is securely fastened at, or as closely practical to, the exterior rear of the vehicle in a position not less than 12 inches from the ground, measuring from the bottom. Subsection (d)(6) is amended to comply with HB 1674 which allows a child support agency to give the department notice of a child support delinquency in order for a denial flag to be placed on the registration renewal. Previously, a final order was required. Transportation Code, §502.045, requires the department to adopt a list of evidentiary items sufficient to establish good reason for delinquent registration. The amendments to subsection (d) establish that valid reasons may include extensive repairs, being out of the country, using the vehicle only for seasonal use, military service, and storage of the vehicle. Evidence of a valid reason may include receipts, passport dates, and military orders.

Section 217.23 is renamed "Special Registration Permits" from "Temporary Registration Permits" to include more types of permits. Citations are updated throughout the section. The references to a manufacturer's rated carrying capacity of one ton is changed throughout to a gross weight of 10,000 pounds to correspond with HB 2357 which changed the terminology to correlate with the terminology used by Texas Department of Public Safety.

Section 217.24(c) amendments remove a duplicate reference to podiatrist, as it pertains to presenting evidence for a disabled plate or placard. In addition, HB 2357 removed the restrictions for a prescription written by a licensed registered nurse or physician assistant to only be effective in a county with a population of 125,000 or less. A licensed registered nurse or physician assistant can write a prescription for a disabled plate or placard regardless of the population.

New §217.26, Military Specialty License Plates, removes the military plate portion from §217.28 to its own section for ease of reference. The content of the section remains the same except that HB 2357 added four license plates. The Bronze Star, Bronze Star with Valor, and Distinguished Service Medal are added as meritorious service plates in accordance with HB 191 and HB 559. There are no fees for the first set of meritorious service plates. In accordance with HB 3580 and HB 2357, the surviving spouse of a Disabled Veteran may apply for one Surviving Spouse Disabled Veteran specialty license plate, if the Disabled Veteran license plates were issued to the veteran prior to the time of death, and the surviving spouse remains unmarried, there is no fee for the Surviving Spouse Disabled Veteran specialty license plate; however, registration fees and other applicable fees apply. SB 461 added United States Paratrooper and HB 1178 added Women Veteran as specialty license plates issued to members or former members of the U.S. Armed Forces.

In accordance with HB 2357, the word "Honorably Discharged" may be placed on the applicable plate if the applicant is a former member of the U.S. Air Force, Army, Coast Guard, Marine Corps, or Navy.

Section 217.28 is amended to delete references to military license plates which are moved to new §217.26. Separate references to the Legion of Merit plates have been removed since the fee has been incorporated into Chapter 504. Because HB 2357 deleted Parade license plates, they are deleted from the section. Classic Travel Trailer, Custom Vehicles, and Street Rods specialty plates are added to subsection (c)(2). Classic Travel Trailer has been divided from Classic Motor Vehicles, and Custom Vehicles and Street Rod plates were added by HB 890, 82nd Legislature, Regular Session, 2011. In order to avoid duplicate plates, Classic Motor Vehicle, Travel Trailer, Street Rod, and Exhibition Vehicle plates will not be issued an alpha numeric pattern if the pattern is already in use on another vehicle. Subsec-

tion (c)(3) clarifies that only one plate is issued for rental and travel trailers. Subsection (c)(8) explains the department issues the plate numbers, not the executive director. In subsection (d), the five-year registration period for foreign organization license plates is changed to seven years in accordance with HB 2357. Information regarding specialty plates created through the request of a sponsoring entity has been removed from subsection (g), including eligibility and fees, because the statute is specific.

Citations are updated in §217.29 and §217.30. The one-ton language is converted to gross weight in excess of 10,000 pounds in §217.30. References to in transit and token trailer plates are removed as in transit plates are related to motor vehicle dealers and token trailer plates are no longer necessary because of fleet registration.

Citations are updated in §217.31.

In §217.37 and §217.39, the fee for machinery license plates and water well drilling vehicles is reduced from $5.30 to $5 in accordance with HB 2553, 81st Legislative Session, 2009, which was effective September 1, 2011.

Citations are updated in §217.40 and §217.41. The one-ton language is converted to gross weight in excess of 10,000 pounds in §217.41.

In §217.42, citations are updated and trailers and semi-trailers are added as vehicles that may be registered as fleet vehicles. HB 2357 also authorized the department to allot credit for any vehicle removed from the fleet for the remaining full year increment in accordance with HB 2357.

Citations are updated in §217.43.

Sections 217.53 and 217.54 are amended, in accordance with HB 2357, to reflect that the automated registration and title is now funded by the $1 fee in all counties.

FISCAL NOTE

Linda Flores, Chief Financial Officer, has determined that for each of the first five years the repeal, amendments and new section as proposed are in effect, there will be fiscal implications for state or local governments as a result of enforcing or administering the repeal, amendments and new section. Currently, the department is not reimbursed for costs associated with applications for bonded titles. The new $15 fee is calculated to be revenue neutral. The department processed approximately 38,000 bonded titles in Fiscal Year 2011 and the projection for bonded titles is approximately 47,000 for Fiscal Year 2012. The approximate time to process a bonded title is approximately 35 minutes. The proposed fee will cover the costs of the transaction. Since the department was absorbing this cost, it will not expend approximately $235,000 the remainder of the fiscal year.

Randy Elliston, Director, Vehicle Titles and Registration Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the repeal, amendments and new section.

PUBLIC BENEFIT AND COST

Mr. Elliston has also determined that for each year of the first five years the repeal, amendments and new section are in effect, the public benefit anticipated as a result of enforcing or administering the repeal, amendments and new section is to streamline procedures for titling and registration of motor vehicles.

There are no anticipated economic costs for persons required to comply with the repeal, amendments and new section except for the $15 administrative fee for a bonded title application. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the repeal, amendments and new section may be submitted to Randy Elliston, Director, Vehicle Titles and Registration Division, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Building 1, Austin, Texas 78731. The deadline for receipt of comments is 5:00 p.m. on June 18, 2012.

SUBCHAPTER A. MOTOR VEHICLE TITLES

43 TAC §217.2, §217.3

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the Board of the Texas Department of Motor Vehicles with the authority to establish rules for the conduct of the work of the department, and Transportation Code, §§501.0041, 502.0021, 504.0011, and 520.003, which provide the Board of the Texas Department of Motor Vehicles with the authority to establish rules for each respective chapter of the Transportation Code.

CROSS REFERENCE TO STATUTE

Transportation Code, §§501.002, 501.006, 501.0275, 501.053, 502.001, 502.0023, 502.045 - 502.047, 502.056 - 502.057, 502.059 - 502.060, 502.093 - 502.095, 502.146, 502.252 - 502.255, 502.451 - 502.456, 502.491 - 502.492, 504.002, 504.005 - 504.0051, 504.007 - 504.008, 504.010, 504.201 - 504.202, 504.301, 504.3011, 504.307, 504.315, 504.317 (82nd Leg., Ch. 1296, §183), 504.317 (82nd Leg., Ch. 1281, §4), 504.400 - 504.406, 504.4061, 504.503, 504.516, 504.90, and 520.004.

§217.2. Definitions.

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

(1) Alias--The name of a vehicle owner reflected on a [~~certificate of~~] title, when the name on the [~~certificate of~~] title is different from the name of the legal owner of the vehicle.

(2) Alias [~~certificate of~~] title--A title document issued by the department for a vehicle that is used by an exempt law enforcement agency in covert criminal investigations.

(3) Bond release letter--Written notification from the United States Department of Transportation authorizing United States Customs to release the bond posted for a motor vehicle imported into the United States to ensure compliance with federal motor vehicle safety standards.

[~~(4) Certificate of title--A written instrument that may be issued solely by and under the authority of the department and that reflects the transferor, transferee, vehicle description, license plate and lien information, and rights of survivorship agreement as specified in this subchapter or as required by the department.~~]

(4) [~~(5)~~] Title [~~Certificate of title~~] application--A form prescribed by the division director that reflects the information required by the department to create a motor vehicle title record.

(5) [~~(6)~~] Date of sale--The date of the transfer of possession of a specific vehicle from a seller to a purchaser.

[~~(7) Department--The Texas Department of Motor Vehicles.~~]

[(8) Distributor--A person engaged in the business of selling to a dealer motor vehicles bought from a manufacturer.]

(6) [(9)] Division director--The director of the department's Vehicle Titles and Registration Division.

(7) [(10)] Executive administrator--The director of a federal agency, the director of a Texas state agency, the sheriff of a Texas county, or the chief of police of a Texas city who by law possesses the authority to conduct covert criminal investigations.

(8) [(11)] Exempt agency--A governmental body exempt by law from paying registration fees for motor vehicles.

(9) [(12)] Federal motor vehicle safety standards--Motor vehicle safety requirements promulgated by the United States Department of Transportation, National Highway Traffic Safety Administration, set forth in Title 49, Code of Federal Regulations.

[(13) First sale--A bargain, sale, transfer, or delivery with intent to pass an interest, other than a lien, and accompanied by registration, of a motor vehicle that has not been previously registered in this state or elsewhere.]

(10) [(14)] House moving dolly--An apparatus consisting of metal beams and axles used to move houses. House moving dollies, by nature of their construction and use, actually form large semitrailers.

[(15) House trailer--A vehicle without automotive power designed for human habitation, for carrying persons and property on its own structure, and for being drawn by a motor vehicle, not including manufactured housing.]

(11) [(16)] Identification certificate--A form issued by an inspector of an authorized safety inspection station in accordance with Transportation Code, §548.256.

(12) [(17)] Implements of husbandry--Farm implements, machinery, and tools used in tilling the soil, including self-propelled machinery specifically designed or especially adapted for applying plant food materials or agricultural chemicals. This term does not include an implement unless it is designed or adapted for the sole purpose of transporting farm materials or chemicals. This term does not include any passenger car or truck.

[(18) Lien--A security interest, as defined in Business and Commerce Code, §1.201(b)(35), of whatsoever kind or character whereby an interest, other than an absolute title, is sought to be held or given in a motor vehicle. This term includes a lien created or given by constitution or statute in a motor vehicle.]

[(19) Manufacturer--A person regularly engaged in the business of manufacturing or assembling new motor vehicles, either within this state or elsewhere.]

(13) [(20)] Manufacturer's certificate of origin--A form prescribed by the department showing the original transfer of a new motor vehicle from the manufacturer to the original purchaser, whether importer, distributor, dealer, or owner, and when presented with an application for [certificate of] title, showing, on appropriate forms prescribed by the department, each subsequent transfer between distributor and dealer, dealer and dealer, and dealer and owner.

(14) [(21)] Moped--A motor driven cycle whose attainable speed is not more than 30 miles per hour and that is equipped with a motor that produces not more than two-brake horsepower. If an internal combustion engine is used, the piston displacement may not exceed 50 cubic centimeters and the power drive system may not require the operator to shift gears.

[(22) Motor vehicle--Any motor driven or propelled vehicle required to be registered under the laws of this state; a trailer or semitrailer, other than manufactured housing, that has a gross vehicle weight that exceeds 4,000 pounds; a house trailer; an all-terrain vehicle designed by the manufacturer for off-highway use that is not required to be registered under the laws of this state; or a motorcycle, motor-driven cycle, or moped that is not required to be registered under the laws of this state, other than a motorcycle, motor-driven cycle, or moped designed for and used exclusively on a golf course.]

(15) [(23)] Motor vehicle importation form--A declaration form prescribed by the United States Department of Transportation and certified by United States Customs that relates to any motor vehicle being brought into the United States and the motor vehicle's compliance with federal motor vehicle safety standards.

[(24) New motor vehicle--A motor vehicle that has never been the subject of a first sale either within this state or elsewhere.]

(16) [(25)] Non United States standard motor vehicle--A motor vehicle not manufactured in compliance with federal motor vehicle safety standards.

(17) [(26)] Obligor--An individual who is required to make payments under the terms of a support order for a child.

[(27) Owner--A person, firm, association, or corporation, other than a manufacturer, importer, distributor, or dealer, claiming title to a motor vehicle, or having a right to operate a motor vehicle pursuant to a lien after the motor vehicle has been the subject of a first sale, except the Federal Government and its agencies, and except the State of Texas and a governmental subdivision or agency not required by law to register motor vehicles owned or used in this State.]

(18) [(28)] Person--An individual, firm, corporation, company, partnership, or other entity.

(19) [(29)] Safety certification label--A label placed on a motor vehicle by a manufacturer certifying that the motor vehicle complies with all federal motor vehicle safety standards.

(20) [(30)] Semitrailer--A vehicle of the trailer type having a gross weight in excess of four thousand (4,000) pounds so designed or used in conjunction with a motor vehicle that some part of its own weight and that of its load rests on or is carried by another vehicle.

(21) [(31)] Statement of fact--A written declaration that supports an application for a [certificate of] title, that is executed by the seller of a motor vehicle or another involved party to a transaction involving a motor vehicle, and that clarifies an error made on a [certificate of] title or other negotiable evidence of ownership. When a written declaration is necessary to correct an odometer disclosure error, the signatures of both the seller and buyer are required.

[(32) Subsequent sale--The bargain, sale, transfer, or delivery of a motor vehicle that has been previously registered or licensed in this state or elsewhere, with intent to pass an interest in the vehicle, other than a lien, regardless of where the bargain, sale, transfer, or delivery occurs, and the registration of the vehicle if registration is required under the laws of this state.]

(22) [(33)] Token trailer fee--A registration fee paid for certain semitrailers, meeting the qualifications delineated in Transportation Code, §502.255 [§502.167], and used in combination with truck tractors or commercial motor vehicles whose registration is based on a combined gross weight.

[(34) Trailer--Every vehicle having a gross unloaded weight in excess of four thousand (4,000) pounds and designed or

~~used to carry its load wholly on its own structure and to be drawn by a motor vehicle.~~]

[~~(35) Used motor vehicle--A motor vehicle that has been the subject of a first sale, whether within this state or elsewhere.~~]

[~~(36) Vehicle identification number--A number, assigned by the manufacturer of a motor vehicle or the department, which describes the motor vehicle for purposes of identification.~~]

(23) [~~(37)~~] Verifiable proof--Additional documentation required of a vehicle owner, lienholder, or agent executing an application for a certified copy of a [~~certificate of~~] title.

(A) Individual applicant. If the applicant is an individual, verifiable proof consists of a copy of a current photo identification issued by this state or by the United States.

(B) Business applicant. If the applicant is a business, verifiable proof consists of a letter of signature authority on original letterhead, a business card, or a copy of employee identification and a copy of current photo identification issued by this state or by the United States.

(C) Power of attorney. If the applicant is a person in whose favor a power of attorney has been executed by the owner or lienholder, verifiable proof consists of the documentation required under subparagraph (A) or (B) of this paragraph both for the owner or lienholder and for the person in whose favor the power of attorney is executed.

§217.3. Motor Vehicle [~~Certificates of~~] Title.

(a) Certificates of title. Unless otherwise exempted by law or this chapter, the owner of any motor vehicle that is required to be registered in accordance with Transportation Code, Chapter 502, shall apply for a Texas [~~certificate of~~] title in accordance with Transportation Code, Chapter 501.

(1) Motorcycles, motor-driven cycles, and mopeds.

(A) The title requirements of a motorcycle are the same requirements prescribed for any motor vehicle.

(B) A motorcycle, motor-driven cycle, or moped designed for or used exclusively on golf courses is not classified as a motor vehicle and, therefore, title cannot be issued until the unit is registered.

(C) A vehicle that meets the criteria for a moped and has been certified as a moped by the Department of Public Safety will be registered and titled as a moped. If the vehicle does not appear on the list of certified mopeds published by that agency, the vehicle will be treated as a motorcycle for title and registration purposes.

(D) A motor installed on a bicycle must be certified by the Department of Public Safety before the vehicle may be classified as a moped.

(2) Farm vehicles.

(A) The term motor vehicle does not apply to implements of husbandry, which may not be titled.

(B) Farm tractors owned by agencies exempt from registration fees in accordance with Transportation Code, §502.453 [~~§502.202~~], are required to be titled and registered with "Exempt" license plates issued in accordance with Transportation Code, §502.451 [~~§502.201~~].

(C) Farm tractors used as road tractors to mow rights of way or used to move commodities over the highway for hire are required to be registered and titled.

(D) Farm semitrailers with a gross weight of more than 4,000 pounds that are registered in accordance with Transportation Code, §502.146, [~~§504.504~~] may be issued a Texas [~~certificates of~~] title.

(3) Neighborhood electric vehicles.

(A) The title requirements of a neighborhood electric vehicle (NEV) are the same requirements prescribed for any motor vehicle.

(B) A "neighborhood electric vehicle" is a motor vehicle that:

(i) is originally manufactured to meet, and meets, the equipment requirements and safety standards established for "low speed vehicles" in Federal Motor Vehicle Safety Standard 500 (49 C.F.R. §571.500);

(ii) is a slow moving vehicle, as defined by Transportation Code, §547.001 that is able to attain a speed of more than 20 miles per hour, but not more than 25 miles per hour in one mile on a paved, level surface;

(iii) is a four-wheeled motor vehicle;

(iv) is powered by electricity or alternative power sources;

(v) has a gross vehicle weight rating (GVWR) of less than 3,000 pounds; and

(vi) is not a golf cart as defined in Transportation Code, §502.001(18) [~~§502.001(7)~~].

(4) Exemptions from title. Vehicles registered with the following distinguishing license plates may not be titled under Transportation Code, Chapter 501:

(A) vehicles eligible for machinery license plates and permit license plates in accordance with Transportation Code, §502.146 [~~§504.504~~]; and

(B) vehicles eligible for farm trailer license plates in accordance with Transportation Code, §502.433 [~~§502.163~~], unless the owner chooses to title a farm semitrailer as provided by Transportation Code, §501.036.

(5) Trailers, semitrailers, and house trailers. Owners of trailers and semitrailers shall apply for and receive a Texas [~~certificate of~~] title for any stand alone (full) trailer, including homemade full trailers, or any semitrailer having a gross weight in excess of 4,000 pounds. Farm semitrailers with a gross weight of more than 4,000 pounds that are registered in accordance with Transportation Code, §502.146 [~~§504.504~~], may be issued a Texas [~~certificates of~~] title. House trailer-type vehicles must meet the criteria outlined in subparagraph (C) of this paragraph to be titled.

(A) In the absence of a manufacturer's rated carrying capacity for a trailer or semitrailer, the rated carrying capacity will not be less than one-third of its empty weight.

(B) Mobile office trailers, mobile oil field laboratories, and mobile oil field bunkhouses are not designed as dwellings, but are classified as commercial semitrailers and must be registered and titled as commercial semitrailers if operated on the public streets and highways.

(C) House trailer-type vehicles and camper trailers must meet the following criteria in order to be titled.

(i) A house trailer-type vehicle designed for living quarters and that is eight body feet or more in width or forty body feet or

more in length (not including the hitch), is classified as a manufactured home or mobile home and is titled under the Texas Manufactured Housing Standards Act, Occupations Code, Chapter 1201, administered by the Texas Department of Housing and Community Affairs.

(ii) A house trailer-type vehicle that is less than eight feet in width and less than forty feet in length is classified as a travel trailer and shall be registered and titled.

(iii) A camper trailer shall be titled as a house trailer and shall be registered with travel trailer license plates.

(iv) A recreational park model type trailer that is primarily designed as temporary living quarters for recreational, camping or seasonal use, is built on a single chassis, and is 400 square feet or less when measured at the largest horizontal projection when in the set up mode, shall be titled as a house trailer and may be issued travel trailer license plates. If the park model type trailer exceeds one hundred two inches in width or forty feet in length, the title will include a brand to indicate that an oversize permit must be obtained to move the trailer on the public roads.

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

(f) Department notification of second-hand vehicle transfers. A transferor of a motor vehicle may voluntarily make written notification to the department of the sale of the vehicle, in accordance with Transportation Code, §501.147 [~~§520.023~~]. The written notification may be submitted to the department by mail, in person at one of the department's regional offices, or electronically through the department's Internet website.

(1) Records. On receipt of written notice of transfer from the transferor of a motor vehicle, the department will mark its records to indicate the date of transfer and will maintain a record of the information provided on the written notice of transfer.

(2) Title [~~Certificate of title~~] issuance. A [~~certificate of~~] title will not be issued in the name of a transferee until the transferee files an application for the [~~certificate of~~] title as described in this section.

(g) Bonded titles. [~~Suspension, revocation, or refusal to issue Certificates of Title.~~]

[~~(1) Grounds for title suspension, revocation, or refusal to issue. The department will refuse issuance of a certificate of title, or having issued a certificate of title, will suspend or revoke the certificate of title if the:~~]

[~~(A) application contains any false or fraudulent statement;~~]

[~~(B) applicant has failed to furnish required information requested by the department;~~]

[~~(C) applicant is not entitled to the issuance of a certificate of title under Transportation Code, Chapter 501;~~]

[~~(D) department has reasonable grounds to believe that the vehicle is a stolen or converted vehicle or that the issuance of a certificate of title would constitute a fraud against the rightful owner or a lienholder;~~]

[~~(E) registration of the vehicle stands suspended or revoked; or~~]

[~~(F) required fee has not been paid.~~]

[~~(2) Contested case procedure. Any person who has an interest in a motor vehicle to which the department has refused to issue a certificate of title or has suspended or revoked the certificate of title may contest the department's decision in accordance with Transportation Code, §501.052 and §501.053, in the following manner.~~]

[~~(A) Hearing. Any person who has an interest in a motor vehicle to which the department has refused to issue a certificate of title or has suspended or revoked the certificate of title may apply for a hearing to the designated agent of the county in which the applicant resides. At the hearing the applicant and the department may submit evidence, and a ruling of the designated agent will bind both parties. An applicant wishing to appeal the ruling of the designated agent may do so to the County Court of the county in which the applicant resides.~~]

[~~(B) Alternative to hearing. In lieu of a hearing, any~~]

(1) A person who has an interest in a motor vehicle to which the department has refused to issue a [~~certificate of~~] title or has suspended or revoked a [~~certificate of~~] title may file a bond with the department on a department form.

(2) The amount of the bond must be [~~, in an amount~~] equal to one and one-half times the value of the vehicle as determined using the Standard Presumptive Value (SPV) from the department's website. If the SPV is not available, then a national reference guide will be used. If the value cannot be determined by either source, then the person may obtain an appraisal on a department form from a licensed Texas motor vehicle dealer or licensed Texas insurance adjuster. [~~by the department, and in a form prescribed by the department.~~]

(3) The applicant must pay the department a $15 administrative fee in addition to any other required fees.

(4) If the applicant is a Texas resident, but the evidence indicates that the vehicle is an out of state vehicle, the vehicle identification number must be verified by a state appointed Safety Inspection Station.

(5) On the filing of the bond, the department may issue a [~~certificate of~~] title. [~~The bond shall expire three years after the date it becomes effective and will be returned to the person posting bond, on expiration, unless the department has been notified of the pendency of an action to recover on the bond.~~]

(h) Rescission cancellation or revocation by affidavit.

(1) The department may rescind, cancel, or revoke an application for a title if a notarized affidavit is presented within 21 days of initial sale containing:

(A) a statement that the vehicle involved was a new motor vehicle in the process of a first sale;

(B) a statement that the dealer, the applicant, and any lienholder have canceled the sale;

(C) a statement that the vehicle:

(i) was never in possession of the title applicant; or

(ii) was in the possession of the title applicant; and

(D) the signatures of the dealer, the applicant, and any lienholder as principal to the document;

(E) an odometer disclosure statement executed by the purchaser of the motor vehicle and acknowledged by the dealer if a statement is made pursuant to subparagraph (C)(ii) of this paragraph to be used for the purpose of determining usage subsequent to sale;

(2) A rescission, cancellation, or revocation containing the statement authorized under paragraph (1)(C)(ii) of this subsection does not negate the fact that the vehicle has been subject to a previous retail sale.

(3) A dealer shall obtain written acknowledgment from the subsequent purchaser that discloses the vehicle was subject to a prior retail sale and the effect, if any, the prior retail sale has on the warranty coverage of the vehicle. A copy of the written acknowledgment shall be provided to the subsequent purchaser and the dealer shall maintain a copy of the written acknowledgment in the sales file of the motor vehicle.

(i) [~~(h)~~] Discharge of lien. A lienholder shall provide the owner, or the owner's designee, a discharge of the lien after receipt of the final payment within the time limits specified in Transportation Code, Chapter 501. The lienholder shall submit one of the following documents:

(1) the [~~certificate of~~] title including an authorized signature in the space reserved for release of lien;

(2) a release of lien form prescribed by the department, with the form filled out to include the:

(A) [~~certificate of~~] title or document number, or a description of the motor vehicle including, but not limited to, the motor vehicle's:

(i) year;

(ii) make;

(iii) vehicle identification number; and

(iv) license plate number, if the motor vehicle is subject to registration under Transportation Code, Chapter 502;

(B) printed name of lienholder;

(C) signature of lienholder or an authorized agent;

(D) printed name of the authorized agent if the agent's signature is shown;

(E) telephone number of lienholder; and

(F) date signed by the lienholder;

(3) signed and dated correspondence submitted on company letterhead that includes:

(A) a statement that the lien has been paid;

(B) a description of the vehicle as indicated in paragraph (2)(A) of this subsection;

(C) a [~~certificate of~~] title or document number; or

(D) lien information;

(4) any out-of-state prescribed release of lien form, including an executed release on a lien entry form;

(5) out-of-state evidence with the word "Paid" or "Lien Satisfied" stamped or written in longhand on the face, followed by the name of the lienholder, countersigned or initialed by an agent, and dated; or

(6) original security agreements or copies of the original security agreements if the originals or copies are stamped "Paid" or "Lien Satisfied" with a company paid stamp or if they contain a statement in longhand that the lien has been paid followed by the company's name.

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 May 7, 2012.

TRD-201202300
Brett Bray
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: June 17, 2012
For further information, please call: (512) 467-3853

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SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

43 TAC §§217.21 - 217.24, 217.26, 217.28 - 217.31, 217.37, 217.39 - 217.43

STATUTORY AUTHORITY

The amendments and new section are proposed under Transportation Code, §1002.001, which provides the Board of the Texas Department of Motor Vehicles with the authority to establish rules for the conduct of the work of the department, and Transportation Code, §§501.0041, 502.0021, 504.0011, and 520.003, which provide the Board of the Texas Department of Motor Vehicles with the authority to establish rules for each respective chapter of the Transportation Code.

CROSS REFERENCE TO STATUTE

Transportation Code, §§501.002, 501.006, 501.0275, 501.053, 502.001, 502.0023, 502.045 - 502.047, 502.056 - 502.057, 502.059 - 502.060, 502.093 - 502.095, 502.146, 502.252 - 502.255, 502.451 - 502.456, 502.491 - 502.492, 504.002, 504.005 - 504.0051, 504.007 - 504.008, 504.010, 504.201 - 504.202, 504.301, 504.3011, 504.307, 504.315, 504.317 (82nd Leg., Ch. 1296, §183), 504.317 (82nd Leg., Ch. 1281, §4), 504.400 - 504.406, 504.4061, 504.503, 504.516, 504.90, and 520.004.

§217.21. Definitions.

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

(1) Affidavit for alias exempt registration--A form prescribed by the director that must be executed by an exempt law enforcement agency to request the issuance of exempt registration in the name of an alias.

(2) Agent--A duly authorized representative possessing legal capacity to act for an individual or legal entity.

(3) Alias--The name of a vehicle registrant reflected on the registration, different than the name of the legal owner of the vehicle.

(4) Alias exempt registration--Registration issued under an alias to a specific vehicle to be used in covert criminal investigations by a law enforcement agency.

[~~(5) Apportioned license plate--A license plate issued in lieu of a truck license plate or combination license plate to a motor carrier in this state who proportionally registers a vehicle owned by the carrier in one or more other states.~~]

(5) [~~(6)~~] Axle load--The total load transmitted to the road by all wheels whose centers may be included between two parallel transverse vertical planes 40 inches apart, extending across the full width of the vehicle.

(6) [~~(7)~~] Border commercial zone--A commercial zone established under Title 49, C.F.R., Part 372 that is contiguous to the border with Mexico.

(7) Bus--A motor vehicle used to transport persons and designed to accommodate more than 10 passengers, including the operator; or a motor vehicle, other than a taxicab, designed and used to transport persons for compensation.

(8) Carrying capacity--The maximum safe load that a commercial vehicle may carry, in tons, as determined by the manufacturer.

(9) Character--A numeric or alpha symbol displayed on a license plate.

[~~(10) "Construction machinery" means a vehicle that:~~]

[~~(A) is used for construction;~~]

[~~(B) is built from the ground up;~~]

[~~(C) is not mounted or affixed to another vehicle such as a trailer;~~]

[~~(D) was originally and permanently designed as machinery;~~]

[~~(E) was not in any way originally designed to transport persons or property; and~~]

[~~(F) does not carry a load, including fuel.~~]

[~~(11) Combination license plate--A license plate issued for a truck or truck tractor that has a manufacturer's rated carrying capacity of more than one ton and is used or intended to be used in combination with a semitrailer that has a gross weight of more than 6,000 pounds.~~]

[~~(12) Commercial vehicle--Any vehicle (other than a motorcycle or passenger car) designed or used primarily for the transportation of property, including any passenger car that has been reconstructed so as to be used, and that is being used, primarily for delivery purposes, with the exception of passenger cars used in the delivery of the United States mail.~~]

[~~(13) Conventional vehicle--A regular truck or regular trailer that is eligible only for regular registration and that is primarily designed to transport divisible loads, regardless of the vehicle's present use. Vehicles that have been altered or reconstructed, or on which machinery has been mounted or attached, permanently or otherwise, retain their conventional status.~~]

[~~(14) Cotton vehicle--A vehicle that is used only to transport chili pepper modules, seed cotton, cotton, cotton burrs, or equipment used in transporting or processing chili peppers or cotton that is not more than 10 feet in width.~~]

(10) [~~(15)~~] County or city civil defense agency--An agency authorized by a commissioner's court order or by a city ordinance to provide protective measures and emergency relief activities in the event of hostile attack, sabotage, or natural disaster.

[~~(16) Department--The Texas Department of Motor Vehicles.~~]

(11) [~~(17)~~] Director--The director of the Vehicle Titles and Registration Division, Texas Department of Motor Vehicles.

[~~(18) Disabled person--A person who has mobility problems that substantially impair the person's ability to ambulate or who is legally blind.~~]

(12) [~~(19)~~] Division--Vehicle Titles and Registration Division.

[~~(20) Electric bicycle--A device that has two tandem wheels and is designed to be propelled by an electric motor. An electric bicycle cannot attain a speed of more than 20 miles per hour without the application of human power and weighs 100 pounds or less.~~]

[~~(21) Evidence of financial responsibility--The original document or photocopy of any one of the following items:~~]

[~~(A) a liability insurance policy or liability self-insurance or pool coverage document issued in at least the minimum amount required by law;~~]

[~~(B) a personal automobile insurance policy used as evidence of financial responsibility, written for at least the term required by the Insurance Code, §1952.054;~~]

[~~(C) a standard proof of liability form issued by a liability insurer;~~]

[~~(D) an insurance binder that confirms that the owner is in compliance with the law;~~]

[~~(E) a certificate issued by the Texas Department of Public Safety that shows the vehicle is covered by self-insurance;~~]

[~~(F) a certificate issued by the state treasurer that shows that the owner has money or securities in an amount not less than $55,000 on deposit with the state treasurer;~~]

[~~(G) a certificate issued by the Texas Department of Public Safety that shows that the vehicle has a bond on file with that department, that the bond is in the form and amount required by law, and that the bond is guaranteed by at least two individual sureties each owning real estate within this state;~~]

[~~(H) a certificate issued by the county judge in the county where the owner resides showing that the owner has cash or a cashier's check in an amount not less than $55,000 on deposit with the county judge.~~]

(13) [~~(22)~~] Executive administrator--The director of a federal agency, the director of a Texas state agency, the sheriff of a Texas county, or the chief of police of a Texas city that by law possesses the authority to conduct covert criminal investigations.

(14) [~~(23)~~] Exempt agency--A governmental body exempted by statute from paying registration fees when registering motor vehicles.

(15) [~~(24)~~] Exempt license plates--Specially designated license plates issued to certain vehicles owned or controlled by exempt agencies.

(16) [~~(25)~~] Exhibition vehicle--

(A) An assembled complete passenger car, truck, or motorcycle that:

(i) is a collector's item;

(ii) is used exclusively for exhibitions, club activities, parades, and other functions of public interest;

(iii) does not carry advertising; and

(iv) has a frame, body, and motor that is at least 25-years [~~25 years~~] old; or

(B) A former military vehicle as defined in Transportation Code, §504.502.

(17) [~~(26)~~] Fire-fighting [~~Fire fighting~~] equipment--Equipment mounted on fire-fighting [~~fire fighting~~] vehicles used in the

process of fighting fires, including, but not limited to, ladders and hoses.

(18) [~~(27)~~] Foreign commercial motor vehicle--A commercial motor vehicle, as defined by 49 C.F.R. §390.5, that is owned by a person or entity that is domiciled in or a citizen of a country other than the United States.

[~~(28) Gross weight--The sum of the empty weight of a commercial vehicle (or vehicles, if operated in combination), combined with its maximum carrying capacity, rounded up to the next 100 pounds.~~]

(19) [~~(29)~~] Highway construction project--That section of the highway between the warning signs giving notice of a construction area.

(20) [~~(30)~~] International symbol of access--The symbol adopted by Rehabilitation International in 1969 at its Eleventh World Congress of Rehabilitation of the Disabled.

(21) [~~(31)~~] Legally blind--Having not more than 20/200 visual acuity in the better eye with correcting lenses, or visual acuity greater than 20/200 but with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

[~~(32) Light truck--As defined in Transportation Code, §541.201, any truck with a manufacturer's rated carrying capacity not to exceed two thousand pounds, including those trucks commonly known as pickup trucks, panel delivery trucks, and carryall trucks.~~]

(22) [~~(33)~~] Make--The trade name of the vehicle manufacturer.

[~~(34) Motor bus--A motor-propelled vehicle used to transport persons on public highways for compensation, other than a street or suburban bus.~~]

[~~(35) Motorized mobility device--A device designed for transportation of persons with physical disabilities that:~~]

[~~(A) has three or more wheels;~~]

[~~(B) is propelled by a battery-powered motor;~~]

[~~(C) has not more than one forward gear; and~~]

[~~(D) is not capable of speeds exceeding eight miles per hour.~~]

[~~(36) Net carrying capacity--150 pounds multiplied by the seating capacity as determined by the manufacturer's rated seating capacity, exclusive of the driver's or operator's seat, or in the case of a vehicle that is not rated by the manufacturer, as determined by an allowance of one passenger for each sixteen inches, exclusive of the driver's or operator's seat.~~]

(23) [~~(37)~~] Nonprofit organization--An unincorporated association or society or a corporation that is incorporated or holds a certificate of authority under the Business Organizations Code.

(24) Nominating State Agency--A state agency authorized to accept and distribute funds from the sale of a specialty plate as designated by the nonprofit organization (sponsoring entity).

[~~(38) Owner--A person who holds the legal title to a vehicle, has the legal right to possess a vehicle, or has the legal right to control a vehicle.~~]

[~~(39) Passenger car--In accordance with Transportation Code, §502.001, any motor vehicle other than a motorcycle, golf cart, or a bus, designed or used primarily for the transportation of persons.~~]

(25) [~~(40)~~] Political subdivision--A county, municipality, local board, or other body of this state having authority to provide a public service.

(26) [~~(41)~~] Registration period--A designated period during which registration is valid. A registration period [~~always~~] begins on the first day of a calendar month and ends on the last day of a calendar month.

[~~(42) Rental fleet--A fleet of five or more vehicles that are owned by the same owner, offered for rent or rented without drivers, and designated by the owner in the manner prescribed by the department as a rental fleet.~~]

[~~(43) Rental trailer--A utility trailer that has a gross weight of 4,000 pounds or less and is part of a rental fleet.~~]

[~~(44) Road tractor--A vehicle designed for the purpose of mowing the right of way of a public highway or a motor vehicle designed or used for drawing another vehicle or a load and not constructed to carry:~~]

[~~(A) an independent load; or~~]

[~~(B) a part of the weight of the vehicle and load to be drawn.~~]

(27) [~~(45)~~] Service agreement--A contractual agreement that allows individuals or businesses to access the department's vehicle registration records.

(28) [~~(46)~~] Specialty license plate--A special design license plate issued by the department under statutory authority.

(29) [~~(47)~~] Specialty license plate fee--Statutorily or department required fee payable on submission of an application for a specialty license plate, symbol, tab, or other device, and collected in addition to statutory motor vehicle registration fees.

(30) [~~(48)~~] Sponsoring entity--An institution, college, university, sports team, or any other non-profit individual or group that desires to support a particular specialty license plate by coordinating the collection and submission of the prescribed applications and associated license plate fees or deposits for that particular license plate.

(31) [~~(49)~~] Street or suburban bus--A vehicle, other than a passenger car, used to transport persons for compensation exclusively within the limits of a municipality or a suburban addition to a municipality.

(32) [~~(50)~~] Tandem axle group--Two or more axles spaced 40 inches or more apart from center to center having at least one common point of weight suspension.

[~~(51) Token trailer--~~]

[~~(A) A semitrailer that has a gross weight of more than 6,000 pounds and is operated in combination with a truck; or~~]

[~~(B) a truck tractor that has been issued an apportioned license plate, a combination license plate, or a forestry vehicle license plate.~~]

[~~(52) Tow truck--A motor vehicle equipped with a mechanical device adapted or used to tow, winch, or otherwise move another motor vehicle.~~]

[~~(53) Travel trailer--A house trailer-type vehicle or a camper trailer that is less than eight feet in width or 40 feet in length, exclusive of any hitch installed on the vehicle, and is designed primarily for use as temporary living quarters in connection with recreational, camping, travel, or seasonal use and not as a permanent dwelling.~~]

(33) [~~(54)~~] Unconventional vehicle--A vehicle built entirely as machinery from the ground up, that is permanently designed to perform a specific function, and is not designed to transport property.

~~[(55) Vehicle--A device in or by which a person or property is or may be transported or drawn on a public highway, other than a device used exclusively on stationary rails or tracks.]~~

(34) [~~(56)~~] Vehicle classification--The grouping of vehicles in categories for the purpose of registration, based on design, carrying capacity, or use.

(35) [~~(57)~~] Vehicle description--Information regarding a specific vehicle, including, but not limited to, the vehicle make, model year, body style, and vehicle identification number.

(36) [~~(58)~~] Vehicle identification number--A number assigned by the manufacturer of a motor vehicle or the department that describes the motor vehicle for purposes of identification.

(37) [~~(59)~~] Vehicle inspection sticker--A sticker issued by the Texas Department of Public Safety signifying that a vehicle has passed all applicable safety and emissions tests.

(38) [~~(60)~~] Vehicle registration insignia--A license plate, symbol, tab, or other device issued by the department evidencing that all applicable fees have been paid for the current registration period and allowing the vehicle to be operated on the public highways.

(39) [~~(61)~~] Vehicle registration record--Information contained in the department's files that reflects, but is not limited to, the make, vehicle identification number, model year, body style, license number, and the name of the registered owner.

(40) [~~(62)~~] Volunteer fire department--An association that is organized for the purpose of answering fire alarms, extinguishing fires, and providing emergency medical services.

§217.22. Motor Vehicle Registration.

(a) Registration. Unless otherwise exempted by law or this chapter, a vehicle to be used on the public highways of this state must be registered in accordance with Transportation Code, Chapter 502 and the provisions of this section. Transportation Code, Chapter 501, Subchapter E prohibits [~~and Subchapter D of this chapter (relating to Non-repairable and Salvage Motor Vehicles) prohibit~~] registration of a vehicle whose owner has been issued a salvage or nonrepairable vehicle title. These vehicles may not be operated on a public roadway.

(b) Initial application for vehicle registration.

(1) An applicant for initial vehicle registration must file an application on a form prescribed by the department. The form will at a minimum require:

(A) the signature of the owner;

(B) the motor vehicle description, including, but not limited to, the motor vehicle's year, make, model, vehicle identification number, body style, manufacturer's rated carrying capacity in tons for commercial motor vehicles, and empty weight;

(C) the license plate number;

(D) the odometer reading, or the word "exempt" if the motor vehicle is exempt from federal and state odometer disclosure requirements;

(E) the name and complete address of the applicant; and

(F) the name, mailing address, and date of any liens.

(2) The application must be accompanied by the following documents:

(A) evidence of vehicle ownership as specified in Transportation Code, §501.030, unless the vehicle has been issued a nonrepairable or salvage vehicle title in accordance with Transportation Code, Chapter 501, Subchapter E;

(B) registration fees prescribed by law;

(C) any local fees or other fees prescribed by law and collected in conjunction with registering a vehicle;

(D) evidence of financial responsibility required by Transportation Code, §502.046 [~~§502.153~~], unless otherwise exempted by law; and

(E) any other documents or fees required by law.

(3) An initial application for registration must be filed with the tax assessor-collector of the county in which the owner resides, except:

(A) an application for registration as a prerequisite to filing an application for [~~certificate of~~] title may also be filed with the county tax assessor-collector in the county in which the motor vehicle is purchased or encumbered; or

(B) if a county has been declared a disaster area, the resident may apply at the closest unaffected county if the affected county tax assessor-collector estimates the county offices will be inoperable for a protracted period.

(4) The recorded owner of a vehicle that was last registered or titled in another jurisdiction and is subject to registration in this state may apply for registration if the owner cannot or does not wish to relinquish the negotiable out-of-state evidence of ownership to obtain a Texas [~~certificate of~~] title. On receipt of a form prescribed by the department and payment of the statutory fee for a title application and any other applicable fees, the department will issue a registration receipt to the applicant.

(A) Registration receipt. The receipt issued at the time of application may serve as proof of registration and evidences title to a motor vehicle for registration purposes only, but may not be used to transfer any interest or ownership in a motor vehicle or to establish a lien.

(B) Information to be included on the form. The form will include the:

(i) out-of-state title number, if applicable;

(ii) out-of-state license plate number, if applicable;

(iii) state or country that issued the out-of-state title or license plate;

(iv) lienholder name and address as shown on the out-of-state evidence, if applicable;

(v) statement that negotiable evidence of ownership is not being surrendered; and

(vi) signature of the applicant or authorized agent of the applicant.

(C) Accompanying documentation. An application for registration under this paragraph must be supported, at a minimum, by:

(i) a completed application for registration, as specified in paragraph (1) of this subsection;

(ii) presentation, but not surrender of, evidence from another jurisdiction demonstrating that legal evidence of ownership has been issued to the applicant as the motor vehicle's owner, such as a validated title [~~or registration verification from the other jurisdiction~~], a

current registration receipt or a registration receipt that is not more than six months past the date of expiration, a title receipt, a non-negotiable title, or written verification from the other jurisdiction; and

(iii) any other documents or fees required by law.

(D) Assignment. In instances in which the title or registration receipt is assigned to the applicant, an application for registration purposes only will not be processed. The applicant must apply for a [~~certificate of~~] title under Transportation Code, Chapter 501.

(c) Vehicle registration insignia.

(1) On receipt of a complete initial application for registration with the accompanying documents and fees, the department will issue vehicle registration insignia to be displayed on the vehicle for which the registration was issued for the current registration period.

(A) If the vehicle has a windshield, the symbol, tab, or other device prescribed by and issued by the department shall be attached to the inside lower left corner of the vehicle's front windshield within six inches of the vehicle inspection sticker in a manner that will not obstruct the vision of the driver.

(B) If the vehicle has no windshield, the symbol, tab, or other device prescribed by and issued by the department shall be attached to the rear license plate, except that registration receipts, retained inside the vehicle, may provide the record of registration for vehicles with permanent trailer plates.

(C) If the vehicle is registered as a former military vehicle as prescribed by Transportation Code, §504.502, the vehicle's registration number shall be displayed instead of displaying a symbol, tab, or license plate.

(i) Former military vehicle registration numbers shall be displayed on a prominent location on the vehicle in numbers and letters of at least two inches in height.

(ii) To the extent possible, the location and design of the former military vehicle registration number must conform to the vehicle's original military registration number.

(2) Unless otherwise prescribed by law, each vehicle registered under this subchapter:

(A) must display two license plates, one at the exterior front and one at the exterior rear of the vehicle that are securely fastened at the exterior front and rear of the vehicle in a horizontal position of not less than 12 inches from the ground, measuring from the bottom, except that a vehicle described by Transportation Code, §621.2061 may place the rear plate so that it is clearly visible; or[~~.~~]

(B) must display one plate that is securely fastened at or as close as practical to the exterior rear of the vehicle in a position not less than 12 inches from the ground, measuring from the bottom if the vehicle is a road tractor, motorcycle, trailer or semitrailer.

(3) Each vehicle registered under this subchapter must display license plates:

(A) assigned by the department for the period; or

(B) validated by a registration insignia issued by the department that establishes that the vehicle is registered for the period.

(4) [~~(3)~~] The [~~In accordance with Transportation Code, §502.052 and §502.180(e), the~~] department will cancel or not issue any license plate containing an alpha-numeric pattern that meets one or more of the following criteria.

(A) The alpha-numeric pattern conflicts with the department's current or proposed regular license plate numbering system.

(B) The executive director finds that the alpha-numeric pattern may be considered objectionable or misleading, including that the pattern may be viewed as, directly or indirectly:

(i) indecent (defined as including a reference to a sex act, an excretory function or material, or sexual body parts);

(ii) a vulgarity (defined as curse words);

(iii) derogatory (defined as an expression of hate directed toward people or groups that is demeaning to people or groups, or associated with an organization that advocates such expressions);

(iv) a reference to illegal activities or substances, or implied threats of harm; or

(v) a misrepresentation of law enforcement or other governmental entities and their titles.

(C) The alpha-numeric pattern is currently issued to another owner.

(5) [~~(4)~~] The provisions of paragraph (1) of this subsection do not apply to vehicles registered with annual license plates issued by the department.

(d) Vehicle registration renewal.

(1) To renew vehicle registration, a vehicle owner must apply, prior to the expiration of the vehicle's registration, to the tax assessor-collector of the county in which the owner resides.

(2) The department will send a license plate renewal notice, indicating the proper registration fee and the month and year the registration expires, to each vehicle owner prior to the expiration of the vehicle's registration.

(3) The license plate renewal notice should be returned by the vehicle owner to the appropriate county tax assessor-collector or to the tax assessor-collector's deputy, either in person or by mail, unless the vehicle owner renews via the Internet. The renewal notice must be accompanied by the following documents and fees:

(A) registration renewal fees prescribed by law;

(B) any local fees or other fees prescribed by law and collected in conjunction with registration renewal; and

(C) evidence of financial responsibility required by Transportation Code, §502.046 [~~§502.153~~], unless otherwise exempted by law.

(4) If a renewal notice is lost, destroyed, or not received by the vehicle owner, the vehicle may be registered if the owner presents personal identification acceptable to the tax assessor-collector. Failure to receive the notice does not relieve the owner of the responsibility to renew the vehicle's registration.

(5) Renewal of expired vehicle registrations.

(A) In accordance with Transportation Code, §502.407, a vehicle with an expired registration may not be operated on the highways of the state after the fifth working day after the date a vehicle registration expires.

(B) If the owner has been arrested or cited for operating the vehicle without valid registration, then a [~~A~~] 20 percent delinquency penalty is due when registration is renewed [~~if the owner has been arrested or cited for operating the vehicle without valid registration~~].

(C) If the county tax assessor-collector determines that a registrant has a valid reason for being delinquent in registration, the vehicle owner will be required to pay for twelve months' registration.

Renewal will establish a new registration expiration month that will end on the last day of the eleventh month following the month of registration renewal.

(D) If the county tax assessor-collector determines that a registrant does not have a valid reason for being delinquent in registration, the full annual fee will be collected and the vehicle registration expiration month will remain the same.

(E) If a vehicle is registered in accordance with Transportation Code, §§502.255, 502.431, 502.435, 502.454 [§§~~502.164, 502.167, 502.188, 502.203~~], 504.315, 504.401, 504.405, [~~504.411, or~~] 504.505, or 504.515 and if the vehicle's registration is renewed more than one month after expiration of the previous registration, the registration fee will be prorated.

(F) Any delinquent registration submitted directly to the department for processing will be evaluated to verify the reason for delinquency. If the department determines that a registrant has a valid reason for being delinquent in registration, the vehicle owner will be required to pay for 12 months' registration. Renewal will establish a new registration expiration month that will end on the last day of the 11th month following the month of registration. If the department determines that a registrant does not have a valid reason for being delinquent in registration, the full annual fee will be collected and the vehicle registration expiration month will remain the same. [~~Valid reasons for delinquency include those reasons set forth in Transportation Code, §502.176(e).~~]

(G) Evidence of a valid reason may include receipts, passport dates, and military orders. Valid reasons may include:

(i) extensive repairs on the vehicle;

(ii) the person was out of the country;

(iii) the vehicle is used only for seasonal use;

(iv) military orders; and

(v) storage of the vehicle.

(6) Refusal to renew registration for delinquent child support.

(A) Placement of denial flag. On receipt of a notice [~~final order~~] issued under Family Code, Chapter 232 for the suspension or nonrenewal of a motor vehicle registration, the department will place a registration denial flag on the motor vehicle record of the child support obligor as reported by the child support agency [~~final order~~].

(B) Refusal to renew registration. While a motor vehicle record is flagged, the county tax-assessor collector shall refuse to renew the registration of the associated motor vehicle.

(C) Removal of denial flag. The department will remove the registration denial flag on [~~On~~] receipt of a removal notice [~~an order~~] issued by a child support agency under Family Code, Chapter 232 [~~vacating or staying an order for the suspension or nonrenewal of a motor vehicle registration, the department will remove the registration denial flag from the motor vehicle record~~].

(7) License plate reissuance program. The county tax assessor-collectors shall issue new multi-year license plates at no additional charge at the time of registration renewal provided the current plates are over seven years old from the date of issuance, including permanent trailer plates.

(e) Replacement of license plates, symbols, tabs, and other devices.

(1) When a license plate, symbol, tab, or other registration device is lost, stolen, or mutilated, a replacement may be obtained from any county tax assessor-collector upon:

(A) the payment of the statutory replacement fee prescribed by Transportation Code, §502.060 or §504.007 [~~§502.184~~]; and

(B) the provision of a signed statement, on a form prescribed by the department, that states:

(i) the license plate, symbol, tab, or other registration device furnished for the described vehicle has been lost, stolen, or mutilated, and if recovered, will not be used on any other vehicle; and

(ii) the replaced license plate, symbol, tab, or other device will only be used on the vehicle to which it was issued.

(2) If the owner remains in possession of any part of the lost, stolen, or mutilated license plate, symbol, tab, or other registration device, that remaining part must be removed and surrendered to the department on issuance of the replacement and request by the county tax assessor-collector.

(f) Out-of-state vehicles. A vehicle brought to Texas from out-of-state must be registered within 30 days of the date on which the owner establishes residence or secures gainful employment, except as provided by Transportation Code, §502.090 [~~§502.0025~~]. Accompanying a completed application, an applicant must provide:

(1) an application for [~~certificate of~~] title as required by Transportation Code, Chapter 501, if the vehicle to be registered has not been previously titled in this state; and

(2) any other documents or fees required by law.

(g) (No change.)

(h) A neighborhood electric vehicle, as defined in §217.3(a)(3) of this chapter (relating to Motor Vehicle [~~Certificates of~~] Title):

(1) is required to be titled in accordance with Transportation Code, §502.042 [~~§502.152~~] in order to be registered for operation on public roads;

(2) may be operated on a residential street, roadway, or public highway in accordance with Transportation Code, §551.303;

(3) must comply with the evidence of financial responsibility requirements established in Transportation Code, §502.046 [~~§502.153~~];

(4) must meet the definition of a "slow-moving vehicle" and must display a slow-moving-vehicle emblem as described in Transportation Code, §547.001; and

(5) is subject to all traffic and other laws applicable to motor vehicles.

(i) - (j) (No change.)

(k) Refusal to register vehicle in certain counties. A county may enter into a contract with the department under Government Code, Chapter 791 to indicate in the state's motor vehicle records that the owner of the vehicle has failed to pay a fine, fee, or tax that is past due. In accordance with Transportation Code, §502.010 [~~§502.185~~], a county tax assessor-collector may refuse to register a motor vehicle if such a failure is indicated in the motor vehicle record for that motor vehicle.

(l) Record notation. A contract between the department and a county, municipality, or local authority entered into under Transportation Code, §502.010 [~~§502.185~~], Transportation Code, §702.003, or

Transportation Code, §707.017 will contain the terms set out in this subsection.

(1) To place or remove a registration denial flag on a vehicle record, the contracting entity must submit a magnetic tape or other acceptable submission medium as determined by the department in a format prescribed by the department.

(2) The information submitted by the contracting entity will include, at a minimum, the vehicle identification number and the license plate number of the affected vehicle.

(3) If the contracting entity data submission contains bad or corrupted data, the submission medium will be returned to the contracting entity with no further action by the department.

(4) The magnetic tape or other submission medium must be submitted to the department from a single source within the contracting entity.

(5) The submission of a magnetic tape or other submission medium to the department by a contracting entity constitutes a certification by that entity that it has complied with all applicable laws.

§217.23. Special [~~Temporary~~] Registration Permits.

(a) Purpose and scope. Transportation Code, Chapter 502, Subchapters C and I charge [~~Subchapter G, charges~~] the department with the responsibility of issuing special [~~temporary~~] registration permits which shall be recognized as legal registration for the movement of motor vehicles not authorized to travel on Texas public highways for lack of registration or for lack of reciprocity with the state or country in which the vehicles are registered. For the department to efficiently and effectively perform these duties, this section prescribes the policies and procedures for the application and the issuance of temporary registration permits.

(b) Permit categories. The department will issue the following categories of special [~~temporary~~] registration permits.

(1) Additional weight permits. The owner of a truck, truck tractor, trailer, or semitrailer may purchase temporary additional weight permits for the purpose of transporting the owner's own seasonal agricultural products to market or other points for sale or processing in accordance with Transportation Code, §502.434 [~~§502.351~~]. In addition, such vehicles may be used for the transportation without charge of seasonal laborers from their place of residence, and materials, tools, equipment, and supplies from the place of purchase or storage, to a farm or ranch exclusively for use on such farm or ranch.

(A) Additional weight permits are valid for a limited period of less than one year.

(B) An additional weight permit will not be issued for a period of less than one month or extended beyond the expiration of a license plate issued under Transportation Code, Chapter 502.

(C) The statutory fee for an additional weight permit is based on a percentage of the difference between the owner's regular annual registration fee and the annual fee for the desired tonnage computed as follows:

(i) one-month (or 30 consecutive days)--10 percent;

(ii) one-quarter (three consecutive months)--30 percent;

(iii) two-quarters (six consecutive months)--60 percent; or

(iv) three-quarters (nine consecutive months)--90 percent.

(D) Additional weight permits are issued for calendar quarters with the first quarter to begin on April 1st of each year.

(E) A permit will not be issued unless the registration fee for hauling the larger tonnage has been paid prior to the actual hauling.

(F) Additional weight permits may not be issued to farm licensed trailers or semitrailers.

(2) Annual permits.

(A) Transportation Code, §502.093 [~~§502.353~~] authorizes the department to issue annual permits to provide for the movement of foreign commercial vehicles that are not authorized to travel on Texas highways for lack of registration or for lack of reciprocity with the state or country in which the vehicles are registered. The department will issue annual permits:

(i) for a 12-month period designated by the department which begins on the first day of a calendar month and expires on the last day of the last calendar month in that annual registration period; and

(ii) to each vehicle or combination of vehicles for the registration fee prescribed by weight classification in Transportation Code, §502.253 [~~§502.162~~] and §502.255 [~~§502.167~~].

(B) The department will not issue annual permits for the importation of citrus fruit into Texas from a foreign country except for foreign export or processing for foreign export.

(C) The following exemptions apply to vehicles displaying annual permits.

(i) Registered foreign semitrailers having gross weights in excess of 6,000 pounds used or to be used in combination with truck tractors or commercial motor vehicles with manufacturer's rated carrying capacities in excess of one ton are exempted from the requirement to pay the token fee and display the associated distinguishing license plate provided for in Transportation Code, §502.255 [~~§502.167~~]. An annual permit is required for the power unit only.

(ii) Vehicles registered with annual permits are not subject to the optional county registration fee under Transportation Code, §502.401 [~~§502.172~~], the optional county fee for transportation projects under Transportation Code, §502.402 [~~§502.1725~~], or the optional registration fee for child safety under Transportation Code, §502.403 [~~§502.173~~].

(3) 72-hour permits and 144-hour permits.

(A) In accordance with Transportation Code, §502.094 [~~§502.352~~] the department will issue a permit valid for 72 hours or 144 hours for the movement of commercial motor vehicles, trailers, semitrailers, and motor buses owned by residents of the United States, Mexico, or Canada.

(B) A 72-hour permit or a 144-hour permit is valid for the period of time stated on the permit beginning with the effective day and time as shown on the permit registration receipt.

(C) Vehicles displaying 72-hour permits or 144-hour permits are subject to vehicle safety inspection in accordance with Transportation Code, §548.051, except for:

(i) vehicles currently registered in another state of the United States, Mexico, or Canada; and

(ii) mobile drilling and servicing equipment used in the production of gas, crude petroleum, or oil, including, but not lim-

ited to, mobile cranes and hoisting equipment, mobile lift equipment, forklifts, and tugs.

(D) The department will not issue a 72-hour permit or a 144-hour permit to a commercial motor vehicle, trailer, semitrailer, or motor bus apprehended for violation of Texas registration laws. Apprehended vehicles must be registered under Transportation Code, Chapter 502.

(4) Temporary agricultural permits.

(A) Transportation Code, §502.092 [~~§502.355~~] authorizes the department to issue a 30-day temporary nonresident registration permit to a nonresident for any truck, truck tractor, trailer, or semitrailer to be used in the movement of all agriculture products produced in Texas:

(i) from the place of production to market, storage, or railhead not more than 75 miles distant from the place of production; or

(ii) to be used in the movement of machinery used to harvest Texas-produced agricultural products.

(B) The department will issue a 30-day temporary nonresident registration permit to a nonresident for any truck, truck tractor, trailer, or semitrailer used to move or harvest farm products, produced outside of Texas, but:

(i) marketed or processed in Texas; or

(ii) moved to points in Texas for shipment from the point of entry into Texas to market, storage, processing plant, railhead or seaport not more than 80 miles distant from such point of entry into Texas.

(C) The statutory fee for temporary agricultural permits is one-twelfth of the annual Texas registration fee prescribed for the vehicle for which the permit is issued.

(D) The department will issue a temporary agricultural permit only when the vehicle is legally registered in the nonresident's home state or country for the current registration year.

(E) The number of temporary agricultural permits is limited to three permits per nonresident owner during any one vehicle registration year.

(F) Temporary agricultural permits may not be issued to farm licensed trailers or semi-trailers.

(5) One-trip permits. Transportation Code, §502.095 [~~§502.354~~] authorizes the department to temporarily register any unladen vehicle upon application to provide for the movement of the vehicle for one trip, when the vehicle is subject to Texas registration and not authorized to travel on the public roadways for lack of registration or lack of registration reciprocity.

(A) Upon receipt of the $5 [~~$5.00~~] fee, registration will be valid for one trip only between the points of origin and destination and intermediate points as may be set forth in the application and registration receipt.

(B) The department will issue a one-trip permit to a bus which is not covered by a reciprocity agreement with the state or country in which it is registered to allow for the transit of the vehicle only. The vehicle should not be used for the transportation of any passenger or property, for compensation or otherwise, unless such bus is operating under charter from another state or country.

(C) A one-trip permit is valid for a period up to 15 days from the effective date of registration.

(D) A one-trip permit may not be issued for a trip which both originates and terminates outside Texas.

(E) A laden motor vehicle or a laden commercial vehicle cannot display a one-trip permit. If the vehicle is unregistered, it must operate with a 72-hour or 144-hour permit.

(6) 30-day temporary registration permits. Transportation Code, §502.095 [~~§502.354~~] authorizes the department to issue a temporary registration permit valid for 30 days for a $25 fee. A vehicle operated on a 30-day temporary permit is not restricted to a specific route. The permit is available for:

(A) passenger vehicles;

(B) motorcycles;

(C) private buses;

(D) trailers and semitrailers with a gross weight not exceeding 10,000 pounds;

(E) light commercial vehicles not exceeding a gross weight of 10,000 pounds [~~manufacturer's rated carrying capacity of one ton~~]; and

(F) a commercial vehicle exceeding 10,000 pounds [~~one ton~~], provided the vehicle is operated unladen.

(c) Application process.

(1) Procedure. An owner who wishes to apply for a temporary registration permit for a vehicle which is otherwise required to be registered in accordance with §217.22 of this subchapter (relating to Motor Vehicle Registration), must do so on a form prescribed by the director.

(2) Form requirements. The application form will at a minimum require:

(A) the signature of the owner;

(B) the name and complete address of the applicant; and

(C) the vehicle description.

(3) Fees and documentation. The application must be accompanied by:

(A) statutorily prescribed fees;

(B) evidence of financial responsibility:

(i) as required by Transportation Code, Chapter 502, Subchapter B [~~G~~], provided that all policies written for the operation of motor vehicles must be issued by an insurance company or surety company authorized to write motor vehicle liability insurance in Texas; or

(ii) if the applicant is a motor carrier as defined by §218.2 of this title (relating to Definitions), indicating that the vehicle is registered in compliance with Chapter 218, Subchapter B of this title (relating to Motor Carrier Registration); and

(C) any other documents or fees required by law.

(4) Place of application.

(A) All applications for annual permits must be submitted directly to the department for processing and issuance.

(B) Additional weight permits and temporary agricultural permits may be obtained by making application with the department through the county tax assessor-collectors' offices.

(C) 72-hour and 144-hour permits, one-trip permits, and 30-day temporary registration permits may be obtained by making application either with the department or the county tax assessor-collectors' offices.

(d) Display of registration insignia. The department will issue a specially designed tag or windshield validation sticker, upon receipt of a complete application for a permit.

(1) Tags shall be displayed in a manner that is clearly visible and legible when viewed from outside of the vehicle. The tag shall be attached to or displayed in the vehicle to allow ready inspection.

(2) Windshield validation stickers shall be displayed on the inside of the front windshield in the lower left corner.

(3) A receipt will be issued for each registration insignia as evidence of registration to be carried in the vehicle during the time the permit is valid. If the receipt is lost or destroyed, the owner must obtain a duplicate from the department or from the county office who issued the original receipt. The fee for the duplicate receipt is the same as the fee required by Transportation Code, §502.058 [~~§502.179~~].

(e) (No change.)

(f) Replacement permits. Vehicle owners displaying annual permits may obtain replacement permits if an annual permit is lost, stolen, or mutilated.

(1) The fee for a replacement annual permit is the same as for a replacement number plate, symbol, tab, or other device as provided by Transportation Code, §502.060 [~~§502.184~~].

(2) The owner shall apply directly to the department in writing for the issuance of a replacement annual permit. Such request should include a copy of the registration receipt and replacement fee.

(g) Agreements with other jurisdictions. In accordance with Transportation Code, §502.091 [~~§502.054~~] and Chapter 648, the executive director of the department may enter into a written agreement with an authorized officer of a state, province, territory, or possession of a foreign country to provide for the exemption from payment of registration fees by nonresidents if residents of this state are granted reciprocal exemptions. The executive director may enter into such agreement only upon:

(1) the approval of the governor; and

(2) making a determination that the economic benefits to the state outweigh all other factors considered.

(h) (No change.)

§217.24. Disabled Person License Plates and Identification Placards.

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

(c) Initial application.

(1) Place of application. The following persons may file an application for disabled person license plates or identification placards with the county tax assessor-collector in the county in which the applicant resides:

(A) the owner of a registered vehicle that is regularly operated by or for the transportation of a disabled person; and

(B) a disabled person who is not a vehicle owner.

(2) Application form. The application must be made on a form prescribed by the director and must, at a minimum, include the name, address, and signature of the disabled person, and:

(A) the first four digits of the applicant's driver's license number or the number of a personal identification card issued to the applicant under Transportation Code, Chapter 521; or

(B) an out-of-state current driver's license number issued to a non-resident individual serving in the United States military at a military installation in this state.

(3) Accompanying documentation.

(A) In accordance with Transportation Code, §504.201 and §681.003, and unless otherwise exempted by law or this section, an initial application for disabled person license plates and an identification placard must be accompanied by evidence that the operator or regularly transported person is disabled.

(B) The evidence must take one of the two following forms.

(i) The evidence may be in the form of a disability statement, as it appears on the application for disabled person license plates or identification placards, which has been correctly completed and signed in the presence of a notary.

(ii) The evidence may also be in the form of a written prescription that includes the disabled person's name, a statement that the disability is either temporary or permanent, a statement whether the person's disability is mobility related as described by Transportation Code, §681.001(5)[~~(B) or (C)~~], and the signature of a physician. The prescription must be written on a prescription form or on the physician's letterhead. [~~In the case of a mobility problem caused by a disorder of the foot, the evidence may be signed by a podiatrist on the podiatrist's letterhead.~~]

(C) An initial application for disabled person license plates or identification placards must be signed by a [~~physician~~]:

(i) physician licensed to practice medicine in Texas, Arkansas, Louisiana, New Mexico, or Oklahoma;

(ii) physician authorized by law to practice medicine in a health facility of the Department of Veterans Affairs; [~~or~~]

(iii) physician practicing medicine in the United States Military on a military installation;[~~.~~]

(iv) licensed registered nurse or physician assistant acting under the delegation and supervision of a licensed physician in conformance with Occupations Code, Chapter 157, Subchapter B; or

(v) physician's assistant licensed to practice in this state acting as the agent of a licensed physician under Occupations Code, §204.202(e).

(D) If the initial application for disabled license plates or identification placards is based on a mobility problem caused by a disorder of the foot, it may be signed by a podiatrist licensed to practice podiatry in Texas, Arkansas, Louisiana, New Mexico, or Oklahoma.

(E) If the initial application for disabled license plates or identification placards is based on vision impairment, it may be signed by an optometrist licensed to practice optometry or therapeutic optometry in Texas, Arkansas, Louisiana, New Mexico, or Oklahoma.

[~~(F) If the initial application for disabled license plates or identification placards, and the person resides in a county with a population of 125,000 or less, it may be issued by:~~]

[~~*(i)* a licensed registered nurse or physician assistant acting under the delegation and supervision of a licensed physician in conformance with Occupations Code, Chapter 157, Subchapter B; or~~]

~~*[(ii)* a physician's assistant licensed to practice in this state acting as the agent of a licensed physician under Occupations Code, §204.202(e).]~~

(4) Exemption from accompanying documentation. The department will issue disabled person identification placards to an organization that regularly transports disabled persons in vehicles it owns or controls if the organization is prohibited by law from disclosing the identities of its clients. The application may be made in the name of the organization. In addition, accompanying documentation described in paragraph (3) of this subsection will not be required. The organization must present an "Exempt" Texas Vehicle Registration Receipt issued in accordance with §217.43 of this subchapter (relating to Exempt and Alias Vehicle Registration) for each disabled person identification placard requested.

(5) Issuance of disabled person license plates and identification placards to certain institutions.

(A) In accordance with Transportation Code, §504.203 and §681.0032, the department will issue disabled person license plates or a blue permanently disabled person identification placard for display on a van or bus operated by an institution, facility, or residential retirement community that is licensed under Health and Safety Code, Chapter 242, 246, or 247.

(B) The van or bus must be used for the transport of residents of the institution, facility, or residential retirement community.

(C) A qualified institution, facility, or residential retirement community must meet the following requirements to obtain disabled parking insignia.

(i) An application for disabled person license plates or an identification placard must be presented. Accompanying documentation described in paragraph (3) of this subsection is not required.

(ii) A Texas Vehicle Registration Receipt issued in accordance with §217.22 of this subchapter (relating to Motor Vehicle Registration) must be presented for each van or bus for which disabled person insignia is requested.

(D) If the Vehicle Registration Receipt indicates that the van or bus is not owned by the eligible institution, facility, or residential retirement community that is requesting disabled person identification insignia, then the institution, facility, or residential retirement community must submit a written statement that the van or bus is in the possession and control of the eligible institution, facility, or residential retirement community and is operated by the institution, facility, or residential retirement community for the transportation of its disabled residents.

(d) - (g) (No change.)

§217.26. Military Specialty License Plates.

(a) Purpose and Scope. Transportation Code, Chapter 504 authorizes the department to issue military specialty license plates. This section prescribes the policies and procedures for the application, issuance, and renewal of military specialty license plates.

(b) Classification.

(1) Meritorious Service. There are no fees for the first set of specialty license plates. Registration fees and any additional fees will be collected at the time of registration for additional sets. These plates include:

(A) Congressional Medal of Honor;

(B) Legion of Valor, consisting of Air Force Cross, Distinguished Flying Cross, Distinguished Service Cross and Navy Cross;

(C) Legion of Merit;

(D) Silver Star;

(E) Bronze Star and Bronze Star with Valor;

(F) Distinguished Service Medal;

(2) Recognition Award. The first set of specialty license plates is $3 and no registration fee is collected. Registration fees and any additional fees will be collected at the time of registration for additional sets. These plates include:

(A) Former Prisoner of War (POW);

(B) Disabled Veteran;

(C) Purple Heart; and

(D) Pearl Harbor Survivor.

(3) Issued to members or former members of the U.S. Armed Forces. There is no charge for the specialty plate, however, registration fees and any additional fees collected at the time of registration apply. These plates include:

(A) War II, Korea, Vietnam Operations, Iraqi Freedom, Enduring Freedom, Desert Storm and Desert Shield;

(B) Coast Guard Auxiliary;

(C) Armed Forces Reserved;

(D) U.S. Paratrooper;

(E) Marine Corps League;

(F) Texas Guard (National and State);

(G) Texas Wing Civil Air Patrol;

(H) Woman Veteran;

(I) U.S. Air Force;

(J) U.S. Army;

(K) U.S. Coast Guard;

(L) U.S. Marine Corps; or

(M) U.S. Navy.

(4) Honorably discharged. The following license plates may include the words "Honorably Discharged" if the applicant is a former member of the U.S. Armed Forces:

(A) U.S. Air Force;

(B) U.S. Army;

(C) U.S. Coast Guard;

(D) U.S. Marine Corps; or

(E) U.S. Navy.

(c) Surviving spouse license plates.

(1) The surviving spouse of a deceased Disabled Veteran may apply for one "Surviving Spouse Disabled Veteran" specialty license plate, if proof exists that Disabled Veteran License Plates were issued to the veteran prior to the time of death, and the surviving spouse remains unmarried. There is no fee for the specialty license plate, however; registration fees and other applicable fees apply.

(2) The surviving spouse of a deceased veteran who, prior to death, had been issued other military specialty plates, may apply for and continue to register one vehicle and pay the fee applicable for

that military specialty license plate. The surviving spouse must remain unmarried to be remain eligible.

(d) Application. Applications for military specialty license plates must be made to the department and include evidence of eligibility. The evidence of eligibility may include, but is not limited to:

(1) an official document issued by a governmental entity;

(2) a letter issued by a governmental entity on that agency's letterhead;

(3) discharge papers; or

(4) a death certificate.

(e) Period.

(1) Military Vehicle license plates and registration numbers are issued for a five-year period.

(2) The registration for Congressional Medal of Honor license plates expires each March 31.

(f) Assignment and Transfer. Military plates may not be assigned and may only be transferred to another vehicle owned by the same vehicle owner.

(g) Applicability. Section 217.28 of this subchapter (relating to Specialty License Plates, Symbols, Tabs, and Other Devices) applies to military plates, symbols, tabs, or other devices as to:

(1) what is considered one set of plates per vehicle as determined by vehicle type;

(2) issuance of validation tabs and insignia;

(3) stolen or replaced plates;

(4) payment of other applicable fees;

(5) personalization, except that Congressional Medal of Honor plates may not be personalized;

(6) renewal, except that the owner of a vehicle with Congressional Medal of Honor license plates must return the documentation and specialty license plate fee, if any, directly to the department;

(7) refunds; and

(8) expiration.

§217.28. Specialty License Plates, Symbols, Tabs, and Other Devices.

(a) Purpose and Scope. Transportation Code, Chapter 504 charges the department with the responsibility of issuing a plate or plates, symbols, tabs, or other devices that, when attached to a vehicle as prescribed by the department, act as the legal registration insignia for the period issued. In addition, Transportation Code, Chapter 504 charges the department with providing specialty license plates, symbols, tabs, and other devices. For the department to perform these duties efficiently and effectively, this section prescribes the policies and procedures for the application, issuance, and renewal of specialty license plates, symbols, tabs, and other devices, through the county tax assessor-collectors, and establishes application fees, expiration dates, and registration periods for certain specialty license plates. This section does not apply to military license plates except as provided by §217.26 of this subchapter (relating to Military Specialty License Plates).

(b) Initial application for specialty license plates, symbols, tabs, or other devices.

(1) Application Process.

(A) Procedure. An owner of a vehicle registered as specified in §217.22 of this subchapter (relating to Motor Vehicle Registration) who wishes to apply for a specialty license plate, symbol, tab, or other device must do so on a form prescribed by the director.

(B) Form requirements. The application form shall at a minimum require the name and complete address of the applicant.

(2) Fees and Documentation.

(A) The application must be accompanied by the prescribed registration fee, unless exempted by statute.

(B) The application must be accompanied by the statutorily prescribed specialty license plate fee. [~~In accordance with Acts of the 80th Legislature, Regular Session, 2007, Chapter 1166, Section 14, the fees for Legion of Merit license plates issued under Transportation Code, §504.316 are determined under Transportation Code, §504.3015(a).~~] If a registration period is greater than 12 months, the expiration date of a specialty license plate, symbol, tab, or other device will be aligned with the registration period and the specialty plate fee will be adjusted to yield the appropriate fee. If the statutory annual fee for a specialty license plate is $5 [~~$5.00~~] or less, it will not be prorated.

(C) Specialty license plate fees will not be refunded after an application is submitted and the department has approved issuance of the license plate.

(D) The application must be accompanied by prescribed local fees or other fees that are collected in conjunction with registering a vehicle, with the exception of vehicles bearing license plates that are exempt by statute from these fees.

(E) The application must include evidence of eligibility for any specialty license plates. The evidence of eligibility may include, but is not limited to:

(i) an official document issued by a governmental entity; or

(ii) a letter issued by a governmental entity on that agency's letterhead.[~~;~~]

[~~(iii)~~ ~~discharge papers; or~~]

[~~(iv)~~ ~~a death certificate.~~]

(F) Initial applications for license plates for display on Exhibition Vehicles must include a photograph of the completed vehicle.

(3) Place of application. Applications for specialty license plates may be made directly to the county tax assessor-collector, except that applications for the following license plates must be made directly to the department:

[~~(A) Congressional Medal of Honor;~~]

(A) [~~(B)~~] County Judge;

(B) [~~(C)~~] Federal Administrative Law Judge;

(C) [~~(D)~~] State Judge;

(D) [~~(E)~~] State Official;

(E) [~~(F)~~] U.S. Congress--House;

(F) [~~(G)~~] U.S. Congress--Senate; and

(G) [~~(H)~~] U.S. Judge.[~~; and~~]

[~~(I) Legion of Valor.~~]

(4) Gift plates.

(A) A person may purchase general distribution specialty license plates as a gift for another person if the purchaser submits an application for the specialty license plates that provides:

(i) the name and address of the person who will receive the plates; and

(ii) the vehicle identification number of the vehicle on which the plates will be displayed.

(B) To be valid for use on a motor vehicle, the recipient of the plates must file an application with the county tax assessor-collector and pay the statutorily required registration fees in the amount as provided by Transportation Code, Chapter 502 and this subchapter.

(c) Initial issuance of specialty license plates, symbols, tabs, or other devices.

(1) Issuance. On receipt of a completed initial application for registration, accompanied by the prescribed documentation and fees, the department will issue specialty license plates, symbols, tabs, or other devices to be displayed on the vehicle for which the license plates, symbols, tabs, or other devices were issued for the current registration period. If the vehicle for which the specialty license plates, symbols, tabs, or other devices are issued is currently registered, the owner must surrender the license plates currently displayed on the vehicle, along with the corresponding license receipt, before the specialty license plates may be issued.

(2) [~~Exhibition Vehicle,~~] Classic Motor Vehicle, [~~and~~] Classic Travel Trailer , and Custom Vehicles, Street Rods and Exhibition Vehicle.

(A) License plates. Texas license plates that were issued the same year as the model year of a Classic Motor Vehicle, Travel Trailer, Street Rod, or [~~an~~] Exhibition Vehicle[~~, Classic Motor Vehicle, or Classic Travel Trailer,~~] may be displayed on that vehicle under Transportation Code, [§]§504.501[~~, 504.5011,~~] and §504.502, unless:

(i) the license plate's original use was restricted by statute to another vehicle type; [~~or~~]

(ii) the license plate is a qualifying plate type that originally required the owner to meet one or more eligibility requirements; or[~~.~~]

(iii) the alpha numeric pattern is already in use on another vehicle.

(B) Validation stickers and tabs. The department will issue validation stickers and tabs for display on license plates that are displayed as provided by subparagraph (A) of this paragraph.

(3) Number of plates issued.

(A) Two plates. Unless otherwise listed in subparagraph (B) of this paragraph, two specialty license plates, each bearing the same license plate number, will be issued per vehicle.

(B) One plate. One license plate will be issued per vehicle for all motorcycles and for the following specialty license plates:

(i) Antique Vehicle;

(ii) Classic Travel Trailer;

(iii) Rental Trailer;

(iv) Travel Trailer;

(v) [~~(iii)~~] Cotton Vehicle;

(vi) [~~(iv)~~] Disaster Relief;

(vii) [~~(v)~~] Forestry Vehicle;

(viii) [~~(vi)~~] Golf Cart;

(ix) [~~(vii)~~] Log Loader;

(x) [~~(viii)~~] Military Vehicle; and

[(ix) ~~Parade; and~~]

(xi) [~~(x)~~] apportioned vehicle in accordance with §217.44(c)(2)(E) of this subchapter (relating to Registration Reciprocity Agreements).

(C) Registration number. The identification number assigned by the military may be approved as the registration number instead of displaying Military Vehicle license plates on a former military vehicle.

(4) Assignment of plates.

(A) Title holder. Unless otherwise exempted by law or this section, the vehicle on which specialty license plates, symbols, tabs, or other devices is to be displayed shall be titled in the name of the person to whom the specialty license plates, symbols, tabs, or other devices is assigned, or a [~~certificate of~~] title application shall be filed in that person's name at the time the specialty license plates, symbols, tabs, or other devices are issued.

(B) Non-owner vehicle. If the vehicle is titled in a name other than that of the applicant, the applicant must provide evidence of having the legal right of possession and control of the vehicle.

(C) Leased vehicle. In the case of a leased vehicle, the applicant must provide a copy of the lease agreement verifying that the applicant currently leases the vehicle.

(5) Classification of neighborhood electric vehicles. The registration classification of a neighborhood electric vehicle, as defined by §217.3(a)(3) of this chapter (relating to Motor Vehicle [~~Certificates of~~] Title) will be determined by whether it is designed as a 4-wheeled truck or a 4-wheeled passenger vehicle.

(6) Number of vehicles. An owner may obtain specialty license plates, symbols, tabs, or other devices for an unlimited number of vehicles, unless the statute limits the number of vehicles for which the specialty license plate may be issued.

[~~(7) Other classes of vehicle. A specialty license plate design may be varied to accommodate its use on motor vehicles other than passenger cars and light trucks. The department will determine whether a specialty license plate will be made available for one or more classes of vehicles in addition to passenger cars and light trucks and, if so, to which class or classes. In making this determination, the department will consider the cost of redesigning a specialty license plate to accommodate another class of vehicle, the potential demand for that specialty license plate on that class of vehicle, and other factors bearing on the potential cost or benefit to the public of expanding the availability of a specialty license plate.~~]

(7) [~~(8)~~] Personalized plate numbers.

(A) Issuance. The department [~~executive director~~] will issue a personalized license plate number subject to the exceptions set forth in this paragraph.

(B) Character limit. A personalized license plate number may contain no more than six alpha or numeric characters or a combination of characters. Depending upon the specialty license plate design and vehicle class, the number of characters may vary. Spaces, hyphens, periods, hearts, the International Symbol of Access, or silhouettes of the state of Texas may be used in conjunction with the license plate number.

(C) Personalized plates not approved. A personalized license plate number will not be approved by the executive director if the alpha-numeric pattern:

(i) conflicts with the department's current or proposed regular license plate numbering system;

(ii) would violate §217.22(c)(4)[~~(3)~~] of this subchapter as determined by the executive director; or

(iii) is currently issued to another owner.

(D) Classifications of vehicles eligible for personalized plates. Unless otherwise listed in subparagraph (E) of this paragraph, personalized plates are available for all classifications of vehicles.

(E) Categories of plates for which personalized plates are not available. Personalized license plate numbers are not available for display on the following specialty license plates:

(i) Amateur Radio (other than the official call letters of the vehicle owner);

(ii) Antique Motorcycle;

(iii) Antique Vehicle;

(iv) Apportioned;

~~*[(v)* Congressional Medal of Honor;]~~

(v) [~~(vi)~~] Cotton Vehicle;

~~*[(vii)* Disabled Veteran;]~~

(vi) [~~(viii)~~] Disaster Relief;

(vii) [~~(ix)~~] Farm Trailer (except Go Texan II);

(viii) [~~(x)~~] Farm Truck (except Go Texan II);

(ix) [~~(xi)~~] Farm Truck Tractor (except Go Texan II);

(x) [~~(xii)~~] Fertilizer;

(xi) [~~(xiii)~~] Forestry Vehicle;

(xii) [~~(xiv)~~] Log Loader;

(xiii) [~~(xv)~~] Machinery;

~~*[(xvi)* Parade;]~~

(xiv) [~~(xvii)~~] Permit;

(xv) [~~(xviii)~~] Rental Trailer;

(xvi) [~~(xix)~~] Soil Conservation; and

(xvii) [~~(xx)~~] Texas Guard.

(F) Fee. Unless specified by statute, a personalized license plate fee of $40 will be charged in addition to any prescribed specialty license plate fee.

(G) Priority. Once a personalized license plate number has been assigned to an applicant, the owner shall have priority to that number for succeeding years if a timely renewal application is submitted to the county tax assessor-collector each year in accordance with subsection (d) of this section.

(d) Specialty license plate renewal.

(1) Renewal deadline. If a personalized license plate is not renewed within 60 days after its expiration date, a subsequent renewal application will be treated as an application for new personalized license plates.

(2) Length of validation. With the following exceptions, all specialty license plates, symbols, tabs, or other devices shall be valid for 12 months from the month of issuance or for a prorated period of at least 12 months coinciding with the expiration of registration.

(A) Five-year period. Antique Vehicle and Antique Motorcycle license plates, Antique tabs, [~~The following license plates~~] and registration numbers are issued for a five-year period.[~~:~~]

~~*[(i)* Antique Vehicle and Antique Motorcycle license plates and Antique tabs;]~~

~~*[(ii)* Military Vehicle license plates and registration numbers;]~~

~~*[(iii)* Parade license plates; and]~~

~~*[(iv)* Foreign Organization license plates.]~~

(B) Seven-year period. Foreign Organization license plates and registration numbers are issued for a seven-year period.

(C) [~~(B)~~] March expiration dates. The registration for Cotton Vehicle and Disaster Relief [~~the following~~] license plates expires each March 31.[~~:~~]

~~*[(i)* Congressional Medal of Honor;]~~

~~*[(ii)* Cotton Vehicle; and]~~

~~*[(iii)* Disaster Relief.]~~

(D) [~~(C)~~] June expiration dates. The registration for the Honorary Consul license plate expires each June 30.

(E) [~~(D)~~] September expiration dates. The registration for the Log Loader license plate expires each September 30.

(F) [~~(E)~~] December expiration dates. The registration for the following license plates expires each December 31:

(i) County Judge;

(ii) Federal Administrative Law Judge;

(iii) State Judge;

(iv) State Official;

(v) U.S. Congress--House;

(vi) U.S. Congress--Senate; and

(vii) U.S. Judge.

(G) [~~(F)~~] Except as otherwise provided in this paragraph, if a vehicle's registration period is other than 12 months, the expiration date of the specialty license plate, symbol, tab, or other device will be set to align it with the expiration of registration.

(3) Renewal.

(A) Renewal notice. Approximately 60 days before the expiration date of a specialty license plate, symbol, tab, or other device, the department will send each owner a renewal notice that includes the amount of the specialty plate fee and the registration fee.

(B) Return of notice. The owner must return the fee and any prescribed documentation to the tax assessor-collector of the county in which the owner resides, except that the owner of a vehicle with one of the following license plates must return the documentation and specialty license plate fee, if applicable, directly to the department and submit the registration fee to the county tax assessor-collector:

(i) County Judge;

(ii) Federal Administrative Law Judge;

(iii) State Judge;

(iv) State Official;

(v) U.S. Congress--House;

(vi) U.S. Congress--Senate; and

(vii) U.S. Judge.

[~~(C) Return of documents. The owner of a vehicle with Congressional Medal of Honor license plates must return the documentation and specialty license plate fee, if any, directly to the department.~~]

(C) [~~(D)~~] Expired plate numbers. The department will retain a specialty license plate number for 60 days after the expiration date of the plates if the plates are not renewed on or before their expiration date. After 60 days the number may be reissued to a new applicant. All specialty license plate renewals received after the expiration of the 60 days will be treated as new applications.

(D) [~~(E)~~] Issuance of validation insignia. On receipt of a completed license plate renewal application and prescribed documentation, the department will issue registration validation insignia as specified in §217.22 of this subchapter unless this section or other law requires the issuance of new license plates to the owner.

(E) [~~(F)~~] Lost or destroyed renewal notices. If a renewal notice is lost, destroyed, or not received by the vehicle owner, the specialty license plates, symbol, tab, or other device may be renewed if the owner provides acceptable personal identification along with the appropriate fees and documentation. Failure to receive the notice does not relieve the owner of the responsibility to renew the vehicle's registration.

(e) Transfer of specialty license plates.

(1) Transfer between vehicles.

(A) Transferable between vehicles. The owner of a vehicle with specialty license plates, symbols, tabs, or other devices may transfer the specialty plates between vehicles by filing an application through the county tax assessor-collector if the vehicle to which the plates are transferred:

(i) is titled or leased in the owner's name; and

(ii) meets the vehicle classification requirements for that particular specialty license plate, symbol, tab, or other device.

(B) Non-transferable between vehicles. The following specialty license plates, symbols, tabs, or other devices are non-transferable between vehicles:

(i) Antique Vehicle license plates, Antique Motorcycle license plates, and Antique tabs;

~~*[(ii)* Military Vehicle license plates and registration numbers;]~~

(ii) [~~(iii)~~] Classic Auto, Classic Truck, Classic Motorcycle, [~~and~~] Classic Travel Trailer, Street Rod, and Custom Vehicle license plates;

~~*[(iv)* Parade license plates;]~~

(iii) [~~(v)~~] Forestry Vehicle license plates; and

(iv) [~~(vi)~~] Log Loader license plates.

(C) New specialty license plates. If the department creates a new specialty license plate under Transportation Code, §504.801, the department will specify at the time of creation whether the license plate may be transferred between vehicles.

(2) Transfer between owners.

(A) Non-transferable between owners. [~~Specialty license plates, symbols, tabs, or other devices issued under Transportation Code, Chapter 504, Subchapters B and G, may not be transferred between persons.~~] Specialty license plates, symbols, tabs, or other devices issued under Transportation Code, Chapter 504, Subchapters C, [~~D,~~] E, and F are not transferable from one person to another except as specifically permitted by statute.

(B) New specialty license plates. If the department creates a new specialty license plate under Transportation Code, §504.801, the department will specify at the time of creation whether the license plate may be transferred between owners.

(3) Simultaneous transfer between owners and vehicles. Specialty license plates, symbols, tabs, or other devices are transferable between owners and vehicles simultaneously only if the owners and vehicles meet all the requirements in both paragraphs (1) and (2) of this subsection.

(f) Replacement.

(1) Application. When specialty license plates, symbols, tabs, or other devices are lost, stolen, or mutilated, the owner shall apply directly to the county tax assessor-collector for the issuance of replacements, except that Log Loader license plates must be reapplied for and accompanied by the prescribed fees and documentation.

(2) Temporary registration insignia. If the specialty license plate, symbol, tab, or other device is lost, destroyed, or mutilated to such an extent that it is unusable, and if issuance of a replacement license plate would require that it be remanufactured, the owner must pay the statutory replacement fee, and the department will issue a temporary tag for interim use. The owner's new specialty license plate number will be shown on the temporary tag unless it is a personalized license plate, in which case the same personalized license plate number will be shown.

(3) Stolen specialty license plates.

(A) The department or county tax assessor-collector will not approve the issuance of replacement license plates with the same personalized license plate number if the department's records indicate either the vehicle displaying the personalized license plates or the license plates are reported as stolen to law enforcement. The owner will be directed to contact the department for another personalized plate choice.

(B) The owner may select a different personalized number to be issued at no charge with the same expiration as the stolen specialty plate. On recovery of the stolen vehicle or license plates, the department will issue, at the owner's or applicant's request, replacement license plates, bearing the same personalized number as those that were stolen.

(g) License plates created after January 1, 1999. In accordance with Transportation Code, §504.702, the department will begin to issue specialty license plates authorized by a law enacted after January 1, 1999, only if the sponsoring entity for that license plate submits the following items before the fifth anniversary of the effective date of the law.

(1) The sponsoring entity must submit a written application. The application must be on a form approved by the director and include, at a minimum:

(A) the name of the license plate;

(B) the name and address of the sponsoring entity;

(C) the name and telephone number of a person authorized to act for the sponsoring entity; and

(D) the deposit [~~or license plate fees set forth in paragraph (2) of this subsection~~].

[~~(2) The written request must be accompanied by:~~]

[~~(A) a deposit in the amount of $8,000 in the form of a single payment, made payable to the Texas Department of Motor Vehicles; or~~]

[~~(B) if the license plates are presold, the prescribed number of properly executed applications for that license plate accompanied by a single payment, made payable to the Texas Department of Motor Vehicles, in an amount equal to the prescribed fees for issuance of those license plates; or~~]

[~~(C) if the sponsoring entity submits less than the prescribed number of properly executed applications for that license plate accompanied by a single payment, a deposit made payable to the Texas Department of Motor Vehicles, that consists of:~~]

[~~*(i)* the prescribed license plate fees for those applications submitted; and~~]

[~~*(ii)* a deposit equal to $8,000 less the prescribed portion of those license plate fees to be retained by the department, and deposited to the State Highway Fund, for issuance of the license plates for which applications are submitted.~~]

[~~(3) The deposit submitted to the department under paragraph (2)(A) or (C) of this subsection will be returned to the sponsoring entity only if the prescribed number of sets of the applicable license are issued or presold.~~]

(2) [~~(4)~~] A sponsoring entity is not an agent of the department and does not act for the department in any matter, and the department does not assume any responsibility for fees or applications collected by a sponsoring entity.

(h) - (i) (No change.)

§217.29. Vehicle Registration Renewal via the Internet.

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

(d) Fees. A vehicle owner who renews registration via the Internet must pay:

(1) registration fees prescribed by law;

(2) any local fees or other fees prescribed by law and collected in conjunction with registering a vehicle;

(3) a fee of $1 [~~$1.00~~] for the processing of a registration renewal by mail in accordance with Transportation Code, §502.197(a) [~~§502.101(a)~~]; and

(4) a convenience fee of $2 [~~$2.00~~] for the processing of an electronic registration renewal paid by a credit card payment in accordance with Transportation Code, §1001.009 [~~§201.208~~].

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

§217.30. Commercial Vehicle Registration.

(a) (No change.)

(b) Commercial vehicle registration classifications.

(1) Apportioned license plates. Apportioned license plates are issued in lieu of Combination or Truck license plates to Texas carriers who proportionally register their fleets in other states, in conformity with §217.44 of this subchapter (relating to Registration Reciprocity Agreements).

(2) City bus license plates. A street or suburban bus shall be registered with license plates bearing the legend "City Bus."

(3) Combination license plates.

(A) Specifications. A truck or truck tractor with a gross weight [~~manufacturer's rated carrying capacity~~] in excess of 10,000 pounds [~~one ton~~] used or to be used in combination with a semitrailer having a gross weight in excess of 6,000 pounds, shall be registered with combination license plates. Such vehicles must be registered for a gross weight equal to the combined gross weight of all the vehicles in the combination, but not less than 18,000 pounds. Only one combination license plate is required and must be displayed on the front of the truck or truck tractor. When displaying a combination license plate, a truck or truck tractor is not restricted to pulling a semitrailer licensed with a Token Trailer license plate and may legally pull semitrailers and full trailers displaying other types of Texas license plates or license plates issued out of state. The following vehicles are not required to be registered in combination:

(i) trucks or truck tractors having a gross weight of less than 10,000 pounds [~~manufacturer's rated carrying capacity of one ton or less,~~] or trucks or truck tractors to be used exclusively in combination with semitrailers having gross weights not exceeding 6,000 pounds;

(ii) semitrailers with gross weights of 6,000 pounds or less, or semitrailers that are to be operated exclusively with trucks or truck tractors having gross weight of less than 10,000 pounds [~~manufacturer's rated carrying capacity of one ton or less~~];

(iii) trucks or truck tractors used exclusively in combination with semitrailer-type vehicles displaying Machinery, Permit, or Farm Trailer license plates;

(iv) trucks or truck tractors used exclusively in combination with travel trailers and manufactured housing;

(v) trucks or truck tractors to be registered with Farm Truck or Farm Truck Tractor license plates;

(vi) trucks or truck tractors and semitrailers to be registered with disaster relief license plates;

(vii) trucks or truck tractors and semitrailers to be registered with Soil Conservation license plates;

(viii) trucks or truck tractors and semitrailers to be registered with U.S. Government license plates or Exempt license plates issued by the State of Texas; and

(ix) vehicles that are to be issued temporary permits, such as 72-Hour Permits, 144-Hour Permits, One Trip Permits, or 30-Day Permits in accordance with Transportation Code, §502.094 [~~§502.352~~] and §502.095 [~~§502.354~~].

(B) Converted semitrailers. Semitrailers that are converted to full trailers by means of auxiliary axle assemblies will retain their semitrailer status, and such semitrailers are subject to the combination and token trailer registration requirements.

(C) Axle assemblies. Various types of axle assemblies that are specially designed for use in conjunction with other vehicles or combinations of vehicles may be used to increase the load capabilities of such vehicles or combinations.

(i) Auxiliary axle assemblies such as trailer axle converters, jeep axles, and drag axles, which are used in conjunction with truck tractor and semitrailer combinations, are not required to be registered; however, the additional weight that is acquired by the

use of such axle assemblies must be included in the combined gross weight of the combination.

(ii) Ready-mix concrete trucks that have an auxiliary axle assembly installed for the purpose of increasing a load capacity of such vehicles must be registered for a weight that includes the axle assembly.

(D) Exchange of Combination license plates. Combination license plates shall not be exchanged for another type of registration during the registration year, except that:

(i) if a major permanent reconstruction change occurs, Combination license plates may be exchanged for Truck license plates, provided that a corrected title is applied for;

(ii) if the department initially issues Combination license plates in error, the plates will be exchanged for license plates of the proper classification;

(iii) if the department initially issues Truck or Trailer license plates in error to vehicles that should have been registered in combination, such plates will be exchanged for Combination and Token Trailer license plates; or

(iv) if a Texas apportioned carrier acquires a combination license power unit, the Combination license plates will be exchanged for Apportioned license plates.

(4) Cotton Vehicle license plates. The department will issue Cotton Vehicle license plates in accordance with Transportation Code, §504.505 and §217.28 of this subchapter (relating to Specialty License Plates, Symbols, Tabs, and Other Devices).

(5) Forestry Vehicle license plates. The department will issue Forestry Vehicle license plates in accordance with Transportation Code, §504.507 and §217.28 of this subchapter.

(6) In Transit license plates. The department may issue an In Transit license plate annually to any person, firm, or corporation engaged in the primary business of transporting and delivering by means of the full mount, saddle mount, tow bar, or any other combination, new vehicles and other vehicles from the manufacturer or any other point of origin to any point of destination within the State. Each new vehicle being transported, delivered, or moved under its own power in accordance with this paragraph must display an In Transit license plate in accordance with Transportation Code, §503.035.

(7) Motor Bus license plates. A motor bus as well as a taxi and other vehicles that transport passengers for compensation or hire, must display Motor Bus license plates when operated outside the limits of a city or town, or adjacent suburb, in which its company is franchised to do business.

(8) Token Trailer license plates.

(A) Qualification. The department will issue Token Trailer license plates for semitrailers that are required to be registered in combination.

(B) Validity. A Token Trailer license plate is valid only when it is displayed on a semitrailer that is being pulled by a truck or a truck tractor that has been properly registered with Forestry Vehicle (in accordance with Transportation Code, §504.507), Combination (in accordance with Transportation Code, §502.255 [~~§502.167~~], or Apportioned (in accordance with Transportation Code, §502.091 [~~§502.054~~] license plates for combined gross weights that include the weight of the semitrailer, unless exempted by Transportation Code, §502.094 [~~§502.352~~] and §623.011.

(C) License receipt. The operator shall carry a copy of the Token Trailer license plate receipt in the vehicle at all times when operating the vehicle on the public highways.

(D) House-moving dollies. House-moving dollies are to be registered with Token Trailer license plates and titled as semitrailers; however, only one such dolly in a combination is required to be registered and titled. The remaining dolly (or dollies) is permitted to operate unregistered, since by the nature of its construction, it is dependent upon another such vehicle in order to function. The pulling unit must display a Combination or Apportioned license plate.

(E) Full trailers. The department will not issue a Token Trailer license plate for a full trailer.

(9) Tow Truck license plates. A Tow Truck license plate must be obtained for all tow trucks operating and registered in this state. The department will not issue a Tow Truck license plate to tow trucks that are not registered in compliance with Transportation Code, Chapter 643.

(c) Application for commercial vehicle registration.

(1) Application form. An applicant shall apply for commercial license plates through the appropriate county tax assessor-collector upon forms prescribed by the director and shall require, at a minimum, the following information:

(A) owner name and complete address;

(B) complete description of vehicle, including empty weight; and

(C) motor number or serial number.

(2) Empty weight determination.

(A) The weight of a Motor Bus shall be the empty weight plus carrying capacity, in accordance with Transportation Code, §502.168.

(B) The weight of a vehicle cannot be lowered below the weight indicated on a Manufacturer's Certificate of Origin unless a corrected Manufacturer's Certificate of Origin is obtained.

(C) In all cases where the department questions the empty weight of a particular vehicle, the applicant should present a weight certificate from a public weight scale or the Department of Public Safety.

(3) Gross weight.

(A) Determination of Weight. The combined gross weight of vehicles registering for combination license plates shall be determined by the empty weight of the truck or truck tractor combined with the empty weight of the heaviest semitrailer or semitrailers used or to be used in combination therewith, plus the heaviest net load to be carried on such combination during the motor vehicle registration year, provided that in no case may the combined gross weight be less than 18,000 pounds.

(B) Restrictions. The following restrictions apply to combined gross weights.

(i) After a truck or truck tractor is registered for a combined gross weight, such weight cannot be lowered at any subsequent date during the registration year. The owner may, however, lower the gross weight when registering the vehicle for the following registration year, provided that the registered combined gross weight is sufficient to cover the heaviest load to be transported during the year and provided that the combined gross weight is not less than 18,000 pounds.

(ii) A combination of vehicles is restricted to a total gross weight not to exceed 80,000 pounds; however, all combinations may not qualify for 80,000 pounds unless such weight can be properly distributed in accordance with axle load limitations, tire size, and distance between axles, in accordance with Transportation Code, §623.011.

(4) Motor number or serial number. Ownership must be established by a court order if no motor or serial number can be identified. Once ownership has been established, the department will assign a number upon payment of the fee.

(5) Accompanying documentation. Unless otherwise exempted by law, completed applications for commercial license plates shall be accompanied by:

(A) prescribed registration fees;

(B) prescribed local fees or other fees that are collected in conjunction with registering a vehicle;

(C) evidence of financial responsibility as required by Transportation Code, §502.046 [~~§502.153~~] (if the applicant is a motor carrier as defined by §218.2 of this title (relating to Definitions), proof of financial responsibility may be in the form of a registration listing or an international stamp indicating that the vehicle is registered in compliance with Chapter 218, Subchapter B of this title (relating to Motor Carrier Registration);

(D) an application for Texas [~~Certificate of~~] Title in accordance with §217.3 of this chapter (relating to Motor Vehicle [~~Certificates of~~] Title), or other proof of ownership;

(E) proof of payment of the Federal Heavy Vehicle Use Tax, if applicable;

(F) an original or certified copy of the Certificate of Registration issued in accordance with Transportation Code, Chapter 643, if application is being made for Tow Truck license plates; and

(G) other documents or fees required by law.

(6) Proof of payment required. Proof of payment of the Federal Heavy Vehicle Use Tax is required for vehicles with a gross registration weight of 55,000 pounds or more, or in cases where the vehicle's gross weight is voluntarily increased to 55,000 pounds or more. Proof of payment shall consist of an original or photocopy of the Schedule 1 portion of Form 2290 receipted by the Internal Revenue Service (IRS), or a copy of the Form 2290 with Schedule 1 attached as filed with the IRS, along with a photocopy of the front and back of the canceled check covering the payment to the IRS.

(7) Proof of payment not required. Proof of payment of the Federal Heavy Vehicle Use Tax is not required:

(A) for new vehicles when an application for title and registration is supported by a Manufacturer's Certificate of Origin;

(B) on used vehicles when an application for title and registration is filed within 60 days from the date of transfer to the applicant as reflected on the assigned title, except that proof of payment will be required when an application for Texas title and registration is accompanied by an out-of-state title that is recorded in the name of the applicant;

(C) when a vehicle was previously wrecked, in storage, or otherwise out of service and, therefore, not registered or operated during the current registration year or during the current tax year, provided that a non-use affidavit is signed by the operator; and

(D) as a prerequisite to registration of vehicles apprehended for operating without registration or reciprocity or when an owner or operator purchases temporary operating permits or additional weight.

(d) Renewal of commercial license plates.

(1) Registration period. The department will establish the registration period for commercial vehicles, unless specified by statute. Commercial license plates are issued for established annual registration periods as follows.

(A) March expiration. The following license plates are issued for the established annual registration period of April 1st through March 31st of the following year:

(i) City Bus license plates;

(ii) Combination license plates; and

~~*[(iii)* In Transit license plates;]~~

(iii) [~~(iv)~~] Motor Bus license plates.[~~; and~~]

~~*[(v)* Token Trailer license plates.]~~

(B) Five-year registration with March 31st expiration. The following license plates are available with a five-year registration period. Registration fees for the license plates listed below may be paid on an annual basis, or may be paid up front for the entire five-year period:

(i) Five-year Rental Trailer license plates issued for rental trailers that are part of a rental fleet; and

(ii) Five-year Token Trailer license plates, available to owners of semitrailers to be used in combination with truck-tractors displaying Apportioned or Combination license plates.

(2) License Plate Renewal Notice. The department will mail a License Plate Renewal Notice, indicating the proper registration fee and the month and year the registration expires, to each vehicle owner approximately six to eight weeks prior to the expiration of the vehicle's registration.

(3) Return of License Plate Renewal Notices. License Plate Renewal Notices should be returned by the vehicle owner to the department or the appropriate county tax assessor-collector, as indicated on the License Plate Renewal Notice. Unless otherwise exempted by law, License Plate Renewal Notices may be returned either in person or by mail, and shall be accompanied by:

(A) statutorily prescribed registration renewal fees;

(B) prescribed local fees or other fees that are collected in conjunction with registration renewal;

(C) evidence of financial responsibility as required by Transportation Code, §502.046 [~~§502.153~~]; and

(D) other prescribed documents or fees.

(4) Lost or destroyed License Plate Renewal Notice. If a License Plate Renewal Notice is lost, destroyed, or not received by the vehicle owner, the vehicle may be registered if the owner presents personal identification acceptable to the tax assessor-collector. Failure to receive the notice does not relieve the owner of the responsibility to renew the vehicle's registration.

(e) (No change.)

(f) Replacement of lost, stolen, or mutilated commercial vehicle license plates.

~~[(1) In Transit license plates. Replacement In Transit license plates will not be issued. Additional In Transit license plates~~

may be obtained at any time during the registration year by submitting a new application in accordance with subsection (d) of this section.]

[(2)] An [Other license plates. Except for In Transit license plates identified in paragraph (1) of this subsection, an] owner of lost, stolen, or mutilated commercial vehicle license plates may obtain replacement license plates by filing an Application for Replacement Plates and remitting the prescribed fee to the county tax assessor-collector of the county in which the owner resides.

§217.31. Vehicle Emissions Enforcement System.

(a) Purpose. Transportation Code, §502.047 [§502.009] requires the department to implement a system requiring verification that a vehicle complies with vehicle emissions inspection and maintenance programs as required by the Health and Safety Code, §382.202 [§382.037] and §382.203 [§382.0372], and Transportation Code, Chapter 548, Subchapter F. Transportation Code, §501.0276 and §502.047 [§502.1535] requires a vehicle subject to Transportation Code, §548.3011 to pass an emissions test on resale in an affected or early action compact county before it is titled or registered. This section prescribes the department's policies and procedures if a vehicle does not comply with the emissions standards set by federal and state laws and the provisions of the Texas air quality State Implementation Plan.

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

(d) Vehicles moved into affected or early action compact counties. If a vehicle was last titled in an unaffected county and is to be titled or registered in an affected or early action compact county, it is not eligible for a title receipt, a [certificate of] title, or registration after a retail sale unless proof is presented to the county tax assessor-collector that the vehicle has passed the emissions test. This subsection does not apply to a vehicle that will be used in the affected or early action compact county for fewer than 60 days during the registration period for which registration is sought or to a vehicle that is a 1996 or newer model and has less than 50,000 miles.

§217.37. Equipment and Vehicles Within Road Construction Projects.

Road construction equipment (machinery type vehicles) operating laden or unladen within the limits of a project are not required to display the $5 [$5.30] machinery license plate, regardless of the intermingling of regular vehicular traffic; however, conventional commercial vehicles operating within the limits of a project shall be required to be registered with regular commercial plates whenever traffic is allowed to intermingle. A highway construction project is that section of the highway between the warning signs giving notice of a construction area.

§217.39. Water Well Drilling Vehicles.

Every truck or trailer, whether conventional or unconventional, which has mounted thereon machinery used exclusively for drilling water wells may qualify for a $5 [$5.30] machinery license plate.

§217.40. Marketing of Specialty License Plates through a Private Vendor.

(a) Purpose and scope. The department will enter into a contract with a private vendor to market department-approved specialty license plates in accordance with Transportation Code, Chapter 504, Subchapter J [§504.851 and §504.852]. This section sets out the procedure for approval of the design, purchase, and replacement of vendor specialty license plates. In this section, the license plates marketed by the vendor are referred to as vendor specialty license plates.

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

(d) Board decision.

(1) Decision. The decision of the Board will be based on:

(A) compliance with Transportation Code, Chapter 504, Subchapter J [§§504.851-504.852];

(B) the proposed license plate design, including:

(i) whether the design meets the legibility and reflectivity standards established by the department;

(ii) whether the design meets the standards established by the department for uniqueness to ensure that the proposed plate complies with Transportation Code, §504.852(c);

(iii) whether the license plate design can accommodate the International Symbol of Access (ISA) as required by Transportation Code, §504.201(f) [§504.201(h)];

(iv) the criteria designated in §217.22(c)(4)[(3)](B) of this subchapter (relating to Motor Vehicle Registration) as applied to the design; [and]

(v) whether a design is similar enough to an existing plate design that it may compete with the existing plate sales; and

(vi) other information provided during the application process.

(2) Public comment on proposed design. All proposed plate designs will be considered by the Board as an agenda item at a regularly or specially called open meeting. Notice of consideration of proposed plate designs will be posted in accordance with Office of the Secretary of State meeting notice requirements. Notice of each license plate design will be posted on the department's Internet web site to receive public comment at least 25 days in advance of the meeting at which it will be considered. The department will notify all specialty plate organizations and the sponsoring agencies who administer specialty license plates issued in accordance with Transportation Code, Chapter 504, Subchapter G, of the posting. A comment on the proposed design can be submitted in writing through the mechanism provided on the department's Internet web site for submission of comments. Written comments are welcome and must be received by the department at least 10 days in advance of the meeting. Public comment will be received at the Board's meeting.

(e) - (j) (No change.)

(k) Replacement.

(1) Application. An owner must apply directly to the county tax assessor-collector for the issuance of replacement vendor specialty license plates and must pay the fee described in paragraphs (2), (3), or (4) of this subsection, whichever applies.

(2) Lost or mutilated vendor specialty license plates. To replace vendor specialty license plates that are lost or mutilated, the owner must pay the statutory replacement fee provided in Transportation Code, §504.007 [§502.184].

(3) No-charge replacement. The owner of vendor specialty license plates will receive at no charge replacement license plates as follows:

(A) one set of replacement license plates on or after the seventh anniversary after the date of initial issuance; and

(B) one set of replacement license plates seven years after the date the set of license plates were issued in accordance with subparagraph (A) of this paragraph.

(4) Optional replacements. An owner of a vendor specialty license plate may replace vendor specialty license plates before the seventh anniversary after the date of issuance by submitting a request to

the county tax assessor-collector accompanied by the payment of a $6 [$30] fee.

(5) Interim replacement tags. If the vendor specialty license plates are lost or mutilated to such an extent that they are unusable, replacement license plates will need to be remanufactured. The county tax assessor-collector will issue interim replacement tags for use until the replacements are available. The owner's vendor specialty license plate number will be shown on the interim replacement tags.

(6) Stolen vendor specialty license plates. The county tax assessor-collector will not approve the issuance of replacement vendor specialty license plates with the same license plate number if the department's records indicate that the vehicle displaying that license plate number was reported stolen or the license plates themselves were reported stolen.

(l) - (n) (No change.)

§217.41. Removal of License Plates and Registration Insignia upon Sale of Motor Vehicle.

(a) Purpose. Transportation Code, Chapter 502, Subchapter I, provides for the removal of the license plates and registration insignia when a motor vehicle is sold or transferred. Motor vehicles eligible for this process are limited to a passenger car or a light truck, as those terms are defined in Transportation Code, §502.001.

(b) Disposition of removed license plates. License plates removed from a motor vehicle by a licensed motor vehicle dealer[, ~~as provided in Transportation Code, §502.451(a),~~] or by a motor vehicle owner in a private transaction as provided in Transportation Code, §502.491 [~~§502.251(a-1)~~], may be:

(1) transferred to another vehicle:

(A) that is titled or will be titled in the same owner name as the vehicle from which the license plates were removed;

(B) that is of the same vehicle classification (passenger car or light truck) as the vehicle from which the license plates were removed;

(C) if the age of the removed license plate is not greater than provided in §217.22(d)(7) of this subchapter (relating to Motor Vehicle Registration) which would require a new license plate to be issued; and

(D) upon[:]

[(i)] acceptance of a request to transfer the license plate by the county tax assessor-collector in which the application is filed as provided by Transportation Code, §501.023 or §502.040 [~~§502.002(b)~~], whichever applies; [~~and~~]

[(ii) ~~payment of the transfer fee provided in Transportation Code, §502.453;~~]

(2) disposed of in a manner that renders the license plates unusable or that ensures the license plates will not be available for fraudulent use on a motor vehicle; or

(3) retained by the owner of the motor vehicle from which the license plates were removed.

(c) Vehicle transit permit.

(1) Obtaining a vehicle transit permit. A person who obtains a motor vehicle in a private transaction may obtain one vehicle transit permit (temporary single-trip permit), through the department's website at www.txdmv.gov if the seller or transferor has removed the license plates and registration insignia.

(2) Restrictions. The permit, which is valid only for the period shown on the permit, may be used for operation of the motor vehicle only as provided in Transportation Code, §502.492 [~~§502.454~~], and must be carried in the vehicle at all times. The permit may only be used on passenger vehicles 6,000 pounds or less and light trucks with a gross vehicle weight of 10,000 pounds or less.

§217.42. Registration of Fleet Vehicles.

(a) Scope. A registrant may consolidate the registration of multiple motor vehicles, including trailers and semi-trailers, in a fleet instead of registering each vehicle separately. This section prescribes the policies and procedures for fleet registration.

(b) Eligibility. A fleet must meet the following requirements to be eligible for fleet registration.

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

(5) Each vehicle must currently be titled in Texas or be issued a registration receipt, or the registrant must submit an application for a [~~certificate of~~] title or registration for each vehicle.

(c) Application.

(1) Application for fleet registration must be in a form prescribed by the department. At a minimum the form will require:

(A) the full name and complete address of the registrant;

(B) a description of each vehicle in the fleet, which may include the [~~motor~~] vehicle's model year, make, model, vehicle identification number, document number, body style, gross weight, empty weight, and for a commercial vehicle, manufacturer's rated carrying capacity in tons;

(C) the existing license plate number, if any, assigned to each vehicle; and

(D) any other information that the department may require.

(2) The application must be accompanied by the following items:

(A) in the case of a leased vehicle, a certification that the vehicle is currently leased to the person to whom the fleet registration will be issued;

(B) registration fees prescribed by law for the entire registration period selected by the registrant;

(C) local fees or other fees prescribed by law and collected in conjunction with registering a vehicle for the entire registration period selected by the registrant;

(D) evidence of financial responsibility for each vehicle as required by Transportation Code, §502.046 [~~§502.153~~], unless otherwise exempted by law;

(E) annual proof of payment of Heavy Vehicle Use Tax; and

(F) any other documents or fees required by law.

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

(f) Fleet composition.

(1) A registrant may add a vehicle to a fleet at any time during the registration period. An added vehicle will be given the same registration period as the fleet and will be issued fleet registration insignia.

(2) A registrant may remove a vehicle from a fleet at any time during the registration period. The fleet registrant shall return the fleet registration insignia for that vehicle to the department at the time the vehicle is removed from the fleet. Credit for any vehicle removed from the fleet for the remaining full year increments can be applied to any vehicle added to the fleet or at the time of renewal. No refunds will be given if credit is not used or the account is closed.

(3) If the number of vehicles in an account [~~a fleet~~] falls below twenty-five during the registration period, fleet registration will remain in effect. If the number of vehicles in an account [~~a fleet~~] is below twenty-five at the end of the registration period, fleet registration will be canceled. In the event of cancellation, each vehicle shall be registered separately. The registrant shall immediately return all fleet registration insignia to the department.

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

§217.43. Exempt and Alias Vehicle Registration.

(a) Exempt plate registration.

(1) Issuance. Pursuant to Transportation Code, §502.453 [~~§502.202~~], a vehicle owned by and used exclusively in the service of a governmental agency, used exclusively for public school transportation services, used for fire-fighting [~~fire fighting~~] or by a volunteer fire department, or used in volunteer county marine law enforcement is exempt from payment of a registration fee and is eligible for exempt plates.

(2) Application for exempt registration.

(A) Application. An application for exempt plates shall be made to the county tax assessor-collector, shall be made on a form prescribed by the department, and shall contain the following information:

(i) vehicle description;

(ii) name of the exempt agency;

(iii) an affidavit executed by an authorized person stating that the vehicle is owned or under the control of and will be operated by the exempt agency; and

(iv) a certification that each vehicle listed on the application has the name of the exempt agency printed on each side of the vehicle in letters that are at least two inches high or in an emblem that is at least 100 square inches in size and of a color sufficiently different from the body of the vehicle as to be clearly legible from a distance of 100 feet.

(B) Emergency medical service vehicle.

(i) Exempt registration may be issued for a vehicle that is owned or leased by a non-profit emergency medical service provider; a municipality or county; or a non-profit emergency medical service provider chief or supervisor in accordance with Transportation Code, §502.456 [~~§502.204~~].

(ii) The application for exempt registration must contain the vehicle description, the name of the emergency medical service provider, and a statement signed by an officer of the emergency medical service provider stating that the vehicle is used exclusively as an emergency response vehicle and qualifies for registration under Transportation Code, §502.456 [~~§502.204~~].

(iii) A copy of an emergency medical service provider license issued by the Texas Board of Health must accompany the application.

(C) Fire-fighting [~~Fire fighting~~] vehicle. The application for exempt registration of a fire-fighting [~~fire fighting~~] vehicle owned privately or by a volunteer fire department must contain the vehicle description. The affidavit must be executed by the person who has the proper authority and shall state that:

(i) the vehicle is privately owned and is designed and used exclusively for fire-fighting [~~fire fighting~~]; or

(ii) the vehicle is owned by a volunteer fire department and is used exclusively in the conduct of its business.

(3) Exception. A vehicle may be exempt from payment of a registration fee, but display license plates other than exempt plates if the vehicle is not registered under subsection (b) of this section.

(A) If the applicant is a law enforcement office, the applicant must present a certification that each vehicle listed on the application will be dedicated to law enforcement activities.

(B) If the applicant is exempt from the inscription requirements under Transportation Code, §721.003, the applicant must present a certification that each vehicle listed on the application is exempt from inscription requirements under Transportation Code, §721.003. The applicant must also provide a citation to the section that exempts the vehicle.

(C) If the applicant is exempt from the inscription requirements under Transportation Code, §721.005 the applicant must present a certification that each vehicle listed on the application is exempt from inscription requirements under Transportation Code, §721.005. The applicant must also provide a copy of the order or ordinance that exempts the vehicle.

(D) If the applicant is exempt from the inscription requirements under Education Code, §51.932, the applicant must present a certification that each vehicle listed on the application is exempt from the inscription requirements under Education Code, §51.932. Exempt plates will be marked with the replacement year.

(b) Affidavit for issuance of exempt registration under an alias.

(1) On receipt of an affidavit for alias exempt registration, approved [~~properly executed~~] by the executive administrator of an exempt law enforcement agency, the department will issue alias exempt license plates for a vehicle and register the vehicle under an alias for the law enforcement agency's use [~~registration annually for a vehicle used~~] in covert criminal investigations.

(2) The affidavit for alias exempt registration must be in a form prescribed by the director and must include the vehicle description, a sworn statement that the vehicle will be used in covert criminal investigations, and the signature of the executive administrator or the executive administrator's designee as provided in paragraph (3) of this subsection. The vehicle registration insignia of any vehicles no longer used in covert criminal investigations shall be surrendered immediately to the department.

(3) The executive administrator, by annually filing an authorization with the director, may appoint a staff designee to execute the affidavit. A new authorization must be filed when a new executive administrator takes office.

(4) The letter of authorization must contain a sworn statement delegating the authority to sign the affidavit to a designee, the name of the designee, and the name and the signature of the executive administrator.

(5) The affidavit for alias exempt registration must be accompanied by a [~~certificate of~~] title application under §217.7 of this chapter (relating to Restitution Liens). The application must contain the information required by the department to create the alias record of vehicle registration and title.

(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 May 7, 2012.

TRD-201202302
Brett Bray
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: June 17, 2012
For further information, please call: (512) 467-3853

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43 TAC §217.26

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

STATUTORY AUTHORITY

The repeal is proposed under Transportation Code, §1002.001, which provides the Board of the Texas Department of Motor Vehicles with the authority to establish rules for the conduct of the work of the department, and Transportation Code, §§501.0041, 502.0021, 504.0011, and 520.003, which provide the Board of the Texas Department of Motor Vehicles with the authority to establish rules for each respective chapter of the Transportation Code.

CROSS REFERENCE TO STATUTE

Transportation Code, §504.510.

§217.26. Golf Carts.

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 May 7, 2012.

TRD-201202301
Brett Bray
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: June 17, 2012
For further information, please call: (512) 467-3853

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SUBCHAPTER C. REGISTRATION AND TITLE SYSTEM

43 TAC §217.53, §217.54

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the Board of the Texas Department of Motor Vehicles with the authority to establish rules for the conduct of the work of the department, and Transportation Code, §§501.0041, 502.0021, 504.0011, and 520.003, which provide the Board of the Texas Department of Motor Vehicles with the authority to establish rules for each respective chapter of the Transportation Code.

CROSS REFERENCE TO STATUTE

Transportation Code, §§501.002, 501.006, 501.0275, 501.053, 502.001, 502.0023, 502.045 - 502.047, 502.056 - 502.057, 502.059 - 502.060, 502.093 - 502.095, 502.146, 502.252 - 502.255, 502.451 - 502.456, 502.491 - 502.492, 504.002, 504.005 - 504.0051, 504.007 - 504.008, 504.010, 504.201 - 504.202, 504.301, 504.3011, 504.307, 504.315, 504.317 (82nd Leg., Ch. 1296, §183), 504.317 (82nd Leg., Ch. 1281, §4), 504.400 - 504.406, 504.4061, 504.503, 504.516, 504.90, and 520.004.

§217.53. Automated Vehicle Registration and [~~Certificate of~~] Title System.

(a) Purpose.

(1) Transportation Code, Chapters 501 and 502, charge the department with the responsibility for issuing certificates of title and registering vehicles operating on the roads, streets, and highways of the state.

(2) To provide a more efficient, cost-effective system for registering and titling vehicles, maintaining records, improving inventory control of accountable items, and collecting and reporting of applicable fees consistent with those statutes, the department has designed an automated system known as the registration and title system. This system expedites registration and titling processes, provides a superior level of customer service to the owners and operators of vehicles, and facilitates availability of the department's motor vehicle records for official law enforcement needs. Automated equipment compatible with the registration and title system is indispensable to the operational integrity of the system. This subchapter prescribes the policies and procedures under which the department may make that equipment available to a county tax assessor-collector as designated agent of the state for processing [~~certificate of~~] title and vehicle registration documents.

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

(1) Automated equipment--Equipment associated with the operation of the registration and titling system, including, but not limited to, microcomputers, printers, software, and cables.

(2) Department--The Texas Department of Motor Vehicles.

(3) Executive director--The executive director of the Texas Department of Motor Vehicles.

(4) Fair share allocation--The amount of automated equipment determined by the department to be effective at providing a reasonable level of service to the public. This amount will be determined on [~~the basis of comparisons with similarly sized counties,~~] transaction volumes, number of county substations, [~~transaction types,~~] and other factors relating to a particular county's need.

(5) RTS--The department's registration and title system.

§217.54. Automated Equipment.

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

(c) Enhancements to RTS.

[~~(1)~~] The department will collect an additional fee of $1 for each registration [~~in counties with 50,000 or more annual motor vehicle registrations~~] for the purpose of enhancing the RTS, providing for automated on-site production of registration insignia, or providing for automated self-serve registration.

[(2) The department will determine which counties meet the criteria for collecting the $1 additional fee, on an annual basis.]

(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 May 7, 2012.

TRD-201202303
Brett Bray
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: June 17, 2012
For further information, please call: (512) 467-3853

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 17. MARKETING AND PROMOTION

SUBCHAPTER I. TEXAS EQUINE INCENTIVE PROGRAM

4 TAC §§17.502, 17.507, 17.508

The Texas Department of Agriculture (the department) adopts the amendment of Chapter 17, Subchapter I, §17.502 and §17.508, the repeal of §17.507, and new §17.507, concerning the Texas Equine Incentive Program, without changes to the proposal published in the March 9, 2012, issue of the *Texas Register* (37 TexReg 1578). The amendments, repeal and new section are adopted to establish the method by which incentive awards will be paid to the owners of eligible foals under the program.

The amendment to §17.502 provides the definition of an enrolled foal. New §17.507 establishes how incentive awards will be paid to enrolled foals that participate in the program. The amendments to §17.508 clarify that the owner of a foal that desires to participate in the program must be enrolled in the program and participate in Texas horse events in accordance with the foal's breed association. The repeal of existing §17.507 is adopted to allow the department to adopt new §17.507, which establishes how the department will determine and pay incentive awards. Prior to proposing the amendments to Chapter 17, Subchapter I, §17.502, and §17.508, the repeal of §17.507, and new §17.507, the department sought comment from the Appaloosa Horse Club (AHC), the American Paint Horse Association (APHA), and the Texas Quarter Horse Association (TQHA). The AHC and the TQHA indicated no opposition to the proposal. The APHA indicated that it was deferring action on the payout program to the department, so that there would be no further delays in the rule-making process.

No comments were received on the proposal.

The amendments to §17.502 and §17.508 and new §17.507 are adopted under the Texas Agriculture Code, §12.044, which requires the department to adopt rules to establish and administer an equine incentive program.

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 May 3, 2012.

TRD-201202279
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: May 23, 2012
Proposal publication date: March 9, 2012
For further information, please call: (512) 463-4075

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4 TAC §17.507

The repeal of §17.507 is adopted under the Texas Agriculture Code, §12.044, which requires the department to adopt rules to establish and administer an equine incentive program.

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 May 3, 2012.

TRD-201202280
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: May 23, 2012
Proposal publication date: March 9, 2012
For further information, please call: (512) 463-4075

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TITLE 22. EXAMINING BOARDS

PART 18. TEXAS STATE BOARD OF PODIATRIC MEDICAL EXAMINERS

CHAPTER 376. VIOLATIONS AND PENALTIES

22 TAC §376.25

The Texas State Board of Podiatric Medical Examiners adopts amendments to §376.25, concerning Complaint Form, without changes to the proposed text as published in the November 11, 2011, issue of the *Texas Register* (36 TexReg 7647). The text will not be republished.

The amendments to §376.25 are adopted to reduce the number of frivolous complaints and to require that all complaints be sworn to before a notary public to attest truthfulness.

No comments were received in response to the proposed amendments.

The amendments are adopted under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry.

The adopted amendments to §376.25 implement Texas Occupations Code, Chapter 202, Subchapter E.

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 May 7, 2012.

TRD-201202297
Janie Alonzo
Staff Services Officer V
Texas State Board of Podiatric Medical Examiners
Effective date: May 27, 2012
Proposal publication date: November 11, 2011
For further information, please call: (512) 305-7000

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PART 32. STATE BOARD OF EXAMINERS FOR SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY

CHAPTER 741. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

SUBCHAPTER H. FITTING AND DISPENSING OF HEARING INSTRUMENTS

22 TAC §741.102, §741.104

The State Board of Examiners for Speech-Language Pathology and Audiology (board) adopts an amendment to §741.102 and new §741.104, concerning the regulation and sale of hearing instruments by licensed audiologists. Section 741.104 is adopted with a change to the proposed text as published in the March 30, 2012, issue of the *Texas Register* (37 TexReg 2155). Section 741.102 is adopted without changes and, therefore, the section will not be republished.

BACKGROUND AND PURPOSE

The adopted rules meet the requirements and directives of Senate Bill 662, 82nd Texas Legislature, Regular Session, 2011, amending Occupations Code, §401.002, concerning the adoption of a joint rule with the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments (committee) regarding the sale of hearing instruments.

SECTION-BY-SECTION SUMMARY

The amendment to §741.102 deletes language no longer necessary for the section specific to the sale of hearing instruments in accordance with the recent new legislation.

New §741.104 creates the joint rule with the committee. The new rule establishes requirements for the sale of hearing instruments, including information required in the written contract for hearing instrument purchase, records that must be retained by a licensed audiologist, and guidelines for the 30-day trial period during which a person may cancel the purchase of a hearing instrument.

COMMENTS

The board has reviewed and prepared a response to the comments received regarding the proposed rules during the comment period. There were two associations that commented on the proposed rules. The commenters were not against the rules in their entirety; however, the commenters suggested recommendations for change as discussed in the summary of comments. Commenters were generally in favor of the rules.

Comment: Concerning §741.104(b)(3), the commenters indicated that there was an omission of words regarding the 30 consecutive day period when a hearing instrument is returned to the manufacturer.

Response: The board agrees with the commenters and corrected the omission of words.

STATUTORY AUTHORITY

The amendment and new rule are authorized under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401.

§741.104. Joint Rule Regarding the Sale of Hearing Instruments.

(a) This section constitutes the rule required by the Act to be adopted jointly with the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments. The requirements of this section shall be repealed or amended only through consultation with, and mutual action by, the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments.

(b) Guidelines for a 30 consecutive day trial period.

(1) All clients shall be informed of a 30 consecutive day trial period by written contract for services. All charges associated with such trial period shall be included in this written contract for services, which shall include the name, address, and telephone number of the State Board of Examiners for Speech-Language Pathology and Audiology.

(2) Any client purchasing one or more hearing instruments shall be entitled to a refund of the purchase price advanced by the client for the hearing instrument(s), less the agreed-upon amount associated with the trial period, upon return of the instrument(s), in good condition, to the licensed audiologist or licensed intern in audiology within the trial period ending 30 consecutive days from the date of delivery. Should the order be canceled by the client prior to the delivery of the hearing instrument(s), the licensed audiologist or licensed intern in audiology may retain the agreed-upon charges and fees as specified in the written contract for services. The client shall receive the refund due no later than the 30th day after the date on which the client cancels the order or returns the hearing instrument(s), in good condition, to the licensed audiologist or licensed intern in audiology.

(3) Should the hearing instrument(s) have to be returned to the manufacturer for repair or remake during the trial period, the 30 consecutive day trial period begins anew. The trial period begins on the day the client reclaims the repaired/remade hearing instrument(s). The expiration date of the new 30 consecutive day trial period shall be made available to the client in writing, through an amendment to the original written contract. The amendment shall be signed by both the licensed audiologist or licensed intern in audiology and the client.

(4) On delivery of a new replacement hearing instrument(s) during the trial period, the serial number of the new instrument(s), the delivery date of the hearing instrument(s), and the date of the expiration of the 30 consecutive trial period must be stated in writing.

(5) If the date of the expiration of the 30 consecutive day trial period falls on a holiday, weekend, or a day the business is not open, the expiration date shall be the first day the business reopens.

(c) Upon the sale of any hearing instrument(s) or change of model or serial number of the hearing instrument(s), the owner shall ensure that each client receives a written contract that contains:

(1) the date of sale;

(2) the make, model, and serial number of the hearing instrument(s);

(3) the name, address, and telephone number of the principal place of business of the license holder who dispensed the hearing instrument;

(4) a statement that the hearing instrument is new, used, or reconditioned;

(5) the length of time and other terms of the guarantee and by whom the hearing instrument is guaranteed;

(6) a copy of the written forms (relating to waiver forms);

(7) a statement on or attached to the written contract for services, in no smaller than 10-point bold type, as follows: "The client has been advised that any examination or representation made by a licensed audiologist or licensed intern in audiology in connection with the fitting and selling of the hearing instrument(s) is not an examination, diagnosis or prescription by a person duly licensed and qualified as a physician or surgeon authorized to practice medicine in the State of Texas and, therefore, must not be regarded as medical opinion or advice;"

(8) a statement on the face of the written contract for services, in no smaller than 10-point bold type, as follows: "If you have a complaint against a licensed audiologist or intern in audiology, you may contact the State Board of Examiners for Speech-Language Pathology and Audiology, P.O. Box 149347, Austin, Texas 78714-9347, telephone 1-800-942-5540;"

(9) the printed name, license type, signature and license number of the licensed audiologist or licensed intern in audiology who dispensed the hearing instrument;

(10) the supervisor's name, license type, and license number, if applicable;

(11) a recommendation for a follow-up appointment within 30 days after the hearing instrument fitting;

(12) the expiration date of the 30 consecutive day trial period under subsection (b) of this section; and

(13) the dollar amount charged for the hearing instrument and the dollar amount charged for the return or restocking fee, if applicable.

(d) Record keeping. The owner of the dispensing practice shall ensure that records are maintained on every client who receives services in connection with the fitting and dispensing of hearing instruments. Such records shall be preserved for at least five years after the date of the last visit. All of the business's records and contracts are solely the property of the person who owns the business. Client access to records is governed by the Health Insurance Portability and Accountability Act (HIPAA). The records must be available for the board's inspection and shall include, but not be limited to, the following:

(1) pertinent case history;

(2) source of referral and appropriate documents;

(3) medical evaluation or waiver of evaluation;

(4) copies of written contracts for services and receipts executed in connection with the fitting and dispensing of each hearing instrument provided;

(5) a complete record of hearing tests, and services provided; and

(6) all correspondence specifically related to services provided to the client or the hearing instrument(s) fitted and dispensed to the client.

(e) The written contract and trial period information provided to a client in accordance with this section, orally and in writing, shall be in plain language designed to be easily understood by the average consumer.

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 May 2, 2012.

TRD-201202267
Vicki Dionne
Chair
State Board of Examiners for Speech-Language Pathology and Audiology
Effective date: May 22, 2012
Proposal publication date: March 30, 2012
For further information, please call: (512) 776-6990

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 15. TEXAS VETERANS COMMISSION

CHAPTER 452. ADMINISTRATION GENERAL PROVISIONS

40 TAC §452.2

The Texas Veterans Commission (commission) adopts the amendment to 40 TAC §452.2, relating to Advisory Committees, without changes to the proposed text as published in the February 17, 2012, issue of the *Texas Register* (37 TexReg 898) and will not be republished.

The adopted amendment adds new §452.2(e) to create a new advisory committee, the Veterans County Service Officer Advisory Committee. It is the role of the agency's advisory committees to advise and make recommendations to the commission on its programs, rules and policies affecting the delivery of service to veterans and their families. This amended rule implements a new advisory committee focused on the critical relationship between the Veterans County Service Officers and the Texas Veterans Commission relating to the support and training of Veterans

County Service Officers, as well as strengthening the statewide network of services being provided to veterans.

No comments were received regarding the proposed rule amendment.

The amendment is adopted under Texas Government Code §434.010, granting the commission the authority to establish rules, and Texas Government Code §434.0101, granting the commission the authority to establish rules governing the agency's advisory committees.

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 May 4, 2012.

TRD-201202282
H. Karen Fastenau
General Counsel
Texas Veterans Commission
Effective date: May 24, 2012
Proposal publication date: February 17, 2012
For further information, please call: (512) 463-1981

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PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §700.850 and §700.1043, without changes to the proposed text published in the February 17, 2012, issue of the *Texas Register* (37 TexReg 901). The justification for the amendments is to reduce the maximum amount of reimbursement that may be paid for nonrecurring adoption expenses and nonrecurring permanency care assistance (PCA) expenses to $1,200 per child. Currently, a person who adopts a child who is the subject of an adoption assistance agreement may be reimbursed up to $1,500 for the reasonable and necessary nonrecurring expenses associated with the adoption of the child. Currently, a person who obtains permanent managing conservatorship of a child who is the subject of a PCA agreement may be reimbursed up to $2,000 for the reasonable and necessary expenses associated with obtaining conservatorship of the child. Expenses that can be reimbursed under both programs include legal fees, court costs, costs for home studies and health and psychological examinations, and reasonable costs for lodging, food, and transportation in order to attend court hearings associated with the adoption or award of managing conservatorship.

The amendment to §700.850 is necessary to ensure that DFPS does not exceed amounts appropriated for the purpose of nonrecurring adoption expenses under the General Appropriations Act for the 2012-2013 fiscal biennium (House Bill 1, 82nd Legislature, Regular Session). Further, by making the maximum reimbursable amounts for nonrecurring expenses consistent between the adoption assistance and PCA programs (see changes to §700.1043), DFPS will achieve greater consistency between the two programs and will remove a potential monetary disincentive to choosing adoption of a child over permanent managing conservatorship of a child when both options are legally viable. The effective date for these rules is June 1, 2012; however, the reduced amounts will be applicable to adoption assistance and permanency care assistance agreements signed on or after August 1, 2012. The delayed implementation date for the reduced amount will allow staff a two-month interval following the effective date of the new rules in which to convey this new information to families in the process of negotiating an adoption assistance or PCA agreement.

The amendments will function by ensuring that DFPS does not exceed its budget allocation, consistent with legislative appropriations and intent. Further, by making the maximum reimbursable amounts for nonrecurring expenses consistent in both the adoption assistance and PCA programs, the rule amendments will serve to ensure that families have no financial incentive to choose permanent managing conservatorship over adoption for children who are legally eligible for adoption.

During the public comment period, DFPS received comments from Embrace Waiting Children Inc., Family by Choice, Inc., and four individuals. All commenters objected to the lowering of the maximum reimbursable amounts for nonrecurring expenses. Five of the six commenters expressed their views that the new ceilings would not be sufficient to cover actual expenses and speculated that the lowered amounts would serve as a disincentive to future families considering making a permanent legal commitment to children in DFPS's care. Four of the six commenters commented that the relatively small savings to the state that will result from the reduced appropriations for this purpose are insignificant compared to the savings to the state and the positive impact on the future lives of children when families have the means to offer a child a permanent home. DFPS acknowledges that the actual nonrecurring expenses of some families who adopt a child or assume permanent managing conservatorship of a child may exceed the lowered maximum reimbursable amounts for nonrecurring expenses. DFPS further acknowledges the possibility that the lowered amounts could discourage some families from pursuing adoption or permanent managing conservatorship of a child in DFPS's care. Nonetheless, DFPS must reduce the maximum reimbursable amounts for the nonrecurring expenses of adoption in order to not exceed the sums appropriated to DFPS for this purpose. Further, DFPS has determined that it is appropriate to make the maximum ceiling amount for reimbursement of nonrecurring expenses the same in both the Adoption Assistance and Permanency Care Assistance programs in order to remove a potential monetary disincentive to choosing adoption over permanent managing conservatorship when both options are legally viable.

SUBCHAPTER H. ADOPTION ASSISTANCE PROGRAM

DIVISION 3. APPLICATION PROCESS, AGREEMENTS, AND BENEFITS

40 TAC §700.850

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the

Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements Family Code §162.304, which directs the Department to enter into adoption assistance agreements for eligible children and provides that the "need for and amounts of the subsidy shall be determined by the department under its rules."

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 May 1, 2012.

TRD-201202249
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: June 1, 2012
Proposal publication date: February 17, 2012
For further information, please call: (512) 438-3437

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SUBCHAPTER J. ASSISTANCE PROGRAMS FOR RELATIVES AND OTHER CAREGIVERS
DIVISION 2. PERMANENCY CARE ASSISTANCE PROGRAM

40 TAC §700.1043

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements Family Code §264.853, which directs the HHSC executive commissioner to adopt rules necessary to implement the PCA program.

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 May 1, 2012.

TRD-201202250
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: June 1, 2012
Proposal publication date: February 17, 2012
For further information, please call: (512) 438-3437

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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: 40 TAC §700.1311(b)

Child's Age	Maximum Length of Stay
Five years or older	30 days.
Under five years	Five workdays - unless the child is in the shelter with a sibling who is five years or older, or a minor parent, in which event the maximum length of stay is 30 days.
Less than 12 months	Four days (96 hours) - unless the infant is in the shelter with a minor parent, in which event the maximum length of stay is 30 days.

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Notice of Settlement of a Texas Health and Safety Code

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Health and Safety Code. Before the State may settle a judicial enforcement action, pursuant to the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Acts.

Case Title and Court: Settlement Agreement in the *State of Texas v. McCain Farms, LLC*, No. D-1-GV-10-001906, in the 53rd Judicial District, Travis County, Texas.

Background: This suit alleges violations of the Texas Health and Safety Code at a sugarcane and sugar beets farm in Cameron County, Texas. The Defendant, McCain Farms LLC, is the owner and operator of the farm. The suit seeks civil penalties, attorney's fees and court costs. The Texas Health and Safety Code violations are for the unauthorized burning of a field at the farm.

Nature of Settlement: The settlement awards $10,000.00 in civil penalties and $2,000.00 in attorney's fees to the State.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment and written comments on the proposed settlement should be directed to David L. Green, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 475-3205, facsimile (512) 457-4603. Written comments must be received within 30 days of publication of this notice to be considered.

For information regarding this publication, contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

TRD-201202295
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: May 7, 2012

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Texas Water Code and Texas Health and Safety Code Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code and the Texas Health and Safety Code. Before the State may settle a judicial enforcement action under the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Texas Water Code and the Texas Health and Safety Code.

Case Title and Court: *Harris County, Texas, and the State of Texas acting by and through the Texas Commission on Environmental Quality v. Total Petrochemicals USA, Inc.,* Cause No. 2011-31488, in the 189th Judicial District Court, Harris County, Texas.

Nature of Defendant's Operations: Defendant is a multi-national manufacturer and supplier of petrochemicals who owns and operates a petrochemical refining and manufacturing plant in La Porte, Harris County, Texas. Claims settled include allegations that Total Petrochemicals USA, Inc., released dangerous air contaminants without authorization.

Proposed Agreed Judgment: The Agreed Final Judgment orders Total Petrochemicals USA, Inc., $25,000.00 in civil penalties, to be divided equally between Harris County and the State of Texas. In addition, the Defendant will pay $2,883.00 and $1,800.00 in attorney's fees to Harris County, Texas, and to the State of Texas respectively. The Defendant will also pay court costs.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Anthony W. Benedict, Assistant Attorney General, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

For information regarding this publication, contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

TRD-201202331
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: May 8, 2012

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Texas Water Code Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Health and Safety Code and the Texas Water Code. Before the State may settle a judicial enforcement action under the Texas Health and Safety Code and the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Texas Health and Safety Code and the Texas Water Code.

Case Title and Court: *State of Texas v. Astro Waste, Inc.,* Cause No. D-1-GV-08-002578, in the 419th Judicial District Court, Travis County, Texas.

Background: This suit alleges violations of the rules promulgated by the Texas Commission on Environmental Quality under the Texas Health and Safety Code related to the processing of municipal solid waste. The Defendant is Astro Waste, Inc. The suit seeks civil penalties, injunctive relief, attorney's fees, and court costs.

Proposed Agreed Final Judgment: The Agreed Final Judgment orders Astro Waste, Inc., to pay $38,015.00 in civil penalties. In addition, the Defendant will pay $16,000.00 in attorney's fees to the State of Texas.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Mark Steinbach, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

For information regarding this publication, contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

TRD-201202317
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: May 7, 2012

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Comptroller of Public Accounts

Notice of Request for Proposals

Pursuant to Chapters 403; 2254, Subchapter A; and 2305, §2305.032, Texas Government Code, the Comptroller of Public Accounts (Comptroller), State Energy Conservation Office (SECO) announces its Request for Proposals (RFP #203f) and invites proposals from qualified, interested engineering firms and individuals to provide professional energy engineering services for the LoanSTAR Revolving Loan Program. The Comptroller reserves the right to award more than one contract under the RFP. If a contract award is made under the terms of this RFP, Contractor will be expected to begin performance of the contract on or about September 1, 2012, or as soon thereafter as practical.

Contact: Parties interested in submitting a proposal should contact William Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, in the Issuing Office at: 111 E. 17th St., Room 201, Austin, Texas 78774, (512) 305-8673, to obtain a complete copy of the RFP. The Comptroller will mail copies of the RFP only to those parties specifically requesting a copy. The RFP will be available for pick-up at the above referenced address on Friday, May 18, 2012, after 10:00 a.m. Central Time (CT) and during normal business hours thereafter. The Comptroller will also make the entire RFP available electronically on the Electronic State Business Daily (ESBD) at: http://esbd.cpa.state.tx.us after 10:00 a.m. CT on Friday, May 18, 2012.

Questions and Non-Mandatory Letters of Intent: All written inquiries, questions, and Non-mandatory Letters of Intent to propose must be received at the above-referenced address not later than 2:00 p.m. (CT) on Friday, May 25, 2012. Prospective proposers are encouraged to fax non-mandatory Letters of Intent and Questions to (512) 463-3669 to ensure timely receipt. Non-mandatory Letters of Intent must be addressed to William Clay Harris, Assistant General Counsel, Contracts, and must contain the information as stated in the corresponding Section of the RFP and be signed by an official of that entity. On or about Friday, June 1, 2012, the Comptroller expects to post responses to questions on the ESBD. Late Non-mandatory Letters of Intent and Questions will not be considered under any circumstances. Respondents shall be solely responsible for verifying timely receipt of Non-Mandatory Letters of Intent and Questions in the Issuing Office.

Closing Date: Proposals must be delivered in the Issuing Office to the attention of the Assistant General Counsel, Contracts, no later than 2:00 p.m. (CT), on Friday, June 15, 2012. Late Proposals will not be considered under any circumstances. Respondents shall be solely responsible for verifying time receipt of Proposals in the Issuing Office.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. The Comptroller will make the final decision. The Comptroller reserves the right to accept or reject any or all proposals submitted. The Comptroller is not obligated to execute a contract on the basis of this notice or the distribution of any RFP. The Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or to the RFP.

The anticipated schedule of events pertaining to this solicitation is as follows: Issuance of RFP - May 18, 2012, after 10:00 a.m. CT; Non-Mandatory Letters of Intent and Questions Due - May 25, 2012, 2:00 p.m. CT; Official Responses to Questions posted - June 1, 2012; Proposals Due - June 15, 2012, 2:00 p.m. CT; Contract Execution - September 1, 2012, or as soon thereafter as practical; Commencement of Services - September 1, 2012.

TRD-201202351
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: May 9, 2012

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/14/12 - 05/20/12 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/14/12 - 05/20/12 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-201202320
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: May 8, 2012

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Texas Education Agency

Notice of Correction: Request for Applications Concerning the 2012-2014 College for All Pilot Grant

The Texas Education Agency (TEA) published Request for Applications (RFA) #701-12-103 concerning the College for All Pilot grant for the 2012-2013 and 2013-2014 school years in the April 13, 2012, issue of the *Texas Register* (37 TexReg 2773).

The TEA is amending the deadline for receipt of any and all questions submitted in writing. In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted in writing by Tuesday, May 22, 2012, to the TEA contact persons identified in Part 2: Program Guidelines of the RFA. This correction reflects a change from the original deadline date of Thursday, May 10, 2012.

The TEA is also amending the deadline for receipt of applications. Applications must be received in the TEA Document Control Center by 5:00 p.m. (Central Time), Tuesday, June 12, 2012, to be eligible to be considered for funding. This correction reflects a change from the original deadline date of Thursday, May 24, 2012.

Further Information. For clarifying information about the RFA, contact Vicki Logan, Division of Grants Administration, Texas Education Agency, (512) 463-8525.

TRD-201202354
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: May 9, 2012

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Employees Retirement System of Texas

Request for Proposal to Provide an Election Administrator for the Board of Trustee Election

The Employees Retirement System of Texas ("ERS") is issuing a Request for Proposal ("RFP") seeking an independent company to act as Trustee election administrator. The initial term of the Contractual Agreement ("Contract") will begin upon Contract execution through August 31, 2015. The RFP may be obtained from the Electronic State Business Daily ("ESBD") on or after May 18, 2012 by going to the following link: **http://esbd.cpa.state.tx.us.**

Anyone wishing to respond to the RFP shall meet the following preferred criteria: (1) maintain its principal place of business in the United States of America; (2) have experience providing election services for similar-sized organizations for a minimum of three years; (3) capability of providing a variety of voting technologies, including paper, web-based, and telephone; (4) capability of providing a 24-hour toll-free telephone line and TDD access number for the hearing and speech impaired; (5) capability to provide the requirements specified in the RFP's Scope of Work; (6) be in good financial standing, not in any form of bankruptcy, and current in the payment of all taxes and fees; and (7) maintain adequate liability insurance. Further requirements are set out in the RFP and Contract. The Contract will also be posted on ESBD.

Questions should be submitted no later than May 25, 2012, at 4:00 p.m. Central Time, by submitting them to Chris Wood, ERS Purchasing Team Lead, at **chris.wood@ers.state.tx.us.** For questions submitted prior to the inquiry deadline, ERS shall post the question and response on the ESBD by 5:00 p.m. Central Time on June 4, 2012.

The deadline for submitting Proposals is June 18, 2012, at 12:00 p.m. Central Time.

ERS will base its evaluation and selection of a Trustee election administrator on factors including, but not limited to, the following (which are not necessarily listed in order of priority): compliance with and adherence to the RFP and acceptance of the Contract terms; experience; skills and ability to perform the required services and quality of services; ability to work within the timeframe established by ERS; proposed rates; Respondent's financial strength and stability; legal disclosure requirements; references; and other factors deemed appropriate by ERS. Among the offerors that ERS determines to be capable of providing high quality, cost-effective services in compliance with the RFP requirements, technological capabilities will be used as a distinguishing factor. ERS may also give preference to an entity whose principal place of business is within the state of Texas or that uses Texas-based personnel to provide the services.

ERS reserves the right to reject any Proposal submitted that does not fully comply with the RFP's instructions and criteria, to vary any RFP provision at any time prior to execution of a Contract and to call for new Proposals if deemed by ERS to be in its best interests. ERS retains the right to approve the Proposal that is in its best interests, and is under no legal requirement to execute a Contract on the basis of this notice or upon issuance of the RFP. ERS will not pay any costs incurred by anyone in responding to the RFP.

TRD-201202337
Paula A. Jones
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
Filed: May 9, 2012

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is June 18, 2012. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on June 18, 2012. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing.**

(1) COMPANY: ANEEKA & SAFEER, INCORPORATED dba Tidwell Food Store; DOCKET NUMBER: 2012-0505-PST-E; IDENTIFIER: RN101793024; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at

a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $2,000; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Blake Site Corporation; DOCKET NUMBER: 2012-0530-WQ-E; IDENTIFIER: RN106349640; LOCATION: North Richland Hills, Tarrant County; TYPE OF FACILITY: property; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge storm water associated with construction activities under Texas Pollutant Discharge Elimination System Construction General Permit Number TXR150000; PENALTY: $938; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Celanese Ltd.; DOCKET NUMBER: 2011-1945-AIR-E; IDENTIFIER: RN100258060; LOCATION: Bay City, Matagorda County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), Federal Operating Permit Number O1628, Special Terms and Conditions Number 16, Air Permit Number 4196, Special Conditions Number 11, and Texas Health and Safety Code, §382.085(b), by failing to conduct sampling to quantify emissions from the Vinyl Acetate Cooling Tower (Emission Point Number 301M150) using the El Paso method, or approved equivalent, with results determined in pounds per hour and cumulative tons per year; PENALTY: $17,743; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3629; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: CELINA SHELL FOOD MART, INCORPORATED; DOCKET NUMBER: 2011-2023-PST-E; IDENTIFIER: RN100770411; LOCATION: Celina, Collin County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to timely renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §334.50(b)(2)(A)(i)(III) and TWC, §26.3475(a), by failing to test the line leak detector at least once per year for performance and operational reliability; 30 TAC §334.50(d)(1)(B)(ii) and TWC, §26.3475(c)(1), by failing to provide release detection for the USTs by failing to conduct reconciliation of detailed inventory control records at least once each month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; 30 TAC §334.50(d)(1)(B)(iii)(I) and TWC, §26.3475(c)(1), by failing to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for the USTs involved in the retail sale of petroleum substances used as a motor fuel; 30 TAC §115.242(3)(E) and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order, and free of defects that would impair the effectiveness of the system, including but not limited to absence or disconnection of any component that is part of the approved system; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II vapor recovery system at least once every 12 months; and 30 TAC §115.246(1), (4), (6) and THSC, §382.085(b), by failing to maintain Stage II records at the station and making them immediately available for review upon request by agency personnel; PENALTY: $39,573; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Centerville Independent School District; DOCKET NUMBER: 2012-0511-PST-E; IDENTIFIER: RN101668044; LOCATION: Centerville, Leon County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2), and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the piping associated with the USTs; PENALTY: $2,500; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(6) COMPANY: City of Royse City; DOCKET NUMBER: 2011-2273-MWD-E; IDENTIFIER: RN102940087; LOCATION: Royse City, Rockwall County; TYPE OF FACILITY: wastewater treatment plant with associated collection system; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010366001, Permit Conditions Number 2.g., by failing to prevent the unauthorized discharge of wastewater from the collection system into or adjacent to water in the state; PENALTY: $6,000; Supplemental Environmental Project offset amount of $6,000 applied to Texas Association of Resource Conservation and Development Areas, Incorporated - Water or Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Crete Carrier Corporation; DOCKET NUMBER: 2012-0352-PST-E; IDENTIFIER: RN101545192; LOCATION: Wilmer, Dallas County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(b), by failing to provide release detection for the piping associated with the underground storage tanks; PENALTY: $2,016; ENFORCEMENT COORDINATOR: Thane Barkley, (512) 239-2552; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: Duchman, Ltd. dba Duchman Family Winery; DOCKET NUMBER: 2012-0053-PWS-E; IDENTIFIER: RN106301245; LOCATION: Driftwood, Hays County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.39(e)(1) and (h)(1) and Texas Health and Safety Code, §341.035(a), by failing to submit engineering plans and specifications to the executive director and obtain approval of the plans and specifications prior to the construction of a new public water system; and 30 TAC §290.42(b)(1), by failing to provide disinfection facilities for the groundwater supply to ensure microbiological control and distribution protection; PENALTY: $550; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753-1808, (512) 339-2929.

(9) COMPANY: E. S. Water Utility Consolidators, Incorporated; DOCKET NUMBER: 2012-0028-MLM-E; IDENTIFIER: RN101430080 and RN102874625; LOCATION: Montgomery County; TYPE OF FACILITY: water utility and public water supply; RULE VIOLATED: 30 TAC §290.39(j), by failing to notify the executive director prior to making any significant changes to the facility's production, treatment, storage, pressure maintenance, or distribution system; and 30 TAC §291.93(3) and TWC, §13.139(d), by failing to

submit to the executive director a planning report that clearly explains how the facility, which has reached 85% of its capacity, will provide the expected service demands to the remaining areas within the boundaries of its certificated area; PENALTY: $160; ENFORCEMENT COORDINATOR: Michaelle Sherlock, (210) 403-4076; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(10) COMPANY: EKN CORPORATION dba SSG ALL SEASONS; DOCKET NUMBER: 2011-2256-PST-E; IDENTIFIER: RN101741403; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide proper release detection for the pressurized piping associated with the underground storage tanks; PENALTY: $2,554; ENFORCEMENT COORDINATOR: Bridgett Lee, (512) 239-2565; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: Eli Gravriel Sasson; DOCKET NUMBER: 2011-2292-MWD-E; IDENTIFIER: RN101525137; LOCATION: Harris County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0011414002, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with permitted effluent limitations; 30 TAC §305.125(1) and (9)(A), and TPDES Permit Number WQ0011414002, Monitoring and Reporting Requirements Number 7.c, by failing to report any effluent violation which deviates from the permitted limitation by more than 40% in writing to the Regional Office and the Enforcement Division within five working days of becoming aware of the non-compliance; and TWC, §26.121(a)(1), 30 TAC §305.125(1) and (4), and TPDES Permit Number WQ0011414002, Effluent Limitations and Monitoring Requirements Number 4, and Permit Conditions Number 2.d, by failing to prevent the discharge of floating solids and sludge into or adjacent to water in the state and by failing to comply with permitted effluent limitations; PENALTY: $16,125; ENFORCEMENT COORDINATOR: JR Cao, (512) 239-2543; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: Exterran Energy Solutions, L.P.; DOCKET NUMBER: 2011-1838-MLM-E; IDENTIFIER: RN101993830; LOCATION: Victoria, Victoria County; TYPE OF FACILITY: oilfield equipment maintenance; RULE VIOLATED: 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXR05Y435, Part III, Section A.7, by failing to conduct the annual comprehensive compliance site evaluation in 2010; 30 TAC §305.125(1) and TPDES General Permit Number TXR005Y435, Part III, Section A.5(g), by failing to conduct quarterly site inspections for the last three quarters in 2010 and the first quarter of 2011; 30 TAC §335.2(b), by failing the respondent has caused, suffered, allowed, or permitted the shipment of industrial solid waste to an unauthorized facility; and 30 TAC §305.125(1) and TPDES General Permit Number TXR05Y435, Part III, Section A.4(e), by failing to summarize all data from the laboratory analysis of storm water discharge samples; PENALTY: $23,341; Supplemental Environmental Project offset amount of $9,336 applied to Houston Arboretum & Nature Center - Hurricane Ike Habitat Restoration and Removal of Invasive Species; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(13) COMPANY: FAA HOUSTON TRACON DISTRICT 190; DOCKET NUMBER: 2011-2218-PST-E; IDENTIFIER: RN102267283; LOCATION: Houston, Harris County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank system; PENALTY: $1,875; ENFORCEMENT COORDINATOR: Heather Brister, (254) 761-3034; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: Fort Bend Independent School District; DOCKET NUMBER: 2012-0199-PST-E; IDENTIFIER: RN102448651; LOCATION: Houston, Fort Bend County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.10(b), by failing to maintain the required underground storage tank records and making them immediately available for inspection upon request by agency personnel; PENALTY: $1,000; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: Harvey Ray Hawkins; DOCKET NUMBER: 2011-2314-LII-E; IDENTIFIER: RN103510830; LOCATION: San Angelo, Tom Green County; TYPE OF FACILITY: irrigation and landscape business; RULE VIOLATED: 30 TAC §344.24(a) and §344.35(d)(2), by failing to comply with local regulations, by failing to obtain a permit required to install an irrigation system and by failing to have a final inspection conducted on the irrigation system; 30 TAC §344.71(b), by failing to include in all written estimates, proposals, bids, and invoices relating to the installation or repair of an irrigation system(s) the statement: Irrigation in Texas is regulated by the TCEQ (MC-178), P.O. Box 13087, Austin, Texas 78711-3087. TCEQ's Web site is *www.tceq.texas.gov;* 30 TAC §344.63(2) and (4), by failing to provide an irrigation plan and maintenance checklist to the homeowner; and 30 TAC §344.35(d)(5), by failing to retain the irrigation system records; PENALTY: $1,288; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (325) 655-9479.

(16) COMPANY: HASINA INCORPORATED dba Tejani Chevron; DOCKET NUMBER: 2011-2104-PST-E; IDENTIFIER: RN101901437; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $1,625; ENFORCEMENT COORDINATOR: JR Cao, (512) 239-2543; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(17) COMPANY: Mexia Independent School District; DOCKET NUMBER: 2012-0296-PST-E; IDENTIFIER: RN101674679; LOCATION: Mexia, Limestone County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank system; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Andrea Park, (512) 239-4575; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(18) COMPANY: Muhammad Zaman dba Hoff's Food Stop; DOCKET NUMBER: 2011-2284-PST-E; IDENTIFIER: RN101746956; LOCATION: Mathis, San Patricio County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), and also by failing to provide release detection for the piping associated with the USTs; PENALTY:

$1,754; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(19) COMPANY: NEW MART CORPORATION dba Beltway Mobil; DOCKET NUMBER: 2012-0193-PST-E; IDENTIFIER: RN101789345; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $2,550; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20) COMPANY: Pasadena Refining System, Incorporated; DOCKET NUMBER: 2010-2073-AIR-E; IDENTIFIER: RN100716661; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: petroleum refining; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), Federal Operating Permit (FOP) Number O1544, Special Terms and Conditions (STC) Number 17, Air Permit Number 76192, Special Conditions (SC) Number 6, and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain the required minimum level of Potential Hydrogen in the Sorbent Regeneration System Caustic Scrubber (Unit ID VTLSG001) scrubbing solution; 30 TAC §116.115(c) and §122.143(4), FOP Permit Number O1544, STC Number 17, Air Permit Number 22039, SC Number 6, and THSC, §382.085(b), by failing to operate Boiler 6 (Unit ID BLRHT006) within the required carbon monoxide limit of 50 parts per million (ppm) for a total of 685 hours; 30 TAC §116.115(c) and §122.143(4), FOP Permit Number O1544, STC Numbers 1A and 17, Air Permit Number 6059, SC Number 12, 40 Code of Federal Regulations (CFR) §60.104(a)(2)(i), and THSC, §382.085, by failing to limit the in-stack hourly average for sulfur dioxide in the Sulfur Recovery Unit (SRU) Tail Gas Incinerator (Unit ID SRUIN001) to 250 ppm; 30 TAC §116.115(c) and §122.143(4), FOP Permit Number O1544, STC Number 17, Air Permit Number 6059, SC Number 4, and THSC, §382.085(b), by failing to maintain the SRU Tail Gas Incinerator (Unit ID SRUIN001) at or above the minimum temperature of 1,250 degrees Fahrenheit and at the required oxygen level of 3%; 30 TAC §§115.725(l), 115.764(a)(3), 116.115(c)and 122.143(4), FOP Permit Number O1544, STC Number 1A, Air Permit Number 56389, SC Number 6E, and THSC, §382.085(b), by failing to operate the Highly Reactive Volatile Organic Compounds analyzers for the East and West Flares (Unit IDs FLRFNEAST and FLRFNWEST) and for the Complex Cooling Tower (Unit ID FUCTWCPX), at least 95% of the operational time averaged over a calendar year; 30 TAC §116.115(c) and §122.143(4), FOP Permit Number O1544, STC Number 17, Air Permit Number 6059, SC Number 5, and THSC, §382.085(b), by failing to maintain the required minimum flame zone temperature of 2,300 degrees Fahrenheit for the SRU and the Thermal Reactor; 30 TAC §116.115(c) and §122.143(4), FOP Permit Number O1544, STC Number 17, Air Permit Number 56389, SC Number 1, and THSC, §382.085(b), by failing to comply with the annual allowable emissions rate; 30 TAC §101.201(a)(1)(B) and §122.143(4), FOP Permit Number O1544, STC Number 2F, and THSC, §382.085(b), by failing to report an emissions event (Number 2008-224); 30 TAC §116.115(c) and §122.143(4), FOP Permit Number O1544, STC Number 17, Air Permit Number 20246, SC Number 14, Air Permit Number 56389, SC Number 4, and THSC, §382.085(b), by failing to demonstrate compliance with the hourly fill rate for Volatile Organic Compound Storage Tank Numbers 118, 330 and 820 from October 1, 2008 - September 30, 2009; and 30 TAC §116.115(c) and §122.143(4), FOP Permit Number O1544, STC Numbers 1A and 17, Air Permit Number 22039, SC Number 4, Air Permit Number 5953, SC Number 1, Air Permit Number 20246, SC Number 12 and 40 CFR §50.104(a)(1) and THSC, §382.085(b), by failing to limit the concentration of Hydrogen Sulfide in fuel gas streams to 160 ppm; PENALTY: $745,303; Supplemental Environmental Project offset amount of $372,651 applied to The Sheltering Arms Weatherization Assistance Program; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3629; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(21) COMPANY: Patty Eckert; DOCKET NUMBER: 2011-2197-MSW-E; IDENTIFIER: RN104925318; LOCATION: London, Kimble County; TYPE OF FACILITY: unauthorized disposal site; RULE VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; and 30 TAC §324.6 and 40 Code of Federal Regulations §279.22(d), by failing to perform response action upon detection of a release of used oil; PENALTY: $1,312; ENFORCEMENT COORDINATOR: Philip Aldridge, (512) 239-0855; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (325) 655-9479.

(22) COMPANY: Pioneer Food Mart Incorporated dba Bob's Town & Country; DOCKET NUMBER: 2011-2311-PST-E; IDENTIFIER: RN101869915; LOCATION: Canton, Van Zandt County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide proper release detection for the piping associated with the UST system; PENALTY: $2,379; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(23) COMPANY: Sam's Truck Stop Business, Incorporated dba Plateau Truck Stop; DOCKET NUMBER: 2011-1792-PWS-E; IDENTIFIER: RN101377620; LOCATION: 20 miles east of Van Horn, Culberson County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(3)(A)(ii) and §290.122(c)(2)(B), by failing to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive result on a routine sample and by failing to provide public notice to persons served by the facility regarding the failure to collect repeat distribution coliform samples during the month of August 2010; 30 TAC §290.109(c)(2)(F) and §290.122(c)(2)(B), by failing to collect at least five routine distribution coliform samples the month following a coliform-positive sample result and by failing to provide public notice to persons served by the facility regarding the failure to sample for the month of September 2010; 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B), and Texas Health and Safety Code, §341.033(d), by failing to collect routine distribution water samples for coliform analysis and by failing to provide notice to persons served by the facility regarding the failure to conduct routine coliform monitoring for the months of October 2010, January 2011, and April - May 2011; and 30 TAC §290.109(c)(4)(B) and §290.122(c)(2)(B), by failing to collect one raw groundwater source *escherichia coli* sample from the facility's well within 24 hours of notification of a distribution total coliform positive sample and by failing to provide public notice to persons served by the facility regarding the failure to collect one raw groundwater source *escherichia coli* sample during the month of December 2010; PENALTY: $3,340; ENFORCEMENT COORDINATOR: Andrea Linson, (512) 239-1482; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(24) COMPANY: SKY 2 C, INCORPORATED dba Sky Food Mart; DOCKET NUMBER: 2011-2361-PST-E; IDENTIFIER: RN102424322; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $5,500; ENFORCEMENT COORDINATOR: Raymond Marlow, P.G., (409) 899-8785; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(25) COMPANY: Sterling Collision Centers, Incorporated; DOCKET NUMBER: 2012-0442-AIR-E; IDENTIFIER: RN106313034; LOCATION: Austin, Travis County; TYPE OF FACILITY: auto body refinishing; RULE VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain proper authorization prior to operating an auto body refinishing facility; PENALTY: $4,500; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 422-8938; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753-1808, (512) 339-2929.

(26) COMPANY: STRUCTURAL METALS, INCORPORATED; DOCKET NUMBER: 2011-2321-IHW-E; IDENTIFIER: RN102413689; LOCATION: Seguin, Guadalupe County; TYPE OF FACILITY: steel works with an electrical arc furnace and rolling mills; RULE VIOLATED: 30 TAC §37.251(b), by failing to demonstrate acceptable financial assurance that meets the requirements of the financial test option; PENALTY: $5,475; Supplemental Environmental Project offset amount of $2,190 applied to Texas State University at San Marcos - Continuous Water Quality Monitoring Network; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(27) COMPANY: Sugartree, Incorporated; DOCKET NUMBER: 2011-1921-WR-E; IDENTIFIER: RN106229719; LOCATION: Lipan, Parker County; TYPE OF FACILITY: golf course; RULE VIOLATED: TWC, §11.121 and 30 TAC §297.11, by failing to obtain authorization prior to impounding, diverting, storing or using state water; PENALTY: $1,500; ENFORCEMENT COORDINATOR: Heather Brister, (254) 761-3034; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(28) COMPANY: Tanda Management LLC dba Lucas Car Care; DOCKET NUMBER: 2012-0100-AIR-E; IDENTIFIER: RN106265101; LOCATION: Cypress, Harris County; TYPE OF FACILITY: an automobile repair shop that includes a vehicle safety and emission certification station; RULE VIOLATED: 30 TAC §114.50(d)(1) and Texas Health and Safety Code, §382.085(b), by failing to prevent the issuance of a vehicle inspection report when all applicable air pollution emissions control related requirements of the annual vehicle safety inspection requirements were not completely met; PENALTY: $450; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(29) COMPANY: Transatlantic Alliance Corporation dba The Corner; DOCKET NUMBER: 2011-2319-PST-E; IDENTIFIER: RN101636702; LOCATION: Garland, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $1,875; ENFORCEMENT COORDINATOR: Andrea Linson, (512) 239-1482; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(30) COMPANY: WESTOVER AND WESTOVER GROUP, LLC dba Conoco Express; DOCKET NUMBER: 2012-0119-PST-E; IDENTIFIER: RN101570091; LOCATION: Irving, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b), by failing to maintain the required UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: $15,971; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201202322
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: May 8, 2012

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Correction of Error

The Texas Commission on Environmental Quality (TCEQ) adopted amendments to Chapters 50, 55, and 80 in the April 27, 2012, issue of the *Texas Register* (37 TexReg 3120). Errors in the rulemaking notices and their corrections are outlined as follows.

On page 3124, first column, last paragraph, the word "provide" in the first sentence should be "provides". The corrected text reads:

"The amendment to TWC, §5.115(b) provides that a state agency...."

On page 3127, second column, first complete paragraph, the word "COMMENTS:" should be deleted.

On page 3128, second column, second complete paragraph, the word "COMMENT:" should be deleted.

On page 3130, second column, first paragraph, the word "COMMENT:" should be deleted.

On page 3133, first column, first paragraph under the heading "Statutory Authority", the phrase "TWC, §5.311, concerning Delegation of Responsibility, which provides that the commission may delegate hearings to the State Office of Administrative Hearings;" should be moved in front of "TWC, §5.315, concerning Discovery in Cases Using Prefiled Testimony, which defines discovery deadlines in cases using prefiled testimony;".

On page 3133, first column, third paragraph under the heading "Statutory Authority", the references "§5.315" and "§5.311" are reversed in the series. The corrected text reads:

"The amendment implements TWC, §§5.115, 5.228, 5.311, 5.315, and 5.556, and HB 2694, Article 10."

On page 3137, second column, first paragraph, the word "provide" in the first sentence should be "provides". The corrected text reads:

"The amendment to TWC, §5.115(b) provides that a state agency...."

On page 3140, second column, first complete paragraph, the word "COMMENTS:" should be deleted.

On page 3141, second column, second complete paragraph, the word "COMMENT:" should be deleted.

On page 3143, second column, first complete paragraph, the word "COMMENT:" should be deleted.

On page 3146, first column, first paragraph under the heading "Statutory Authority", the phrase "TWC, §5.311, concerning Delegation of Responsibility, which provides that the commission may delegate hearings to the State Office of Administrative Hearings;" should be moved in front of "TWC, §5.315, concerning Discovery in Cases Using Prefiled Testimony, which defines discovery deadlines in cases using prefiled testimony;".

On page 3146, first column, third paragraph under the heading "Statutory Authority", the references "§5.315" and "§5.311" are reversed in the series. The corrected text reads as follows:

"The amendment implements TWC, §§5.115, 5.228, 5.311, 5.315, and 5.556, and HB 2694, Article 10."

On page 3146, second column, first paragraph under the heading "Statutory Authority", the phrase "TWC, §5.311, concerning Delegation of Responsibility, which provides that the commission may delegate hearings to the State Office of Administrative Hearings;" should be moved in front of "TWC, §5.315, concerning Discovery in Cases Using Prefiled Testimony, which defines discovery deadlines in cases using prefiled testimony;".

On page 3146, second column, third paragraph under the heading "Statutory Authority", the references "§5.315" and "§5.311" are reversed in the series. The corrected text reads:

"The amendments implement TWC, §§5.115, 5.228, 5.311, 5.315, and 5.556, and HB 2694, Article 10."

On page 3147, first column, first paragraph under the heading "Statutory Authority", the phrase "TWC, §5.311, concerning Delegation of Responsibility, which provides that the commission may delegate hearings to the State Office of Administrative Hearings;" should be moved in front of "TWC, §5.315, concerning Discovery in Cases Using Prefiled Testimony, which defines discovery deadlines in cases using prefiled testimony;".

On page 3147, first column, third paragraph under the heading "Statutory Authority", the references "§5.315" and "§5.311" are reversed in the series. The corrected text reads:

"The amendment implements TWC, §§5.115, 5.228, 5.311, 5.315, and 5.556, and HB 2694, Article 10."

On page 3152, second column, third complete paragraph, the word "provide" in the first sentence should be "provides". The corrected text reads:

"The amendment to TWC, §5.115(b) provides that a state agency...."

On page 3163, first column, first paragraph under the heading "Statutory Authority" for 30 TAC §80.17, the phrase "TWC, §5.311, concerning Delegation of Responsibility, which provides that the commission may delegate hearings to the State Office of Administrative Hearings;" should be moved in front of "TWC, §5.315, concerning Discovery in Cases Using Prefiled Testimony, which defines discovery deadlines in cases using prefiled testimony;".

On page 3163, first column, third paragraph under the heading "Statutory Authority" for 30 TAC §80.17, the references "§5.315" and "§5.311" are reversed in the series. The corrected text reads:

"The amendment implements TWC, §§5.115, 5.228, 5.311, 5.315, and 5.556, and HB 2694, Article 10."

On page 3163, second column, first paragraph continued from the previous column, the phrase "TWC, §5.311, concerning Delegation of Responsibility, which provides that the commission may delegate hearings to the State Office of Administrative Hearings;" should be moved in front of "TWC, §5.315, concerning Discovery in Cases Using Prefiled Testimony, which defines discovery deadlines in cases using prefiled testimony;".

On page 3163, second column, second complete paragraph, the references "§5.315" and "§5.311" are reversed in the series. The corrected text reads:

"The amendments implement TWC, §§5.115, 5.228, 5.311, 5.315, and 5.556, and HB 2694, Article 10."

On page 3164, first column, first paragraph continued from the previous page, the phrase "TWC, §5.311, concerning Delegation of Responsibility, which provides that the commission may delegate hearings to the State Office of Administrative Hearings;" should be moved in front of "TWC, §5.315, concerning Discovery in Cases Using Prefiled Testimony, which defines discovery deadlines in cases using prefiled testimony;".

On page 3164, first column, second complete paragraph, the references "§5.315" and "§5.311" are reversed in the series. The corrected text reads:

"The amendments implement TWC, §§5.115, 5.228, 5.311, 5.315, and 5.556, and HB 2694, Article 10."

On page 3164, first column, last paragraph, the phrase "TWC, §5.311, concerning Delegation of Responsibility, which provides that the commission may delegate hearings to the State Office of Administrative Hearings;" should be moved in front of "TWC, §5.315, concerning Discovery in Cases Using Prefiled Testimony, which defines discovery deadlines in cases using prefiled testimony;".

On page 3164, second column, second complete paragraph, the references "§5.315" and "§5.311" are reversed in the series. The corrected text reads:

"The amendments implement TWC, §§5.115, 5.228, 5.311, 5.315, and 5.556, and HB 2694, Article 10."

TRD-201202284

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Notice of Receipt of Application and Intent to Obtain a Municipal Solid Waste Permit Amendment

Proposed Permit No. 42D

APPLICATION. Waste Management of Texas, Inc., 1201 North Central Street, Ferris, Ellis County, Texas 75125-2101, has applied to the Texas Commission on Environmental Quality (TCEQ or Commission) for a Type I Municipal Solid Waste permit major amendment to authorize a horizontal expansion of the Skyline Landfill. The facility is located at 1201 North Central Street, Ferris, Ellis County, Texas 75125-2101. The TCEQ received the application on April 20, 2012. The permit application is available for viewing and copying at the Ferris Public Library, 301 East 10th Street, Ferris, Ellis County, Texas 75125-3028. The following link to an electronic map of the facility's general location is provided as a public courtesy and is not part of the application or notice: http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=32.546666&lng=-96.665833&zoom=13&type=r. For exact location, refer to the application.

ADDITIONAL NOTICE. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the

mailing list for this application. That notice will contain the deadline for submitting public comments.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the Commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; and, the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose. Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission will only grant a contested case hearing on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised in timely filed comments that were not subsequently withdrawn.

MAILING LIST. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

AGENCY CONTACTS AND INFORMATION. All public comments and requests must be submitted either electronically at www.tceq.texas.gov/about/comments.html or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. If you choose to communicate with the TCEQ electronically, please be aware that your email address, like your physical mailing address, will become part of the agency's public record. For more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, toll free, at 1-800-687-4040. Si desea información en español, puede llamar al 1-800-687-4040. Further information may also be obtained from Waste Management of Texas, Inc., by calling Steve Jacobs, Director of Disposal Operations at (512) 272-6245.

TRD-201202349
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 9, 2012

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Notice of Water Quality Applications

The following notices were issued on April 27, 2012 through May 4, 2012.

INFORMATION SECTION

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

BIG BROWN POWER COMPANY LLC AND LUMINANT GENERATION COMPANY LLC which operates the Big Brown Steam Electric Station, a steam power generating station, have applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0001309000, which authorizes the discharge of once through cooling water and previously monitored effluents (PMEs) at a daily average rate not to exceed 1015 million gallons per day (MGD) and a daily maximum rate not to exceed 1015 MGD via Outfall 001 on an interim basis; once through cooling water and PMEs at a daily average flow not to exceed 1522 MGD and a daily maximum flow not to exceed 1522 MGD via Outfall 001 - final; ash transport water and metal cleaning waste on an intermittent and flow variable basis via Outfall 101; storm water runoff from lignite storage areas and the plant area yard drains, low volume wastewater, and PMEs on an intermittent and flow variable basis via Outfall 002; and domestic wastewater on a flow variable basis via Outfall 102. The facility is located on the north bank of Fairfield Lake on Farm-to-Market Road 2570, approximately eleven (11) miles northeast of the City of Fairfield, Freestone County, Texas 75840.

CITGO REFINING AND CHEMICALS COMPANY LP which proposes to operate Citgo Corpus Christi Petroleum Coke Storage and Handling Facility, has applied for a new permit, proposed TPDES Permit No. WQ0004977000, to authorize the discharge of storm water runoff, dust suppression runoff from coke piles, and truck wash water on an intermittent and flow variable basis via Outfall 001. The facility is located on the north side of Tule Lake Channel, 1/2 mile southwest of the intersection of Navigation Boulevard and County Road 55 B, on the north side of Bulk Dock Road, west of Navigation Boulevard in Corpus Christi, Nueces County, Texas 78407.

CITY OF LAMESA has applied for a renewal of TPDES Permit No. WQ0010107001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The facility is located approximately 1.30 miles southeast of the intersection of State Highway 137 and Sulphur Springs Draw; southeast of the City of Lamesa in Dawson County, Texas 79331.

LUCE BAYOU PUBLIC UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0011167001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 225,000 gallons per day. The facility is located 3.5 miles north of the intersection of Farm-to-Market Road 1960 and Farm-to-Market Road 2100 at a point 2 miles north of Huffman in Harris County, Texas 77336.

THE CITY OF HUTTO has applied for a new permit, proposed TPDES Permit No. WQ0011324002, to authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 4,000,000 gallons per day. The facility will be located at 10700 Farm-to-Market Road 1660, between Cottonwood Creek and Lower Brushy Creek, south of the intersection of Farm-to-Market Road 1660 and County Road 134, in Hutto in Williamson County, Texas 78634.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 157 has applied for a renewal of TPDES Permit No. WQ0011906001 which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,300,000 gallons per day. The facility is located at 19355 Aspen Trail, on the northern bank of Dinner Creek and approximately 2,000 feet south of Farm-to-Market Road 529 (Freeman Road) in Harris County, Texas 77449.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 208 has applied for a major amendment to TPDES Permit No. WQ0011947001 to authorize the removal of Diazinon reporting and Public Education Program requirements from the permit. The current permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 6,700,000 gallons per day. The facility is located at 7926 State Highway 6, approximately 3/4 mile northeast of the intersection of State Highway 6 and Farm-to-Market Road 529 (Spencer Road) in Harris County, Texas 77095.

ESTATE OF ROBERT EDWARD PINE AND CATHERINE DEBLIEUX (Administrator) have applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment to TPDES Permit No. WQ0013735001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 21,000 gallons per day to a daily average flow not to exceed 35,000 gallons per day. The proposed amendment also requests to change the treatment process from a constructed wetland system to an activated sludge system. The facility is located approximately 0.3 mile south of American Canal on County Road 48 and 2.8 miles north of the intersection of State Highway 6 and County Road 48 in Brazoria County, Texas 77583.

UTILITIES INVESTMENT COMPANY INC has applied to the TCEQ for a renewal of TPDES Permit No. WQ0013988001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 49,000 gallons per day. The facility is located approximately 2.5 miles west-northwest of the intersection of Interstate Highway 45 and Longstreet Road and 3.8 miles north-northwest of the intersection of River Road and Farm-to-Market Road 830 in Montgomery County, Texas 77318.

MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO. 24 has applied for a renewal of TPDES Permit No. WQ0014116001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located at 4003 Ricewood Drive, approximately 0.5 mile northwest of the point where White Oak Creek leaves Montgomery County and approximately 2.5 miles east of U.S. Highway 59 in Montgomery County, Texas 77365.

OMEGA HEALTHCARE INVESTORS INC has applied for a renewal of TPDES Permit No. WQ0014329001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 12,600 gallons per day via surface irrigation of 6.41 acres of non-public access land. The wastewater treatment facility and disposal site are located at 8579 State Highway 31 West, approximately 2.5 miles west of the City of Athens, on the south side of State Highway 31 in Henderson County, Texas 75751.

FAR HILLS UTILITY DISTRICT AND UTILITY SERVICES OF AMERICA LLC has applied for a major amendment to TPDES Permit No. WQ0014555002 to relocate the outfall and renewal of the authorization to discharge of treated domestic wastewater from a daily average flow not to exceed 700,000 gallons per day. The facility is located at 11266 Cude Cemetery Road, on the east side of Cude Cemetery Road approximately 1,800 feet south of Farm-to-Market Road 830 in Montgomery County, Texas 77318.

EB WINDY HILL LP has applied for a new permit, proposed TPDES Permit No. WQ0015011001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The facility will be located south of the end of Mockingbird Lane and approximately 2 miles east of the intersection of Interstate Highway 35 and County Road 122 (Bebee Road) in Hays County, Texas 78640.

The following do not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN 30 DAYS OF THE ISSUED DATE OF THE NOTICE.

THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY has initiated a minor amendment of the TPDES Permit No. WQ0010388001 issued to the City of Brenham, P.O. Box 1059, Brenham, Texas 77834. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,550,000 gallons per day. The minor amendment is to approve the pretreatment program substantial modification. The City of Brenham submitted to the TCEQ for approval a request for a substantial modification to its approved pretreatment program under the TPDES program. Approval of the request for modification to the pretreatment program will allow City of Brenham to revise the technically based local limits and to continue to regulate the discharge of pollutants by industrial users into its treatment works facilities, to perform inspections, surveillance, and monitoring, to determine compliance with applicable pretreatment standards and requirements, and to enforce against noncompliant industrial users. The request for approval complies with both federal and State requirements. The substantial modification will be approved without change if no substantive comments are received within 30 days of notice publication. The facility is located at 2005 Old Chappell Hill Road, approximately 3,300 feet southeast of the intersection of Farm-to-Market Road 577 and State Highway 105, south of and adjacent to Hog Branch in the City of Brenham in Washington County, Texas.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, toll free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201202350
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 9, 2012

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General Land Office

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 during the period of April 30, 2012, through May 7, 2012. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the General Land Office's web site. The notice was published on the web site on May 9, 2012. The public comment period for this project will close at 5:00 p.m. on June 8, 2012.

FEDERAL AGENCY ACTIONS:

Applicant: Sunoco Partners Marketing & Terminals, LLC

Location: The project site is located in the Gulf Intracoastal Waterway, at Corps Station 200+100, approximately 4 miles northeast of Freeport, in Brazoria County, Texas. The site can be located on the U.S.G.S. quadrangle map titled: Freeport, Texas. NAD 83, Latitude: 28.9704 North; Longitude: -95.2829 West.

Project Description: The proposed project is an amendment to permit SWG-1993-01136 (formerly W-N-243-41-PERMIT-6622) issued 1965, which authorized the dredging of a slip 60-foot-wide by 650-foot-long to an elevation of -12 Mean Low Tide (MLT) in the Gulf Intracoastal Waterway, with the dredged material to be placed on shore on the applicant's property. The applicant proposes to install two new barge dolphins as well as hydraulically dredge the barge dock berth from -12 MLT to -15 MLT. Approximately 21,000 cubic yards of dredged material will be placed in an approved upland Dredge Material Placement Area (DMPA) 1, 2, 3, 7 or 85. The Port of Freeport holds a 20-year easement for these DMPA's. The applicant will coordinate with the Port of Freeport as to which DMPA will be used.

CMP Project No.: 12-0732-F1

Type of Application: U.S.A.C.E. permit application #SWG-1993-01136 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action or activity is or is not consistent with the CMP goals and policies and whether the action should be referred to the Land Commissioner for review.

Further information on the application listed above, including a copy of the consistency certifications or consistency determinations for inspection may be obtained from Kate Zultner, Consistency Review Specialist, P.O. Box 12873, Austin, Texas 78711-2873, or via email at kate.zultner@glo.texas.gov. Comments should be sent to Ms. Zultner at the above address or by email.

TRD-201202348
Larry L. Laine
Chief Clerk/Deputy Land Commissioner
General Land Office
Filed: May 9, 2012

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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 TX" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	Houston Thyroid and Endocrine Specialists, P.L.L.C.	L06464	Houston	00	04/17/12
Throughout TX	Granite Construction Company	L06467	Lewisville	00	04/23/12
Webster	Texas Oncology, P.A. dba Deke Slayton Memorial Cancer Center	L06465	Webster	00	04/17/12

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Angleton	Isotherapeutics Group, L.L.C.	L05969	Angleton	19	04/13/12
Austin	Seton Healthcare dba Seton Medical Center Austin	L02896	Austin	128	04/17/12
Bellaire	Texas Nuclear Imaging, Inc. dba Excel Diagnostics Imaging Clinic Medical Center	L05009	Bellaire	40	04/18/12
Borger	WRB Refining, L.P.	L02480	Borger	58	04/23/12
Burnet	Seton Healthcare dba Seton Highland Lakes Hospital	L03515	Burnet	47	04/18/12
Comanche	Comanche County Medical Center Company dba Comanche County Medical Center	L06200	Comanche	05	04/16/12
Corpus Christi	Berry Fabricators	L01575	Corpus Christi	59	04/19/12
Corpus Christi	Equistar Chemicals, L.P.	L02447	Corpus Christi	23	04/16/12
Cypress	North Cypress Medical Center Operating Company, L.L.C. dba North Cypress Medical Center	L06020	Cypress	21	04/17/12
Dallas	Alpha Testing, Inc.	L03411	Dallas	20	04/17/12
Dallas	University of Texas Southwestern Medical Center at Dallas	L05947	Dallas	23	04/16/12
Deer Park	Shell Chemical, L.P.	L04933	Deer Park	25	04/16/12
Eastland	Basic Energy Services, L.P.	L06425	Eastland	02	04/16/12
El Paso	The University of Texas at El Paso	L00159	El Paso	68	04/18/12
Houston	Memorial Hermann Hospital System dba Memorial Hospital Memorial City	L01168	Houston	133	04/23/12
Houston	Gulf Coast Cancer Center	L05185	Houston	15	04/13/12
Houston	Enercon Services, Inc.	L05447	Houston	09	04/19/12
Houston	NIS Holdings, Inc. dba Nuclear Imaging Services	L05775	Houston	79	04/16/12
Humble	Memorial Hermann Hospital Systems dba Memorial Hermann Northeast	L02412	Humble	88	04/20/12
Humble	Cardiovascular Association, P.L.L.C.	L05421	Humble	14	04/20/12
Katy	Memorial Hermann Hospital System dba Memorial Hermann Katy Hospital	L03052	Katy	63	04/20/12
Lubbock	Methodist Diagnostic Imaging dba Covenant Diagnostic Imaging	L03948	Lubbock	47	04/20/12
McAllen	Valley Nuclear Incorporated	L04521	McAllen	31	04/16/12
Midland	Isotech Laboratories, Inc.	L04283	Midland	25	04/19/12
Orange	E. I. Dupont De Nemours & Company	L00005	Orange	72	04/18/12
Orange	Tin, Inc. dba International Paper	L01029	Orange	61	04/19/12
Plainview	Methodist Hospital Plainview dba Covenant Hospital Plainview	L02493	Plainview	31	04/18/12

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
Port Neches	Huntsman Petrochemical, L.L.C.	L06323	Port Neches	02	04/23/12
San Antonio	Methodist Healthcare System of San Antonio, Ltd. dba The Gamma Knife Center	L05076	San Antonio	31	04/20/12
Sugar Land	Memorial Hermann Healthcare System dba Memorial Hermann Sugarland Hospital	L03457	Sugar Land	35	04/20/12
The Woodlands	Memorial Hermann Hospital System dba Memorial Hermann Hospital The Woodlands	L03772	The Woodlands	93	04/20/12
Throughout TX	Global X-Ray and Testing Corporation	L03663	Aransas Pass	118	04/16/12
Throughout TX	Texas A&M University	L05683	College Station	20	04/18/12
Throughout TX	Alliance Geotechnical Group, Inc.	L05314	Dallas	20	04/18/12
Throughout TX	Tucker Energy Services, Inc.	L06157	Denton	06	04/19/12
Throughout TX	T. Smith Inspection and Testing, L.L.C.	L05697	Fort Worth	10	04/18/12
Throughout TX	Arends Inspection, L.L.C.	L06333	Houston	05	04/19/12
Throughout TX	Platinum Energy Solutions, Inc.	L06410	Houston	08	04/23/12
Throughout TX	Multi Phase Meters, Inc.	L06458	Houston	02	04/17/12
Throughout TX	Kleinfelder Central, Inc.	L01351	McKinney	76	04/23/12
Throughout TX	American X-Ray & Inspection	L05974	Midland	30	04/24/12
Throughout TX	Raba-Kistner Consultants, Inc. dba Raba-Kistner-Brytest Consultants, Inc.	L01571	San Antonio	70	04/19/12
Throughout TX	Advanced Inspection Technologies, L.L.C.	L06423	Spring	04	04/18/12
Throughout TX	Apex Geoscience, Inc.	L04929	Tyler	38	04/23/12
Victoria	Victoria Heart & Vascular Center	L05748	Victoria	09	04/23/12

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Deer Park	Oxy Vinyls, L.P.	L03200	Deer Park	17	04/16/12

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	Northwest Heart Center	L05637	Houston	03	04/20/12
Kerrville	Kerrville Cancer Center	L06024	Kerrville	02	04/11/12
Marble Falls	K. C. Engineering	L06061	Marble Falls	03	04/16/12
Throughout TX	G & T Paving Company	L04874	Brownsville	06	04/16/12
Throughout TX	Baylor All Saints Medical Center dba Baylor Medical Center at Southwest Fort Worth	L04105	Fort Worth	033	04/20/12

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of 25 Texas Administrative Code (TAC) Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing, Mail Code 2835, P.O. Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

TRD-201202292
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: May 7, 2012

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Texas Department of Housing and Community Affairs

Announcement of the Opening of the Public Comment Period for the Corrected Draft Substantial Amendment 3 to the State of Texas FFY 2010 Action Plan

The Texas Department of Housing and Community Affairs (the "Department") announces the opening of a 15-day public comment period for an amendment to the *State of Texas Federal Fiscal Year (FFY) 2010 Action Plan* as required by the U.S. Department of Housing and Urban Development (HUD). The Amendment is necessary as part of the overall requirements governing the State's consolidated planning process. The Amendment is submitted in compliance with 24 CFR §91.520, Consolidated Plan Submissions for Community Planning and Development Programs, as modified by the *Federal Register* Notice (Docket No.FR-5321-N-03). The 15-day public comment period begins May 18, 2012 and continues until 5:00 p.m. on June 1, 2012.

This amendment outlines the expected distribution and use of $7,284,978 through the Neighborhood Stabilization Program (NSP), which HUD is providing to the State of Texas. This allocation of funds is provided under §1497 of the Wall Street Reform and Consumer Protection Act of 2010 (Pub. L. 111-203, approved July 21, 2010) ("Dodd-Frank Act").

Beginning May 18, 2012, the Substantial Amendment will be available on the Department's website at www.tdhca.state.tx.us. A hard copy may be requested by contacting the Texas Neighborhood Stabilization Program at P.O. Box 13941, Austin, Texas 78711-3941 or by calling (512) 475-3726.

Written comment should be sent by mail to Marni Holloway, Texas Department of Housing and Community Affairs, Neighborhood Stabilization Program, P.O. Box 13941, Austin, Texas 78711-3941, by email to marni.holloway@tdhca.state.tx.us, or by fax to (512) 475-3746.

TRD-201202355
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: May 9, 2012

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Texas Department of Insurance

Company Licensing

Application for a Certificate of Authority as a Texas port of entry by INDUSTRIAL ALLIANCE INSURANCE AND FINANCIAL SERVICES, INC., an alien life, accident and/or health company. The home office is in Quebec, Canada.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201202285
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: May 4, 2012

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Correction of Error

The Texas Department of Insurance (TDI) filed a Notice of Public Hearing on April 26, 2012, for publication in the May 11, 2012, issue of the *Texas Register* (37 TexReg 3641). On page 3642, first column, under "Anticipated Schedule," the date "May 15, 2012" should be "May 22, 2012". The corrected text should read as follows:

"TDI public hearing to make selection May 22, 2012"

TRD-201202283

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Public Utility Commission of Texas

Award of Contract

Request for Proposal 473-12-00150 - Conservation Education Outreach/Website Services

The Public Utility Commission of Texas (PUCT) is issuing an award of proposal to assist the PUCT in developing and executing strategies for the development and operation of an education program that emphasizes the benefits to Texas and retail consumers of energy conservation particularly during peak usage periods, an energy conservation website to be hosted by the PUCT, and a summer peak energy savings challenge.

Description of Services:

The contractor shall implement creative strategy and messaging for:

- the need for energy conservation particularly during peak usage periods

- the development of a website that will serve as a central location for information on energy efficiency and conservation programs

- coordination with Smart Meter Texas education on utilizing smart meter data to manage energy usage/lower costs

- develop resources for educators and Texas students related to energy usage

Name of Contractor:

Sherry Matthews Advocacy Marketing

200 South Congress Avenue, Austin, TX 78704

Duration of Contract and Award Amount:

May 1, 2012 through August 31, 2013

$539,850.00

TRD-201202315
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 7, 2012

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Notice of Application for a 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 May 8, 2012, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Samsara Communications, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 40379.

Applicant intends to provide data, facilities-based, and resale telecommunications services.

Applicant proposes the geographic area of 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 (888) 782-8477 no later than May 25, 2012. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at (800) 735-2989. All comments should reference Docket Number 40379.

TRD-201202353
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 9, 2012

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On May 2, 2012, Sage Telecom of Texas, LP filed an application to amend its service provider certificate of operating authority (SPCOA) Number 60160. Applicant seeks to reflect a change in ownership/control wherein control of Sage Telecom of Texas, LP would be transferred to TSC Acquisition Corp.

The Application: Application of Sage Telecom of Texas, LP for Amendment to its Service Provider Certificate of Operating Authority, Docket Number 40367.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than May 25, 2012. 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 40367.

TRD-201202287
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 4, 2012

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Notice of Application for Good Cause Exception to P.U.C. Substantive Rule §25.101(b) for a Proposed Transmission Line

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on May 3, 2012, to waive for good cause P.U.C. Substantive Rule §25.101(b).

Docket Style and Number: Application of Southwestern Public Service Company for a Good Cause Exception to P.U.C. Substantive Rule §25.101(b), Docket Number 40366.

The Application: Southwestern Public Service Company (SPS) is requesting permission from the commission to construct a 1.03 mile 230-kV transmission line extending an existing 230-kV transmission line to the proposed Newhart Substation in Castro County. SPS is seeking a waiver of P.U.C. Substantive Rule §25.101(b) so it can construct the line without amending its certificate of convenience and necessity (CCN). The project does not qualify for an exception under P.U.C. Substantive Rule §25.101(c)(5)(A)(i), because the line's length exceeds one mile.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All comments should reference Docket Number 40366.

TRD-201202288
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 4, 2012

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Notice of Application for Service Area Exception

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on May 3, 2012, for an amendment to certificated service area for a service area exception within Hemphill County, Texas.

Docket Style and Number: Application of Southwestern Public Service Company to Amend a Certificate of Convenience and Necessity for Electric Service Area Exception within Hemphill County. Docket Number 40371.

The Application: Southwestern Public Service Company (SPS) filed an application for a service area exception to allow SPS to provide service to a specific customer located within the certificated service area of North Plains Electric Cooperative, Inc. (NPEC). NPEC has provided an affidavit of relinquishment for the proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than May 29, 2012 by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All comments should reference Docket Number 40371.

TRD-201202286
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 4, 2012

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Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on May 4, 2012, to amend a certificate of convenience and necessity for a proposed transmission line in Dawson County, Texas.

Docket Style and Number: Application of Lyntegar Electric Cooperative, Inc. to Amend a Certificate of Convenience and Necessity for the

Patricia 138-kV Transmission Line within Dawson County. Docket Number 40317.

The Application: The proposed project is designated as the Patricia 138-kV Transmission Line Project. The facilities include construction of a new 138-kV transmission line. The project will be a radial tap from the existing Oncor Lamesa to North Andrews 138-kV transmission line to serve a distribution substation that will provide additional distribution capacity in the rapidly growing area near the town of Patricia, Texas. The proposed project will be approximately 7.6 miles in length. LEC plans to construct the line with steel or concrete single pole tangent structures and self-supporting concrete caisson mounted steel structures on all angle and dead-end structures. The estimated cost of the project, including transmission facilities and substation facilities, is $5,527,110 or $5,852,110, depending on the route chosen.

The proposed project is presented with two alternate routes. Any of the routes or route segments presented in the application could, however, be approved by the commission.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. The deadline for intervention in this proceeding is Monday, June 18, 2012. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All comments should reference Docket Number 40317.

TRD-201202314
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 7, 2012

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Notice of Application to Amend a Certificate of Convenience and Necessity for Two Proposed Generating Units

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on May 2, 2012, to amend a certificate of convenience and necessity for two generating units at the Montana Site in El Paso, County, Texas.

Docket Style and Number: Application of El Paso Electric Company to Amend a Certificate of Convenience and Necessity for Generating Units Montana 1 and 2 at the Montana Site in El Paso County, Docket Number 40301.

The Application: El Paso Electric Company (EPE) filed an application to amend a certificate of convenience and necessity (CCN) for two 88 megawatt natural gas-fired generating units to be constructed at an undeveloped site in El Paso County, east of the City of El Paso, known as the Montana Power Station site. The proposed units are called the Montana Units 1 and 2. Montana Units 1 and 2 are scheduled to be in service for the peak seasons of 2014 and 2015, respectively, and will serve as peaking and intermediate facilities.

The total estimated direct capital cost of the project, including the associated transmission facilities and common costs, is $182.4 million. In addition, the estimated amount of allowance for funds used during construction is $20.6 million.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. The deadline for intervention in this proceeding is June 18, 2012. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All comments should reference Docket Number 40301.

TRD-201202289
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 4, 2012

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Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of Central Texas Telephone Cooperative, Inc. (Central Texas) application filed with the Public Utility Commission of Texas (commission) on May 7, 2012, for approval of a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of Central Texas Telephone Cooperative, Inc. for Approval of a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171, Tariff Control Number 40378.

The Application: Central Texas filed an application to increase its local exchange access service line rates for certain business and residential customers. The proposed effective date for the proposed rate changes is June 1, 2012. The estimated annual revenue increase recognized by the applicant is $228,854 or less than 4.74% of Central Texas' gross annual intrastate revenues. Central Texas has 6,144 access lines in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by May 29, 2012, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by May 29, 2012. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326, or you may call the commission at (512) 936-7120 or toll-free at 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Tariff Control Number 40378.

TRD-201202336
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 9, 2012

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Public Notice of Change in Comment Deadlines

Under the Public Utility Commission of Texas' (commission) proposed amendments to §25.505, relating to Resource Adequacy in the Electric Reliability Council of Texas Power Region, published in the April 27, 2012, issue of the *Texas Register* (37 TexReg 2953), comments are due June 1, 2012 and reply comments are due June 15, 2012. The Electric Reliability Council of Texas recently selected the Brattle Group to help identify and evaluate factors that affect investment in new generation and suggest solutions to address adequacy concerns. The Brattle Group's final report is due June 1, 2012. In order to allow interested persons to fully incorporate the results of the final report in their initial comments, the commission is extending the comment period. Initial

comments are now due on June 15, 2012, and reply comments are now due June 29, 2012.

Questions concerning this notice should be referred to Diana Leese at (512) 936-7204 or Jason Haas at (512) 936-7295. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All comments should refer to Project Number 40268.

TRD-201202330
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 8, 2012

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Texas Water Development Board

Applications for May 2012

Pursuant to Texas Water Code §6.195, the Texas Water Development Board provides notice of the following application:

Project ID #62516, a request from the City of Bronte, P.O. Box 370, Bronte, Texas 76933-0370, received January 18, 2012, for financial assistance in the amount of $850,000 consisting of: (a) a loan in the amount of $595,000; and (b) $255,000 in loan forgiveness, from the Drinking Water State Revolving Fund to finance planning and design cost relating to water system improvements.

TRD-201202321
Kenneth Petersen
General Counsel
Texas Water Development Board
Filed: May 8, 2012

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Correction of Error

The Texas Water Development Board proposed new 31 TAC Chapter 355, Subchapter C in the May 4, 2012, issue of the *Texas Register* (37 TexReg 3353).

On page 3355, in §355.91(d), the word "application" should be "applications". The corrected text reads as follows:

"(d) The EA may request clarification from the RWPG if necessary to evaluate the application. Incomplete applications...."

The Texas Water Development Board also proposed new 31 TAC Chapter 357 in the May 4, 2012, issue of the *Texas Register* (37 TexReg 3358). Errors in the proposed rulemaking notices and their corrections are outlined as follows.

Preamble:

On page 3358, first column, in the first paragraph under "BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSAL", the phrase "(2) a requirement that the regional water plan to be consistent" should read "(2) a requirement that the regional water plan be consistent".

On page 3359, first column, in the second paragraph under the heading "Subchapter B. Guidance Principles and Notice Requirements", the phrase "specified action" in the next to the last sentence should be amended to read "specified actions".

On page 3359, first column, in the last sentence of the third paragraph under the heading "Subchapter B. Guidance Principles and Notice Requirements", the phrase "this section are the same as" should be corrected to read "this section are not necessarily the same as". The last sentence should read:

"Finally, the requirements of this section are not necessarily the same as the Open Meetings Act because the Legislature prescribed the public notice requirements in Texas Water Code §16.053(h)(8) and (9) specifically for the regional water planning process."

On page 3360, in the last line of the first column, the phrase "calculated planning safety factors" should be "calculating planning safety factors".

On page 3361, in the second column, second paragraph from the bottom, the phrase "proposed subsections (c) and (d)" should be followed by a comma.

Rules:

On page 3365, §357.11(g), the phrase "and or" should read "and". The corrected text reads as follows:

"(g) Each RWPG, at its discretion, may at any time add additional voting and non-voting representatives...."

On page 3365, §357.11(h), a comma should follow the word "discretion". The corrected text reads as follows:

"(h) Each RWPG, at its discretion, may remove...."

On page 3365, §357.11(i), the phrase "and or" should be "and" in the two instances in which it appears in this subsection. The corrected text reads as follows:

"(i) RWPGs may enter into formal and informal agreements to coordinate, avoid conflicts, and share information...."

On page 3365, §357.12(a), the wording "Prior to the preparation of the TWPs. In accordance with" should read as follows:

"(a) Prior to the preparation for the RWPs, in accordance with...."

On page 3365, §357.12(a)(4), the phrase "or political subdivisions" should be deleted. The corrected text reads as follows:

"(4) designate a political subdivision as a representative of the RWPG eligible to apply for financial assistance...."

On page 3366, §357.12(c)(2), the phrase "adopt previous RWP and state water" should be "adopt previous RWP or state water". The corrected text reads as follows:

"(2) where appropriate, adopt previous RWP or state water plan information, updated as necessary, as the RWP; and"

On page 3366, §357.21(b)(5)(A), replace "and or" with "or". The corrected text reads as follows:

"(A) On the website of the host political subdivision or on the Board website if requested by the RWPG; and"

On page 3366, §357.21(c)(1), replace "and or" with "and". The corrected text reads as follows:

"(1) These notice requirements apply to the following RWPG actions: population projection and water demand projection revision requests...."

On page 3366, §357.21(c)(4)(B), replace "or" with "of". The corrected text reads as follows:

"(B) any person or entity who has requested notice of RWPG activities either in writing or email, as requested by the person or entity;"

On page 3367, §357.21(c)(5)(A), replace "and or" with "or". The corrected text reads as follows:

"(A) On the website of the host political subdivision or on the Board website if requested by the RWPG; and"

On page 3367, §357.21(d)(7)(A), replace "and or" with "or". The corrected text reads as follows:

"(A) On the website of the host political subdivision or on the Board website if requested by the RWPG;"

On page 3367, §357.21(d)(8)(C)(ii), replace "and/or" with "and". The corrected text reads as follows:

"(ii) Comments associated with a preplanning meeting, scope of work development, and an application for funding to the Board must be considered prior to taking RWPG action."

On page 3368, §357.31(a), replace "and or" with "or" in both instances in which it appears in this subsection. The corrected text reads as follows:

"(a) RWPs shall present projected population and water demands by WUG as defined in §357.10 of this title (relating to Definitions and Acronyms). If a WUG lies in one or more counties or RWPA or river basins, data shall be reported for each river basin, RWPA, and county split."

On page 3369, §357.31(e)(2), replace "and or" with "or" in each instance in which it appears in this subparagraph. The corrected text reads as follows:

"(2) RWPGs may request revisions of Board adopted population or water demand projections if the request demonstrates that population or water demand projections no longer represents a reasonable estimate of anticipated conditions based on changed conditions or new information...."

On page 3369, §357.33(e), replace "and or" with "or". The corrected text reads as follows:

"(e) RWPGs shall perform a secondary water needs analysis for all WUGs and WWPs for which conservation water management strategies or direct reuse water management strategies...."

On page 3370, §357.34(d)(3)(B), delete the phrase "from environmental information". The corrected text reads as follows:

"(B) Environmental factors including effects on environmental water needs, wildlife habitat, cultural resources, and effect of upstream development on bays, estuaries, and arms of the Gulf of Mexico. Evaluations will be in accordance with the Commission's adopted environmental flow standards under 30 TAC Chapter 298 (relating to Environmental Flow Standards for Surface Water) or, if unavailable, information from existing site-specific studies...."

On page 3371, §357.35(g)(1), replace "and or" with "or" in two instances. The corrected text reads as follows:

"(1) Recommended water management strategies and the associated results of all the potentially feasible water management strategy evaluations by WUG and WWP. If a WUG or WWP lies in one or more counties or RWPAs or river basins, data will be reported for each river basin, RWPA, and county."

On page 3372, §357.40(b)(3), replace "and or" with "and". The corrected text reads as follows:

"(3) Threats to agricultural and natural resources identified pursuant to §357.34(d)(5) of this title;"

On page 3372, §357.42(e), replace "and or" with "or". The corrected text reads as follows:

"(e) RWPGs will provide general descriptions of local drought contingency plans that involve making emergency connections between water systems or WWP systems that...."

On page 3372, §357.42(f)(3), replace "and or" with "or". The corrected text reads as follows:

"(3) List of all potentially feasible drought management water management strategies that were considered or evaluated by the RWPG but not recommended; and"

On page 3375, §357.51(c)(4), add "responses" to the end of the paragraph. The corrected text reads as follows:

"(4) RWPG Public Meeting. After receipt...with existing statutes and rules related to regional water planning responses."

TRD-201202357

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How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 36 (2011) is cited as follows: 36 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 "36 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 36 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online at: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Index of Rules***. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register***. If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with the ***Texas Register*** page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
40 TAC §3.704.....950 *(P)*