
TEXAS REGISTER

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*Ariana Castereno
12th Grade*

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THE ATTORNEY GENERAL

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

An index to the full text of these documents is available from
the Attorney General's Internet site <http://www.oag.state.tx.us>.

Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

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

Requests for Opinions

RQ-0013-KP

Requestor:

The Honorable Angie Chen Button

Chair, Economic and Small Business Development

Texas House of Representatives

P.O. Box 2910

Austin, Texas 78768-2910

Re: Whether chapter 681 of the Transportation Code authorizes a political subdivision to contract with a private business to enforce the privileged parking laws within that chapter (RQ-0013-KP)

Briefs requested by March 18, 2015

RQ-0014-KP

Requestor:

Mr. William H. Kuntz, Executive Director

Texas Department of Licensing and Regulation

P.O. Box 12157

Austin, Texas 78711

Re: Whether municipalities or local law enforcement agencies are authorized to impound a motor vehicle for lack of proof of insurance or financial responsibility (RQ-0014-KP)

Briefs requested by March 25, 2015

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

TRD-201500626

Amanda Crawford

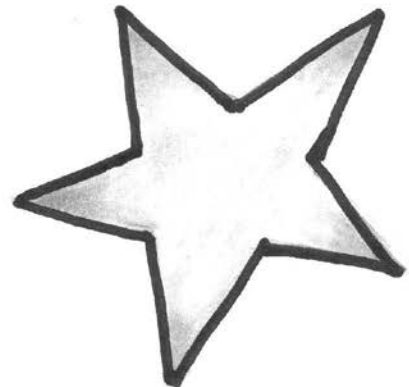
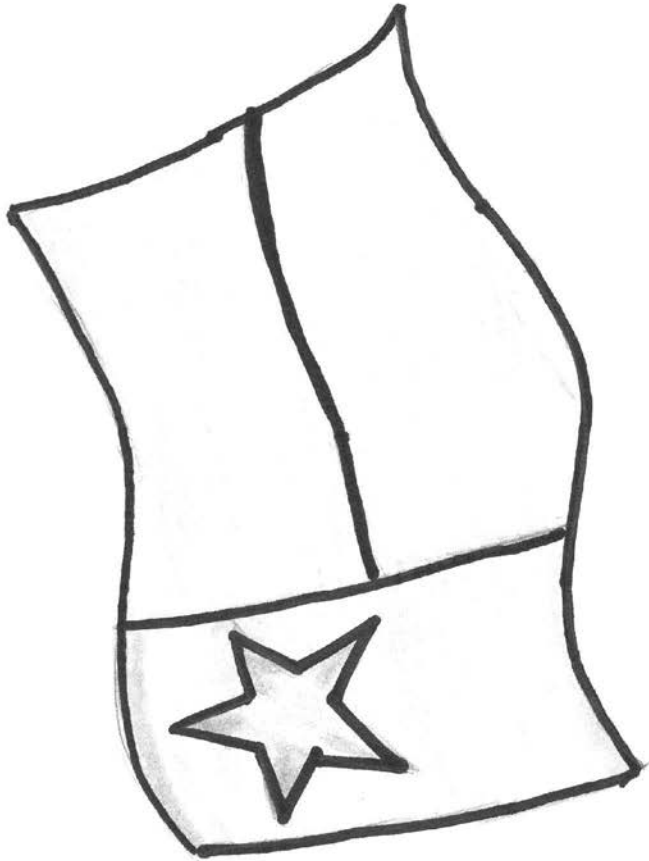
General Counsel

Office of the Attorney General

Filed: February 23, 2015



2 W X A A



TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39. Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Ethics Advisory Opinion

EAO-524. Whether a legislator may receive, donate to charity, or otherwise attribute to out-of-pocket expenses the proceeds from certain book sales. (AOR-592)

SUMMARY

Under the facts as they are presented in this opinion, a legislator is not prohibited from receiving proceeds from the sales of a book he co-authored or using the proceeds to pay for his out-of-pocket expenses or donate to a charity.

The Texas Ethics Commission is authorized by §571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) §2152.064, Government Code; and (11) §2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-201500506
Natalia Luna Ashley
Executive Director
Texas Ethics Commission
Filed: February 18, 2015



Ethics Advisory Opinion

EAO-525. Whether a current member of the Texas Legislature may use political contributions to pay the mandatory monthly assessments adopted by the homeowners association of an Austin residence owned by the Legislator who does not ordinarily reside in Travis County. (AOR-593)

SUMMARY

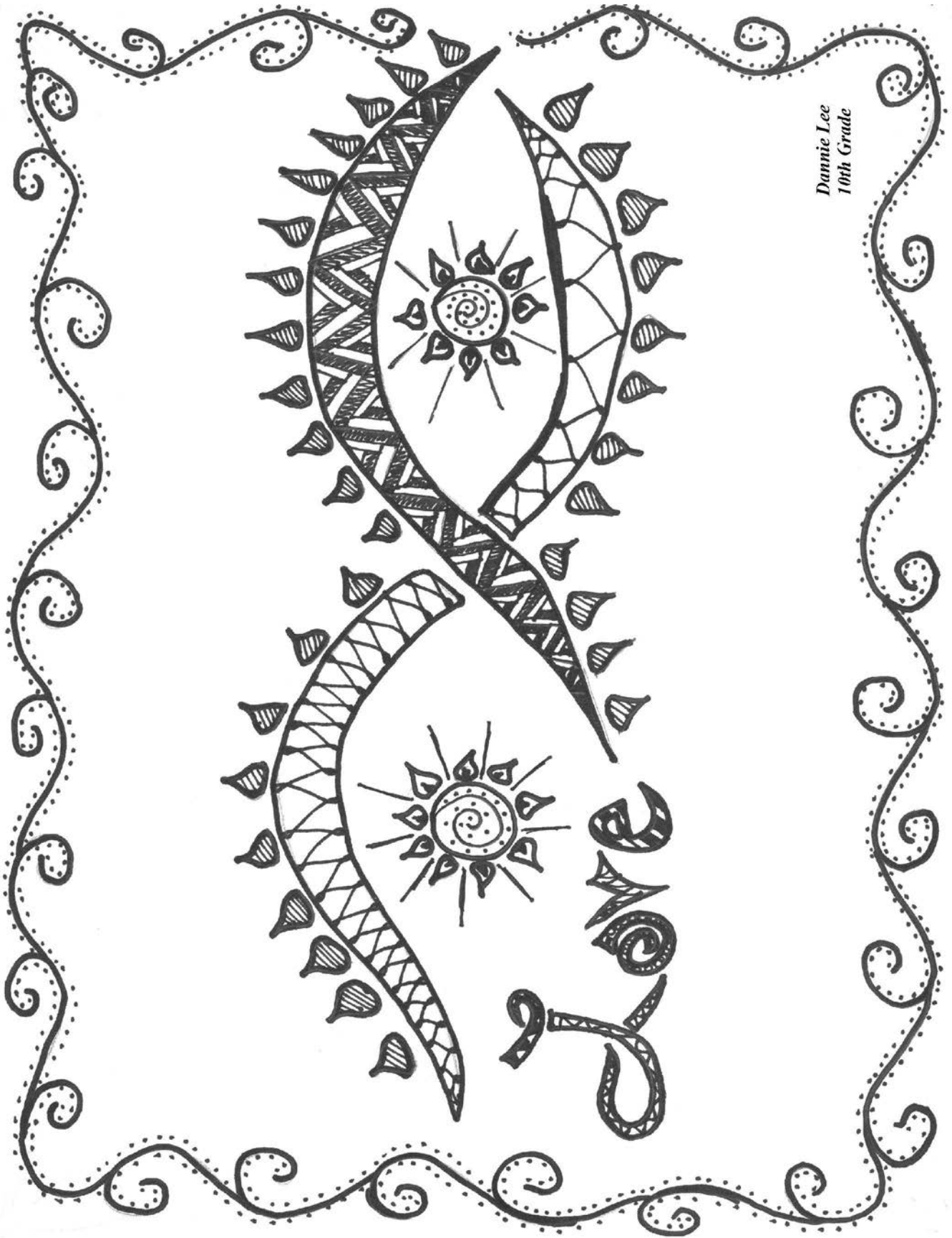
It is permissible for a member of the legislature who does not ordinarily reside in Travis County to use political contributions to pay the mandatory monthly assessments adopted by the homeowners association for a residence in Austin that the member owns to the extent that the residence is used for political purposes.

The Texas Ethics Commission is authorized by §571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) §2152.064, Government Code; and (11) §2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-201500507
Natalia Luna Ashley
Executive Director
Texas Ethics Commission
Filed: February 18, 2015





Dannie Lee
10th Grade

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

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

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 25. SPECIAL NUTRITION PROGRAMS

SUBCHAPTER B. SUMMER FOOD SERVICE PROGRAM (SFSP)

The Texas Department of Agriculture (TDA) proposes the repeal of Chapter 25, Subchapter B, Division 1, Overview and Purpose, §§25.601 - 25.603; Division 2, Eligibility of Sponsors and Facilities, §§25.611- 25.618; Division 3, Application Process, §§25.641 - 25.644; Division 4, Sponsor Standards and Responsibilities, §§25.651 - 25.662; Division 5, Budgets, §§25.681 - 25.684; Division 6, Food Service Management Companies, §§25.691 - 25.693; Division 7, Start-Up and Advance Payments, §§25.701 - 25.703; Division 8, Commodities, §25.711 and §25.712; Division 9, Reimbursement, §§25.721 - 25.735; Division 10, Program Rules and Technical Assistance, §§25.751 - 25.753; Division 11, Audits, §§25.761 - 25.764; Division 12, Sanctions and Penalties, §§25.771 - 25.784; and Division 13, Suspension and Termination, §25.801, concerning the Summer Food Service Program. These sections of Chapter 25, Subchapter B are proposed for repeal to allow TDA to administer the Summer Food Service Program in strict accordance with the provisions of 7 Code of Federal Regulations Part 225 and to remove obsolete references to the Texas Department of Human Services (DHS).

In addition, TDA proposes new Chapter 25, Subchapter B, §25.601, concerning schools required to participate in a Summer Nutrition Program, either the Summer Food Service Program (SFSP) or the Seamless Summer Option (SSO), and §25.602, concerning additional application requirements for contracting organizations under the Summer Food Service Program (SFSP). New §25.601 is proposed following TDA's reorganization and renumbering of rules governing the SFSP to replace former §25.612, which was adopted as required by Texas Agriculture Code §12.0029, as enacted by Senate Bill 89, 82nd Legislative Session 2011 (SB 89), in order to lower the threshold for mandatory participation in a Summer Nutrition Program and update related waiver procedures. New §25.602 is proposed following TDA's reorganization and renumbering of rules governing the SFSP to replace former §25.644, which was adopted to be effective March 27, 2012 (37 TexReg 2073), to ensure that funding is utilized to feed more eligible children by increasing accountability of SFSP sponsors, minimizing fraud in the program, providing higher levels of accountability and transparency with respect to SFSP sponsors, and ensuring

that federal and state tax dollars are spent for the program's purpose, as outlined in 7 CFR Part 225.

Angela Olige, Chief Administrator for Food and Nutrition, has determined that, for the first five-year period the proposed repeals and new sections are in effect, there will be no fiscal implications for state government as a result of the administration or enforcement of the proposed repeals and new sections. There will be no fiscal implications for local government.

Ms. Olige has also determined that for each year of the first five years the proposed repeals and new sections are in effect, the public benefit anticipated as a result of administration and enforcement of the amendment will be the repeal of outdated references and duplicate rules, as well as clarification and ease of locating information by relying on the federal regulations. There will be no adverse fiscal impact on individuals, small or micro businesses as a result of the proposed repeals.

Written comments on the proposal may be submitted to Angela Olige, Chief Administrator for Food and Nutrition, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711 or to Angela.Olige@Texasagriculture.gov. Written comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

4 TAC §25.601, §25.602

New §25.601 and §25.602 are proposed under Texas Agriculture Code §12.0025, which authorizes the department to administer the Summer Food Service Program, and §12.016, which authorizes the department to adopt rules as necessary for the administration of its powers and duties under the Texas Agriculture Code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§25.601. Waiver of Summer Nutrition Program Requirements for Public School Districts.

(a) Eligibility.

(1) Public school districts in which 50% or more of the enrolled children are eligible to receive free meal benefits in the National School Lunch Program (NSLP) must operate a Summer Nutrition Program directly, arrange for another school food authority (SFA) to operate a Summer Nutrition Program in their district, or arrange with another entity for the operation of the Summer Food Service Program (SFSP) in their districts for at least 30 calendar days during the summer recess unless they receive a waiver from the department, in accordance with this section.

(2) The department will notify school districts required by this section to operate a Summer Nutrition Program of this obligation no later than October 31 of each year preceding the summer season in question.

(3) A school district notified under paragraph (2) of this subsection must inform TDA in writing, no later than January 31 of each year, whether it intends to:

(A) directly provide a Summer Nutrition Program to students in its district;

(B) arrange for another SFA to operate a Summer Nutrition Program in their district or arrange with another entity for the operation of the SFSP in their district; or

(C) request a waiver from the department.

(b) Documentation required by the department.

(1) A school district that arranges for the provision of a Summer Nutrition Program must enter into an agreement to partner or collaborate with a local governmental entity, educational institution, or private non-profit organization to ensure meal service for children in the school district's attendance area.

(2) School districts required to provide a Summer Nutrition Program under this section that choose to arrange for the operation of the program in their districts must provide TDA with written documentation of the arrangement with another entity to provide SFSP in their district no later than April 1 of each year.

(c) Requesting a waiver. No later than November 30 of each year, the board of trustees of a public school district wishing to obtain a waiver must inform, in writing, the school district's local school health advisory council that it intends to request a waiver from the department. The school district must then communicate with the department in writing, no later than January 31, of their intent to operate a Summer Nutrition Program, arrange for another SFA to operate a Summer Nutrition Program in their district, or arrange with another entity for the operation of the SFSP in their districts, or their intent to request a waiver.

(d) Awarding of waivers to public schools otherwise required to operate the program. The department may grant a waiver of the requirement to provide a Summer Nutrition Program or arrange for the provision of the SFSP only if the district provides verifiable documentation that such waiver is warranted. Waivers are for one year only.

(e) Verifiable documentation that a public school must show in order to be considered for a waiver.

(1) Documentation showing that there are fewer than 100 children in the district currently eligible to receive free or reduced-price meals under the National School Lunch Program; or

(2) Documentation showing that transportation to enable district students to participate in the program is an insurmountable obstacle to the district's ability to provide or arrange for the provision of the program despite consultation by the district with public transit providers; or

(3) Documentation that the district is unable to provide or arrange for the provision of a program due to renovation or construction of district facilities and the unavailability of an appropriate alternate provider or site; or

(4) Documentation that the district is unable to provide the program due to another extenuating circumstance, and that there is not an appropriate alternate site or provider available; and

(5) Documentation that the district has worked with department field offices to identify another possible provider for the program in the district; or

(6) Documentation that the cost to the district to provide or arrange for the program would be cost-prohibitive, as provided in subsection (f) of this section.

(f) Criteria and methodology considered by the department to determine if operating the program is cost-prohibitive for a district.

(1) A school district's operation of a Summer Nutrition Program will be deemed cost-prohibitive if the projected operational expenses for the summer nutrition program are greater than the sum of the expected federal reimbursements plus one month of the school food services' allowable three months operating expenses on hand.

(2) To demonstrate that operation of a Summer Nutrition Program is cost-prohibitive, a school district must provide:

(A) projected Summer Nutrition Program budget for program year:

(i) based on number of expected participants; and

(ii) including specific cost items to support possible determination of cost-prohibitive nature of program operation;

(B) expected reimbursement amount, based on either:

(i) previous year's program participation; or

(ii) interest survey data taken since start of current school year;

(C) documents supporting the calculation of the food service department's three months operating expense balance, including:

(i) current fund balance;

(ii) current year's total operating expense; and

(iii) available cash on hand;

(D) financial statement which indicates child nutrition net cash resources are below two months net cash reserves; and

(E) written explanation of efforts made to attempt partnership with another SFA to operate a Summer Nutrition Program in their district or arrange for another entity for SFSP operation, including:

(i) contacting local field operations office; and

(ii) two or more other entities to discuss potential partnership.

§25.602. Additional Requirements for Contracting Organizations.

(a) Upon request from TDA, each principal of a nongovernmental organization that participates in the Summer Food Service Program shall submit the following information:

(1) government-issued identification (state-issued drivers license, state-issued identification card, military identification, valid U.S. passport or other identification approved by TDA); and

(2) proof of residential mailing address (official mail sent to the individuals address from a utility provider, governmental agency or bank; a lease executed by the individual; or other proof approved by TDA).

(b) TDA may perform a criminal background investigation on each principal of a nongovernmental organization. In the event such a report reveals that the applicant and/or any principal knowing falsified any statements contained in the application TDA may seek criminal prosecution for any applicable state or federal charge.

(c) TDA shall deny an application based on the principal's background investigation if the investigation reveals any of the following: a criminal conviction in the past seven years that indicates a lack of business integrity, including but not limited to: fraud, anti-trust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstructing justice.

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

Filed with the Office of the Secretary of State on February 23, 2015.

TRD-201500597

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: April 5, 2015

For further information, please call: (512) 463-4075



DIVISION 1. OVERVIEW AND PURPOSE

4 TAC §§25.601 - 25.603

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

The repeal of Chapter 25, Subchapter B, Division 1, Overview and Purpose, §§25.601 - 25.603 is proposed pursuant to the Texas Agriculture Code, §12.0025(5), which provides that the department shall administer the SFSP, and §12.016, which authorizes the department to adopt rules as necessary for the administration of its powers and duties under the code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§25.601. *What is the purpose of the Summer Food Service Program (SFSP)?*

§25.602. *What do certain words and terms in this subchapter mean?*

§25.603. *How is the SFSP authorized?*

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

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Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

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DIVISION 2. ELIGIBILITY OF SPONSORS AND FACILITIES

4 TAC §§25.611 - 25.618

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

The repeal of Chapter 25, Subchapter B, Division 2, Eligibility of Sponsors and Facilities, §§25.611 - 25.618 is proposed pursuant to the Texas Agriculture Code, §12.0025(5), which provides that the department shall administer the SFSP, and §12.016, which authorizes the department to adopt rules as necessary for the administration of its powers and duties under the code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§25.611. *How do sponsors qualify to participate in the SFSP?*

§25.612. *Are public school districts required to participate in a Summer Nutrition Program? What documentation is required by TDA? What are the requirements for obtaining a waiver?*

§25.613. *If public schools are approved to participate in the National School Lunch Program, are they eligible to participate in the SFSP?*

§25.614. *Are any sponsors required to submit proof of tax-exempt status?*

§25.615. *Can a college or university participate as an SFSP sponsor on a year-round basis?*

§25.616. *Does DHS approve applications from potential sponsors that do not provide year-round service to the communities they propose to serve?*

§25.617. *Does DHS use a priority system when approving applicants that propose to serve the same area or the same enrolled children?*

§25.618. *What documentation is a sponsor required to submit to show compliance with the Single Audit Act?*

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

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DIVISION 3. APPLICATION PROCESS

4 TAC §§25.641 - 25.644

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

The repeal of Chapter 25, Subchapter B, Division 3, Application Process, §§25.641 - 25.644 is proposed pursuant to the Texas Agriculture Code, §12.0025(5), which provides that the department shall administer the SFSP, and §12.016, which authorizes the department to adopt rules as necessary for the administration of its powers and duties under the code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§25.641. *How does a sponsor apply to participate in the SFSP?*

§25.642. *What must a sponsor do if the information in its application changes?*

§25.643. *What criteria does DHS use to approve or deny applications?*

§25.644. *Additional Requirements for Contracting Organizations*
The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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DIVISION 4. SPONSOR STANDARDS AND RESPONSIBILITIES

4 TAC §§25.651 - 25.662

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

The repeal of Chapter 25, Subchapter B, Division 4, Sponsor Standards and Responsibilities, §§25.651 - 25.662 is proposed pursuant to the Texas Agriculture Code, §12.0025(5), which provides that the department shall administer the SFSP, and §12.016, which authorizes the department to adopt rules as necessary for the administration of its powers and duties under the code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§25.651. *What are the rights and responsibilities of a sponsor that participates in the SFSP?*

§25.652. *Must a sponsor implement a particular financial management system?*

§25.653. *Must a sponsor maintain records and documents related to its participation in the SFSP?*

§25.654. *How long must a sponsor maintain records and documents pertaining to the program?*

§25.655. *When is litigation, a claim, an audit, or an investigation finding considered resolved?*

§25.656. *Must a sponsor permit DHS to access its facilities and records?*

§25.657. *How must a sponsor procure foods, supplies, equipment, and other goods and services for the SFSP?*

§25.658. *Must a sponsor manage its meal service according to any specific guidelines?*

§25.659. *How does a sponsor determine a participant's eligibility for free or reduced-price school meals?*

§25.660. *Must a sponsor comply with specific health standards when operating its food service?*

§25.661. *Must a sponsor prevent discrimination against participants in its SFSP operations?*

§25.662. *Will a sponsor be discriminated against in the SFSP?*

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

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DIVISION 5. BUDGETS

4 TAC §§25.681 - 25.684

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

The repeal of Chapter 25, Subchapter B, Division 5, Budgets, §§25.681 - 25.684 is proposed pursuant to the Texas Agriculture Code, §12.0025(5), which provides that the department shall administer the SFSP, and §12.016, which authorizes the department to adopt rules as necessary for the administration of its powers and duties under the code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§25.681. *How must a sponsor submit an administrative budget for DHS approval?*

§25.682. *Can a sponsor adjust its approved budget?*

§25.683. *When must a sponsor submit budget information to DHS?*

§25.684. *Will DHS approve a budget adjustment retroactively?*

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

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DIVISION 6. FOOD SERVICE MANAGEMENT COMPANIES

4 TAC §§25.691 - 25.693

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

The repeal of Chapter 25, Subchapter B, Division 6, Food Service Management Companies, §§25.691 - 25.693 is proposed

pursuant to the Texas Agriculture Code, §12.0025(5), which provides that the department shall administer the SFSP, and §12.016, which authorizes the department to adopt rules as necessary for the administration of its powers and duties under the code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§25.691. *Can a sponsor contract with a food service management company or school food authority to obtain meals?*

§25.692. *How does a sponsor contract for the services of a food service management company (FSMC) or school food authority (SFA)?*

§25.693. *If a sponsor purchases meals from a food service management company, must it establish a special account for operating costs?*

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

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DIVISION 7. START-UP AND ADVANCE PAYMENTS

4 TAC §§25.701 - 25.703

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

The repeal of Chapter 25, Subchapter B, Division 7, Start-Up and Advance Payments, §§25.701 - 25.703 is proposed pursuant to the Texas Agriculture Code, §12.0025(5), which provides that the department shall administer the SFSP, and §12.016, which authorizes the department to adopt rules as necessary for the administration of its powers and duties under the code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§25.701. *Does DHS provide start-up payments to sponsors?*

§25.702. *Does DHS provide advance payment to sponsors before the end of the month in which the costs will be incurred?*

§25.703. *Is there a limit to the amount of an advance payment?*

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

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DIVISION 8. COMMODITIES

4 TAC §§25.711, §25.712

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

The repeal of Chapter 25, Subchapter B, Division 8, Commodities, §25.711 and §25.712 is proposed pursuant to the Texas Agriculture Code, §12.0025(5), which provides that the department shall administer the SFSP, and §12.016, which authorizes the department to adopt rules as necessary for the administration of its powers and duties under the code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§25.711. *Does DHS provide commodity assistance to sponsors?*

§25.712. *How must a sponsor use these commodities?*

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

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DIVISION 9. REIMBURSEMENT

4 TAC §§25.721 - 25.735

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

The repeal of Chapter 25, Subchapter B, Division 9, Reimbursement, §§25.721 - 25.735 is proposed pursuant to the Texas Agriculture Code, §12.0025(5), which provides that the department shall administer the SFSP, and §12.016, which authorizes the department to adopt rules as necessary for the administration of its powers and duties under the code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§25.721. *Must a sponsor follow specific guidelines when claiming reimbursement?*

§25.722. *Under what authority does DHS reimburse sponsors in the SFSP?*

§25.723. Does DHS reimburse the cost of meals served to adults performing labor necessary for the operation of the SFSP?

§25.724. Does DHS provide supplemental reimbursement for meals served to children?

§25.725. Is there a specific deadline by which a sponsor must submit a claim for reimbursement?

§25.726. When must a sponsor combine two consecutive months of service on a single claim for reimbursement?

§25.727. Is there a specific deadline by which a sponsor must submit a claim for reimbursement of two consecutive months of service?

§25.728. Will DHS pay a claim for reimbursement if it is received or postmarked later than 60 days after the end of the claim month?

§25.729. How does DHS handle a claim received later than 60 days after the end of the claim month(s)?

§25.730. What happens if DHS finds that good cause did not exist?

§25.731. What happens if DHS finds that good cause beyond the sponsor's control existed?

§25.732. What happens if USDA finds that good cause existed?

§25.733. What happens if USDA finds that good cause did not exist?

§25.734. Does a sponsor have the option not to submit a request for payment of a late claim based on good cause?

§25.735. If a sponsor chooses not to submit a request for payment of a late claim based on good cause, can a sponsor still be reimbursed for that claim?

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

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DIVISION 10. PROGRAM REVIEWS AND TECHNICAL ASSISTANCE

4 TAC §§25.751 - 25.753

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

The repeal of Chapter 25, Subchapter B, Division 10, Program Reviews and Technical Assistance, §§25.751 - 25.753 is proposed pursuant to the Texas Agriculture Code, §12.0025(5), which provides that the department shall administer the SFSP, and §12.016, which authorizes the department to adopt rules as necessary for the administration of its powers and duties under the code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§25.751. Does DHS monitor a sponsor's activities?

§25.752. Is a sponsor required to administer and monitor its program operations?

§25.753. Is a sponsor required to conduct reviews of its facilities? The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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DIVISION 11. AUDITS

4 TAC §§25.761 - 25.764

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

The repeal of Chapter 25, Subchapter B, Division 11, Audits, §§25.761 - 25.764 is proposed pursuant to the Texas Agriculture Code, §12.0025(5), which provides that the department shall administer the SFSP, and §12.016, which authorizes the department to adopt rules as necessary for the administration of its powers and duties under the code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§25.761. Is a sponsor that participates in the SFSP subject to audit?

§25.762. Are certain sponsors exempt from the single audit requirements?

§25.763. When is an audit considered acceptable?

§25.764. How is a sponsor informed of its obligation to comply with the single audit requirements?

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

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DIVISION 12. SANCTIONS AND PENALTIES

4 TAC §§25.771 - 25.784

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

The repeal of Chapter 25, Subchapter B, Division 12, Sanctions and Penalties, §§25.771 - 25.784 is proposed pursuant to the Texas Agriculture Code, §12.0025(5), which provides that the department shall administer the SFSP, and §12.016, which authorizes the department to adopt rules as necessary for the administration of its powers and duties under the code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§25.771. *Does DHS investigate irregularities in or complaints about a sponsor's operation of the SFSP?*

§25.772. *What does DHS do if a sponsor that is subject to single audit requirements fails to submit an audit as required?*

§25.773. *Can a sponsor appeal this action?*

§25.774. *What does DHS do if extenuating circumstances prevent a sponsor from conducting an audit as required?*

§25.775. *Who must pay for this audit?*

§25.776. *What does DHS do if a sponsor submits an audit that does not meet the single audit requirements as specified in 7 CFR Part 3052?*

§25.777. *Can DHS extend the deadline by which a sponsor must submit an audit?*

§25.778. *How must a sponsor request an extension of its audit deadline?*

§25.779. *Is DHS required to grant a sponsor an extension of its audit deadline?*

§25.780. *How is a new audit due date determined?*

§25.781. *How is the sponsor informed of the decision regarding the extension of its audit due date?*

§25.782. *Can a sponsor request more than one extension?*

§25.783. *What does DHS do if DHS does not receive an audit by the specified deadline and an extension of the deadline has not been granted?*

§25.784. *Can a sponsor participate in any of the Special Nutrition Programs if DHS terminates its participation in the SFSP for failing to comply with the single audit requirements as stated in 7 CFR Part 3052?*

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

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DIVISION 13. SUSPENSION AND TERMINATION

4 TAC §25.801

(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 Agriculture or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal of Chapter 25, Subchapter B, Division 13, Suspension and Termination, §25.801 is proposed pursuant to the Texas Agriculture Code, §12.0025(5), which provides that the department shall administer the SFSP, and §12.016, which authorizes the department to adopt rules as necessary for the administration of its powers and duties under the code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§25.801. *What regulations does DHS use to deny an application for participation in the SFSP and to terminate an agreement between DHS and a sponsor?*

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

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PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 51. ENTRY REQUIREMENTS

4 TAC §51.1, §51.2

The Texas Animal Health Commission (commission) proposes amendments to §51.1, concerning Definitions, and §51.2, concerning General Requirements, in Chapter 51, which is entitled "Entry Requirements". The purpose of the amendments is to shorten the length of time that Certificates of Veterinary Inspection (CVI) are valid from 45 days to 30 days maximum for equine entering the state and to correct language regarding exceptions to entry permits and CVI requirements.

A CVI is a document signed by an accredited veterinarian that shows the equine were inspected and subjected to tests, immunizations, and treatment as required by the commission. The change of equine CVI length of validity for entry into Texas will accomplish three objectives.

First, the change will bring commission rules into compliance with Title 9, Code of Federal Regulations, §161.4(b), which states in part that "certificates, forms, records, and reports shall be valid for 30 days following the date of inspection of the animal identified on the document,...".

Second, the results of a recent 2014 poll of other state animal health agencies showed that no other state has a CVI length of validity for equine greater than 30 days.

Third, a number of emerging diseases have occurred in recent years including Vesicular Stomatitis (VS) and Equine Herpes Encephalomyelopathy (EHM or Equine Herpes Virus-1 (EHV-1)) that threaten the equine industry in Texas and in other states. Both diseases are reportable to the commission.

VS is a viral disease which is endemic in the Southwestern United States. The disease creates vesicular lesions in and around the mouth hampering the ability of an animal to eat or drink and can also cause hoof lesions which may result in lameness. The incubation period for VS is usually between days two through eight. Texas and Colorado experienced the largest VS outbreak in recent history in the summer of 2014. The VS outbreak affected 62 premises and 13 counties in Texas and 370 premises and 17 counties in Colorado.

EHM is a viral disease which can result in symptoms such as respiratory disease, abortions, neurologic manifestations and death. The incubation period for EHM is normally between days two through ten. The EHM virus can be reactivated during times of stress such as strenuous exercise and long distance transport. There have been numerous outbreaks of EHM in recent years at large horse facilities and events in other states that have affected Texas animals either at the event or created tracing of exposed Texas horses.

A shorter validity timeframe for CVIs issued on equine entering Texas will better protect the Texas equine population from the introduction of the above mentioned diseases as well as other traditional and emerging diseases, bring Texas into compliance with the federal regulations regarding the validity of certificates issued by accredited veterinarians, and also make the Texas CVI entry requirements consistent with all other state CVI timeframes.

FISCAL NOTE

Ms. Larissa Schmidt, Director of Administration, Texas Animal Health Commission, has determined for the first five-year period the rules are in effect, there will be no significant additional fiscal implications for state or local government as a result of enforcing or administering the rules. An Economic Impact Statement (EIS) is required if the proposed rules have an adverse economic effect on small businesses. The agency has evaluated the requirements and determined that there is not an adverse economic impact and, therefore, there is no need to do an EIS. Implementation of these rules poses no significant fiscal impact on small or micro-businesses, or to individuals.

PUBLIC BENEFIT NOTE

Ms. Schmidt has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to ensure that equine have a validity timeframe for a CVI that will lessen the ability for them to be exposed and disclose a diagnosis prior to entry into Texas.

LOCAL EMPLOYMENT IMPACT STATEMENT

In accordance with Texas Government Code §2001.022, this agency has determined that the proposed rules will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

TAKINGS ASSESSMENT

The agency has determined that the proposed governmental action will not affect private real property. The proposed amendments are an activity related to the handling of animals, including requirements for testing, movement, inspection, identification, reporting of disease, and treatment, in accordance with 4 TAC §59.7, and are, therefore, compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007.

REQUEST FOR COMMENT

Comments regarding the proposal may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719 or by email at "comments@tahc.texas.gov".

STATUTORY AUTHORITY

The amendments are proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The commission is authorized, through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock.

Pursuant to §161.005, entitled "Commission Written Instruments", the commission may authorize the executive director or another employee to sign written instruments on behalf of the commission. A written instrument, including a quarantine or written notice signed under that authority, has the same force and effect as if signed by the entire commission.

Pursuant to §161.006, entitled "Documents to Accompany Shipment", if required that a certificate or permit accompany animals or commodities moved in this state, the document must be in the possession of the person in charge of the animals or commodities, if the movement is made by any other means.

Pursuant to §161.044, entitled "Regulation of Livestock Movement from Stockyards or Railway Shipping Pens", the commission may regulate the movement of livestock out of stockyards or railway shipping pens and require treatment or certification of those animals as reasonably necessary to protect against communicable diseases.

Pursuant to §161.046, entitled "Rules", the commission may adopt rules as necessary for the administration and enforcement of this chapter.

Pursuant to §161.048, entitled "Inspection of Shipment of Animals or Animal Products", the commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. An agent of the commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease.

Pursuant to §161.049, entitled "Dealer Records", the commission may require a livestock, exotic livestock, domestic fowl, or exotic fowl dealer to maintain records of all livestock, exotic livestock, domestic fowl, or exotic fowl bought and sold by the dealer.

Pursuant to §161.054, entitled "Regulation of Movement of Animals", the commission, by rule, may regulate the movement of animals. The commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce.

Pursuant to §161.081, entitled "Importation of Animals", the commission by rule may regulate the movement, including movement by a railroad company or other common carrier, of livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl into this state from another state, territory, or country.

Pursuant to §161.112, entitled "Rules", the commission shall adopt rules relating to the movement of livestock, exotic live-

stock, and exotic fowl from livestock markets and shall require tests, immunization, and dipping of those livestock as necessary to protect against the spread of communicable diseases.

Pursuant to §161.114, entitled "Inspection of Livestock", an authorized inspector may examine livestock consigned to and delivered on the premises of a livestock market before the livestock are offered for sale. If the inspector considers it necessary, the inspector may have an animal tested or vaccinated. Any testing or vaccination must occur before the animal is removed from the livestock market.

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

§51.1. Definitions.

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

(1) Accredited veterinarian--A licensed veterinarian who is approved to perform specified functions required by cooperative state-federal disease control and eradication programs pursuant to Title 9 of the Code of Federal Regulations, Parts 160 and 161.

(2) Animal--Includes livestock, exotic livestock, domestic fowl, and exotic fowl.

(3) Assembly--Boarding stables, boarding pastures, breeding farms, parades, rodeos, roping events, trail rides, and training stables.

(4) Certificate of veterinary inspection--A document signed by an accredited veterinarian that shows the livestock, poultry, exotic livestock, or exotic fowl listed were inspected and subjected to tests, immunizations, and treatment as required by the commission. Certificates are valid for [45 days for equine and] 30 days for all [other] species.

(5) Cervidae--Deer, elk, moose, caribou and related species in the cervidae family, raised under confinement or agricultural conditions for the production of meat or other agricultural products or for sport or exhibition, and free-ranging cervidae when they are captured for any purpose.

(6) Commission--The Texas Animal Health Commission.

(7) Commuter Flock--A National Poultry Improvement Plan (pullorum-typhoid clean or equivalent) flock in good standing with operations in participating states that are under single ownership or management control whose normal operations require interstate movement of hatching eggs and/or baby poultry without change of ownership for purposes of hatching, feeding, rearing or breeding. The owner or representative of the company owning the flock and chief animal health officials of participating states of origin and destination must have entered into a signed "Commuter Poultry Flock Agreement."

(8) Commuter Cattle Herd--A herd of cattle located in two or more states that is documented as a valid ranching operation by those states in which the herd is located and which requires movement of cattle interstate from a farm of origin or returned interstate to a farm of origin in the course of normal ranching operations, without change of ownership, directly to or from another premise owned, leased, or rented by the same individual. An application for "commuter herd" status must be signed by the owner and approved by the states in which the herd is located. This status will continue until canceled by the owner or one of the signatory states.

(9) Commuter Swine Herd--A swine herd located in two or more states that is documented as a valid ranching operation by those states in which the herd is located and which requires movement of

swine interstate from a farm of origin or returned interstate to a farm of origin in the course of normal ranching operations, without change of ownership, directly to or from another premise owned, leased, or rented by the same individual. An application for "commuter herd" status must be signed by the owner and approved by the states in which the herd is located. This status will continue until canceled by the owner or one of the signatory states.

(10) Equine interstate passport--A document signed by an accredited veterinarian that shows the equine listed were inspected, subjected to tests, immunizations and treatment as required by the issuing state animal health agency, and contains a description of the equine listed. The passport is valid for six months when accompanied by proof of an official negative EIA test within the previous six months. Permanent individual animal identification in the form of a lip tattoo, brand or electronic implant is required for all equine approved for the equine interstate passport. This document is valid for equine entering from any state that has entered into a written agreement to reciprocate with Texas.

(11) Equine identification card--A document signed by the owner and a brand inspector or authorized state animal regulatory agency representative that lists the animal's name and description and indicates the location of all identifying marks or brands. This document is valid for equine entering from any state which has entered into a written agreement to reciprocate with Texas.

(12) Exotic livestock--Grass-eating or plant-eating, single-hooved or cloven-hooved mammals that are not indigenous to this state and are known as ungulates, including animals from the swine, horse, tapir, rhinoceros, elephant, deer, and antelope families.

(13) Exotic fowl--Any avian species that is not indigenous to this state. The term includes ratites.

(14) Interstate show--A show, fair, or exhibition that permits livestock and poultry from other states to enter for show or exhibition and be held in common facilities with Texas origin livestock and poultry of the same species.

(15) Livestock--Cattle, horses, mules, asses, sheep, goats, and hogs.

(16) Owner-shipper statement--A statement signed by the owner or shipper of the livestock being moved stating the location from which the animals are moved interstate; the destination of the animals; the number of the animals covered by the statement; the species of the animal covered; the name and address of the shipper; and the identification of each animal as required by the commission or the United States Department of Agriculture (USDA).

(17) Permit--A document recognized by the commission with specified conditions relative to movement, testing and vaccinating of animals which is required to accompany the animals entering, leaving or moving within the State of Texas.

(A) "E" permit--Premovement authorization for entry of animals into the state by the commission. The "E" permit states the conditions under which movement may be made, and will provide any appropriate restrictions and test requirements after arrival. The permit is valid for 15 days.

(B) VS 1-27 (VS Form 1-27)--A premovement authorization for movement of animals to restricted designations.

(18) Purebred registry association--A swine breed association formed and perpetuated for the maintenance of records of purebreeding of swine species for a specific breed whose characteristics are set forth in constitutions, by-laws, and other rules of the association.

(19) Radio Frequency Identification Device (RFID)--Official individual animal identification with an identification device that utilizes radio frequency technology. The RFID devices include ear tags, boluses, implants (injected), and tag attachments (transponders that work in concert with ear tags).

(20) Sponsor--An owner or person in charge of an exhibition, show or fair.

§51.2. *General Requirements.*

(a) Entry permit requirements.

(1) All animals entering Texas from any state, territory, or foreign country shall have an entry permit unless excepted [~~accepted~~] by this chapter.

(2) Entry permit requests shall be directed to the commission by either writing to Texas Animal Health Commission, c/o Permits, P.O. Box 12966, Austin, Texas 78711-2966; or by telephoning (512) 719-0777 or 1-800-550-8242. In order to obtain a valid permit, the permit requester must provide the commission information necessary to determine that the animals comply [~~compliance~~] with applicable [~~the~~] entry requirements [~~for the animals to enter the state~~], the destination of the animals, and [~~animal(s) as well as~~] contact information for the requester.

(3) The entry permit number shall be written on a valid certificate of veterinary inspection by the issuing accredited veterinarian and the certificate must accompany the shipment. If a [~~health~~] certificate of veterinary inspection is excepted [~~accepted~~] by §51.3 of this chapter (relating to Exceptions), then the permit number shall be written or affixed onto the appropriate documents accompanying the shipment. The permit is valid for 15 [~~fifteen~~] days after issuance.

(b) Certificate of veterinary inspection.

(1) All animals entering Texas from any state, territory, or foreign country shall have a certificate of veterinary inspection unless excepted [~~accepted~~] by this chapter.

(2) The certificate of veterinary inspection shall state that:

(A) the veterinarian found the animals to be free of symptoms or evidence of communicable or infectious diseases;

(B) the animals were subjected to tests, immunizations, and treatment required by rule of the commission. Animals that have been vaccinated or tested for any disease as required by the commission shall be individually identified on the certificate of veterinary inspection; and

(C) additional language may be required for a specific species or disease as provided in this chapter. [~~Chapter; and~~]

(3) [~~(D)~~] A [~~a~~] certificate of veterinary inspection is valid for 30 days[;] after issuance. [~~For equine, a certificate of veterinary inspection is valid for 45 days after issuance.~~]

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

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Gene Snelson

General Counsel

Texas Animal Health Commission

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For further information, please call: (512) 719-0700



TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 3. STATE BANK REGULATION SUBCHAPTER B. GENERAL

7 TAC §3.23

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes new §3.23, concerning exercise of trust powers. The new rule is proposed to ensure that a state bank seeking to offer trust services can provide those services reliably and consistently without undue risk to its customers or to the safety and soundness of the institution.

Proposed §3.23(a) would define "trust services" to mean service as a fiduciary to hold or administer accounts established through a customer relationship involving the transfer of title to funds or property to the bank, including a relationship in which the bank acts as a trustee, executor, administrator, guardian, custodian, conservator, receiver, registrar of stocks and bonds, mortgage or indenture trustee, escrow agent, transfer agent, or investment advisor.

However, proposed to be excluded from the term are relationships in which the bank as trustee or custodian acts in an essentially custodial or ministerial capacity, and can only invest the funds in its own time or savings deposits or in other assets at the explicit direction of the customer, provided the bank does not exercise any investment discretion or provide any investment advice with respect to such other assets. This exception would permit serving as the fiduciary under accounts like Individual Retirement Accounts established pursuant to the Employee Retirement Income Security Act of 1974 (26 U.S.C. 408), Self-Employed Retirement Plans established pursuant to the Self-Employed Individuals Retirement Act of 1962 (26 U.S.C. 401), Roth Individual Retirement Accounts and Coverdell Education Savings Accounts established pursuant to the Taxpayer Relief Act of 1997 (26 U.S.C. 408A and 530 respectively), Health Savings Accounts established pursuant to the Medicare Prescription Drug Improvement, and Modernization Act of 2003 (26 U.S.C. 223), and other similar accounts without having to obtain prior approval to provide trust services. The commission specifically requests comment regarding whether this specific exception is appropriate in light of the accompanying fiduciary risk, and whether other exemptions should be considered.

Only a bank that does not currently provide trust services and has not provided trust services over a year would be required to file a notice with the commissioner, as specified by proposed §3.23(b). Proposed §3.23(c) itemizes the information to be required in a notice submission for approval to provide trust services.

Finally, proposed §3.23(d) would permit a bank that already has trust powers specified in its certificate of formation to begin providing trust services on the 31st day after the notice is received by the banking commissioner unless the commissioner specifies an earlier or later date, subject to any conditions imposed by the banking commissioner and any required approval of the bank's primary federal regulator. The banking commissioner would have authority to extend the decision period if the bank's notice raises issues that require additional information or additional time for analysis but, if the period is extended, the bank would be required to wait for the commissioner's written approval to begin providing trust services. A bank that is amending its certificate of formation to authorize trust powers would also be required to wait for the commissioner's written approval.

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

Mr. Bacon also has determined that, for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule is enhanced consistency and quality of trust services offered by state banks that previously have not provided such services. In addition, the rule will support the safety and soundness of state bank operations by ensuring that fiduciary risk is appropriately managed and controlled.

For each year of the first five years that the rule will be in effect, there will be no economic costs to persons required to comply with the rule as proposed. Any additional costs incurred by a state bank seeking to provide trust services are required to ensure the safety and soundness of bank operations, regardless of whether or not the rule as proposed is adopted.

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

To be considered, comments on the proposed new rule must be submitted no later than 5:00 p.m. on April 6, 2015. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The new rule is proposed under Finance Code §31.003(a)(2), which authorizes the commission to adopt rules necessary or reasonable to preserve or protect the safety and soundness of state banks. As required by Finance Code §31.003(b), the commission has considered the need to (1) promote a stable banking environment; (2) provide the public with convenient, safe, and competitive banking services; (3) preserve and promote the competitive position of state banks with regard to national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system; and (4) allow for economic development in this state.

Finance Code §32.001 and §32.101 are affected by the proposed new section.

§3.23. Exercise of Trust Powers.

(a) As used in this section, "trust services" mean services provided to the public as a fiduciary for hire or compensation, to hold or administer accounts established through a customer relationship involving the transfer of title to funds or property to the bank, includ-

ing a fiduciary relationship in which the bank acts as trustee, executor, administrator, guardian, custodian, conservator, receiver, registrar of stocks and bonds, mortgage or indenture trustee, escrow agent, transfer agent, or investment advisor, except that "trust services" do not include customer services in which:

(1) the bank's duties as trustee or custodian are essentially custodial or ministerial in nature; and

(2) the bank may only invest customer funds:

(A) in its own time or savings deposits; or

(B) in other assets at the explicit direction of the customer, provided the bank does not exercise any investment discretion or provide any investment advice with respect to such other assets.

(b) A state bank that does not currently provide trust services and has not provided trust services for a period in excess of one year may not begin offering or providing trust services except upon compliance with this section and with any requirements imposed by the bank's primary federal regulator.

(c) A state bank described in subsection (b) of this section that intends to offer and provide trust services shall submit a notice to the banking commissioner describing the proposed trust services and the anticipated date for initiation of such services. In addition, the bank must submit:

(1) the bank's proposed business plan for providing trust services, including the policies and procedures the bank will employ to manage its fiduciary risk;

(2) sufficient biographical information on proposed trust management personnel to enable the banking commissioner to assess their qualifications;

(3) a description of the locations where the bank proposes to offer trust services and the manner in which such services will be provided at each location, including the extent to which fiduciary authority is proposed to be delegated to personnel at such location;

(4) if the bank's certificate of formation does not authorize the bank to exercise the trust powers necessary to provide the proposed trust services, an application for amendment of its certificate of formation pursuant to Finance Code, §32.101, accompanied by the filing fee required by §15.2 of this title (relating to Filing Fees and Cost Deposits); and

(5) a copy of any filings made with the bank's primary federal regulator providing notice or seeking approval to offer trust services.

(d) Provided the bank's certificate of formation authorizes the bank to exercise trust powers sufficient to provide the proposed trust services, and subject to any conditions imposed by the banking commissioner and any required approval of the bank's primary federal regulator, the bank may begin offering and providing trust services on the 31st day after the date the banking commissioner receives the bank's notice under subsection (c) of this section unless the banking commissioner specifies an earlier or later date. The banking commissioner may extend the 30-day period on a determination that the bank's notice raises issues that require additional information or additional time for analysis. If the period is extended, or if the bank is amending its certificate of formation to authorize trust powers, the bank may not offer or provide trust services until it has received written approval of the banking commissioner.

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

Filed with the Office of the Secretary of State on February 20, 2015.

TRD-201500545

Catherine Reyer

General Counsel

Finance Commission of Texas

Earliest possible date of adoption: April 5, 2015

For further information, please call: (512) 475-1301



SUBCHAPTER E. BANKING HOUSE AND OTHER FACILITIES

7 TAC §3.91

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes amendments to §3.91, concerning Loan Production Offices. The amended rule is proposed to clarify the requirements necessary for a foreign bank to establish a loan production office in this state.

The proposed amendments to §3.91 clarify and provide the requirements foreign banks must fulfill to establish and maintain loan production offices in Texas. Under proposed revised §3.91(g), a foreign bank must comply with Finance Code Chapters 201 and 204 in order to establish a loan production office (LPO) in this state, unless the LPO is being established as an office of a Federal branch regulated by the Office of the Comptroller of the Currency. In that case, then under proposed §3.91(h), the Federal branch must instead comply with the provisions of the Finance Code, Chapter 201, Subchapter B and notify the Banking Commissioner (the commissioner) of the proposed establishment of the office and provide the information as required by proposed §3.91(h)(1).

An LPO of a Federal branch that seeks to relocate or close an established LPO in this state must notify the commissioner in writing of the planned relocation or closure of the LPO per proposed §3.91(h)(2). Under proposed §3.91(h)(3), no examinations or fees will be required under Finance Code, Chapter 204, for an LPO of a Federal branch.

Dan Frasier, Director, Corporate Activities Division, Texas Department of Banking, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rule.

Mr. Frasier also has determined that, for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule is more clarity regarding how to establish an LPO in this state. The simplified and clarified requirements may lead to the establishment of additional LPOs in Texas, which will create additional competition to meet the loan needs of Texas citizens.

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

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

To be considered, comments on the proposed amended rule must be submitted no later than 5:00 p.m. on April 6, 2015. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The amended rule is proposed under Finance Code, §201.003, which provides that the commission may adopt rules to accomplish the purposes of Title 3, Subtitle G, of the Texas Finance Code, including rules to implement and clarify this subtitle, which includes Chapter 204 governing Foreign Banks.

Finance Code, §204.003 and §204.201 are affected by the proposed amended section.

§3.91. *Loan Production Offices.*

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

(g) Foreign bank LPOs [corporations]. A banking corporation or association incorporated or organized under the laws of a jurisdiction other than the United States or a state, territory, commonwealth, or other political subdivision of the United States, must comply with the provisions of the Finance Code, Chapter 201, Subchapter B (§§201.101 *et seq.*), and Finance Code, Chapter 204, to establish an LPO, unless the LPO will be an office of a Federal branch regulated by the Office of the Comptroller of the Currency (OCC). In the latter case, the Federal branch must comply with subsection (h) of this section [to establish a representative office in this state].

(h) Federal branch LPO. A Federal branch may establish an LPO in this state by complying with the provisions of Finance Code, Chapter 201, Subchapter B (§§201.101 *et seq.*), and by notifying the banking commissioner of its intent to establish the LPO.

(1) The Federal branch shall notify the banking commissioner in writing on or before the 31st day preceding the date of establishment of the LPO, except that the banking commissioner may waive or shorten the period if the banking commissioner does not have a significant supervisory or regulatory concern regarding the Federal branch or its planned LPO. The written notification must include the physical address of the planned LPO, a list of the specific activities to be performed at the planned LPO, the anticipated date for the establishment of the LPO, documentation evidencing the approval of the OCC, and such other information as the banking commissioner may reasonably request.

(2) To relocate or close an existing LPO in this state, a Federal branch shall notify the banking commissioner in writing on or before the tenth day following the date of the relocation or closure of the LPO. The written notification must include the physical address of the LPO, the date for its closure or relocation, documentation evidencing the approval or acquiescence of the OCC, and such other information as the banking commissioner may reasonably request.

(3) An LPO of a Federal branch established in compliance with this section is not subject to examination by the banking commissioner under, or subject to any fee imposed by, Finance Code, Chapter 204.

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

Filed with the Office of the Secretary of State on February 20, 2015.

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Catherine Reyer
General Counsel
Finance Commission of Texas
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For further information, please call: (512) 475-1301



PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 33. MONEY SERVICES BUSINESSES

7 TAC §33.52

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes new §33.52, concerning how to provide information to customers about authorized delegates. The new rule is proposed to implement Texas Finance Code §151.403(a)(6), which requires the authorized delegate of a money transmission license holder to display a notice indicating that the person is an authorized delegate.

Texas Finance Code §151.403 circumscribes the conduct to which an authorized delegate of a money transmission license holder must conform. Under §151.403(a)(6), an authorized delegate "must prominently display on the form prescribed by the commissioner a notice that indicates that the person is an authorized delegate of the license holder." The department has generally allowed authorized delegates to include this notice as part of the consumer complaint notice required by 7 TAC §33.51, without mandating a specific form. This approach has proved successful. In order to satisfy the requirement of Finance Code §151.403(a)(6) that the commissioner prescribe a form for this notice, and to clarify for regulated entities that the delegate notice may be provided with the complaint notice, new §33.52 is proposed.

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

Ms. Newberg also has determined that, for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule is greater clarity for how regulated entities can comply with the requirements of Finance Code Chapter 151.

For each year of the first five years that the rule will be in effect, there will be no economic costs to persons required to comply with the rule as proposed. The authorized delegates subject to the rule are already required to provide the notice, and the rule adds no new requirements.

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

To be considered, comments on the proposed new rule must be submitted no later than 5:00 p.m. on April 6, 2015. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard,

Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The new rule is proposed under Finance Code, §151.102, which authorizes the commission to adopt rules to administer and enforce Chapter 151, and under Finance Code §151.403(a)(6) which requires the commissioner to specify the form of the required notice.

Finance Code, §151.403 is affected by the proposed new section.

§33.52. Authorized Delegate Notice.

(a) In addition to the complaint notice required by §33.51(f) of this title, an authorized delegate of a money transmission license holder appointed in accordance with Texas Finance Code §151.402 must provide each of its Texas customers with notice that:

(1) is written in the language in which the transaction is conducted;

(2) states the name of the license holder; and

(3) indicates that the person is an authorized delegate conducting money transmission on behalf of the license holder.

(b) The notice must be provided by one or more of the methods described in §33.51(e)(3) of this title. If the authorized delegate maintains a website that advertises the money transmission services it provides on behalf of the license holder, the notice must also be prominently displayed on this website.

(c) The authorized delegate notice may be provided on a single form with the complaint notice required under §33.51 of this title.

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

Filed with the Office of the Secretary of State on February 20, 2015.

TRD-201500542

Catherine Reyer

General Counsel

Texas Department of Banking

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For further information, please call: (512) 475-1301



TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 10. UNIFORM MULTIFAMILY RULES

SUBCHAPTER F. COMPLIANCE MONITORING

10 TAC §§10.607, 10.622, 10.623

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to 10 TAC §§10.607, 10.622, and 10.623. The amendments affect §10.607(d)(2) concerning Reporting Requirements; §10.622(d) concerning Special Rules Regarding Rents and Rent Limit Violations; and

§10.623 concerning Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period. The purpose for each amendment is described as follows.

10 TAC §10.607(d)(2), Reporting Requirements. During the most recent rulemaking process, this paragraph was amended. The Department made a change to the originally proposed amendment based on public comment; however, the rule that was adopted did not accurately incorporate the public comment. The purpose of this amendment is to correct the paragraph to align with the public comment as intended and provide that certain reports are due on the 15th business day of the month. Please note, only subsection (d)(2) is being amended, but the rule in its entirety is published for context.

10 TAC §10.622(d), Special Rules Regarding Rents and Rent Limit Violations. The purpose of this amendment is to align subsection (d) with subsection (b) of this section. In subsection (b) the rule clearly requires owners of Housing Tax Credit Developments to refund, not credit, excess rent collected. This proposed amendment provides the same specificity for owners of non-Housing Tax Credit Rental Developments. Please note, only subsection (d) is being amended, but the rule in its entirety is published for context.

10 TAC §10.623, Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period. The current rule provides that once a Development completes the 15-year Federal Compliance Period, low-income occupancy requirements can be met Development-wide instead of building by building as required during the Compliance Period. The intent was to allow for flexibility; however, the impact of employee occupied units was not taken into consideration. Under certain scenarios, a Development that was meeting the low-income occupancy requirements during the Compliance Period could be found in noncompliance with the application of the rule as currently written. This was not intended and the purpose of this amendment is to eliminate this possibility. The additional amendments are to better align the rule with other provisions found in Subchapter F of this chapter concerning Compliance Monitoring.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the amendments are in effect, enforcing or administering the amendments does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the amendments will be improved compliance with federal and state requirements and consistency with other provisions of the rule. There will not be any additional new economic cost to individuals required to comply with the amendments.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will not be any additional economic effect on small or micro-businesses based on these amendments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held March 6, 2015, through April 6, 2015, to receive input on the proposed amendments. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Stephanie Naquin, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or by fax to (512) 475-3359. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. APRIL 6, 2015.

STATUTORY AUTHORITY. The amendments are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed amendments affect no other code, article, or statute.

§10.607. Reporting Requirements.

(a) The Department requires reports to be submitted electronically through the Department's web-based Compliance Monitoring and Tracking System (CMTS) and in the format prescribed by the Department. The Electronic Compliance Reporting Filing Agreement and the Owner's Designation of Administrator of Accounts forms must be filed for:

(1) 9% Housing Tax Credit Developments - no later than the date prescribed in §10.402(g) of this chapter relating to the 10 Percent Test;

(2) 4% Housing Tax Credit Developments - no later than the date prescribed in §10.402(e) of this chapter (relating to Post Bond Closing Documentation Requirements); or

(3) For all other multifamily developments, no later than September 1st of the year following the award.

(b) Each Development is required to submit an Annual Owner's Compliance Report (AOCR). Depending on the Development, some or all of the Report must be submitted. The first AOCR is due the second year following the award in accordance with the deadlines set out in subsection (e) of this section. *Example 607(1):* A Development was allocated Housing Tax Credits in July 2011. The first report is due April 30, 2013, even if the Development has not yet commenced leasing activities.

(c) The AOCR is comprised of four parts:

(1) Part A "Owner's Certification of Program Compliance." All Owners must annually certify compliance with applicable program requirements. The AOCR Part A shall include answers to all questions required by the U. S. Department of the Treasury to be addressed, including those required by Treasury Regulation 1.42-5(b)(1) or the applicable program rules. HTC Developments during their Compliance Period will also be required to provide the contact information of the syndicator in the Annual Owner's Compliance Report;

(2) Part B "Unit Status Report." All Developments must annually report and certify the information related to individual household income, rent, certification dates and other necessary data to ensure compliance with applicable program regulations. In addition, Owners are required to report on the race and ethnicity, family composition, age, use of rental assistance, disability status, and monthly rental payments of individuals and families applying for and receiving assistance or if the household elects not to disclose the information, such election;

(3) Part C "Housing for Persons with Disabilities." The Department is required to establish a system that requires Owners of state or federally assisted housing Developments with 20 or more housing Units to report information regarding housing Units designed for persons with disabilities. The certified answers to the questions on Part C satisfy this requirement; and,

(4) Part D "Form 8703." Tax exempt bond properties must file Form 8703 each calendar year of the qualified project period. The form is due to the IRS by March 31 after the close of the calendar year for which the certification is made. The Department requires Tax Exempt Bond Development Owners to submit a copy of the filed Form 8703 for the preceding calendar year.

(d) The owner is required to report certain financial information to the Department electronically through CMTS. If supplemental information is required it must be uploaded to the Development's CMTS account.

(1) Developments funded with Exchange or TCAP must also submit a "Quarterly Owner's Financial Certification" and these must be submitted in January, April, July, and October on the 10th day of the month.

(2) Developments funded with Exchange or TCAP must also submit a "Quarterly Owner's Financial Certification" and these must be submitted in January, April, July, and October on the 15th business day of the month.

(e) Parts A, B, C, and D of the Annual Owner's Compliance Report and the Annual Owner's Financial Certification must be provided to the Department no later than April 30th of each year, reporting data current as of December 31st of the previous year (the reporting year).

(f) Periodic Unit Status Reports. All Developments must submit a Quarterly Unit Status report to the Department through the Compliance Monitoring and Tracking System. Quarterly reports are due in January, April, July, and October on the 10th day of the month. The report must report occupancy as of the last day of the previous month for the reporting period. For example, the report due October 10th should report occupancy as of September 30th of the preceding month. The first quarterly report is due on the first quarterly reporting date after leasing activity commences.

(g) Owners are encouraged to continuously maintain current resident data in the Department's CMTS. Under certain circumstances, such as in the event of a natural disaster, the Department may alter the reporting schedule and require all Developments to provide current occupancy data through CMTS.

(h) All rental Developments funded or administered by the Department will be required to submit a current Unit Status Report prior to an onsite monitoring visit.

(i) Exchange developments must submit IRS Form(s) 8609 with lines 7, 8(b), 9(b), 10(a), 10(c), and 10(d) completed thirty (30) days after the Department issues the executed form(s). If an Owner elects to group buildings together into one or more multiple building projects, the owner must attach a statement identifying the buildings in the project. An owner may request to change the election made on line 8(b) only once during the Compliance Period. The request will be treated as non-material amendment, subject to the fee described in §10.901 of this chapter (relating to Fee Schedule) and the process described in §10.405 of this chapter (relating to Amendments and Extensions).

§10.622. *Special Rules Regarding Rents and Rent Limit Violations.*

(a) Rent or Utility Allowance Violations of the maximum allowable limit for the HTC program. Under the HTC program, the amount of rent paid by the household plus an allowance for utilities, plus any mandatory fees, cannot exceed the maximum applicable limit (as determined by the minimum set-aside elected by the Owner) published by the Department. If it is determined that a HTC Development, during the Compliance Period, collected rent in excess of the rent limit established by the minimum set-aside, the owner must correct the violation by reducing the rent charged. The Department will report the violation as corrected on January 1st of the year following the violation. The refunding of overcharged rent does not avoid the disallowance of the credit by the IRS.

(b) Rent or Utility Allowance Violations of additional rent restrictions under the HTC program. If Owners agreed to additional rent

and occupancy restrictions, the Department will monitor to confirm compliance. If noncompliance is discovered, the Department will require the Owner to restore compliance by refunding (not a credit to amounts owed the Development) any excess rents to a sufficient number of households to meet the set aside. *Example 622(1):* A 100 unit development is required to lease 10 units to households at the 30 percent income and rent limits. The utility allowance is miscalculated resulting in overcharged rents. Fifteen households have an income under 30 percent. The owner must refund 10 of these households.

(c) Rent Violations of the maximum allowable limit due to application fees under the HTC program. Under the HTC program, Owners may not charge tenants any overhead costs as part of the application fee. Owners must only charge the actual cost for application fees as supported by invoices from the screening company the Owner uses.

(1) The amount of time Development staff spends checking an applicant's income, credit history, and landlord references may be included in the Development's application fee. Development Owners may add up to \$5.50 per Unit for their other out of pocket costs for processing an application without providing documentation. *Example 622(2):* A Development's out of pocket cost for processing an application is \$17.00 per adult. The property may charge \$22.50 for the first adult and \$17.00 for each additional adult. Should an Owner desire to include a higher amount to cover staff time, prior approval is required and wage information and a time study must be supplied to the Department.

(2) Documentation of Development costs for application processing or screening fees must be made available during onsite visits or upon request. The Department will review application fee documentation during onsite monitoring visits. If the Development pays a flat monthly fee to a third party for credit or criminal background checks, Owners must calculate the appropriate fee to be charged applicants by using the total number of applications processed, not just approved applications. If the Department determines from a review of the documentation that the Owner has overcharged residents an application fee, the noncompliance will be reported to the IRS on Forms 8823 under the category "gross rent(s) exceeds tax credit limits." The noncompliance will be corrected on January 1st of the next year.

(3) Owners are not required to refund the overcharged fee amount. To correct the issue, owners must reduce the application fee for prospective applicants. Once the fee is reduced for prospective applicants, the Department will report the affected units back in compliance on January 1st of the year after they were overcharged the application fee.

(d) Rent or Utility Allowance Violations on Non-HTC Developments, HTC development after the Compliance Period, and foreclosed HTC properties for three years after foreclosure. If it is determined that the Development collected rent in excess of the allowable limit, the Department will require the Owner to refund (not a credit to amounts owed the Development) to the affected residents the amount of rent that was overcharged.

(e) Trust Account to be established. If the Owner is required to refund rent under subsection (b) or (d) of this section and cannot locate the resident, the excess monies must be deposited into a trust account for the tenant. The account must remain open for the shorter of a four (4) year period, or until all funds are claimed. If funds are not claimed after the four year period, the unclaimed funds must be remitted to the Texas Comptroller of Public Accounts Unclaimed Property Holder Reporting Section to be disbursed as required by Texas unclaimed property statutes.

(f) Rent Adjustments for HOME Developments:

(1) 100 percent HOME assisted Developments. If a household's income exceeds 80 percent at recertification, the owner must charge rent equal to 30 percent of the household's adjusted income;

(2) HOME Developments with any Market Rate units. If a household's income exceeds 80 percent at recertification, the owner must charge rent equal to the lesser of 30 percent of the household's adjusted income or the comparable Market rent; and

(3) HOME Developments layered with other Department affordable housing programs. If a household's income exceeds 80 percent at recertification, the owner must charge rent equal to the lesser of 30 percent of the household's adjusted income or the rent allowable under the other program.

(g) Special conditions for NSP Developments. To determine if a Unit is rent restricted, the amount of rent paid by the household, plus an allowance for utilities, plus any rental assistance payment must be less than the applicable limit.

(h) Employee Occupied Units (HTC and HTF Developments). IRS Revenue Rulings 92-61 and 2004-82 provide guidance on employee occupied units. Provided that all the criteria in the Rulings are met, if the Owner of the Development does not charge the employee for rent, the unit will be removed from the numerator and denominator of the applicable fraction to determine compliance. If the owner charges the employee any amount of rent, the Department will evaluate the eligibility of the household. If the household's income exceeds the maximum allowable limit or there is any other noncompliance, the event will be cited and reported to the IRS on IRS Form 8823 as appropriate. Owners must ensure that additional rent and occupancy restrictions are maintained even if units are leased to employees.

§10.623. Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period.

(a) HTC properties allocated credit in 1990 and after are required under §42(h)(6) of the Code to record a LURA restricting the Development for at least thirty (30) years. Various sections of the Code specify monitoring rules State Housing Finance Agencies must implement during the Compliance Period.

(b) After the Compliance Period, the Department will continue to monitor HTC Developments using the criteria detailed in paragraphs (1) - (13) of this subsection:

(1) The frequency and depth of monitoring household income, rents, social services and other requirements of the LURA will be determined based on risk. Factors will include changes in ownership or management, compliance history, timeliness of reports and timeliness of responses to Department request;

(2) At least once every three (3) years the property will be physically inspected including the exterior of the Development, all building systems and 10 percent of Low-Income Units. No less than five but no more than thirty-five of the Development's HTC Low-Income Units will be physically inspected to determine compliance with HUD's Uniform Physical Condition Standards;

(3) Each Development shall submit an annual report in the format prescribed by the Department;

(4) Reports to the Department must be submitted electronically as required in §10.607 of this chapter (relating to Reporting Requirements);

(5) Compliance monitoring fees will continue to be submitted to the Department annually in the amount stated in the LURA;

(6) All HTC households must be income qualified upon initial occupancy of any Low-Income Unit. Proper verifications of in-

come are required, and the Department's Income Certification form must be completed unless the Development participates in the Rural Rental Housing Program or a project based HUD program, in which case the other program's certification form will be accepted;

(7) Rents will remain restricted for all HTC Low-Income Units. After the Compliance Period, utilities paid to the Owner ~~are [can be] accounted for in the utility allowance[-]. The tenant paid portion of the rent plus the applicable utility allowance must not exceed the applicable limit. Any excess rent collected must be refunded];~~

(8) All additional income and rent restrictions defined in the LURA remain in effect;

(9) For Additional Use Restrictions, defined in the LURA (such as supportive services, nonprofit participation, elderly, etc), refer to the Development's LURA to determine if compliance is required after the completion of the Compliance Period ~~or if the Compliance Period was specifically extended beyond 15 years. Example 623(1): The Development's LURA states "The Compliance Period shall be a period of 20 consecutive taxable years and the Extended Use Period shall be a period of 35 consecutive taxable years, each commencing with the first year of the Credit Period." In this scenario, the Additional Use Restrictions prescribed in the LURA are applicable through year 20, but since the Federal Compliance Period has ended, the Development will be monitored under this section;~~

(10) The Owner shall not terminate the lease or evict low-income residents for other than good cause;

(11) The total number of required HTC Low-Income Units ~~can [must]~~ be maintained Development wide;

(A) For 100% low-income Building(s) - the Owner will not be considered out of compliance with occupancy requirements if a unit is occupied by an employee, provided that the unit is Exempt under IRS Revenue Rulings 92-61 and 2004-82. Otherwise, the unit must be treated as a Low-Income Unit.

(B) For mixed income Developments - Employees that occupy a HTC Low-Income Unit must qualify and meet all requirements to be designated as a low income household.

(C) Owners must ensure that additional rent and occupancy restrictions are maintained without regard for Exempt unit.

(12) Owners may not charge fees for amenities that were included in the Development's Eligible Basis; and

(13) Once a calendar year, Owners must continue to collect and maintain current data on each household that includes the number of household members, age, ethnicity, race, disability status, rental amounts and rental assistance (if any). This information can be collected on the Department's Annual Eligibility Certification form or the Income Certification form or HUD Income Certification form or USDA Income Certification form. [Owners must continue to collect and report data in accordance §10.612(b)(1) of this chapter (relating to Tenant File Requirements).]

(c) After the first fifteen (15) years of the Extended Use Period, certain requirements will not be monitored as detailed in paragraphs (1) - ~~(5) [(6)]~~ of this subsection.

(1) The student restrictions found in §42(i)(3)(D) of the Code. An income qualified household consisting entirely of full time students may occupy a Low-Income Unit. If a Development markets to students or leases more than 15 percent of the total number of units to student households, the property will be found in noncompliance unless the LURA is amended through the Material Amendments procedures found in §10.405 of this chapter (relating to Amendments).

{(2) The building's applicable fraction found in the Development's Cost Certification and/or the LURA. Low-Income occupancy requirements will be monitored Development wide, not building by building;}

(2) [(3)] All households, regardless of income level or 8609 elections, will be allowed to transfer between buildings within the Development;

(3) [(4)] The Department will not monitor the Development's application fee after the Compliance Period is over; [and]

(4) [(5)] Mixed income Developments are not required to conduct annual income recertifications. However, Owners must continue to collect and report data in accordance with subsection (b)(13) of this section; and [§10.613 of this chapter (relating to Lease Requirements);]

(5) [(6)] The Department will not monitor whether rent is being charged for an employee occupied unit.

(d) While the requirements of the LURA may provide additional requirements, right and remedies to the Department or the tenants, the Department will monitor post year fifteen (15) in accordance with this section as amended.

(e) Unless specifically noted in this section, all requirements of this chapter, the LURA and §42 of the Code remain in effect for the Extended Use Period. These Post-Year Fifteen (15) Monitoring Rules apply only to the HTC Developments administered by the Department. Participation in other programs administered by the Department may require additional monitoring to ensure compliance with the requirements of those programs.

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

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Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-2330



TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 161. GENERAL PROVISIONS

22 TAC §161.3

The Texas Medical Board (Board) proposes an amendment to §161.3, concerning Organization and Structure.

The amendment clarifies the process for reporting potential grounds for removal of a board member and adds a potential ground that must be reported related to both disciplinary and non-disciplinary action against a physician board member under subsection (f). The amendment also adds new subsection (g), providing that the validity of an action of the board is not affected by the fact that the action is taken when a ground for removal of a board member exists. Remaining amendments represent general cleanup of the rule.

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing this proposal will be to ensure both the public and the regulated profession that the board members meet the highest standards of professionalism and integrity and have not been subject to Board disciplinary or non-disciplinary action. An additional public benefit anticipated will be to ensure that the process for making reports of potential grounds for board member removal are clear.

Mr. Freshour has also determined that for the first five-year period the section is in effect there will be no fiscal implication to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018 or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure. The amendments are also proposed under the authority of Texas Occupations Code Annotated, §152.006.

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

§161.3. Organization and Structure.

(a) The board shall consist of 19 members appointed by the Governor with the advice and consent of the Senate.

(b) The board shall consist of the following composition: nine physicians with a degree of doctor of medicine (M.D.) and licensed to practice medicine in Texas for at least three years; three physicians with a degree of doctor of osteopathic medicine (D.O.) and licensed to practice medicine in Texas for three years; and seven members who represent the public.

(c) The terms of board members shall be six years in length and shall be staggered so that the terms of not more than one-third of the members shall expire in a single calendar year. Upon completion of a term, a member shall continue to serve until a successor has been appointed. A member may be reappointed to successive terms as permitted by law at the discretion of the Governor.

(d) Each board member shall meet and maintain the qualifications for board membership as set by law.

(e) A board member should strive to achieve and project the highest standards of professional conduct. Such standards include:

(1) A board member should not accept or solicit any benefit that might influence the board member in the discharge of official duties or that the board member knows or should know is being offered with the intent to influence official conduct.

(2) A board member should not accept employment or engage in any business or professional activity that would involve the disclosure of confidential information acquired by reason of the official position as a board member.

(3) A board member should not accept employment that could impair independence of judgment in the performance of the board member's official duties.

(4) A board member should not make personal investments that could reasonably be expected to create a conflict between the board member's private interest and the public interest.

(5) A board member should not intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the board member's official powers or performed the board member's official duties in favor of another.

(6) A board member should be fair and impartial in the conduct of the business of the board. A board member should project such fairness and impartiality in any meeting or hearing.

(7) A board member should be diligent in preparing for meetings and hearings.

(8) A board member should avoid conflicts of interests. If a conflict of interest should unintentionally occur, the board member should recuse himself or herself from participating in any matter before the board that could be affected by the conflict.

(9) A board member should avoid the use of the board member's official position to imply professional superiority or competence.

(10) A board member should avoid the use of the board member's official position as an endorsement in any health care related matter.

(11) Board member appearances.

(A) A board member should not appear as an expert witness in any case in which a licensee of the board is a party and in which the expert testimony relates to standard of care or professional malpractice. A board member may provide expert testimony if the board member has been called primarily as a fact witness. A board member should disclose any potential employment as an expert witness to and seek prior approval of the board's executive committee. When providing expert testimony in any matter, a board member should state that any opinion of the board member is not on behalf of or approved by the board and should not claim special expertise because of board membership.

(B) A board member shall not appear in any administrative proceeding involving the exercise of the board's licensing or disciplinary authority before the board or the State Office of Administrative Hearings in which proceeding a licensee of the board is a party. A board member may furnish a written statement for a licensee to use in such administrative proceedings only if:

(i) the board member sought and received in writing the prior approval of the board's executive committee;

(ii) the written statement of the board member used by a licensee presents only facts that the board member has personally witnessed and does not offer or provide any statement as to character of the licensee or characterization of the events witnessed; and

(iii) the written statement plainly states that the recitation of the witnessed facts is not an indication of in any manner that the board concurs with, agrees to, or supports those facts or the board member in his or her action.

(12) A board member should refrain from making any statement that implies that the board member is speaking for the board if the board has not voted on an issue or unless the board has given the board member such authority.

(f) Report of Potential Grounds for Removal. If the executive director of the board has knowledge that a potential ground for removal exists, the executive director shall notify the president of the board of that ground. The president of the board shall then notify the governor's

office and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the president of the board, the executive director shall notify the next highest ranking officer of the board, who shall then notify the governor and the attorney general that a potential ground for removal exists. Grounds for potential removal that must be reported are as follows:

(1) [(f)] A [One ground for removal from the board occurs if a] board member is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board. [If the executive director of the board has knowledge that a potential ground for removal exists due to a member's failure to attend an adequate number of regularly scheduled board meetings, the executive director shall notify the president of the board of the ground. The president of the board shall then notify the governor's office that a potential ground for removal exists.] A board member shall be considered to have been absent from a regularly scheduled board meeting if the member fails to attend at least a portion of either a full board session or a portion of a regularly scheduled committee meeting to which a member is assigned during such board meeting. Any dispute or controversy as to whether or not an absence has occurred shall be submitted to the full board for resolution by a majority vote after giving the purported absentee the opportunity to present information concerning the alleged absences and after allowing discussion by other members of the board.

(2) A board member who is subject of a non-disciplinary or disciplinary action, including but not limited to any remedial plan, board order, or administrative penalty, regardless of the nature of the violation(s) that led to the remedial plan, board order, or administrative penalty.

(g) The validity of an action of the board is not affected by the fact that the action is taken when a ground for potential removal of a board member exists.

(h) [(g)] Each member of the board shall receive per diem as provided by law for each day that the member engages in the business of the board and will be reimbursed for travel expenses incurred in accordance with the state of Texas and board's travel policies.

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

Filed with the Office of the Secretary of State on February 23, 2015.

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Mari Robinson, J.D.

Executive Director

Texas Medical Board

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For further information, please call: (512) 305-7016



CHAPTER 163. LICENSURE

22 TAC §§163.1, 163.7, 163.11

The Texas Medical Board (Board) proposes amendments to §163.1, concerning Definitions; §163.7, concerning Ten Year Rule; and §163.11, concerning Active Practice of Medicine.

The amendments to §163.1 add a new paragraph (9)(D) relating to "one-year training program and a new paragraph (13)(D) relating to "two-year training program" to include a domestic training

program that subsequently received accreditation by the Accreditation Council for Graduate Medical Education, American Osteopathic Association or Royal College of Physicians, and was accepted by a specialty board that is a member of the American Board of Medical Specialties, the Bureau of Osteopathic Specialists, or the Royal College of Physicians for Board certification purposes. Additional amendments to paragraph (13)(B) relating to "two-year training program" add clarifying language that describes the board approved program under which a Faculty Temporary License was issued and cites to corresponding rules relating to Faculty Temporary Licenses.

The amendments to §163.7 revise paragraph (1) to add the Royal College of Physicians and Surgeons of Canada to the list of specialty boards from which an applicant can present evidence of current competence and updates the list of requirements to clarify that proof of initial certification through passage of all exams or subsequent passage of a monitored written, specialty certification examination will meet the Ten Year Rule.

The amendments to §163.11 revise subsection (c)(1)(A) to clarify that proof of initial certification through passage of all exams or subsequent passage of a monitored written, specialty certification examination will meet requirements for purposes of active practice. In addition, the Royal College of Physicians and Surgeons of Canada is added to the list of acceptable specialty boards.

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the proposal will be to provide applicants a mechanism to meet training requirements when such training was not accredited by the ACGME or AOA, at the time of such training, but was subsequently accredited by the ACGME or AOA, and was accepted by one of the accepted specialty boards for board certification purposes. An additional benefit will be to avoid confusion and to have rules that are clear and accurate and to expand the potential pool of qualified applicants by adding the Royal College of Physicians and Surgeons of Canada and to clarify the standards required of those applicants to satisfy the ten year rule and to align the Active Practice rule with other relevant rules in order to have consistency and parity among the rules.

Mr. Freshour has also determined that for the first five-year period the sections are in effect there will be no fiscal implication to state or local government as a result of enforcing the sections as proposed. There will be no effect to individuals required to comply with the rules as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018 or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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

§163.1. Definitions.

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

(1) Acceptable approved medical school--A medical school or college located in the United States or Canada that has been accredited by the Liaison Committee on Medical Education or the American Osteopathic Association Bureau of Professional Education.

(2) Acceptable unapproved medical school--A school or college located outside the United States or Canada that:

(A) is substantially equivalent to a Texas medical school; and

(B) has not been disapproved by a state physician licensing or education agency.

(i) If another state's physician licensing agency or education agency has determined that a medical degree conferred by a medical school is not the equivalent of an accredited or authorized degree or has otherwise disapproved the medical school, the board will not recognize the medical school as an acceptable unapproved medical school, unless:

(I) the Texas Higher Education Coordinating Board has determined that a degree conferred by the medical school is the equivalent of an accredited or authorized degree through the review process described by §61.3021, Texas Education Code; or

(II) the applicant can provide evidence that the determination or disapproval by the other state was unfounded.

(ii) A fraudulent or substandard medical school operating outside the United States or Canada shall not be an acceptable unapproved medical school. "Fraudulent or substandard," as used in this subsection, has the meaning assigned by §61.302, Texas Education Code. If the Texas Higher Education Coordinating Board certifies that it has determined, through the review process described by §61.3021, Texas Education Code, that a medical degree conferred by a medical school is not the equivalent of an accredited or authorized degree, the board will not recognize the medical school as an acceptable unapproved medical school.

(iii) This section shall not affect any person who received a license from the board prior to a determination by the Texas Higher Education Coordinating Board through the review process described by §31.3021, Texas Education Code.

(3) Affiliated hospital--Affiliation status of a hospital with a medical school as defined by the Liaison Committee on Medical Education and documented by the medical school in its application for accreditation.

(4) Applicant--One who files an application as defined in this section.

(5) Application--An application is all documents and information necessary to complete an applicant's request for licensure including the following:

(A) forms furnished by the board, completed by the applicant:

(i) all forms and addenda requiring a written response must be typed, printed in ink, or completed online;

(ii) photographs must meet United States Government passport standards;

(B) all documents required under §163.5 of this title (relating to Licensure Documentation); and

(C) the required fee.

(6) Board--Texas Medical Board.

(7) Continuous--12 month periods of uninterrupted postgraduate training with no absences greater than 21 days, unless such absences have been approved by the training program.

(8) Good professional character--An applicant for licensure must not be in violation of or have committed any act described in the Medical Practice Act, Texas Occupations Code Annotated, §§164.051 - 164.053.

(9) One-year training program--A program that is one continuous year of postgraduate training approved by the board that is:

(A) accepted for certification by a specialty board that is a member of the American Board of Medical Specialties or the Bureau of Osteopathic Specialists; or

(B) accredited by one of the following:

(i) the Accreditation Council for Graduate Medical Education, or its predecessor;

(ii) the American Osteopathic Association;

(iii) the Committee on Accreditation of Preregistration Physician Training Programs, Federation of Provincial Medical Licensing Authorities of Canada;

(iv) the Royal College of Physicians and Surgeons of Canada; or

(v) the College of Family Physicians of Canada; or

(C) a postresidency program, usually called a fellowship, performed in the U.S. or Canada and approved by the board for additional training in a medical specialty or subspecialty; or

(D) a U.S. or Canadian graduate medical education training program, that subsequently received accreditation by the Accreditation Council for Graduate Medical Education (ACGME), American Osteopathic Association (AOA) or Royal College of Physicians, and was accepted by a specialty board that is a member of the American Board of Medical Specialties, the Bureau of Osteopathic Specialists, or the Royal College of Physicians for Board certification purposes.

(10) Sixty (60) semester hours of college courses--60 semester hours of college courses other than in medical school that are acceptable to The University of Texas at Austin for credit on a bachelor of arts degree or a bachelor of science degree; the entire primary, secondary, and premedical education required in the country of medical school graduation, if the medical school is located outside the United States or Canada; or substantially equivalent courses as determined by the board.

(11) Substantially equivalent to a Texas medical school--A medical school or college shall be considered to be substantially equivalent to a Texas medical school under the following conditions:

(A) An acceptable approved medical school shall be considered to be substantially equivalent to a Texas medical school. A medical school operating within the United States or Canada that is not an acceptable approved medical school shall not be considered to be substantially equivalent to a Texas medical school.

(B) A medical school operating outside the United States or Canada may be determined to be substantially equivalent to a Texas medical school if the medical school is designed to select and educate medical students and provide students with the opportunity to acquire a sound basic medical education through training in basic

sciences and clinical sciences. The school should provide information about the school's program of advancement of knowledge through research; the school's development of programs of graduate medical education to produce practitioners, teachers, and researchers; and, the school's program to provide opportunity for postgraduate and continuing medical education, for the board's consideration. In addition, to be determined substantially equivalent to a Texas medical school, the medical school's characteristics shall include, but not be limited to, the following:

(i) The facilities for basic sciences and clinical training (i.e., laboratories, hospitals, library, etc.) shall be adequate to ensure opportunity for proper education.

(ii) The admissions standards shall ensure that the medical school has a pool of applicants sufficiently large and possessing United States national level qualifications to fill its entering class. Medical schools must select students who possess the intelligence, integrity, and personal and emotional characteristics necessary for them to become effective physicians.

(iii) The curriculum shall meet the requirements for an unapproved medical school as set forth in the "Curriculum Definitions for Course Areas Prescribed by the Texas Higher Education Coordinating Board for Determining Eligibility of International Medical Graduates for Texas Medical Licensure," as adopted by the Texas Higher Education Coordinating Board, as follows:

(I) The basic sciences curriculum shall include the contemporary content of those expanded disciplines that have been traditionally titled gross anatomy, biochemistry, biology, physiology, microbiology, immunology, pathology, pharmacology, and neuroscience.

(II) The fundamental clinical subjects, which shall be offered in the form of required patient-related clerkships, are internal medicine, obstetrics and gynecology, pediatrics, psychiatry, family practice, and surgery.

(iv) The curriculum shall be of at least 130 weeks in duration.

(v) There must be integrated institutional responsibility for the overall design, management and evaluation of a coherent and coordinated curriculum.

(vi) For schools that have geographically separated programs, the principal academic officer of each geographically remote site must coordinate the curriculum with an academic officer of the medical school responsible for organizing the educational program.

(12) Texas Medical Jurisprudence Examination (JP exam)--The ethics examination developed by the board.

(13) Two-year training program--Two continuous years of postgraduate training in the United States or Canada, progressive in nature that is:

(A) accredited by one of the following:

(i) the Accreditation Council for Graduate Medical Education;

(ii) the American Osteopathic Association;

(iii) the Committee on Accreditation of Preregistration Physician Training Programs, Federation of Provincial Medical Licensing Authorities of Canada;

(iv) the Royal College of Physicians and Surgeons of Canada;

(v) the College of Family Physicians of Canada; or
(vi) all programs approved by the board after August 25, 1984; or

(B) a board-approved program for which a Faculty Temporary License was issued for a full time teaching faculty position as defined under §172.8(i) of this title (relating to Faculty Temporary License); [Permit was issued; or]

(C) a postresidency program, usually called a fellowship, for additional training in a medical specialty or subspecialty, approved by the board; or[-]

(D) a U.S. or Canadian graduate medical education training program, that subsequently received accreditation by the ACGME, AOA or Royal College of Physicians, and was accepted by a specialty board that is a member of the American Board of Medical Specialties, the Bureau of Osteopathic Specialists, or the Royal College of Physicians for Board certification purposes.

(14) License Holder--A person holding a license, permit, or certificate issued by the Board, including a "licensee" as defined by Board rules.

(15) Military service member--A person who is currently serving in the armed forces of the United States, in a reserve component of the armed forces of the United States, including the National Guard, or in the state military service of any state.

(16) Military spouse--A person who is married to a military service member who is currently on active duty.

(17) Military veteran--A person who served on active duty in the army, navy, air force, marine corps, or coast guard of the United States, or in an auxiliary service of one of those branches of the armed forces and who was discharged or released from active duty under conditions other than dishonorable.

§163.7. Ten Year Rule.

An applicant who has not passed an examination listed in §163.6(a) of this title (relating to Examinations Accepted for Licensure) for licensure within the ten-year period prior to the filing date of the application must:

(1) present evidence from a member board of the American Board of Medical Specialties, [or] Bureau of Osteopathic Specialists, [or by the] American Board of Oral and Maxillofacial Surgery, or by the Royal College of Physicians and Surgeons of Canada of passage, within the ten years prior to date of applying for licensure, a monitored:

(A) initial [specialty] certification examination (passage of all parts required);

(B) subsequent specialty written [maintenance of] certification examination.[- or]

~~[(C) continuous certification examination.]~~

(2) obtain through extraordinary circumstances, unique training equal to the training required for specialty certification as determined by a committee of the board and approved by the board, including but not limited to the practice of medicine for at least six months under a faculty temporary license or six months in a training program approved by the board within twelve months prior to the application for licensure; or

(3) pass the Special Purpose Examination (SPEX) within the preceding ten years. The applicant must score 75 or better within three attempts.

§163.11. Active Practice of Medicine.

(a) All applicants for licensure shall provide sufficient documentation to the board that the applicant has, on a full-time basis, actively diagnosed or treated persons or has been on the active teaching faculty of an acceptable approved medical school, within either of the last two years preceding receipt of an Application for licensure.

(b) The term "full-time basis," for purposes of this section, shall mean at least 20 hours per week for 40 weeks duration during a given year.

(c) Applicants who do not meet the requirements of subsections (a) and (b) of this section may, in the discretion of the executive director or board, be eligible for:

(1) an unrestricted license if the applicant [demonstrates]:

(A) presents evidence from [current certification by] a member board of the American Board of Medical Specialties, Bureau of Osteopathic Specialists, [or the] American Board of Oral and Maxillofacial Surgery, or by the Royal College of Physicians and Surgeons of Canada of passage, [obtained by passing] within the two years prior to date of applying for licensure, of a monitored:

(i) initial specialty certification examination (passage of all parts required) [specialty certification examination];

(ii) subsequent specialty written certification examination. [maintenance of certification examination;]

~~[(iii) continuous certification examination.]~~

(B) completion of remedial education, including but not limited to a mini-residency, fellowship or other structured program; or

(C) such other remedial measures that, in the discretion of the board, are necessary to ensure protection of the public and minimal competency of the applicant to safely practice medicine.

(2) a license subject to one of more of the following conditions:

(A) limitation of the practice of the applicant to specified activities of medicine and/or exclusion of specified activities of medicine; or

(B) such other restrictive or remedial conditions that, in the discretion of the executive director or board, are necessary to ensure protection of the public and establish minimal competency of the applicant to safely practice medicine.

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

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Executive Director

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For further information, please call: (512) 305-7016



CHAPTER 165. MEDICAL RECORDS

22 TAC §165.1

The Texas Medical Board (Board) proposes amendments to §165.1, concerning Medical Records.

The amendments to §165.1 add language to subsection (a), contents of Medical Record, to provide that such requirements pertain to all medical records regardless of the medium in which they are made and maintained. Subsection (a)(7) is amended to correct a grammatical error by inserting the word "include." The rule is further amended to include new subsection (a)(8) which clarifies the requirement that a physician document any communication made or received by the physician regarding a patient, about which the physician makes a medical decision. The rule is also amended to include new subsection (a)(10) which further clarifies the requirement that electronic patient medical records contain only accurate pre-populated data, described as data that is based on actual findings from assessments, evaluations, examinations, or diagnostic results.

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing §165.1(a) will be that medical records consistently contain required elements, regardless of method used to make such records. The public benefit anticipated as a result of enforcing §165.1(a)(7) will be to have rules that are clear and grammatically correct. The public benefit anticipated as a result of enforcing §165.1(a)(8) will be to ensure that a patient's medical record contains complete and accurate information relating to physician-patient communications. The public benefit anticipated as a result of enforcing §165.1(a)(10) will be to ensure that electronic patient medical records contain accurate information and data.

Mr. Freshour has also determined that for the first five-year period the section is in effect there will be no fiscal implication to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018 or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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

§165.1. Medical Records.

(a) Contents of Medical Record. Regardless of the medium utilized, each [Each] licensed physician of the board shall maintain an adequate medical record for each patient that is complete, contemporaneous and legible. For purposes of this section, an "adequate medical record" should meet the following standards:

- (1) The documentation of each patient encounter should include:
 - (A) reason for the encounter and relevant history, physical examination findings and prior diagnostic test results;
 - (B) an assessment, clinical impression, or diagnosis;
 - (C) plan for care (including discharge plan if appropriate); and

(D) the date and legible identity of the observer.

(2) Past and present diagnoses should be accessible to the treating and/or consulting physician.

(3) The rationale for and results of diagnostic and other ancillary services should be included in the medical record.

(4) The patient's progress, including response to treatment, change in diagnosis, and patient's non-compliance should be documented.

(5) Relevant risk factors should be identified.

(6) The written plan for care should include when appropriate:

(A) treatments and medications (prescriptions and samples) specifying amount, frequency, number of refills, and dosage;

(B) any referrals and consultations;

(C) patient/family education; and,

(D) specific instructions for follow up.

(7) Include any written consents for treatment or surgery requested from the patient/family by the physician.

(8) Include a summary or documentation memorializing communications transmitted or received by the physician about which a medical decision is made regarding the patient.

(9) [~~8~~] Billing codes, including CPT and ICD-9-CM codes, reported on health insurance claim forms or billing statements should be supported by the documentation in the medical record.

(10) All non-biographical populated fields, contained in a patient's electronic medical record, must contain accurate data and information pertaining to the patient based on actual findings, assessments, evaluations, diagnostics or assessments as documented by the physician.

(11) [~~9~~] Any amendment, supplementation, change, or correction in a medical record not made contemporaneously with the act or observation shall be noted by indicating the time and date of the amendment, supplementation, change, or correction, and clearly indicating that there has been an amendment, supplementation, change, or correction.

(12) [~~10~~] Salient records received from another physician or health care provider involved in the care or treatment of the patient shall be maintained as part of the patient's medical records.

(13) [~~11~~] The board acknowledges that the nature and amount of physician work and documentation varies by type of services, place of service and the patient's status. Paragraphs (1) - (12) [~~11~~] of this subsection may be modified to account for these variable circumstances in providing medical care.

(b) (No change.)

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

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CHAPTER 172. TEMPORARY AND LIMITED LICENSES

SUBCHAPTER B. TEMPORARY LICENSES

22 TAC §172.8

The Texas Medical Board (Board) proposes an amendment to §172.8, concerning Faculty Temporary License.

The amendment corrects a typographical error in subsection (a)(3) by changing the reference to the Medical Practice Act to the correct section number. The rule is further amended in subsection (a)(4)(A) and (B) to correct a grammatical error relating to the incorrect use of an article preceding a noun.

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the proposal will be to have accurate and grammatically correct rules containing correct citations to other laws.

Mr. Freshour has also determined that for the first five-year period the section is in effect there will be no fiscal implication to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018 or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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

§172.8. Faculty Temporary License.

(a) The board may issue a faculty temporary license to practice medicine to a physician in accordance with §155.104, Texas Occupations Code. "Physician," as used in that statute and in this section, is interpreted to mean a person who holds an M.D., D.O., or equivalent degree and who is licensed to practice medicine in another state or a Canadian province or has completed at least two years of postgraduate residency, but does not hold a license to practice medicine in this state.

(1) Each medical license held in any state, territory, or Canadian province must be free of any restrictions, disciplinary order or probation.

(2) The physician must have passed the Texas medical jurisprudence examination within three attempts, with a score of 75 or better, unless the board allows an additional attempt based upon a showing of good cause. An applicant who is unable to pass the JP exam within three attempts must appear before the licensure

committee of the board to address the applicant's inability to pass the examination and to re-evaluate the applicant's eligibility for licensure. It is at the discretion of the committee to allow an applicant additional attempts to take the JP exam.

(3) "Institution," as used in this section, shall mean any of the following:

(A) a school of medicine in this state accredited by the Liaison Committee on Medical Education or the American Osteopathic Association Bureau of Professional Education;

(B) The University of Texas Health Science Center at Tyler;

(C) The University of Texas M.D. Anderson Cancer Center;

(D) an institutional sponsor of a graduate medical education program accredited by the Accreditation Council for Graduate Medical Education or;

(E) a nonprofit health corporation certified under §162.001 [§162.00], Medical Practice Act, and affiliated with a program as described in subparagraph (D) of this paragraph.

(4) The physician must:

(A) hold a salaried faculty position equivalent to an [a] assistant professor-level or higher as determined by the institution working full-time in one of the institutions; or

(B) hold a faculty position equivalent to an [a] assistant professor-level or higher as determined by the institution, work at least part-time in one of the institutions; and

(i) be on active duty in the United States military; and

(ii) be engaged in a practice under the faculty temporary license that will fulfill a critical need of the citizens of Texas.

(5) The physician must sign an oath on a form provided by the board swearing that the physician has read and is familiar with board rules and the Medical Practice Act; will abide by board rules and the Medical Practice Act in activities permitted by this section; and will subject themselves to the disciplinary procedures of the board.

(b) - (k) (No change.)

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

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CHAPTER 174. TELEMEDICINE

22 TAC §§174.2, 174.5, 174.6, 174.8

The Texas Medical Board (Board) proposes amendments to §§174.2, 174.5, 174.6, and 174.8, concerning Telemedicine.

The amendment to §174.2, relating to Definitions, adds language to the definition for "Established Medical Site" under paragraph (2), clarifying that a defined physician-patient relationship is defined by §190.8(1)(L) of this title (relating to Violation Guidelines). Amendments are also made to the rule stating that a patient's private home is not considered to be an established medical site, by striking the phrase "except when the care provided to the patient is limited to mental health" and adding language stating "except as provided in §174.6(d) of this title (relating to Telemedicine Medical Services Provided at an Established Medical Site)." Further amendments provide that an established medical site includes all Mental Health and Mental Retardation Centers (MHMRs) and Community Centers, as defined by Health and Safety Code, Chapter 534, where the patient is a resident and the medical services provided to the patient are limited to mental health services. The amendments further add new paragraph (11), adding a definition for "group or institutional setting," which includes residential treatment facilities, halfway houses, jails, juvenile detention centers, prisons, nursing homes, group homes, rehabilitation centers, and assisted living facilities.

The amendments to §174.5, relating to Notice to Patients, strikes the phrase "and counsel" in subsection (c).

The amendments to §174.6, relating to Telemedicine Medical Services Provided at an Established Medical Site, revise language to be consistent with other parts of this rule and §190.8(1)(L) by substituting the term "defined" for "proper" before the phrase "physician-patient relationship." Subsection (c) is amended to clarify that patient site presenters are not required at established medical sites when mental health services are being provided, unless there are "behavioral emergencies." The term "behavioral emergencies" is defined to provide clarity as to what constitutes a behavioral emergency. Subsection (d)(1) is added to expand which types of patient residential locations may be considered established medical sites, and the limits of services that may be provided at these locations. The amendment allows a patient's private home, which includes a group or institutional setting where the patient is a resident, to be considered an established medical site, if the medical services being provided in this setting are limited to mental health services. Subsection (d)(2) is added, setting forth the requirements that must be met in order for medical services, other than mental health services, to be provided at the patient's home, including a group or institutional setting where the patient is a resident. They include requirements that: a patient site presenter be present; a defined physician-patient relationship be established; and the patient site presenter have sufficient communication and remote medical diagnostic technology to allow the physician to carry out an adequate physical examination while seeing and hearing the patient in real time, with all such examinations being held to the same standard of acceptable medical practices as those in traditional clinical settings. The amendments further clarify that the use of an online questionnaire or questions and answers exchanged through email, electronic text, chat, telephonic evaluation or consultation with a patient do not meet the requirements to establish a defined physician-patient relationship.

The amendment to §174.8, relating to Evaluation and Treatment of the Patient, changes language to be consistent with other parts of this rule stating that medical treatment and diagnosis via telemedicine is held to the same standards for acceptable medical practices as those in traditional in-person clinical settings. In subsection (a)(2), language is amended related to establish-

ing a diagnosis through the use of acceptable medical practices. Such practices include establishing a defined physician-patient relationship, including documenting and performing a patient history, mental status examination, and physical examination, all of which must be performed as part of a face-to-face or in-person evaluation as defined in §174.2(3) and (4) of this title (relating to Definitions). This amendment further restates the exception to the requirement for a patient-site presenter that applies to mental health services, except in cases of behavioral emergencies, and the need for appropriate diagnostic and laboratory testing to establish diagnoses, as well as identify underlying conditions or contra-indications, to treatment recommended or provided.

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcing the proposal will be to provide Texans increased access to telemedicine services while insuring that the services are being provided at a proper location and that a defined physician-patient relationship is being created when medical services are being provided. The additional public benefit is to expand access to needed mental health services along with providing clear guidance as to the scope of such mental health services that may be provided without conducting a face-to-face visit or in-person evaluation.

Mr. Freshour has also determined that for the first five-year period the sections are in effect, there will be no fiscal implication to state or local government as a result of enforcing the sections as proposed. There will be no effect to individuals required to comply with the rules as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018 or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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

§174.2. Definitions.

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

(1) Distant site provider--A physician or a physician assistant or advanced practice nurse who is supervised by and has delegated authority from a licensed Texas physician, who uses telemedicine to provide health care services to a patient in Texas. Distant site providers must be licensed in Texas.

(2) Established medical site--A location where a patient will present to seek medical care where there is a patient site presenter and sufficient technology and medical equipment to allow for an adequate physical evaluation, as appropriate for the patient's presenting complaint. It requires establishing a defined physician-patient relationship, as defined by §190.8(1)(L) of this title (relating to Violation Guidelines). A patient's private home is not considered an established medical site, except as provided in §174.6(d) of this title (relating to Telemedicine Medical Services Provided at an Established Medical Site). An established medical site includes all Mental Health and Mental Retardation Centers (MHMRs), and Community Centers, as defined

by Health and Safety Code, Chapter 534, where the patient is a resident and the medical services provided are limited to mental health services.

(3) - (10) (No change.)

(11) Group or Institutional Setting--These include residential treatment facilities, halfway houses, jails, juvenile detention centers, prisons, nursing homes, group homes, rehabilitation centers, and assisted living facilities.

§174.5. *Notice to Patients.*

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

(c) Necessity of In-Person Evaluation. When, for whatever reason, the telemedicine modality in use for a particular patient encounter is unable to provide all pertinent clinical information that a health care provider exercising ordinary skill and care would deem reasonably necessary for the practice of medicine at an acceptable level of safety and quality in the context of that particular medical encounter, then the distant site provider must make this known to the patient prior to the conclusion of the live telemedicine encounter and advise [and counsel] the patient, prior to the conclusion of the live telemedicine encounter, regarding the need for the patient to obtain an additional in-person medical evaluation reasonably able to meet the patient's needs.

(d) (No change.)

§174.6. *Telemedicine Medical Services Provided at an Established Medical Site.*

(a) Telemedicine medical services provided at an established medical site may be used for all patient visits, including initial evaluations to establish a defined [proper] physician-patient relationship between a distant site provider and a patient.

(b) For new conditions, a patient site presenter must be reasonably available onsite at the established medical site to assist with the provision of care. It is at the discretion of the distant site physician if a patient site presenter is necessary for follow-up evaluation or treatment of a previously diagnosed condition.

(1) A distant site provider may delegate tasks and activities to a patient site presenter during a patient encounter.

(2) A distant site provider delegating tasks to a patient site presenter shall ensure that the patient site presenter to whom delegation is made is properly supervised.

(c) If the only services provided are related to mental health services, a patient site presenter is not required, except in cases of behavioral emergencies, as defined by 25 TAC §415.253 (relating to Definitions). [where the patient may be a danger to themselves or others.]

(d) For the purposes of this chapter the following shall be considered to be an established medical site:

(1) The patient's home, including a group or institutional setting where the patient is a resident, if the medical services being provided in this setting are limited to mental health services;

(2) For medical services, other than mental health services, to be provided at the patient's home, including a group or institutional setting where the patient is a resident, the following requirements must be met:

(A) a patient site presenter is present;

(B) there is a defined physician-patient relationship as set out in §174.8 of this title (relating to Evaluation and Treatment of the Patient);

(C) the patient site presenter has sufficient communication and remote medical diagnostic technology to allow the physician to carry out an adequate physical examination appropriate for the patient's presenting condition while seeing and hearing the patient in real time. All such examinations will be held to the same standard of acceptable medical practices as those in traditional clinical settings; and

(D) An online questionnaire or questions and answers exchanged through email, electronic text, or chat or telephonic evaluation of or consultation with a patient do not meet the requirements for subparagraph (C) of this paragraph.

§174.8. *Evaluation and Treatment of the Patient.*

(a) Evaluation of the Patient. Distant site providers who utilize telemedicine medical services must ensure that a defined [proper] physician-patient relationship is established which at a minimum includes:

(1) establishing that the person requesting the treatment is in fact who the person [whom he/she] claims to be;

(2) establishing a diagnosis through the use of acceptable medical practices, including documenting and performing patient history, mental status examination, and physical examination that must be performed as part of a face-to-face or in-person evaluation as defined in §174.2(3) and (4) of this title (relating to Definitions). The requirement for a face-to-face or in-person evaluation does not apply to mental health services, except in cases of behavioral emergencies, as defined by 25 TAC §415.253 (relating to Definitions) [physical examination (unless not warranted by the patient's mental condition)], and appropriate diagnostic and laboratory testing to establish diagnoses, as well as identify underlying conditions or contra-indications, or both, to treatment recommended or provided;

(3) discussing with the patient the diagnosis and the evidence for it, the risks and benefits of various treatment options; and

(4) ensuring the availability of the distant site provider or coverage of the patient for appropriate follow-up care.

(b) Treatment. Treatment and consultation recommendations made in an online setting, including issuing a prescription via electronic means, will be held to the same standards of acceptable medical practices [appropriate practice] as those in traditional in-person clinical settings.

(c) An online questionnaire or questions and answers exchanged through email, electronic text, or chat or telephonic evaluation of or consultation with a patient are inadequate to establish a defined physician-patient relationship. [An online or telephonic evaluation solely by questionnaire does not constitute an acceptable standard of care.]

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

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CHAPTER 176. HEALTH CARE LIABILITY LAWSUITS AND SETTLEMENTS

22 TAC §176.1

The Texas Medical Board (Board) proposes an amendment to §176.1, concerning Definitions.

The amendment to §176.1 corrects the spelling of the term "x-ray" located in paragraph (6).

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing this proposal will be to have correctly spelled medical terms contained in the Board rules.

Mr. Freshour has also determined that for the first five-year period the section is in effect there will be no fiscal implication to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018 or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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

§176.1. Definitions.

For the purposes of this chapter:

(1) "Health care liability claim" means a cause of action against a licensee for treatment, lack of treatment, or other claimed departure from accepted standards of medical or health care or safety that proximately results in injury to or death of a patient, whether the patient's claim or cause of action sounds in tort or contract. This definition is consistent with Texas Civil Practices and Remedies Code §74.001(a)(13) (relating to medical liability).

(2) "Complaint" means a petition or complaint filed as a lawsuit on a health care liability claim.

(3) "Settlement" means:

(A) a payment made by or on behalf of a licensee on a health care liability claim on which no lawsuit has been filed;

(B) an agreement to settle a lawsuit on a health care liability claim for a specified amount to be paid by or on behalf of a licensee;

(C) a dismissal or non-suit of a lawsuit on a health care liability claim with no payment; and

(D) a final judgment in a lawsuit on a health care liability claim entered by the trial court.

(4) "Insurer" means any entity that provides health care liability coverage to a licensee and is not limited to insurance companies that are regulated by the Texas Department of Insurance.

(5) "Nonadmitted insurer" means an insurance company that is not admitted to do business in Texas, does business on a sur-

plus lines basis, and is not otherwise subject to regulation by the Texas Department of Insurance.

(6) "Physician" means any person licensed to practice medicine in this state, including interns, residents, physicians acting as supervising physicians, on-call physicians, consulting physicians, and physicians who administer, read, or interpret laboratory tests, x-rays [~~ex-rays~~], and other diagnostic studies.

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

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CHAPTER 190. DISCIPLINARY GUIDELINES SUBCHAPTER B. VIOLATION GUIDELINES

22 TAC §190.8

The Texas Medical Board (Board) proposes amendments to §190.8, concerning Violation Guidelines.

The amendment adds language to paragraph (1)(L) in order to clarify a "defined physician-patient relationship" and the requirements for establishing same before prescribing drugs. The amendment clearly defines the minimum elements that are required to establish a defined physician-patient relationship. The elements include a physical examination that must be performed either by a face-to-face visit or an in-person evaluation, as those terms are defined under existing board rules.

The amendments to §190.8 further add new paragraph (8), relating to Texas Occupations Code §164.051(a)(4)(C)'s authority for the board to take disciplinary action based upon a licensee's inability to practice medicine with reasonable skill and safety to patients because of excessive use of drugs, narcotics, chemicals, or another substance. The amendment adds language stating that for the purposes of §164.051(a)(4)(C) of the Texas Occupations Code, any use of a substance listed in Schedule I, as established by the Commissioner of the Department of State Health Services under Chapter 481 of the Texas Health and Safety Code, or as established under the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. §801 et seq.), constitutes excessive use of such substance.

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the proposal will be to insure patient safety by setting forth specific parameters and requirements for a practitioner to establish a defined physician-patient relationship prior to prescribing drugs. The amendment to §190.8(1)(L) will protect patient health and safety by requiring the use of acceptable medical practices that comply with state law and medical board rules, while still providing ample access to medical treatment. An additional public benefit anticipated will be to clarify requirements for prescribing

drugs that are consistent with the board's existing rules related to acceptable medical practices, requirements for medical record documentation of patient evaluations and examinations, and requirements for the practice of telemedicine. The public benefit will also provide clarity as to the definition of excessive use of narcotics, chemicals, or another substance by a physician that would impair a physician's ability to practice with reasonable skill and safety to patients and that would authorize the board to take disciplinary action based upon such impairment, thereby better enabling the board to protect the public.

Mr. Freshour has also determined that for the first five-year period the section is in effect there will be no fiscal implication to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018 or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure. The amendments are also proposed under the authority of the Texas Occupations Code Annotated, §164.051(a)(4)(C).

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

§190.8. Violation Guidelines.

When substantiated by credible evidence, the following acts, practices, and conduct are considered to be violations of the Act. The following shall not be considered an exhaustive or exclusive listing.

(1) Practice Inconsistent with Public Health and Welfare. Failure to practice in an acceptable professional manner consistent with public health and welfare within the meaning of the Act includes, but is not limited to:

(A) - (K) (No change.)

(L) prescription of any dangerous drug or controlled substance without first establishing a defined physician-patient [proper professional] relationship [with the patient].

(i) A defined physician-patient [proper] relationship must include, at a minimum [requires]:

(I) establishing that the person requesting the medication is in fact who the person claims to be;

(II) establishing a diagnosis through the use of acceptable medical practices, which includes documenting and performing: [such as]

(-a-) patient history;₂;

(-b-) mental status examination;₂;

(-c-) physical examination that must be performed by either a face-to-face visit or in-person evaluation as defined in §174.2(3) and (4) of this title (relating to Definitions). The requirement for a face-to-face or in-person evaluation does not apply to mental health services, except in cases of behavioral emergencies, as defined by 25 TAC §415.253 (relating to Definitions); and

(-d-) appropriate diagnostic and laboratory testing.

(III) An online questionnaire or questions and answers exchanged through email, electronic text, or chat or telephonic evaluation of or consultation with a patient are inadequate to establish a defined physician-patient relationship [by questionnaire is inadequate];

(IV) [~~III~~] discussing with the patient the diagnosis and the evidence for it, the risks and benefits of various treatment options; and

(V) [~~IV~~] ensuring the availability of the licensee or coverage of the patient for appropriate follow-up care.

(ii) - (iii) (No change.)

(M) - (O) (No change.)

(2) - (7) (No change.)

(8) For purposes of §164.051(a)(4)(C) of the Texas Occupations Code, any use of a substance listed in Schedule I, as established by the Commissioner of the Department of State Health Services under Chapter 481, or as established under the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. §801 et seq.) constitutes excessive use of such substance.

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

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Mari Robinson, J.D.

Executive Director

Texas Medical Board

Earliest possible date of adoption: April 5, 2015

For further information, please call: (512) 305-7016



TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 206. MANAGEMENT

The Texas Department of Motor Vehicles (department) proposes amendments to Chapter 206, Subchapter A, §206.1, Texas Motor Vehicle Board; §206.2, Texas Department of Motor Vehicles; Subchapter B, §206.22, Public Access to Board Meetings; §206.23, Public Hearings; Subchapter E, §206.92, Definitions; §206.93, Advisory Committee Operations and Procedures; Subchapter F, §206.111, Restrictions on Assignment of Vehicles; and Subchapter G, §206.131, Digital Certificates. The department also proposes the repeals of Subchapter B, §206.21, Board Meetings; Subchapter D, §§206.61 - 206.73, relating to Procedures in Contested Cases; and Subchapter E, §206.91, Scope and Purpose.

EXPLANATION OF PROPOSED AMENDMENTS AND REPEALS

The department conducted a review of its rules in compliance with Government Code, §2001.039. Notice of the department's plan to review was published in the April 18, 2014, issue of the *Texas Register* (39 TexReg 3261).

As a result of the review, the department has determined that the reasons for initially adopting rules under Subchapters A - C and E - G continue to exist, but that amendments are necessary. The department has further determined that the reasons for initially adopting Subchapter B, §206.21; Subchapter D, §§206.61 - 206.73; and Subchapter E, §206.91, no longer exist and should be repealed.

An amendment to §206.1 is proposed to revise the title of that section to "Delegation." Additional amendments are proposed to delete language contained in statute that already describes the board's duties and makeup. The only language remaining allows the board to delegate responsibilities consistent with other law.

Amendments to §206.2 are proposed to describe the roles of the executive director and department staff, consistent with statute.

The department proposes the repeal of §206.21 as it simply repeats statutory language.

Amendments to §206.22 are proposed to remove language that repeats statute, and other cleanup revisions for consistency with other agency rule sections.

Minor amendments to §206.23 are proposed for cleanup, consistent with other department rules.

Subchapter D contains procedural rules for contested cases. These rules are not used for any contested matters currently under the department's jurisdiction and therefore, §§206.61 - 206.73 are proposed for repeal.

The department proposes the repeal of §206.91 as the section contains unnecessary verbiage that describes the purpose of the rules under Subchapter E.

Nonsubstantive amendments to §206.92 are proposed for consistency with other department rules and to clarify language.

Amendments to §206.93 are proposed to clean up language and to remove unnecessary statutory repetition.

Amendments to §206.111 are proposed to make the language consistent with statutes of the Texas Comptroller of Public Accounts regarding fleet vehicle management.

Amendments to §206.131 are proposed for consistency with other department rules and to comply with corresponding rules of the Texas Department of Information Resources.

FISCAL NOTE

Linda M. Flores, Chief Financial Officer, has determined that for each of the first five years the amendments and repealed sections as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments and repealed sections.

Ms. Flores has also certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments and repealed sections.

PUBLIC BENEFIT AND COST

Ms. Flores has also determined that for each year of the first five years the amendments and repealed sections are in effect, the public benefit anticipated as a result of enforcing or amendments and repealed sections will be simplification, clarification, and streamlining of the department's rules. There are no anticipated economic costs for persons required to comply with the

amendments and repealed sections as proposed. There will be no adverse economic effect on small businesses or individuals.

TAKINGS IMPACT ASSESSMENT

The department has determined that this proposal affects no private real property interests 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 so does not constitute a taking or require a takings impact assessment under the Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments and repealed sections may be submitted to David D. Duncan, General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731 or by email to rules@txdmv.gov. The deadline for receipt of comments is 5:00 p.m. on April 6, 2015.

SUBCHAPTER A. ORGANIZATION AND RESPONSIBILITIES

43 TAC §206.1, §206.2

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.

CROSS REFERENCE TO STATUTE

Government Code, Chapter 1001

§206.1. *Delegation [Texas Motor Vehicle Board].*

The Board of the Texas Department of Motor Vehicles (board) may, consistent with applicable law, delegate any agency function to the executive director. The executive director may further delegate such functions to one or more employees of the department.

~~{(a) Board.}~~

~~{(1) The Department of Motor Vehicles is governed by the Texas Motor Vehicle Board, consisting of nine board members appointed by the governor with the advice and consent of the senate.}~~

~~{(2) The governor designates one board member as the chair of the board.}~~

~~{(3) The board shall elect one of its members vice chair of the board.}~~

~~{(b) Board responsibilities.}~~

~~{(1) The Texas Motor Vehicle Board, with the advice and recommendations of the executive director, will:}~~

~~{(A) develop and implement policies that define the respective responsibilities of the executive director and department staff;}~~

~~{(B) provide for the regulation of the distribution and sale of motor vehicles and for the protection of consumers who purchase motor vehicles;}~~

~~{(C) provide for the registration and regulation of salvage vehicle dealers;}~~

~~{(D) provide for the registration and titling of vehicles operating on the public roads;}~~

~~{(E) provide for the regulation and registration of motor carriers;}~~

~~{(F) provide a bonding process for motor transportation brokers;}~~

~~{(G) adopt rules for the operation of the department;}~~

~~{(H) establish policy necessary to carry out the duties and functions of the department and the board;}~~

~~{(I) organize the department into divisions to accomplish the department's functions and duties assigned to it;}~~

~~{(J) approve recommendations for changes to the department's organizational structure submitted by the chair of the board under subsection (d)(1)(F) of this section;}~~

~~{(K) consider ways in which the department's operations may be improved and periodically report to the legislature concerning potential statutory changes that would improve the operation of the department; and}~~

~~{(L) perform other duties required by law.}~~

~~{(2) The board may, consistent with applicable law, delegate one or more of the functions listed under paragraph (1)(B) - (L) of this subsection to the executive director. The executive director may further delegate such functions to one or more employees of the department.}~~

~~{(c) Attendance at meetings. Each board member shall attend at least half of the regularly scheduled meetings that the board member is eligible to attend during a calendar year unless the absence is excused by majority vote of the board.}~~

~~{(d) Chair of the board.}~~

~~{(1) The chair of the board, with the advice and recommendations of the executive director and the executive director's staff, shall:}~~

~~{(A) preside over board meetings, make rulings on motions and points of order, and determine the order of business;}~~

~~{(B) represent the department as liaison with the governor;}~~

~~{(C) report quarterly to the governor on the state of affairs at the department;}~~

~~{(D) report suggestions to the board made by the governor concerning departmental operations;}~~

~~{(E) report to the governor on efforts to maximize the efficiency of departmental operations through the use of private enterprise;}~~

~~{(F) periodically review the department's organizational structure and submit recommendations for structural changes to the governor, the board, and the Legislative Budget Board;}~~

~~{(G) designate one or more employees of the department as a civil rights section of the department and receive regular reports from the section on the department's efforts to comply with civil rights legislation and administrative rules;}~~

~~{(H) create subcommittees, appoint board members to subcommittees, and receive the reports of subcommittees to the board as a whole;}~~

~~{(I) appoint a board member to act in the chair's absence;}~~

~~{(J) serve as the departmental liaison with the governor and the Office of State-Federal Relations to maximize federal funding;}~~

~~{(K) on behalf of the board, report to the governor, the lieutenant governor, the speaker of the house of representatives, and the presiding officer of relevant legislative committees on legislative recommendations adopted by the board and relating to the operation of the department;}~~

~~{(L) oversee the preparation of an agenda for each board meeting and ensure that a copy is provided to each board member at least seven days before a regular meeting; and}~~

~~{(M) perform any other duties assigned by law.}~~

~~{(2) The chair may, consistent with applicable law, delegate one or more of the functions listed under paragraph (1) of this subsection to the executive director, who in turn may further delegate such functions to one or more employees of the department.}~~

§206.2. Texas Department of Motor Vehicles.

(a) Executive director.

~~{(1) The board will appoint an executive director for the department. The executive director, as the chief executive officer of the department, is authorized to administer the day-to-day operations of the department. The executive director may hold that position until removed by the board.}~~

~~(1) [(2)] To assist in discharging the duties and responsibilities of the executive director, the executive director may organize, appoint, and retain [such] administrative staff [as he or she deems appropriate].~~

~~(2) [(3)] The executive director shall:~~

~~(A) serve the board in an advisory capacity, without vote;~~

~~(B) submit to the board quarterly, annually, and biennially, [to the board] detailed reports of the progress of the divisions[,] and a detailed statement of expenditures;~~

~~(C) hire, promote, assign, reassign [re-assign], transfer, and, consistent with applicable law and policy, terminate staff necessary to accomplish the roles and missions of the department; and~~

~~{(D) notify the chair of grounds for removal of a board member if the executive director knows that a potential ground for removal exists, or, if the potential ground for removal relates to the chair, notify another board member; and}~~

~~(D) [(E)] perform other responsibilities as required by law or assigned by the board.~~

~~(3) [(4)] The executive director may, consistent with applicable law, delegate one or more of the functions listed under paragraph (2)(B) - (D) [(3)(B) - (E)] of this subsection to the staff of the department.~~

(b) Department staff. The staff of the department [Texas Motor Vehicle Board], under the direction of the executive director, is responsible for:

(1) implementing the policies and programs of the board by:

(A) formulating and applying operating procedures; and

(B) prescribing such other operating policies and procedures as may be consistent with and in furtherance of the roles and missions of the department;

(2) providing the chair and board members administrative support necessary to perform their respective duties and responsibilities;

(3) preparing an agenda under the direction of the chair and providing notice of board meetings and hearings as required by the Texas Open Meetings Act, Government Code, Chapter 551; and

(4) performing all other duties as prescribed by law or as assigned by the board.

(c) Divisions. ~~The [Consistent with board direction provided under §206.1(b)(1)(G) and (H) of this subchapter (relating to Texas Motor Vehicle Board), the] executive director shall organize the department into [administrative, motor carrier, motor vehicle, and vehicle titles and registration] divisions reflecting the various functions and duties assigned to the department.~~

~~[(d) Automobile Burglary and Theft Prevention Authority. The Automobile Burglary and Theft Prevention Authority (authority) is an independent authority within the department. The authority undertakes a variety of programs designed to reduce thefts of motor vehicles.]~~

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

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David D. Duncan

General Counsel

Texas Department of Motor Vehicles

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For further information, please call: (512) 465-5665



SUBCHAPTER B. PUBLIC MEETINGS AND HEARINGS

43 TAC §206.21

(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, 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.

CROSS REFERENCE TO STATUTE

Government Code, Chapter 1001

§206.21. *Board Meetings.*

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

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David D. Duncan

General Counsel

Texas Department of Motor Vehicles

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For further information, please call: (512) 465-5665



43 TAC §206.22, §206.23

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.

CROSS REFERENCE TO STATUTE

Government Code, Chapter 1001

§206.22. *Public Access to Board Meetings.*

~~[(a) Purpose. This section provides policies and procedures governing public access to the board in order to facilitate that access and maximize public participation in the decision-making process, while ensuring orderly and effective conduct of meetings.]~~

~~(a) [(b)] Posted agenda items. A person may speak before the board on any matter on a posted agenda by submitting a request, in a form and manner as prescribed by the department, prior to the matter being taken up by the board. A person speaking before the board on an agenda item will be allowed an opportunity to speak:~~

~~(1) prior to a vote by the board on the item; and~~

~~(2) for a maximum of three minutes, except as provided in subsection (d)(6) [(f)(6)] of this section.~~

~~(b) [(e)] Open comment period.~~

~~(1) At the conclusion of the posted agenda of each regular business meeting, the board shall [will] allow an open comment period, not to exceed one hour, to receive public comment on any other matter that is under the jurisdiction of the board.~~

~~(2) A person desiring to appear under this subsection shall [must] complete a registration form, as provided by the department, prior to the beginning of the open comment period.~~

~~(3) Except as provided in subsection (d)(6) [(f)(6)] of this section, each person shall [will] be allowed to speak for a maximum of three minutes for each presentation in the order in which the speaker is [he or she] registered.~~

~~(c) [(f)] Disability accommodation. Persons with disabilities, who have special communication or accommodation needs and who plan to attend a meeting, may contact the department in Austin to request auxiliary aids or services. Requests shall [Requests should] be made at least two days before a meeting. The department shall [will] make every reasonable effort to accommodate these needs.~~

~~[(e) Notice. For each board meeting an agenda will be filed with the Texas Register in accordance with the requirements of the Open Meetings Act, Government Code, Chapter 551.]~~

~~(d) [(f)] Conduct and decorum. The board shall [will] receive public input as authorized by this section, subject to the following guidelines.~~

~~(1) Questioning of those making presentations shall [will] be reserved to board members and the department's administrative staff.~~

(2) Organizations, associations, or groups are encouraged to present their commonly held views, and same or similar comments, through a representative member where possible.

(3) Presentations shall remain pertinent to the issue being discussed.

(4) A person who disrupts a meeting shall ~~must~~ leave the meeting room and the premises if ordered to do so by the chair.

(5) Time allotted to one speaker may not be reassigned to another speaker.

(6) The time allotted for presentations or comments under this section may be increased or ~~decreased~~ ~~further limited~~ by the chair, or~~;~~ in the chair's absence, the vice chair, as may be appropriate to assure opportunity for the maximum number of persons to appear.

(e) ~~(g)~~ Waiver. Subject to the approval of the chair, a requirement of this section may be waived in the public interest if necessary for the performance of the responsibilities of the board or the department.

§206.23. Public Hearings.

(a) ~~[Subject of hearings.]~~ The board may hold public hearings:

(1) to consider the adoption of rules;

(2) in accordance with the programs operated by the department; and

(3) to provide, when deemed appropriate by the board or when otherwise required by law, for public input regarding any other issue under the jurisdiction of the board.

(b) ~~[Authorized representative.]~~ The executive director or designee ~~[an employee of the department designated by the executive director]~~ may conduct public hearings held under subsection (a)(2) and (3) of this section.

(c) ~~[Conduct and decorum.]~~ Public hearings shall ~~[will]~~ be conducted in a manner that maximizes public access and input while maintaining proper decorum and orderliness, and shall ~~[will]~~ be governed by the following guidelines:~~[-]~~

(1) Questioning of those making presentations shall ~~[will]~~ be reserved to board members, the executive director, or~~;~~ if applicable, the presiding officer.

(2) Organizations, associations, or groups are encouraged to present their commonly held views and same or similar comments through a representative member where possible.

(3) Presentations shall remain pertinent to the issue being discussed.

(4) A person who disrupts a public hearing shall ~~[must]~~ leave the hearing room and premises if ordered to do so by the chair or the presiding officer.

(5) Time allotted to one speaker may not be reassigned to another speaker.

(d) ~~[Disability accommodation.]~~ Persons with disabilities, who have special communication or accommodation needs and who plan to attend a hearing to be held by the board, may contact the department in Austin. In the case of a hearing ~~[to be]~~ conducted by the department, those persons may contact the public affairs officer, whose address and telephone number appear in the public notice~~[-]~~ for that hearing, to request auxiliary aids or services. Requests shall ~~[should]~~ be made at least two days before the hearing. The department shall ~~[will]~~ make every reasonable effort to accommodate these needs.

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

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David D. Duncan
General Counsel

Texas Department of Motor Vehicles

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SUBCHAPTER D. PROCEDURES IN CONTESTED CASES

43 TAC §§206.61 - 206.73

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

STATUTORY AUTHORITY

The repeals 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.

CROSS REFERENCE TO STATUTE

Government Code, Chapter 1001

§206.61. *Scope and Purpose.*

§206.62. *Definitions.*

§206.63. *Filing of Petition.*

§206.64. *Content of Petition.*

§206.65. *Examination by Executive Director.*

§206.66. *Initiation of Contested Cases, Service of Notice of Hearing, Standard of Review, and Burden of Proof.*

§206.67. *Discovery.*

§206.68. *Evidence.*

§206.69. *Withdrawal or Amendment of Proposal for Decision.*

§206.70. *Filing of Exceptions and Replies.*

§206.71. *Form of Exceptions and Replies.*

§206.72. *Motions for Rehearing.*

§206.73. *Extension of Time for Final Order.*

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

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David D. Duncan
General Counsel

Texas Department of Motor Vehicles

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SUBCHAPTER E. ADVISORY COMMITTEES

43 TAC §206.91

(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, 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.

CROSS REFERENCE TO STATUTE

Government Code, Chapter 1001

§206.91. *Scope and Purpose.*

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

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David D. Duncan

General Counsel

Texas Department of Motor Vehicles

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For further information, please call: (512) 465-5665

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43 TAC §206.92, §206.93

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.

CROSS REFERENCE TO STATUTE

Government Code, Chapter 1001

§206.92. *Definitions.*

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

(1) Advisory committee--Any committee created by the board to make recommendations to the board [it] or to the executive director pursuant to Transportation Code, §1001.031.

(2) Board--The board of the Texas Department of Motor Vehicles.

(3) Department--The Texas Department of Motor Vehicles.

(4) Division director--The chief administrative officer in charge of a division of the department.

(5) Executive director--The chief executive officer of the Texas Department of Motor Vehicles.

§206.93. *Advisory Committee Operations and Procedures.*

{(a) The board may create one or more advisory committees to make recommendations to it and to the department. Any advisory committee created by the board has the purposes, powers, and duties, including the manner of reporting its work, prescribed by the board.}

{(b) The board shall appoint persons to each advisory committee who:}

{(1) are selected from a list provided by the executive director, or a designee; and}

{(2) have knowledge about and interests in, and represent a broad range of viewpoints about the work of the advisory committee or applicable division of the department.}

(a) [(e)] Unless a member resigns from an advisory committee, the member continues to serve on the committee until the member is dismissed or replaced by the board, or until the committee concludes all business or is disbanded. The executive director may designate a division of the department to participate with, or to provide subject-matter expertise, guidance, or administrative support to the advisory committee.

(b) [(d)] A summary of the business undertaken by each advisory committee shall be prepared and filed with the board or the board's [its] designee.

(c) [(e)] All summaries and other records of each advisory committee proceeding are records of the board that may be subject to disclosure under the provisions of Government Code, Chapter 552.

(d) [(f)] The department may, if authorized by law and the executive director, reimburse advisory committee members for reasonable and necessary travel expenses. Current rules and laws governing reimbursement of expenses for state employees shall govern reimbursement of expenses for advisory committee members.

(e) [(g)] Advisory committee members are subject to the same laws, policies, and [policies governing] ethical standards of conduct governing [as those for] board members and employees of the department.

(f) [(h)] In developing department policies, the board shall [will] consider the recommendations submitted by advisory committees.

(g) [(i)] The designated division shall report to the board on actions, including any advice and recommendations, of an advisory committee prior to board action on a pertinent issue. The chair of the advisory committee or the chair's designee may appear before the board prior to board action on a posted agenda item to present the committee's advice and recommendations.

(h) [(j)] Unless a different expiration date is established by the board for the advisory committee, each advisory committee is abolished on the fourth anniversary of its creation by the board.

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

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David D. Duncan

General Counsel

Texas Department of Motor Vehicles

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SUBCHAPTER F. DEPARTMENT VEHICLE
FLEET MANAGEMENT

43 TAC §206.111

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.

CROSS REFERENCE TO STATUTE

Government Code, Chapter 1001

§206.111. *Restrictions on Assignment of Vehicles.*

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

(1) Department--The Texas Department of Motor Vehicles.

(2) Division director--The chief administrative officer in charge of a division of the department.

(3) Executive Director--The executive director of the Texas Department of Motor Vehicles [~~Transportation~~] or the executive director's designee not below the level of division director.

(b) Motor pool. Each department vehicle, with the exception of a vehicle assigned to a field employee, shall [an employee or function, will] be assigned to the department's motor pool and be available for checkout.

(c) Regular vehicle assignment. The department may assign a vehicle to an individual administrative or executive employee on a regular or everyday basis only if the executive director makes a written documented finding that the assignment is critical [~~important~~] to the needs and mission of the department.

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

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David D. Duncan

General Counsel

Texas Department of Motor Vehicles

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SUBCHAPTER G. ELECTRONIC
SIGNATURES

43 TAC §206.131

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.

CROSS REFERENCE TO STATUTE

Government Code, Chapter 1001

§206.131. *Digital Certificates.*

(a) General [Purpose]. This section prescribes the requirements that govern the issuance, use, and revocation of digital certificates issued by the Texas Department of Motor Vehicles (department) [~~department~~] for electronic commerce in eligible department programs. The provisions of 1 TAC Chapter 203, Subchapter B govern this section in the event of a [Texas Administrative Code (TAC), Title 1, Part 10, Chapter 203, Subchapter B (relating to State Agency Use of Electronic Transactions and Signed Records) governs to the extent of any] conflict between that subchapter and a provision of this section.

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

(1) Business entity--An entity recognized by law through which business is conducted with the department, including a sole proprietorship, partnership, limited liability company, corporation, joint venture, educational institution, governmental agency, or non-profit organization.

(2) Certificate holder--An individual to whom a digital certificate is issued.

(3) Digital certificate--A certificate, as defined by 1 TAC §203.1, [~~in 1 TAC Chapter 203, Subchapter A, §203.1 (relating to Key Terms and Technologies for Electronic Transactions and Signed Records);~~] issued by the department for purposes of electronic commerce.

(4) Digital signature--Has the same meaning assigned by 1 TAC §203.1. [~~An electronic identifier assigned in a digital certificate and intended, by the person using it, to have the same force and effect as the use of a manual signature for signing an electronic document.]~~

(5) Division director--The chief administrative officer of a division of the department.

(c) Program authorization. A division director may authorize the use of digital signatures for a particular program based on whether the applicable industries or organizations are using such technology, the frequency of document submission, and the appropriateness for the program. The solicitation documentation for eligible programs will include the information that digital signatures may be used.

(d) Application and issuance of digital certificate.

(1) A request for a digital certificate shall [~~must~~] be in writing and shall [~~must~~] be signed by the individual authorized by the business entity to request a digital certificate.

(2) The department may request information necessary to verify the identity of the individual requestor or the business entity that has authorized the request. To verify identity under this paragraph a person shall [~~must~~] present:

(A) a Texas driver's license or identification certificate with a photograph [~~that is within two years after its expiration date~~];

(B) an unexpired United States passport;

(C) a United States citizenship (naturalization) certificate with identifiable photograph;

(D) an unexpired United States Bureau of Citizenship and Immigration Services document that:

(i) was issued for a period of at least one year;[;]

(ii) [that] is valid for not less than six months from the date it is presented to the department with a completed application; and[; and that]

(iii) contains verifiable data and an identifiable photograph;

(E) an unexpired United States military identification card for active duty, reserve, or retired personnel with an identifiable photograph; or

(F) a foreign passport with a valid or expired visa issued by the United States Department of State with an unexpired United States Bureau of Citizenship and Immigration Services Form I-94:

(i) that was issued for a period of at least one year, is marked valid for a fixed duration, and is valid for not less than six months from the date it is presented to the department with a completed application; or

(ii) that is marked valid for the duration of the person's stay and is accompanied by appropriate documentation.

(3) The department may take actions necessary to confirm that the individual[;] who signed the request[;] is authorized to act on behalf of the business entity, including requiring the individual requestor or the person authorizing the request to personally appear at the department location responsible for the issuing of the certificate.

(4) The department shall [must] issue a digital certificate only to an individual. Information identifying the business entity that authorized the issuance of the certificate may be embedded in the digital certificate.

(e) Refusal to issue a digital certificate. The department shall [will] not issue a digital certificate if the identity of the individual[;] to whom the certificate is to be issued, or the identity of the individual requesting the certificate on behalf of a business entity, cannot be established. The department will not issue a digital certificate if the business entity on whose behalf the request is allegedly being made does not authorize its issuance.

(f) Responsibilities of certificate holder. A certificate holder shall [must]:

- (1) maintain the security of the digital certificate;
- (2) use the certificate solely for the purpose for which it was issued; and
- (3) renew the certificate in a timely manner, if continued use is intended.

(g) Responsibilities of business entity. A business entity is responsible for:

- (1) determining what individual [the individual who] may request a certificate for the business entity;
- (2) determining to what individual [the individual to whom] a certificate is to be issued; and
- (3) requesting within a reasonable time the revocation of the business entity's [its] certificate if the security of the certificate has been compromised or if the business entity is changing its certificate holder.

(h) Revocation of certificate. The department shall [will] revoke a digital certificate:

- (1) upon [on] receipt of a written request for [its] revocation of the business entity's certificate, signed by an individual authorized to act on behalf of the business entity for which it was issued;

(2) for suspension or debarment of the individual or business entity; or

(3) if the department has reason to believe that continued use of the digital certificate would present a security risk.

(i) Use of digital certificate.

(1) A digital signature[; assigned in a digital certificate] issued by the department shall only[; must] be used for the purpose of digitally signing electronic documents filed with the department. A [and only such a signature may be used for that purpose. The use of the] digital signature is binding on the individual to whom the certificate was issued and the represented business entity, as if the document were signed manually.

(2) The department may use the digital certificate to identify the certificate holder when granting or verifying access to secure computer systems used for electronic commerce.

(j) Forms. The department may prescribe forms to request, modify, or revoke a digital certificate.

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

Filed with the Office of the Secretary of State on February 23, 2015.

TRD-201500573

David D. Duncan

General Counsel

Texas Department of Motor Vehicles

Earliest possible date of adoption: April 5, 2015

For further information, please call: (512) 465-5665



CHAPTER 219. OVERSIZE AND OVERWEIGHT VEHICLES AND LOADS

The Texas Department of Motor Vehicles (department) proposes amendments to Subchapter A: §219.1, Purpose and Scope; §219.2, Definitions; §219.3, Surety Bonds for Vehicles Transporting Recyclable Materials or Solid Waste; Subchapter B: §219.11, General Oversize/Overweight Permit Requirements and Procedures; §219.12, Single-Trip Permits Issued Under Transportation Code, Chapter 623, Subchapter D; §219.13, Time Permits; §219.14, Manufactured Housing, and Industrialized Housing and Building Permits; §219.15, Portable Building Unit Permits; §219.16, Permits for Military and Governmental Agencies; §219.17, Multi-state Permitting Agreements; Subchapter C: §219.30, Permits for Over Axle and Over Gross Weight Tolerances; Subchapter D: §219.41, General Requirements; §219.42, Single-Trip Mileage Permits; §219.43, Quarterly Hubometer Permits; §219.44, Annual Permits; §219.45, Permits for Vehicles Transporting Liquid Products Related to Oil Well Production; Subchapter E: §219.61, General Requirements for Permits for Oversize and Overweight Unladen Lift Equipment Motor Vehicles; §219.62, Single Trip Mileage Permits; §219.63, Quarterly Hubometer Permits; §219.64, Annual Permits; Subchapter F: §219.82, Falsification of Information on Application and Permit; and Subchapter H: §219.124, Administrative Proceedings; §219.125, Settlement Agreements; and §219.126, Administrative Penalty for False Information on Certificate by a Shipper.

EXPLANATION OF PROPOSED AMENDMENTS

Senate Bill 1420, 82nd Legislature, Regular Session, 2011, transferred certain functions related to oversize and overweight vehicles from the Texas Department of Transportation to the department.

Amendments are proposed throughout Chapter 219 to reflect the transfer of these functions to the department, to delete language that repeats the statutes, to transfer language from certain graphics to the rules, and to delete certain graphics. Proposed amendments are also made throughout Chapter 219 to reflect changes in the law, to delete language that does not belong in an administrative rule, to clarify current requirements and procedures, and to revise terminology for consistency with other department rules and with current department practice. Further, nonsubstantive amendments are proposed to correct references to statutes and rules.

Additional amendments are proposed to §219.2, Definitions, to add, delete, and modify certain definitions.

Additionally, a proposed amendment to §219.124(e), deletes the word "unappealable," so the language is consistent with Transportation Code, §643.2525. An amendment to §219.125 deletes subsection (c) regarding the revocation of the settlement agreement because the clause is unnecessary. According to §219.125(b), if the settlement agreement requires the payment of a penalty, the alleged violator must submit payment in an agreed amount before the agreement may be executed. In addition, if the settlement agreement involves the revocation, suspension, or denial of an oversize or overweight permit, the department activates the revocation, suspension, or denial.

FISCAL NOTE

Linda M. Flores, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the proposed amendments.

Jimmy Archer, Director, Motor Carrier Division, has certified that there will be no impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Mr. Archer has also determined that for each year of the first five years the amendments are in effect, the public benefits anticipated as a result of enforcing or administering the amendments will be the accuracy and clarity of the department's rules.

There are no anticipated economic costs for persons required to comply with the proposed amendments. There are no anticipated adverse economic effects on small businesses or micro-businesses.

TAKINGS IMPACT ASSESSMENT

The department has determined that this proposal affects no private real property interests 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 so does not constitute a taking or require a takings impact assessment under the Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments may be submitted to David D. Duncan, General Counsel, Texas Department of

Motor Vehicles, 4000 Jackson Avenue, Building 1, Austin, Texas, 78731 or by email to rules@txdmv.gov. The deadline for receipt of comments is 5:00 p.m. on April 6, 2015.

SUBCHAPTER A. GENERAL PROVISIONS

43 TAC §§219.1 - 219.3

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 adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code; and more specifically Transportation Code, §§621.008, 622.002, and 623.002, which authorize the Board of the Texas Department of Motor Vehicles to adopt rules that are necessary to implement and enforce Chapters 621, 622, and 623.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 621, 622, and 623.

§219.1. Purpose and Scope.

The department is responsible for regulating the movement of oversize and overweight vehicles and loads on the state highway system, in order to insure the safety of the traveling public, and to protect the integrity of the highways and the bridges. This responsibility is accomplished through the issuance of permits for the movement of oversize and overweight vehicles and loads, and the execution of special contracts for the movement of oversize and overweight vehicles and loads to travel across the width of a state highway. The sections under this chapter prescribe the policies and procedures for the issuance of permits and the execution of contracts.

§219.2. Definitions.

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

(1) Annual permit--A permit that authorizes movement of an oversize and/or overweight [overdimension] load for one year commencing with the "movement to begin" date.

(2) Applicant--Any person, firm, or corporation requesting a permit.

(3) Axle--The common axis of rotation of one or more wheels whether power-driven or freely rotating, and whether in one or more segments.

(4) Axle group--An assemblage of two or more consecutive axles, with two or more wheels per axle, spaced at least 40 inches from center of axle to center of axle, equipped with a weight-equalizing suspension system that will not allow more than a 10% weight difference between any two axles in the group.

(5) Board--The Board of the Texas Department of Motor Vehicles.

(6) [(5)] Cash collection office--An office that has been designated as the place where a permit applicant can apply for a permit or pay for a permit with cash, cashier's check, personal or business check, or money order.

(7) [(6)] Closeout--The procedure used by the department [MCD] to terminate a permit, issued under Transportation Code, §623.142 or §623.192 that will not be renewed by the applicant.

[(7) Commission--The Texas Transportation Commission.]

(8) Complete identification number--A unique and distinguishing number assigned to equipment or a commodity for purposes of identification.

(9) Concrete pump truck--A self-propelled [self propelled] vehicle designed to pump the concrete product from a ready mix truck to the point of construction.

(10) Crane--Any unladen lift equipment motor vehicle designed for the sole purpose of raising, shifting, or lowering heavy weights by means of a projecting, swinging mast with an engine for power on a chassis permanently constructed or assembled for such purpose.

(11) Credit card--A credit card approved by the department and a permit account card.

(12) Daylight--The period beginning one-half hour before sunrise and ending one-half hour after sunset.

(13) Department--The Texas Department of Motor Vehicles. [~~Transportation.~~]

(14) Digital signature--An electronic identifier intended by the person using it to have the same force and effect as a manual signature. The digital signature shall be unique to the person using it.

(15) Director--The Executive Director of the Texas Department of Motor Vehicles [~~Transportation~~] or a designee not below the level of division director.

(16) District--One of the 25 geographical areas, managed by a district engineer of the Texas Department of Transportation, in which the Texas Department of Transportation [~~department~~] conducts its primary work activities.

(17) District engineer--The chief executive officer in charge of a district of the Texas Department of Transportation. [~~department.~~]

(18) Electronic identifier--A unique identifier which is distinctive to the person using it, is independently verifiable, is under the sole control of the person using it, and is transmitted in a manner that makes it infeasible to change the data in the communication or digital signature without invalidating the digital signature.

(19) Escort vehicle--A motor vehicle used to warn traffic of the presence of a permitted vehicle.

~~{(20) Foreign commercial vehicle annual registration--An annual registration permit issued by the department to foreign commercial vehicles under authority of Transportation Code, §502.353.}~~

(20) [(21)] Four-axle group--Any four consecutive axles, having at least 40 inches from center of axle to center of axle, whose extreme centers are not more than 192 inches apart and are individually attached to or articulated from, or both, to the vehicle by a weight equalizing suspension system.

(21) [(22)] Gauge--The transverse spacing distance between tires on an axle, expressed in feet and measured to the nearest inch, from center-of-tire to center-of-tire on an axle equipped with only two tires, or measured to the nearest inch from the center of the dual wheels on one side of the axle to the center of the dual wheels on the opposite side of the axle.

(22) [(23)] Gross weight--The unladen weight of a vehicle or combination of vehicles plus the weight of the load being transported.

(23) [(24)] Height pole--A device made of a non-conductive material, used to measure the height of overhead obstructions.

(24) [(25)] Highway maintenance fee--A fee established by Transportation Code, §623.077, based on gross weight, and paid by the permittee when the permit is issued.

(25) [(26)] Highway use factor--A mileage reduction figure used in the calculation of a permit fee for a permit issued under Transportation Code, §623.142 and §623.192.

(26) [(27)] Hubometer--A mechanical device attached to an axle on a unit or a crane for recording mileage traveled.

(27) [(28)] HUD number--A unique number assigned to a manufactured home by the U.S. Department of Housing and Urban Development.

(28) [(29)] Indirect cost share--A prorated share of administering department activities, other than the direct cost of the activities, including the cost of providing statewide support services.

(29) [(30)] Load-restricted bridge--A bridge that is restricted by the Texas Department of Transportation, [~~commission,~~] under the provisions of Transportation Code, §621.102, to a weight limit less than the maximum amount allowed by Transportation Code, §621.101.

(30) [(31)] Load-restricted road--A road that is restricted by the Texas Department of Transportation, [~~commission,~~] under the provisions of Transportation Code, §621.102, to a weight limit less than the maximum amount allowed by Transportation Code, §621.101.

(31) [(32)] Machinery plate--A license plate issued under Transportation Code, §502.146. [~~§504.504.~~]

(32) [(33)] Manufactured home--Manufactured housing, as defined in Occupations Code, Chapter 1201, and industrialized housing and buildings, as defined in Occupations Code, §1202.002, and temporary chassis systems, and returnable undercarriages used for the transportation of manufactured housing and industrialized housing and buildings, and a transportable section which is transported on a chassis system or returnable undercarriage that is constructed so that it cannot, without dismantling or destruction, be transported within legal size limits for motor vehicles.

(33) [(34)] Motor carrier--A person that controls, operates, or directs the operation of one or more vehicles that transport persons or cargo over a public highway in this state, as defined in Chapter 218 of this title (relating to Motor Carriers). [~~§18.2 of this title (relating to Definitions).~~]

~~{(35) Motor Carrier Division (MCD)--The Motor Carrier Division of the department.}~~

(34) [(36)] Motor carrier registration (MCR)--The registration issued by the department to motor carriers moving intrastate, under authority of Transportation Code, Chapter 643 as amended.

(35) [(37)] Nighttime--The period beginning one-half hour after sunset and ending one-half hour before sunrise, as defined by Transportation Code, §541.401.

(36) [(38)] Nondivisible load--A load that cannot be reduced to a smaller dimension without compromising the integrity of the load or requiring more than eight hours of work using appropriate equipment to dismantle.

(37) [(39)] Oil field rig-up truck--An unladen vehicle with an overweight single steering axle, equipped with a winch and set of gin poles used for lifting, erecting, and moving oil well equipment and machinery.

(38) [(40)] Oil well servicing unit--An oil well clean-out unit, oil well drilling unit, or oil well swabbing unit, which is mobile

equipment, either self-propelled or trailer-mounted, constructed as a machine used solely for cleaning-out, drilling, servicing, or swabbing oil wells, and consisting in general of, but not limited to, a mast, an engine for power, a draw works, and a chassis permanently constructed or assembled for this purpose.

(39) [(41)] One trip registration--Temporary vehicle registration issued under Transportation Code, §502.095. [§502.354.]

(40) [(42)] Overdimension load--A vehicle, combination of vehicles, or vehicle and its load that exceeds maximum legal width, height, length, overhang, or weight as set forth by Transportation Code, Chapter 621, Subchapters B and C.

(41) [(43)] Overhang--The portion of a load extending beyond the front or rear of a vehicle or combination of vehicles.

(42) [(44)] Overheight--An overdimension load that exceeds the maximum height specified in Transportation Code, §621.207.

(43) [(45)] Overlength--An overdimension load that exceeds the maximum length specified in Transportation Code, §§621.203, 621.204, 621.205, and 621.206.

(44) [(46)] Overweight--An overdimension load that exceeds the maximum weight specified in Transportation Code, §621.101.

(45) [(47)] Overwidth--An overdimension load that exceeds the maximum width specified in Transportation Code, §621.201.

(46) [(48)] Permit--Authority for the movement of an overdimension load, issued by the department [MCD] under Transportation Code, Chapter 623.

(47) [(49)] Permit account card (PAC)--A debit card that can only be used to purchase a permit or temporary vehicle registration and which is issued by a financial institution that is under contract to the department and the Comptroller of Public Accounts.

(48) [(50)] Permit officer--An employee of the department [MCD] who is authorized to issue an oversize/overweight permit or temporary vehicle registration.

(49) [(51)] Permit plate--A license plate issued under Transportation Code, §502.146, [§504.504,] to a crane or an oil well servicing vehicle.

(50) [(52)] Permitted vehicle--A vehicle, combination of vehicles, or vehicle and its load operating under the provisions of a permit.

(51) [(53)] Permittee--Any person, firm, or corporation that is issued an oversize/overweight permit or temporary vehicle registration by the department. [MCD.]

(52) [(54)] Pipe box--A container specifically constructed to safely transport and handle oil field drill pipe and drill collars.

(53) [(55)] Portable building compatible cargo--Cargo, other than a portable building unit, that is manufactured, assembled, or distributed by a portable building unit manufacturer and is transported in combination with a portable building unit.

(54) [(56)] Portable building unit--The pre-fabricated structural and other components incorporated and delivered by the manufacturer as a complete inspected unit with a distinct serial number whether in fully assembled, partially assembled, or kit (unassembled) configuration when loaded for transport.

(55) [(57)] Principal--The person, firm, or corporation that is insured by a surety bond company.

(56) [(58)] Recyclable materials--Material that has been recovered or diverted from the solid waste stream for purposes of reuse, recycling, or reclamation, a substantial portion of which is consistently used in the manufacture of products which may otherwise be produced using raw or virgin materials. Recycled material is not solid waste unless the material is deemed to be hazardous solid waste by the Administrator of the United States Environmental Protection Agency, whereupon it shall be regulated accordingly unless it is otherwise exempted in whole or in part from regulation under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), by Environmental Protection Agency regulation. However, recyclable material may become solid waste at such time, if any, as it is abandoned or disposed of rather than recycled, whereupon it will be solid waste with respect only to the party actually abandoning or disposing of the material.

[(59) Registration reduction--A 25% reduction of the permit fee that applies to a crane or oil well servicing unit registered for maximum legal weight.]

(57) [(60)] Shipper--Person who consigns the movement of a shipment.

(58) [(61)] Shipper's certificate of weight--A form approved by the department in which the shipper certifies to the maximum weight of the shipment being transported.

(59) [(62)] Single axle--An assembly of two or more wheels whose centers are in one transverse vertical plane or may be included between two parallel transverse planes 40 inches apart extending across the full width of the vehicle.

[(63) Single state registration (SSR)--Interstate registration authority issued to motor carriers under authority of 49 U.S.C. §14504 and Transportation Code, Chapter 645.]

(60) [(64)] Single-trip permit--A permit issued for an overdimension load for a single continuous movement over a specific route for an amount of time necessary to make the movement.

(61) [(65)] State highway--A highway or road under the jurisdiction of the Texas Department of Transportation.

(62) [(66)] State highway system--A network of roads and highways as defined by Transportation Code, §221.001.

(63) [(67)] Surety bond--An agreement issued by a surety bond company to a principal that pledges to compensate the Texas Department of Transportation [department] for any damage that might be sustained to the highways and bridges by virtue of the operation of the equipment for which a permit was issued. A surety bond is effective the day it is issued and expires at the end of the state fiscal year, which is August 31st. For example, if you obtain a surety bond on August 30th, it will expire the next day at midnight.

(64) [(68)] Tare weight--The empty weight of any vehicle transporting an overdimension load.

(65) [(69)] Temporary vehicle registration--A 72-hour temporary vehicle registration, 144-hour temporary vehicle registration, or one-trip registration, as defined by Transportation Code, §502.094. [§502.352.]

(66) [(70)] Three-axle group--Any three consecutive axles, having at least 40 inches from center of axle to center of axle, whose extreme centers are not more than 144 inches apart, and are individually attached to or articulated from, or both, to the vehicle by a weight equalizing suspension system.

(67) [(71)] Time permit--A permit issued for a specified period of time under §219.13 of this title (relating to Time Permits).

[§28.13 of this title (relating to Time Permits issued under Transportation Code, Chapter 623, Subchapter D) and in accordance with Transportation Code, Chapter 623.]

(68) [(72)] Traffic control device--All traffic signals, signs, and markings, including their supports, used to regulate, warn, or control traffic.

(69) [(73)] Trailer mounted unit--An oil well clean-out, drilling, servicing, or swabbing unit mounted on a trailer, constructed as a machine used for cleaning out, drilling, servicing, or swabbing oil wells, and consisting in general of, but not limited to, a mast, an engine for power, a draw works, and a chassis permanently constructed or assembled for this purpose.

(70) [(74)] Truck--A motor vehicle designed, used, or maintained primarily for the transportation of property.

(71) [(75)] Truck-tractor--A motor vehicle designed or used primarily for drawing another vehicle:

(A) that is not constructed to carry a load other than a part of the weight of the vehicle and load being drawn; or

(B) that is engaged with a semitrailer in the transportation of automobiles or boats and that transports the automobiles or boats on part of the truck-tractor.

(72) [(76)] Trunnion axle--Two individual axles mounted in the same transverse plane, with four tires on each axle, that are connected to a pivoting wrist pin that allows each individual axle to oscillate in a vertical plane to provide for constant and equal weight distribution on each individual axle at all times during movement.

(73) [(77)] Trunnion axle group--Two or more consecutive trunnion axles whose centers are at least 40 inches apart and which are individually attached to or articulated from, or both, to the vehicle by a weight equalizing suspension system.

(74) [(78)] Two-axle group--Any two consecutive axles whose centers are at least 40 inches but not more than 96 inches apart and are individually attached to or articulated from, or both, to the vehicle by a weight equalizing suspension system.

(75) TXDOT--Texas Department of Transportation.

(76) [(79)] Unit--Oil well clean-out unit, oil well drilling unit, oil well servicing unit, and/or oil well swabbing unit.

(77) [(80)] Unladen lift equipment motor vehicle--A motor vehicle designed for use as lift equipment used solely to raise, shift, or lower heavy weights by means of a projecting, swinging mast with an engine for power on a chassis permanently constructed or assembled for such purpose.

(78) USDOT Number--The United States Department of Transportation number.

(79) [(81)] Variable load suspension axles--Axles, whose controls must be located outside of and be inaccessible from the driver's compartment, that can be regulated, through the use of hydraulic and air suspension systems, mechanical systems, or a combination of these systems, for the purpose of adding or decreasing the amount of weight to be carried by each axle during the movement of the vehicle.

(80) [(82)] Vehicle--Every device in or by which any person or property is or may be transported or drawn upon a public highway, except devices used exclusively upon stationary rails or tracks.

(81) [(83)] Vehicle identification number--A unique and distinguishing number assigned to a vehicle by the manufacturer or by the department in accordance with §217.3(b) [§17.3(b)] of this title

(relating to Motor Vehicle Titles [Certificate of Title]) for the purpose of identification.

(82) [(84)] Vehicle supervision fee--A fee required by Transportation Code, §623.078, paid by the permittee to the department, designed to recover the direct cost of providing safe transportation of a permit load exceeding 200,000 pounds gross weight over a state highway, including the cost for bridge structural analysis, monitoring the progress of the trip, and moving and replacing traffic control devices.

(83) [(85)] Water Well Drilling Machinery--Machinery used exclusively for the purpose of drilling water wells, including machinery that is a unit or a unit mounted on a conventional vehicle or chassis.

(84) [(86)] Weight-equalizing suspension system--An arrangement of parts designed to attach two or more consecutive axles to the frame of a vehicle in a manner that will equalize the load between the axles.

(85) [(87)] Windshield sticker--Identifying insignia indicating that an over axle/over gross weight tolerance permit has been issued in accordance with Subchapter C of this chapter [~~relating to Permits for Over Axle and Over Gross Weight Tolerances~~] and Transportation Code, §623.011.

(86) [(88)] Year--A time period consisting of 12 consecutive months that commences with the "movement to begin" date stated in the permit.

(87) [(89)] 72-hour temporary vehicle registration--Temporary vehicle registration issued by the department [MCD] authorizing a vehicle to operate at maximum legal weight on a state highway for a period not longer than 72 consecutive hours, as prescribed by Transportation Code, §502.094. [§502.352.]

(88) [(90)] 144-hour temporary vehicle registration--Temporary vehicle registration issued by the department [MCD] authorizing a vehicle to operate at maximum legal weight on a state highway for a period not longer than 144 consecutive hours, as prescribed by Transportation Code, §502.094. [§502.352.]

§219.3. Surety Bonds for Vehicles Transporting Recyclable Materials or Solid Waste.

(a) Surety bond required. A surety bond is required for:

(1) vehicles used exclusively to transport recyclable materials operated under the provisions of Transportation Code, §622.134; and

(2) vehicles used exclusively to transport solid waste under the provisions of Transportation Code, §623.163.

(b) Surety bonds.

(1) Surety bonds filed under this section must:

(A) be in the amount of \$1,000 per vehicle (for example, if 10 trucks are covered by the surety bond then the total amount of the surety bond would be \$10,000);

(B) indicate the total amount of coverage; and

(C) be submitted in duplicate to the department [MCD] on Form 1575.

(2) [(D)] A surety bond is effective the day it is issued and expires at the end of the state fiscal year, which is August 31st. For example, if you obtain a surety bond on August 30th, it will expire the next day at midnight.

(3) [(2)] Form 1576 must be completed in duplicate and submitted to the department [MCD] for certification of each vehicle bonded under Form 1575.

(A) The department [MCD] will certify and return to the principal, one copy of Form 1575 and one copy of Form 1576.

(B) The original Form 1576 must be carried in the cab of the bonded vehicle.

(4) [(3)] Form 1577 must be used to add or delete a vehicle covered by Form 1575 and must be completed in duplicate and submitted to the department [MCD] for certification.

(A) The department [MCD] will certify and return to the principal, one copy of Form 1577 when a new vehicle is added to the surety bond. When a vehicle is dropped from the surety bond the department [MCD] will make the necessary revision to the principal's file.

(B) Form 1577 must be carried in the cab of the bonded vehicle.

(5) [(4)] A facsimile copy of Forms 1575, 1576 or 1577 is not acceptable in lieu of the original surety bond.

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

Filed with the Office of the Secretary of State on February 23, 2015.

TRD-201500602

David D. Duncan

General Counsel

Texas Department of Motor Vehicles

Earliest possible date of adoption: April 5, 2015

For further information, please call: (512) 465-5665



SUBCHAPTER B. GENERAL PERMITS

43 TAC §§219.11 - 219.17

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 adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code; and more specifically Transportation Code, §§621.008, 622.002, and 623.002, which authorize the Board of the Texas Department of Motor Vehicles to adopt rules that are necessary to implement and enforce Chapters 621, 622, and 623.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 621, 622, and 623.

§219.11. *General Oversize/Overweight Permit Requirements and Procedures.*

(a) Purpose and scope. This section contains general requirements relating to oversize/overweight permits, including single trip permits. Specific requirements for each type of specialty permit are provided for in this chapter.

(b) Prerequisites to obtaining an oversize/overweight permit. Unless exempted by law or this chapter, the following requirements must be met prior to the issuance of an oversize/overweight permit.

(1) Commercial motor carrier registration or surety bond. Prior to obtaining an oversize/overweight permit, an applicant permitted under the provisions of Transportation Code, Chapter 623, Subchapter D, must be registered as a commercial motor carrier under Chapter 218 [48] of this title (relating to Motor Carriers) or, if not required to obtain a motor carrier registration, file a surety bond with the department as described in subsection (n) of this section.

(2) Vehicle registration. A vehicle registered with a permit plate will not be issued an oversize/overweight permit under this subchapter. A permitted vehicle operating under this subchapter must be registered with one of the following types of vehicle registration:

(A) current Texas license plates that indicate the permitted vehicle is registered for maximum legal gross weight or the maximum weight the vehicle can transport;

(B) Texas temporary vehicle registration;

(C) current out of state license plates that are apportioned for travel in Texas; or

(D) foreign commercial vehicles registered under Texas annual registration.

(c) Permit application.

(1) An application for a permit may be made to the department [MCD] by telephone, by facsimile, electronically, or in person at a cash collection office. All applications shall be made on a form prescribed by the department, and all applicable information shall be provided by the applicant, including:

(A) name, address, and telephone number of applicant;

(B) applicant's customer identification number;

(C) applicant's motor carrier registration number or USDOT Number, [single state registration number,] if applicable;

(D) complete load description, including maximum width, height, length, overhang, and gross weight;

(E) complete description of equipment, including truck make, license plate number and state of issuance, and vehicle identification number, if required;

(F) equipment axle and tire information including number of axles, distance between axles, axle weights, number of tires, and tire size for overweight permit applications; and

(G) any other information required by law.

(2) Applications transmitted electronically are considered signed if a digital signature is transmitted with the application and intended by the applicant to authenticate the application.

(A) The department may only accept a digital signature used to authenticate an application under procedures that comply with any applicable rules adopted by the Department of Information Resources regarding department use or acceptance of a digital signature.

(B) The department may only accept a digital signature to authenticate an application if the digital signature is:

(i) unique to the person using it;

(ii) capable of independent verification;

(iii) under the sole control of the person using it; and

(iv) transmitted in a manner that will make it infeasible to change the data in the communication or digital signature without invalidating the digital signature.

[(3) All permit applications shall be accompanied by the appropriate fees described in this paragraph, in a payment method described in subsection (f) of this section.]

[(A) The fee for a single trip (not exceeding 80,000 pounds) permit is \$60. Fees for other types of permits are indicated in the appropriate subchapters of this chapter.]

[(B) Highway maintenance fees are as indicated in the following table, and are in addition to the permit fee.]
[Figure: 43 TAC §28.11(e)(3)(B)]

[(C) Vehicle supervision fees are as indicated in the following table, and are in addition to the permit fee and the highway maintenance fee.]
[Figure: 43 TAC §28.11(e)(3)(C)]

[(4) The MCD is closed on:]

[(A) Sundays;]

[(B) New Year's Day;]

[(C) Memorial Day;]

[(D) Independence Day;]

[(E) Labor Day;]

[(F) Thanksgiving Day and the Friday following Thanksgiving Day;]

[(G) Christmas Eve and Christmas Day;]

[(H) the Saturday prior to any of the holidays listed in this paragraph falling on a Sunday or a Monday, except the Saturday before Christmas Eve when Christmas Eve falls on a Monday;]

[(I) the Saturday after any of the holidays listed in this paragraph falling on a Friday, except for the Saturday following Thanksgiving Day and the Saturday following Christmas Day when Christmas Day falls on a Friday; and]

[(J) at other times as deemed necessary by the department's administration, such as in the case of emergency weather conditions.]

[(5) The MCD shall be open for the issuance of permits from 6:00 a.m. until 6:00 p.m. (Central Standard Time) Monday through Friday, and from 6:00 a.m. until 2:00 p.m. (Central Standard Time) on Saturdays.]

(d) Maximum permit weight limits.

(1) General. An overweight permitted vehicle will not be routed over a load restricted bridge when exceeding the posted capacity of the bridge, unless a special exception is granted by the department, [MCD,] based on an analysis of the bridge.

(A) An axle group must have a minimum spacing of four feet, measured from center of axle to center of axle, between each axle in the group to achieve the maximum permit weight for the group.

(B) The maximum permit weight for an axle group with spacings of five or more feet between each axle will be based on an engineering study conducted by the department. [MCD,]

(C) A permitted vehicle will be allowed to have air suspension, hydraulic suspension and mechanical suspension axles in a common weight equalizing suspension system for any axle group.

(D) The department [MCD] may permit axle weights greater than those specified in this section, for a specific individual permit request, based on an engineering study of the route and hauling equipment.

(E) An overdimensional load may not exceed the manufacturer's rated tire carrying capacity.

(F) Two or more consecutive axle groups having an axle spacing of less than 12 feet, measured from the center of the last axle of the preceding group to the center of the first axle of the following group, will be reduced by 2.5% for each foot less than 12 feet.

(2) Maximum axle weight limits. Maximum permit weight for an axle or axle group is based on 650 pounds per inch of tire width or the following axle or axle group weights, whichever is the lesser amount:

(A) single axle--25,000 pounds;

(B) two axle group--46,000 pounds;

(C) three axle group--60,000 pounds;

(D) four axle group--70,000 pounds;

(E) five axle group--81,400 pounds;

(F) axle group with six or more axles--determined by the department [MCD] based on an engineering study of the equipment, which will include the type of steering system used, the type of axle suspension, the spacing distance between each axle, the number of tires per axle, and the tire size on each axle; or

(G) trunnion axles--60,000 pounds if;

(i) the trunnion configuration has two axles;

(ii) there are a total of 16 tires for a trunnion configuration; and

(iii) the trunnion axle as shown in the following diagram is 10 feet in width.

Figure: 43 TAC §219.11(d)(2)(G)(iii)

[Figure: 43 TAC §28.11(d)(2)(G)(iii)]

(3) Weight limits for load restricted roads. Maximum permit weight for an axle or axle group, when traveling on a load restricted road, will be based on 650 pounds per inch of tire width or the following axle or axle group weights, whichever is the lesser amount:

(A) single axle--22,500 pounds;

(B) two axle group--41,400 pounds;

(C) three axle group--54,000 pounds;

(D) four axle group--63,000 pounds;

(E) five axle group--73,260 pounds;

(F) axle group with six or more axles--determined by the department [MCD] based on an engineering study of the equipment, which will include the type of steering system used, the type of axle suspension, the spacing distance between each axle, the number of tires per axle, and the tire size on each axle;

(G) trunnion axles--54,000 pounds; and

(H) two or more consecutive axle groups having an axle spacing of less than 12 feet, measured from the center of the last axle of the preceding group to the center of the first axle of the following group will be reduced by 2.5% for each foot less than 12 feet.

(e) Permit issuance.

(1) General. Upon receiving an application, the department [MCD] will review the permit application for the appropriate information and will then determine the most practical route. After a route is selected and a permit number is assigned by the department, [MCD,] an applicant requesting a permit by telephone must legibly enter all necessary information on the permit application, including the approved route and permit number. Permit requests made by methods other than telephone will be returned via facsimile, mail, or electronically.

(2) Routing.

(A) A permitted vehicle will be routed over the most practical route available taking into consideration:

(i) the size and weight of the overdimension load in relation to vertical clearances, width restrictions, steep grades, and weak or load restricted bridges;

(ii) the geometrics of the roadway in comparison to the overdimension load;

(iii) sections of highways restricted to specific load sizes and weights due to construction, maintenance, and hazardous conditions;

(iv) traffic conditions, including traffic volume;

(v) route designations by municipalities in accordance with Transportation Code, §623.072;

(vi) load restricted roads; and

(vii) other considerations for the safe transportation of the load.

(B) When a permit applicant desires a route other than the most practical, more than one permit will be required for the trip unless an exception is granted by the department. [MCD,]

(3) Return movements. A permitted vehicle will be allowed return movement of oversize and overweight hauling equipment to the permitted vehicle's point of origin or the permittee's place of business, and may transport a non-divisible load of legal dimensions on the return trip, provided the transport is completed within the time period stated on the permit.

(4) Records retention.

(A) The original permit, a facsimile copy of the permit, or a department [MCD] computer generated permit must be kept in the permitted vehicle until the day after the date the permit expires.

(B) All telephone requests for permits are recorded and retained for future reference.

(C) Permit information shall be stored in the department's mainframe computer located in Austin, which shall constitute the official permit record.

(f) Payment of permit fees, refunds.

(1) Payment methods. All permit applications must be accompanied by the proper fee, which shall be payable as provided by §209.23 of this title (relating to Methods of Payment).

(A) Permit Account Card (PAC). Application for a PAC should be made directly to the issuing institution. A PAC must be established and maintained according to the contract provisions stipulated between the PAC holder and the financial institution under contract to the department and the Comptroller of Public Accounts.

(B) Escrow accounts. A permit applicant may establish an escrow account with the department for the specific purpose of

paying any fee that is related to the issuance of a permit under this subchapter. [An escrow account may also be utilized to pay fees related to the issuance of a vehicle storage facility license or a motor carrier registration issued under Chapter 18 of this title (relating to Motor Carriers).]

(i) A permit applicant who desires to establish an escrow account shall complete and sign an escrow account agreement, and shall return the completed and signed agreement to the department with a check in the minimum amount of \$305, which shall be deposited to the appropriate fund by the department with the Comptroller of Public Accounts. In lieu of submitting a check for the initial deposit to an applicant's escrow account, the applicant may transfer funds to the department electronically.

(ii) Upon initial deposit, and each subsequent deposit made by the escrow account holder, \$5 will be charged as an escrow account administrative fee.

(iii) The escrow account holder is responsible for monitoring of the escrow account balance.

(iv) An escrow account holder must submit a written request to the department to terminate the escrow account agreement. Any remaining balance will be returned to the escrow account holder.

(2) Refunds. A permit fee will not be refunded after the permit number has been issued unless such refund is necessary to correct an error made by the permit officer.

(g) Amendments. A permit may be amended for the following reasons:

(1) vehicle breakdown;

(2) changing the intermediate points in an approved permit route;

(3) extending the expiration date due to conditions which would cause the move to be delayed;

(4) changing route origin or route destination prior to the start date as listed on the permit;

(5) changing vehicle size limits prior to the permit start date as listed on the permit, provided that changing the vehicle size limit does not necessitate a change in the approved route; and

(6) correcting any mistake that is made due to permit officer error.

(h) Requirements for overwidth loads.

(1) An overwidth load must travel in the outside traffic lane on multi-lane highways, when the width of the load exceeds 12 feet.

(2) Overwidth loads are subject to the escort requirements of subsection (k) of this section.

(3) A permitted vehicle exceeding 16 feet in width will not be routed on the main lanes of a controlled access highway, unless an exception is granted by the department, [MCD,] based on a route and traffic study. The load may be permitted on the frontage roads when available, if the movement will not pose a safety hazard to other highway users.

(4) An applicant requesting a permit to move a load exceeding 20 feet wide will be furnished with a proposed route. The applicant must physically inspect the proposed route to determine if the overdimension load can safely negotiate it, unless an exception is granted based on a route and traffic study conducted by the department. [MCD,] A permit application and the appropriate fee are required for every route inspection.

(A) The applicant must notify the department [MCD] in writing whether the overdimension load can or cannot safely negotiate the proposed route.

(B) If any section of the proposed route is unacceptable, the applicant shall provide the department [MCD] with an alternate route around the unacceptable section.

(C) Once a route is decided upon and a permit issued, the permit may not be amended unless an exception is granted by the department. [MCD.]

(i) Requirements for overlength loads.

(1) Overlength loads are subject to the escort requirements stated in subsection (k) of this section.

(2) A single vehicle, such as a motor crane, that has a permanently mounted boom is not considered as having either front or rear overhang as a result of the boom because the boom is an integral part of the vehicle.

(3) When a single vehicle with a permanently attached boom exceeds the maximum legal length of 45 feet, a permit will not be issued if the boom projects more than 25 feet beyond the front bumper of the vehicle, or when the boom projects more than 30 feet beyond the rear bumper of the vehicle, unless an exception is granted by the department. [MCD.] based on a route and traffic study.

(4) Maximum permit length for a single vehicle is 75 feet.

(5) A load extending more than 20 feet beyond the front or rearmost portion of the load carrying surface of the permitted vehicle must have a rear escort, unless an exception is granted by the department. [MCD.] based on a route and traffic study.

(6) A permit will not be issued for an overdimension load with:

(A) more than 25 feet front overhang; or

(B) more than 30 feet rear overhang, unless an exception is granted by the department. [MCD.] based on a route and traffic study.

(7) An applicant requesting a permit to move an overdimension load exceeding 125 feet overall length will be furnished with a proposed route. The applicant must physically inspect the proposed route to determine if the overdimension load can safely negotiate it, unless an exception is granted based on a route and traffic study conducted by the department. [MCD.] A permit application and the appropriate fee are required for every route inspection.

(A) The applicant must notify the department [MCD] in writing whether the overdimension load can or cannot safely negotiate the proposed route.

(B) If any section of the proposed route is unacceptable, the applicant shall provide the department [MCD] with an alternate route around the unacceptable section.

(C) Once a route is decided upon and a permit issued, the permit may not be amended unless an exception is granted by the department. [MCD.]

(8) A permitted vehicle that is not overwidth or overheight, and does not exceed 150 feet overall length, may be moved in a convoy consisting of not more than four overlength permitted vehicles. A permitted vehicle that is not overwidth or overheight that exceeds 150 feet, but does not exceed 180 feet overall length, may be moved in a convoy consisting of not more than two overlength permitted vehicles.

Convoys are subject to the requirements of subsection (k) of this section. Each permitted vehicle in the convoy must:

(A) be spaced at least 1,000 feet, but not more than 2,000 feet, from any other permitted vehicle in the convoy; and

(B) have a rotating amber beacon or an amber pulsating light, not less than eight inches in diameter, mounted at the rear top of the load being transported.

(j) Requirements for overheight loads.

(1) Overheight loads are subject to the escort requirements stated in subsection (k) of this section.

(2) An applicant requesting a permit to move an overdimension load with an overall height of 19 feet or greater will be furnished with a proposed route. The applicant must physically inspect the proposed route to determine if the overdimension load can safely negotiate it, unless an exception is granted based on a route and traffic study conducted by the department. [MCD.] A permit application and the appropriate fee are required for every route inspection.

(A) The applicant must notify the department [MCD] in writing whether the overdimension load can or cannot safely negotiate the proposed route.

(B) If any section of the proposed route is unacceptable, the applicant shall provide the department [MCD] with an alternate route around the unacceptable section.

(C) Once a route is decided upon and a permit issued, the permit may not be amended unless an exception is granted by the department. [MCD.]

(k) Escort vehicle requirements. Escort vehicle requirements are provided to facilitate the safe movement of permitted vehicles and to protect the traveling public during the movement of permitted vehicles. A permittee must provide for escort vehicles and law enforcement assistance when required by the department. [MCD.] The requirements in this subsection do not apply to the movement of manufactured housing, portable building units, or portable building compatible cargo. Escort vehicle requirements for the movement of manufactured housing are described in §219.14 of this title [~~§28.14 of this subchapter~~] (relating to Manufactured Housing, and Industrialized Housing and Building Permits). Escort vehicle requirements for the movement of portable building units and portable building compatible cargo are described in §219.15 of this title [~~§28.15 of this subchapter~~] (relating to Portable Building Unit Permits).

(1) General.

(A) Applicability. The operator of an escort vehicle shall, consistent with applicable law, warn the traveling public when:

(i) a permitted vehicle must travel over the center line of a narrow bridge or roadway;

(ii) a permitted vehicle makes any turning movement that will require the permitted vehicle to travel in the opposing traffic lanes;

(iii) a permitted vehicle reduces speed to cross under a low overhead obstruction or over a bridge;

(iv) a permitted vehicle creates an abnormal and unusual traffic flow pattern; or

(v) in the opinion of the department. [MCD.] warning is required to ensure the safety of the traveling public or safe movement of the permitted vehicle.

(B) Law enforcement assistance. Law enforcement assistance may be required by the department [MCD] to control traffic when a permitted vehicle is being moved within the corporate limits of a city, or at such times when law enforcement assistance would provide for the safe movement of the permitted vehicle and the traveling public.

(C) Obstructions. It is the responsibility of the permittee to contact utility companies, telephone companies, television cable companies, or other entities as they may require, when it is necessary to raise or lower any overhead wire, traffic signal, street light, television cable, sign, or other overhead obstruction. The permittee is responsible for providing the appropriate advance notice as required by each entity.

(2) Escort requirements for overwidth loads. Unless an exception is granted by the department, [MCD,] based on a route and traffic study, an overwidth load must:

(A) have a front escort vehicle if the width of the load exceeds 14 feet, but does not exceed 16 feet, when traveling on a two lane roadway;

(B) have a rear escort vehicle if the width of the load exceeds 14 feet, but does not exceed 16 feet, when traveling on a roadway of four or more lanes; and

(C) have a front and a rear escort vehicle for all roads, when the width of the load exceeds 16 feet.

(3) Escort requirements for overlength loads. Unless an exception is granted by the department, [MCD,] based on a route and traffic study, overlength loads must have:

(A) a front escort vehicle when traveling on a two lane roadway if the vehicle exceeds 110 feet overall length, but does not exceed 125 feet overall length;

(B) a rear escort vehicle when traveling on a multi-lane highway if the vehicle exceeds 110 feet overall length, but does not exceed 125 feet overall length; and

(C) a front and rear escort vehicle at all times if the permitted vehicle exceeds 125 feet overall length.

(4) Escort requirements for overheight loads. Unless an exception is granted by the department, [MCD,] based on a route and traffic study, overheight loads must have:

(A) a front escort vehicle equipped with a height pole to accurately measure overhead obstructions for any permitted vehicle that exceeds 17 feet in height; and

(B) a front and rear escort vehicle for any permitted vehicle exceeding 18 feet in height.

(5) Escort requirements for permitted vehicles exceeding legal limits in more than one dimension. When a load exceeds more than one dimension that requires an escort under this subsection, front and rear escorts will be required unless an exception is granted by the department. [MCD,] For example, under this subsection one escort is required for a load exceeding 14 feet in width, and one escort is required for a load exceeding 110 feet in length. In the case of a permitted vehicle that exceeds both 14 feet in width and 110 feet in length, both front and rear escorts are required.

(6) Escort requirements for convoys. Convoys must have a front escort vehicle and a rear escort vehicle on all highways at all times.

(7) General equipment requirements. The following special equipment requirements apply to permitted vehicles and escort vehicles that are not motorcycles.

(A) An escort vehicle must be a single unit with a gross vehicle weight (GVW) of not less than 1,000 pounds nor more than 10,000 pounds.

(B) An escort vehicle must be equipped with two flashing amber lights or one rotating amber beacon of not less than eight inches in diameter, affixed to the roof of the escort vehicle, which must be visible to the front, sides, and rear of the escort vehicle while actively engaged in escort duties for the permitted vehicle.

(C) An escort vehicle must display a sign, on either the roof of the vehicle, or the front and rear of the vehicle, with the words "OVERSIZE LOAD" or "WIDE LOAD." The sign must be visible from the front and rear of the vehicle while escorting the permitted load. The sign must meet the following specifications:

(i) at least five feet, but not more than seven feet in length, and at least 12 inches, but not more than 18 inches in height;

(ii) the sign must have a yellow background with black lettering;

(iii) letters must be at least eight inches, but not more than 10 inches high with a brush stroke at least 1.41 inches wide; and

(iv) the sign must be visible from the front or rear of the vehicle while escorting the permitted vehicle, and the signs must not be used at any other time.

(D) An escort vehicle must maintain two-way communications with the permitted vehicle and other escort vehicles involved with the movement of the permitted vehicle.

(E) Warning flags must be either red or orange fluorescent material, at least 12 inches square, securely mounted on a staff or securely fastened by at least one corner to the widest extremities of an overwidth permitted vehicle, and at the rear of an overlength permitted vehicle or a permitted vehicle with a rear overhang in excess of four feet.

(8) Equipment requirements for motorcycles.

(A) An official law enforcement motorcycle may be used as a primary escort vehicle for a permitted vehicle traveling within the limits of an incorporated city, if the motorcycle is operated by a highway patrol officer, sheriff, or duly authorized deputy, or municipal police officer.

(B) An escort vehicle must maintain two-way communications with the permitted vehicle and other escort vehicles involved with the movement of the permitted vehicle.

(l) Restrictions.

(1) Restrictions pertaining to road conditions. Movement of a permitted vehicle is prohibited when road conditions are hazardous based upon the judgement of the operator and law enforcement officials. Law enforcement officials shall make the final determination regarding whether or not conditions are hazardous. Conditions that should be considered hazardous include, but are not limited to:

(A) visibility of less than 2/10 of one mile; or

(B) weather conditions such as wind, rain, ice, sleet, or snow.

(2) Daylight and night movement restrictions.

(A) A permitted vehicle may be moved only during daylight hours unless:

(i) the permitted vehicle is overweight only;

(ii) the permitted vehicle is traveling on an interstate highway and does not exceed 10 feet wide and 100 feet long, with front and rear overhang that complies with legal standards; or

(iii) the permitted vehicle meets the criteria of clause (ii) of this subparagraph and is overweight.

(B) An exception may be granted allowing night movement, based on a route and traffic study conducted by the department. [MCD:] Escorts may be required when an exception allowing night movement is granted.

(3) Weekend and holiday restrictions. The maximum size limits for a permit issued under Transportation Code, Chapter 622, Subchapter E and Chapter 623, Subchapters D and E, for holiday movement is 14 feet wide, 16 feet high, and 110 feet long, unless an exception is granted by the department [MCD] based on a route and traffic study. The department may restrict weekend and holiday movement of specific loads based on a determination that the load could pose a hazard for the traveling public due to local road or traffic conditions.

(4) Curfew restrictions. The operator of a permitted vehicle must observe the curfew movement restrictions of any city in which the vehicle is operated.

(m) General provisions.

(1) Multiple commodities.

(A) Except as provided in subparagraph (B) of this paragraph, when a permitted commodity creates a single overdimension, two or more commodities may be hauled as one permit load, provided legal axle weight and gross weight are not exceeded, and provided an overdimension of width, length or height is not created or made greater by the additional commodities. For example, a permit issued for the movement of a 12 foot wide storage tank may also include a 10 foot wide storage tank loaded behind the 12 foot wide tank provided that legal axle weight and gross weight are not exceeded, and provided an overdimension of width, length or height is not created.

(B) When the transport of more than one commodity in a single load creates or makes greater an illegal dimension of length, width, or height the department may issue an oversize permit for such load subject to each of the following conditions.

(i) The permit applicant or the shipper of the commodities files with the department a written certification by the Texas Department of Economic Development, approved by the Office of the Governor, attesting that issuing the permit will have a significant positive impact on the economy of Texas and that the proposed load of multiple commodities therefore cannot be reasonably dismantled. As used in this clause the term significant positive impact means the creation of not less than 100 new full-time jobs, the preservation of not less than 100 existing full-time jobs, that would otherwise be eliminated if the permit is not issued, or creates or retains not less than one percent of the employment base in the affected economic sector identified in the certification.

(ii) Transport of the commodities does not exceed legal axle and gross load limits.

(iii) The permit is issued in the same manner and under the same provisions as would be applicable to the transport of a single oversize commodity under this section; provided, however, that the shipper and the permittee also must indemnify and hold harmless the department, its board members, [e~~o~~missioners:] officers, and employees from any and all liability for damages or claims of damages including court costs and attorney fees, if any, which may arise from the transport of an oversized load under a permit issued pursuant to this subparagraph.

(iv) The shipper and the permittee must file with the department a certificate of insurance on a form prescribed by the department, or otherwise acceptable to the department, naming the department, its board members, [e~~o~~missioners:] officers, and employees as named or additional insurers on its comprehensive general liability insurance policy for coverage in the amount of \$5 million per occurrence, including court costs and attorney fees, if any, which may arise from the transport of an oversized load under a permit issued pursuant to this subparagraph. The insurance policy is to be procured from a company licensed to transact insurance business in the State of Texas.

(v) The shipper and the permittee must file with the department, in addition to all insurance provided in clause (iv) of this subparagraph, a certificate of insurance on a form prescribed by the department, or otherwise acceptable to the department, naming the department, its board members, [e~~o~~missioners:] officers, and employees as insurers under an auto liability insurance policy for the benefit of said insurers in an amount of \$5 million per accident. The insurance policy is to be procured from a company licensed to transact insurance business in the State of Texas. If the shipper or the permittee is self-insured with regard to automobile liability then that party must take all steps and perform all acts necessary under the law to indemnify the department, its board members, [e~~o~~missioners:] officers, and employees as if the party had contracted for insurance pursuant to, and in the amount set forth in, the preceding sentence and shall agree to so indemnify the department, its board members, [e~~o~~missioners:] officers, and employees in a manner acceptable to the department.

(vi) Issuance of the permit is approved by written order of the board [e~~o~~mission] which written order may be, among other things, specific as to duration and routes.

(C) An applicant requesting a permit to haul a dozer and its detached blade may be issued a permit, as a non-dismantable load, if removal of the blade will decrease the overall width of the load, thereby reducing the hazard to the traveling public.

(2) Oversize hauling equipment. A vehicle that exceeds the legal size limits, as set forth by Transportation Code, Chapter 621, Subchapter C, may only haul a load that exceeds legal size limits unless otherwise noted in this subchapter, but such vehicle may haul an overweight load that does not exceed legal size limits, except for the special exception granted in §219.13(e)(4) of this title (relating to Time Permits). [§28.13(b)(4) of this subchapter (relating to Time Permits issued under Transportation Code, Chapter 623, Subchapter D):]

(n) Surety bonds.

(1) General. The following conditions apply to surety bonds specified in Transportation Code, §623.075.

(A) The surety bond must:

(i) be made payable to the department with the condition that the applicant will pay the department for any damage caused to the highway by the operation of the equipment covered by the surety bond;

(ii) be effective the day it is issued and expires at the end of the state fiscal year, which is August 31st. For example, if you obtain a surety bond on August 30th, it will expire the next day at midnight.

(iii) include the complete mailing address and zip code of the principal;

(iv) be filed with the department [MCD] and have an original signature of the principal;

(v) have a single entity as principal with no other principal names listed; and

(vi) A non-resident agent with a valid Texas insurance license may issue a bond on behalf of an authorized insurance company when in compliance with Insurance Code, Chapter 4056.

(B) A certificate of continuation will not be accepted.

(C) The owner of a vehicle bonded under Transportation Code, [~~§622.013,~~] §623.075 or [~~;~~ and] §623.163, that damages the state highway system as a result of the permitted vehicle's movement will be notified by certified mail of the amount of damage and will be given 30 days to submit payment for such damage. Failure to make payment within 30 days will result in TxDOT [~~the department's~~] placing the claim with the attorney general for collection.

(D) The venue of any suit for a claim against a surety bond for the movement of a vehicle permitted under the provisions of Transportation Code, Chapter 623, Subchapter D, will be any court of competent jurisdiction in Travis County.

(2) Permit surety bonds.

(A) A surety bond required under the provisions of Transportation Code, Chapter 623, Subchapter D, must be submitted on the department's standard surety bond form in the amount of \$10,000.

(B) A facsimile or electronic copy of the surety bond is acceptable in lieu of the original surety bond, for a period not to exceed 10 days from the date of its receipt in the department. [~~MCD.~~] If the original surety bond has not arrived in the department [~~MCD~~] by the end of the 10 days, the applicant will not be issued a permit until the original surety bond has been received in the department. [~~MCD.~~]

(C) The surety bond requirement does apply to the delivery of farm equipment to a farm equipment dealer.

(D) A surety bond is required when a dealer or transporter of farm equipment or a manufacturer of farm equipment obtains a permit.

(E) The surety bond requirement does not apply to driving or transporting farm equipment which is being used for agricultural purposes if it is driven or transported by or under the authority of the owner of the equipment.

(F) The surety bond requirement does not apply to a vehicle or equipment operated by a motor carrier registered with the department under Transportation Code, Chapters 643 or 645 as amended.

§219.12. Single-Trip Permits Issued Under Transportation Code, Chapter 623, Subchapter D.

(a) General. The information in this section applies to single-trip [~~single trip~~] permits issued under Transportation Code, Chapter 623, Subchapter D. The department will issue permits under this section in accordance with the requirements of §219.11 of this title [~~§28.11 of this subchapter~~] (relating to General Oversize/Overweight Permit Requirements and Procedures).

(b) Overweight loads.

(1) The maximum weight limits for an overweight permit are specified in §219.11(d). [~~§28.11(d) of this subchapter.~~]

(2) The applicant shall pay, in addition to the single-trip permit fee of \$60, the applicable highway maintenance fee. [~~described in §28.11(e)(3)(B) of this subchapter.~~]

(3) The applicant must also pay the vehicle supervision fee (VSF) for a [A] permit issued for an overweight vehicle and

[overdimension] load exceeding 200,000 pounds gross weight. [will have a total permit fee that includes the single-trip permit fee, the highway maintenance fee, and the applicable vehicle supervision fee (VSF) described in §28.11(e)(3)(C) of this subchapter.]

(A) The VSF is \$35 if:

(i) the vehicle and load do not exceed 254,300 pounds gross weight;

(ii) there is at least 95 feet of overall axle spacing; and

(iii) the vehicle and load do not exceed maximum permit weight on any axle or axle group, as described in §219.11(d).

(B) The VSF is \$500 if:

(i) there is less than 95 feet of overall axle spacing;

(ii) the vehicle and load exceed maximum permit weight on any axle or axle group, as described in §219.11(d); or

(iii) the vehicle and load exceed 254,300 pounds gross weight. However, for a vehicle and load described in this subparagraph, the VSF is reduced from \$500 to \$100 if no bridges are crossed, and the VSF is reduced from \$500 to \$35 for an additional identical load that is to be moved over the same route within 30 days of the movement date of the original permit.

~~[(A) When a permit is issued under this subsection, and the permittee has additional identical loads that are to be moved over the same route within 30 days of the movement date of the original permit, a reduced vehicle supervision fee of \$35 will be charged in lieu of the full vehicle supervision fee.]~~

~~[(B) An applicant [for a permit issued under paragraph (8) of this subsection] must pay the VSF [vehicle supervision fee] at the time of permit application in order to offset department costs for analyses performed in advance of issuing the permit. A request for cancellation must be in writing and received by the department prior to collection of the structural information associated with the permit application. If the application is canceled, the department will return the vehicle supervision fee.~~

(4) An applicant applying for a permit to move a load that is required for the fulfillment of a fixed price public works contract that was entered into prior to the effective date of this section, and administered by federal, state, or local governmental entities, will not be required to pay the vehicle supervision fee, provided the applicant presents proof of the contract to the department [~~MCD~~] prior to permit issuance.

(5) When the department has determined that a permit can be issued for an overdimension load exceeding 200,000 pounds gross weight, all remaining fees are due at the time the permit is issued.

(6) The department will not charge an analysis fee for single and multiple box culverts.

(7) An applicant requesting a permit to move an overdimension load that is between 200,001 and 254,300 pounds total with less than 95 feet overall axle spacing, or is over the maximum permitted weight on any axle or axle group, or is over 254,300 pounds gross weight, or the weight limits described in §219.11(d), [~~§28.11(d) of this subchapter.~~] must submit the following items to the department [~~MCD~~] to determine if the permit can be issued:

(A) a detailed loading diagram which indicates the number of axles, the number of tires on each axle, the tire size on each axle, the distance between each axle, the tare and gross weight on each axle, the transverse spacing of each set of dual wheels, the

distance between each set of dual wheels, the load's center of gravity, the distance from the center of gravity to the center of the front bolster, the distance from the center of gravity to the center of the rear bolster, the distance from the center of the front bolster to the center of the fifth wheel of the truck, the distance from the center of the rear bolster to the center of the closest axle, and any other measurements as may be needed to verify that the weight of the overdimension load is adequately distributed among the various axle groups in the amounts indicated by the loading diagram;

(B) a map indicating the exact beginning and ending points relative to a state highway;

(C) a copy of the signed contract indicating that the applicant has been retained to transport the shipment;

(D) the vehicle supervision fee as specified in paragraph (3) of this subsection; and

(E) the name, phone number, and fax number of the applicant's licensed professional engineer who has been approved by the department.

(8) The department [MCD] will select a tentative route based on the physical size of the overdimension load excluding the weight. The tentative route must be investigated by the applicant, and the department [MCD] must be advised, in writing, that the route is capable of accommodating the overdimension load.

(9) Before the permit is issued, the applicant's Texas Department of Transportation (TxDOT) approved licensed professional engineer shall submit to the department and TxDOT [the Bridge Division] a written certification that includes a detailed structural analysis of the bridges on the proposed route demonstrating that the bridges and culverts on the travel route are capable of sustaining the load. The certification must be approved by TxDOT and submitted to the department before the permit will be issued.

(10) A permit may be issued for the movement of oversize and overweight self-propelled off road equipment under the following guidelines.

(A) The weight per inch of tire width must not exceed 650 pounds.

(B) The rim diameter of each wheel must be a minimum of 25 inches.

(C) The maximum weight per axle must not exceed 45,000 pounds.

(D) The minimum spacing between axles, measured from center of axle to center of axle, must not be less than 12 feet.

(E) The equipment must be moved empty.

(F) The equipment must be licensed with a machinery license plate or a one trip registration.

(G) The route will not include any controlled access highway, unless an exception is granted based on a route and traffic study conducted by the department. [MCD.]

(c) Drill pipe and drill collars hauled in a pipe box.

(1) A vehicle or combination of vehicles may be issued a permit under Transportation Code, §623.071, to haul drill pipe and drill collars in a pipe box.

(2) The maximum width must not exceed nine feet.

(3) The axle weight limits must not exceed the maximum weight limits as specified in §219.11(d)(3). [~~§28.11(d)(3) of this subchapter.~~]

(4) The height and length must not exceed the legal limits specified in Transportation Code, Chapter 621, Subchapter C.

(5) The permit will be issued for a single-trip only. [~~and the fee will be \$60.~~] For loads over 80,000 pounds, the applicant must pay the single-trip permit fee, in addition to the highway maintenance fee specified in Transportation Code, §623.077. [~~a highway maintenance fee will be charged as specified in §28.11(e)(3)(B) of this subchapter.~~]

(6) The permit is valid only for travel on any farm-to-market and ranch-to-market road, and such road will be specified on the permit; however, the permitted vehicle will not be allowed to cross any load restricted bridge when exceeding the posted capacity of the bridge.

(7) Movement will be restricted to daylight hours only.

(d) Houses and storage tanks.

(1) Unless an exception is granted by the department [MCD], approval for the issuance of a permit for a house or storage tank exceeding 20 feet in width will reside with each district engineer, or the district engineer's designee, along the proposed route.

(2) The issuance of a permit for a house or storage tank exceeding 20 feet in width will be based on:

(A) the amount of inconvenience and hazard to the traveling public, based on traffic volume;

(B) highway geometrics and time of movement; and

(C) the overall width, measured to the nearest inch, of the house, including the eaves or porches.

(3) A storage tank must be empty.

(4) The proposed route must include the beginning and ending points on a state highway.

(5) A permit will not be issued for a newly constructed house or storage tank that exceeds 34 feet overall width unless an exception is granted by the department [MCD] based on a route and traffic study.

(6) A permit will not be issued for the relocation of an existing house or storage tank that exceeds 40 feet overall width, unless an exception is granted by the department [MCD] based on a route and traffic study.

(7) A permit may be issued for the movement of an overweight house provided:

(A) the applicant completes and submits to the department [MCD] a copy of a diagram for moving overweight houses, as shown in Figure: 43 TAC §219.12(e) [Appendix A] of this section;

(B) each support beam, parallel to the centerline of the highway, is equipped with an identical number of two axle groups which may be placed directly in line and across from the other corresponding two axle group or may be placed in a staggered offset arrangement to provide for proper weight distribution;

(C) that, when a support beam is equipped with two or more two axle groups, each two axle group is connected to a common mechanical or hydraulic system to ensure that each two axle group shares equally in the weight distribution at all times during the movement; and when the spacing between the two axle groups, measured from the center of the last axle of the front group to the center of the first axle of the following group, is eight feet or more, the front two

axle group is equipped for self-steering in a manner that will guide or direct the axle group in turning movements without tire scrubbing or pavement scuffing; and

(D) the department conducts a detailed analysis of each structure on the proposed route and determines the load can be moved without damaging the roads and bridges.

(8) The department [MCD] may waive the requirement that a loading diagram be submitted for the movement of an overweight house if the total weight of all axle groups located in the same transverse plane across the house does not exceed the maximum weight limits specified in §219.11(d)(2). [~~§28.11(d)(2) of this subchapter.~~]

(e) Diagram for moving overweight houses. The following Figure: 43 TAC §219.12(e) [Appendix A] indicates the type of diagram that is to be completed by the permit applicant for moving an overweight house. All measurements must be stated to the nearest inch. Figure: 43 TAC §219.12(e) [Figure: 43 TAC §28.12(e)]

§219.13. Time Permits.

(a) General information. Applications for time permits issued under Transportation Code, Chapter 623, and this section shall be made in accordance with §219.11(b) and (c) of this title [~~§28.11(e) of this subchapter~~] (relating to General Oversize/Overweight Permit Requirements and Procedures). Permits issued under this section are governed by the requirements of §219.11(e)(1) and (4). [~~§28.11(e)(1) and (4) of this subchapter.~~]

(b) 30, 60, and 90 day permits. The following conditions apply to time permits issued for overwidth or overlength loads, or overlength vehicles, under this section.

(1) Fees. The fee for a 30-day permit is \$120; the fee for a 60-day permit is \$180; and the fee for a 90-day permit is \$240. All fees are payable in accordance with §219.11(f). [~~§28.11(f) of this subchapter.~~] All fees are non-refundable.

(2) Validity of Permit. Time permits are valid for a period of 30, 60, or 90 calendar days, based on the request of the applicant, and will begin with the "movement to begin" date stated on the permit.

(3) Weight/height limits. The permitted vehicle may not exceed the weight or height limits set forth by Transportation Code, Chapter 621, Subchapters B and C.

(4) Registration requirements for permitted vehicles. The permitted vehicle must be registered in accordance with Transportation Code, Chapter 502, for maximum weight for the vehicle or vehicle combination as set forth by Transportation Code, §502.043. [~~§502.151.~~] Time permits will not be issued to a vehicle or vehicle combination that is registered with temporary vehicle registration.

(5) Vehicle indicated on permit. The permit will indicate only the truck or truck-tractor transporting the load; however, any properly registered trailer or semi-trailer is covered by the permit.

(6) Permit routes. The permit will allow travel on a statewide basis.

(7) Restrictions.

(A) The permitted vehicle must not cross a load restricted bridge or load restricted road when exceeding the posted capacity of the road or bridge.

(B) The permitted vehicle may travel through highway construction or maintenance areas if the dimensions do not exceed the construction restrictions as published by the department.

(C) The permitted vehicle is subject to the restrictions specified in §219.11(l). [~~§28.11(l) of this subchapter.~~] and the permittee is responsible for obtaining from the department information concerning current restrictions.

(8) Escort requirements. Permitted vehicles are subject to the escort requirements specified in §219.11(k). [~~§28.11(k) of this subchapter.~~]

(9) Transfer of time permits. Time permits issued under this subsection are non-transferable between permittees or vehicles.

(10) Amendments. With the exception of time permits issued under subsection (e)(4) of this section, time permits issued under this subsection will not be amended except in the case of permit officer error.

(c) Overwidth loads. An overwidth time permit may be issued for the movement of any non-divisible load or overwidth trailer, subject to subsection (a) of this section and the following conditions.

(1) Width requirements. A time permit will not be issued for a vehicle with a width exceeding 13 feet.

(2) Weight, height, and length requirements. The permitted vehicle shall not exceed legal weight, height, or length according to Transportation Code, Chapter 621, Subchapters B and C. When multiple items are hauled at the same time, the items may not be loaded in a manner that creates:

(A) a width greater than the width of the widest item being hauled;

(B) a height greater than 14 feet;

(C) an overlength load; or

(D) a gross weight exceeding the legal gross or axle weight of the vehicle hauling the load.

(3) Movement of overwidth trailers. When the permitted vehicle is an overwidth trailer, it will be permitted to:

(A) move empty to and from the job site; and

(B) return from the job site to the permittee's place of business with a legal nondivisible load.

(4) Use in conjunction with other permits. An overwidth time permit may be used in conjunction with an overlength time permit.

(d) Overlength loads. An overlength time permit may be issued for the transportation of overlength loads or the movement of an overlength self-propelled vehicle, subject to subsection (a) of this section and the following conditions.

(1) Length requirements. The maximum overall length for the permitted vehicle may not exceed 110 feet.

(2) Weight, height and width requirements. The permitted vehicle may not exceed legal weight, height, or width according to Transportation Code, Chapter 621, Subchapters B and C.

(A) The maximum length for a single permitted vehicle may not exceed 75 feet.

(B) A permit will not be issued when the load has more than 25 feet front overhang, or more than 30 feet rear overhang, unless an exception is granted by the department, [department's Motor Carrier Division,] based on a route and traffic study.

(3) Use in conjunction with other permits. An overlength time permit may be used in conjunction with an overwidth time permit.

(4) Emergency movement. A permitted vehicle transporting utility poles will be allowed emergency night movement for restoring electrical utility service, provided the permitted vehicle is accompanied by a rear escort vehicle.

(e) Annual permits.

(1) General information. All permits issued under this subsection are subject to the following conditions.

(A) Fees for permits issued under this subsection are payable as described in §219.11(f). [~~§28.11(f) of this subchapter.~~]

(B) Permits issued under this subsection are not transferable.

(C) Vehicles permitted under this subsection shall be operated according to the restrictions described in §219.11(l). [~~§28.11(l) of this subchapter.~~] The permittee is responsible for obtaining information concerning current restrictions from the department.

(D) Vehicles permitted under this subsection may not travel over a load restricted bridge or load restricted road when exceeding the posted capacity of the road or bridge.

(E) Vehicles permitted under this subsection may travel through any highway construction or maintenance area provided the dimensions do not exceed the construction restrictions as published by the department.

(F) With the exception of permits issued under paragraph (5) of this subsection, vehicles permitted under this subsection shall be operated according to the escort requirements described in §219.11(k). [~~§28.11(k) of this subchapter.~~]

(2) Implements of husbandry. An annual permit may be issued for an implement of husbandry being moved by a dealer in those implements, and for harvesting equipment being moved as part of an agricultural operation. Permits issued under this paragraph are subject to the conditions described in paragraph (1) of this subsection.

(A) The fee for a permit issued under this paragraph is \$270, plus the highway maintenance fee specified in Transportation Code, §623.077, [~~and §28.11(e)(3)(B) of this subchapter.~~]

(B) The time period will be for one year and will start with the "movement to begin" date stated on the permit.

(C) The maximum width may not exceed 16 feet; maximum height may not exceed 16 feet; maximum length may not exceed 110 feet; and maximum weight may not exceed the limits stated in §219.11(d). [~~§28.11(d) of this subchapter.~~]

(D) The permitted vehicle must travel in the outside traffic lane on multi-lane highways, when the width of the load exceeds 12 feet.

(E) The permitted vehicle must be registered in accordance with Transportation Code, Chapter 502, for maximum weight for the vehicle or vehicle combination, as set forth by Transportation Code, Chapter 621.

(3) Water well drilling machinery. The department may issue annual permits under Transportation Code, §623.071, for water well drilling machinery and equipment that cannot be reasonably dismantled. Permits issued under this paragraph are subject to the conditions described in paragraph (1) of this subsection.

(A) The fee for a permit issued under this paragraph is \$270, plus the highway maintenance fee specified in Transportation Code, §623.077, [~~and §28.11(e)(3)(B) of this subchapter.~~] for an overweight load.

(B) A water well drilling machinery permit is valid for one year from the "movement to begin" date stated on the permit.

(C) The maximum dimensions may not exceed 16 feet wide, 14 feet 6 inches high, 110 feet long, and maximum weight may not exceed the limits stated in §219.11(d). [~~§28.11(d) of this subchapter.~~]

(D) The permitted vehicle must be registered in accordance with Transportation Code, Chapter 502, for the maximum weight of the vehicle, as set forth by Transportation Code, Chapter 621.

(E) A permit issued under this section authorizes a permitted vehicle to operate only on the state highway system.

(4) Envelope vehicle permits.

(A) The department may issue an annual permit under Transportation Code, §623.071(c), to a specific vehicle, for the movement of superheavy or oversize equipment that cannot reasonably be dismantled. Unless otherwise noted, permits issued under this paragraph are subject to the conditions described in paragraph (1) of this subsection.

(i) Superheavy or oversize equipment operating under an annual envelope vehicle permit may not exceed:

(I) 12 feet in width;

(II) 14 feet in height;

(III) 110 feet in length; or

(IV) 120,000 pounds gross weight.

(ii) Superheavy or oversize equipment operating under an annual envelope vehicle permit may not transport a load that has more than 25 feet front overhang, or more than 30 feet rear overhang.

(iii) The fee for an annual envelope vehicle permit is \$4,000, and is non-refundable.

(iv) The time period will be for one year and will start with the "movement to begin" date stated on the permit.

(v) This permit authorizes operation of the permitted vehicle only on the state highway system.

(vi) The permitted vehicle must comply with §219.11(d)(2) and (3). [~~§28.11(d)(2) and (3) of this subchapter.~~]

(vii) The permitted vehicle or vehicle combination must be registered in accordance with Transportation Code, Chapter 502, for maximum weight as set forth by Transportation Code, Chapter 621.

(viii) A permit issued under this paragraph is non-transferable between permittees.

(ix) A permit issued under this paragraph may be transferred from one vehicle to another vehicle in the permittee's fleet provided:

(I) the permitted vehicle is destroyed or otherwise becomes permanently inoperable, to an extent that it will no longer be utilized, and the permittee presents proof that the negotiable certificate of title or other qualifying documentation has been surrendered to the department; or

(II) the certificate of title to the permitted vehicle is transferred to someone other than the permittee, and the permittee presents proof that the negotiable certificate of title or other qualifying documentation has been transferred from the permittee.

(x) A single-trip [single trip] permit, as described in §219.12 of this title [~~§28.12 of this subchapter~~] (relating to Single-Trip [Single Trip] Permits Issued Under Transportation Code, Chapter 623, Subchapter D), may be used in conjunction with an annual permit issued under this paragraph for the movement of vehicles or loads exceeding the height or width limits established in subparagraph (A) of this paragraph. The department will indicate the annual permit number on any single-trip [single trip] permit to be used in conjunction with a permit issued under this paragraph, and permittees will be assessed a fee of \$60 for the single-trip [single trip] permit.

(B) The department may issue an annual permit under Transportation Code, §623.071(d), to a specific motor carrier, for the movement of superheavy or oversize equipment that cannot reasonably be dismantled. Unless otherwise noted, permits issued under this paragraph are subject to the conditions described in paragraph (1) of this subsection and subparagraph (A)(i) - (viii) of this paragraph. A permit issued under this paragraph may be transferred from one vehicle to another vehicle in the permittee's fleet provided:

(i) that no more than one vehicle is operated at a time; and

(ii) the original certified permit is carried in the vehicle that is being operated under the terms of the permit.

(C) An annual envelope permit issued under subparagraph (B) of this paragraph will be sent to the permittee via registered mail, or at the permittee's request and expense overnight delivery service. This permit may not be duplicated. This permit will be replaced only if:

(i) the permittee did not receive the original permit within seven business days after its date of issuance;

(ii) a request for replacement is submitted to the department within 10 business days after the original permit's date of issuance; and

(iii) the request for replacement is accompanied by a notarized statement signed by a principle or officer of the permittee acknowledging that the permittee understands the permit may not be duplicated and that if the original permit is located, the permittee must return either the original or replacement permit to the department.

(D) A request for replacement of a permit issued under subparagraph (B) of this paragraph will be denied if the department can verify that the permittee received the original.

(E) Lost, misplaced, damaged, destroyed, or otherwise unusable permits will not be replaced. A new permit will be required.

(5) Annual manufactured housing permit. The department may issue an annual permit for the transportation of new manufactured homes from a manufacturing facility to a temporary storage location, not to exceed 20 miles from the point of manufacture, in accordance with Transportation Code, §623.094. Permits issued under this paragraph are subject to the requirements of paragraph (1), subparagraphs (A), (B), (C), (D), (E), and (G), of this subsection.

(A) A permit shall contain the name of the company or person authorized to be issued permits by Transportation Code, Chapter 623, Subchapter E.

(B) The fee for a permit issued under this paragraph is \$1,500. Fees are non-refundable, and shall be paid in accordance with §219.11(f). [~~§28.11(f) of this subchapter.~~]

(C) The time period will be for one year from the "movement to begin" date stated on the permit.

(D) A copy of the permit must be carried in the vehicle transporting a manufactured home.

(E) The permitted vehicle must travel in the outside traffic lane on multi-lane highways when the width of the load exceeds 12 feet.

(F) The permitted vehicle must be registered in accordance with Transportation Code, Chapter 502.

(G) Authorized movement for a vehicle permitted under this section shall be valid during daylight hours only as defined by Transportation Code, §541.401.

(H) The permitted vehicle must be operated in accordance with the escort requirements described in §219.14(f) of this title [~~§28.14(f) of this subchapter~~] (relating to Manufactured Housing, and Industrialized Housing and Building Permits).

(I) Permits issued under this section are non-transferable between permittees.

(6) Power line poles. An annual permit will be issued under Transportation Code, Chapter 622, Subchapter E, for the movement of poles required for the maintenance of electric power transmission and distribution lines. Permits issued under this paragraph are subject to the conditions described in paragraph (1) of this subsection.

(A) The fee for the permit is \$120.

(B) The time period will be for one year and will start with the "movement to begin" date stated on the permit.

(C) The maximum length of the permitted vehicle may not exceed 75 feet.

(D) The width, height and gross weight of the permitted vehicle may not exceed the limits set forth by Transportation Code, Chapter 621.

(E) Vehicles permitted under this paragraph may not travel over a load restricted bridge or load zoned road when exceeding posted limits.

(F) The permitted vehicle must be registered in accordance with Transportation Code, Chapter 502, for maximum weight as set forth by Transportation Code, Chapter 621.

(G) Movement will be between the hours of sunrise and sunset; however, the limitation on hours of operation does not apply to a vehicle being operated to prevent interruption or impairment of electric service, or to restore electric service that has been interrupted. When operated at night, a vehicle permitted under this subsection must be accompanied by a rear escort.

(H) The permitted vehicle may not travel during hazardous road conditions as stated in §219.11(1)(1)(A) and (B) [~~§28.11(1)(1)(A) and (B)~~] except to prevent interruption or impairment of electric service, or to restore electric service that has been interrupted.

(I) The speed of the permitted vehicle may not exceed 50 miles per hour.

(J) The permitted vehicle must display on the extreme end of the load:

(i) two red lamps visible at a distance of at least 500 feet from the rear;

(ii) two red reflectors that indicate the maximum width and are visible, when light is insufficient or atmospheric condi-

tions are unfavorable, at all distances from 100 to 600 feet from the rear when directly in front of lawful lower beams of headlamps; and

(iii) two red lamps, one on each side, that indicate the maximum overhang, and are visible at a distance of at least 500 feet from the side of the vehicle.

(7) Cylindrically shaped bales of hay. An annual permit may be issued under Transportation Code, §621.017, for the movement of vehicles transporting cylindrically shaped bales of hay. Permits issued under this paragraph are subject to the conditions described in paragraph (1) of this subsection.

(A) The permit fee is \$10.

(B) The time period will be for one year, and will start with the "movement to begin" date stated on the permit.

(C) The maximum width of the permitted vehicle may not exceed 12 feet.

(D) The length, height, and gross weight of the permitted vehicle may not exceed the limits set forth by Transportation Code, Chapter 621.

(E) Movement is restricted to daylight hours only.

(F) The permitted vehicle must be registered in accordance with Transportation Code, Chapter 502, for maximum weight, as set forth by Transportation Code, Chapter 621.

§219.14. Manufactured Housing, and Industrialized Housing and Building Permits.

(a) General information.

(1) A manufactured home that exceeds size limits for motor vehicles as defined by Transportation Code, Chapter 621, Subchapters B and C, must obtain a permit from the department.

(2) Pursuant to Transportation Code, Chapter 623, Subchapter E, a permit may be issued to persons registered as manufacturers, installers, or retailers with the Texas Department of Housing and Community Affairs or motor carriers registered with the department under Transportation Code, Chapter 643.

(3) The department may issue a permit to the owner of a manufactured home provided that:

(A) the same owner is named on the title of the manufactured home and towing vehicle;

(B) or the owner presents a lease showing that the owner of the manufactured home is the lessee of the towing vehicle.

(b) Application for permit.

(1) The applicant must complete the application and shall include the manufactured home's HUD label number, Texas seal number, or the complete identification number or serial number of the manufactured home, and the overall width, height, and length of the home and the towing vehicle in combination. If the manufactured home is being moved to or from a site in this state where it has been, or will be, occupied as a dwelling, the permit must also show the name of the owner of the home, the location from which the home is being moved, and the location to which the home is being delivered.

(2) A permit application for industrialized housing or industrialized building that does not meet the definition in Occupations Code, §1202.002 and §1202.003 shall be submitted in accordance with §219.11(c) of this title [~~§28.11(e) of this subchapter~~] (relating to General Oversize/Overweight Permit Requirements and Procedures).

(c) Permit issuance.

(1) Permit issuance is subject to the requirements of §219.11(e)(4). [~~§28.11(e)(4) of this subchapter (relating to General Oversize/Overweight Permit Requirements and Procedures).~~]

(2) Amendments can only be made to change intermediate points between the origination and destination points listed on the permit.

(d) Payment of permit fee. The cost of the permit is \$40, payable in accordance with §219.11(f). [~~§28.11(f) of this subchapter (relating to General Oversize/Overweight Permit Requirements and Procedures).~~]

(e) Permit provisions and conditions.

(1) The overall combined length of the manufactured home and the towing vehicle includes the length of the hitch or towing device.

(2) The height is measured from the roadbed to the highest elevation of the manufactured home.

(3) The width of a manufactured home includes any roof or eaves extension or overhang on either side.

(4) A permit will be issued for a single continuous movement not to exceed five days.

(5) Movement must be made during daylight hours only and may be made on any day except New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

(6) The department may limit the hours for travel on certain routes because of heavy traffic conditions.

(7) The department will publish any limitations on movements during the national holidays listed in this subsection, or any limitations during certain hours of heavy traffic conditions, and will make such publications available to the public prior to the limitations becoming effective.

(8) The permit will contain the route for the transportation of the manufactured home from the point of origin to the point of destination.

(9) The route for the transportation must be the most practical route as described in §219.11(e). [~~§28.11(e) of this subchapter (relating to General Oversize/Overweight Permit Requirements and Procedures).~~] except where construction is in progress and the permitted vehicle's dimensions exceed the construction restrictions as published by the department, or where bridge or overpass width or height would create a safety hazard.

(10) The department will publish annually a map or list of all bridges or overpasses which, due to height or width, require an escort vehicle to stop oncoming traffic while the manufactured home crosses the bridge or overpass.

(11) A permittee may not transport a manufactured home with a void permit; a new permit must be obtained.

(f) Escort requirements.

(1) A manufactured home exceeding 12 feet in width must have a rotating amber beacon of not less than eight inches in diameter mounted somewhere on the roof at the rear of the manufactured home, or may have two five-inch flashing amber lights mounted approximately six feet from ground level at the rear corners of the manufactured home. The towing vehicle must have one rotating amber beacon of not less than eight inches in diameter mounted on top of the cab. These beacons or flashing lights must be operational and luminiferous during any permitted move over the highways, roads, and streets of this state.

(2) A manufactured home with a width exceeding 16 feet but not exceeding 18 feet must have a front escort vehicle on two-lane roadways and a rear escort vehicle on roadways of four or more lanes.

(3) A manufactured home exceeding 18 feet in width must have a front and a rear escort on all roadways at all times.

(4) The escort vehicle must:

(A) have one red 16 inch square flag mounted on each of the four corners of the vehicle;

(B) have a sign mounted on the front and rear of the vehicle displaying the words "WIDE LOAD" in black letters at least eight inches high with a brush stroke at least 1.41 inches wide against a yellow background;

(C) have an amber light or lights, visible from both front and rear, mounted on top of the vehicle in one of the following configurations:

(i) two simultaneously flashing lights or

(ii) one rotating beacon of not less than eight inches in diameter; and

(D) maintain two-way communications with the permitted vehicle and other escort vehicles involved with the movement of the permitted vehicle.

(5) Two transportable sections of a multi-section manufactured home, or two single section manufactured homes, when towed together in convoy, may be considered one home for purposes of the escort vehicle requirements, provided the distance between the two units does not exceed 1,000 feet.

(6) An escort vehicle must comply with the requirements in §219.11(k)(1) and §219.11(k)(7)(A). [~~§28.11(k)(1) and §28.11(k)(7)(A) of this subchapter (relating to General Oversize/Overweight Permit Requirements and Procedures).~~]

§219.15. *Portable Building Unit Permits.*

(a) General information.

(1) A vehicle or vehicle combination transporting one or more portable building units and portable building compatible cargo that exceed legal length or width limits set forth by Transportation Code, Chapter 621, Subchapters B and C, may obtain a permit under Transportation Code, Chapter 623, Subchapter F.

(2) In addition to the fee required by subsection (d)[(4)], the department shall collect an amount equal to any fee that would apply to the movement of cargo exceeding any applicable width limits, if such cargo were moved in a manner not governed by this section.

(b) Application for permit. Applications shall be made in accordance with §219.11(c) of this title [~~§28.11(e) of this title~~] (relating to General Oversize/Overweight Permit Requirements and Procedures).

(c) Permit issuance. Permit issuance is subject to the requirements of §219.11(b)(2),(c) and (g). [~~§28.11(b)(1)(A) and (B) of this title (relating to General Oversize/Overweight Permit Requirements and Procedures); with the exception of §28.11(k) of this title, concerning escort requirements.~~]

(d) Payment of permit fee. The cost of the permit is \$15, with all fees payable in accordance with §219.11(f). [~~§28.11(f) of this title (relating to General Oversize/Overweight Permit Requirements and Procedures).~~] All fees are non-refundable.

(e) Permit provisions and conditions.

(1) A portable building unit may only be issued a single-trip permit.

(2) Portable building units may be loaded end-to-end to create an overlength permit load, provided the overall length does not exceed 80 feet.

(3) Portable building units must not be loaded side-by-side to create an overwidth load, or loaded one on top of another to create an overheight load.

(4) Portable building units must be loaded in a manner that will create the narrowest width for permit purposes and provide for greater safety to the traveling public.

(5) The permit will be issued for a single continuous movement from the origin to the destination for an amount of time necessary to make the move, not to exceed 10 consecutive days.

(6) Movement of the permitted vehicle must be made during daylight hours only.

(7) A permittee may not transport portable building units or portable building compatible cargo with a void permit; a new permit must be obtained.

(f) Escort requirements.

(1) A portable building unit or portable building compatible cargo with a width exceeding 16 feet but not exceeding 18 feet must have a front escort vehicle on two-lane roadways and a rear escort vehicle on roadways of four or more lanes.

(2) A portable building unit or portable building compatible cargo exceeding 18 feet in width must have a front and a rear escort on all roadways at all times.

(3) The escort vehicle must:

(A) have one red 16 inch square flag mounted on each of the four corners of the vehicle;

(B) have a sign mounted on the front and rear of the vehicle displaying the words "WIDE LOAD" in black letters at least eight inches high with a brush stroke at least 1.41 inches wide against a yellow background;

(C) have an amber light or lights, visible from both front and rear, mounted on top of the vehicle and which must be two simultaneously flashing lights or one rotating beacon of not less than eight inches in diameter; and

(D) maintain two-way communications with the permitted vehicle and other escort vehicles involved with the movement of the permitted vehicle.

(4) An escort vehicle must comply with the requirements in §219.11(k)(1) and §219.11(k)(7)(A). [~~§28.11(k)(1) and §28.11(k)(7)(A) of this title (relating to General Oversize/Overweight Permit Requirements and Procedures).~~]

§219.16. *Permits for Military and Governmental Agencies.*

(a) The movement of an overdimension load on vehicles registered to the military or governmental agencies must obtain a permit from the department. [MCD.] Military or government applicants may apply for any applicable permit type issued by the department and shall follow all permit restrictions and requirements for the permit issued.

(b) The overdimension load must be moved on military or governmental vehicles that are licensed with either federal or state exempt license plates.

(c) The size and weight measurements of the overdimension load must not exceed the permit size and weight limits stated in §219.11(d) of this title (relating to General Oversize/Overweight Permit Requirements and Procedures), and 219.12(b) of this title (relating to Single-Trip Permits Issued Under Transportation Code, Chapter 623, Subchapter D), [§28.11(d) of this subchapter (relating to Maximum permit weight limits)], and §28.12(b) of this subchapter (relating to Overweight loads),] unless specific permission is granted by the department [MCD] upon request of an authorized representative of the military or a governmental agency.

(d) A surety bond is not required for an overdimension governmental or military load hauled on governmental and military vehicles.

(e) The movement of an overdimension military or governmental load transported on vehicles not licensed with federal or state exempt license plates must obtain a permit, and must comply with §219.11 and §219.12. [§28.11 of this title (relating to Permit Issuance Requirements and Procedures)], and §28.12 of this title (relating to Single-Trip Permits Issued Under Transportation Code, Chapter 623, Subchapter D).]

(f) A military or government entity is not required to pay the fee for a permit issued under this chapter if the load is transported only on vehicles that display federal or state exempt license plates.

§219.17. Multi-state Permitting Agreements.

(a) Agreements with other jurisdictions. In accordance with Texas Transportation Code, §621.003, the director may enter into an agreement with the proper authority of another state that authorizes that authority to issue a permit on behalf of the department and authorizes the department to issue a permit on behalf of the proper authority of the other state. [The agreement must be reviewed by the department's Office of General Counsel, before signing by the director.]

(b) Permit fees.

(1) Permit fees collected by the department for another state under an agreement with another state shall be remitted to the state treasurer for deposit to the credit of an account in the general revenue fund to be known as the permit distributive account.

(2) Fees for a permit issued by the department under authority of an agreement on behalf of another state will be assessed as outlined by the agreement.

(3) Another state issuing a permit on behalf of this state shall collect fees for this state based on Texas laws and administrative rules.

(c) Validity of permit issued by proper authority in another state.

(1) A permit issued by the proper authority in another state under an agreement entered into by the director and that authority has the same validity in this state as a permit issued by the department.

(2) The holder of a permit issued by the proper authority in another state is subject to all applicable laws of this state and all applicable rules of the department.

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

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General Counsel
Texas Department of Motor Vehicles
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◆ ◆ ◆
**SUBCHAPTER C. PERMITS FOR OVER AXLE
AND OVER GROSS WEIGHT TOLERANCES**

43 TAC §219.30

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 adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code; and more specifically Transportation Code, §§621.008, 622.002, and 623.002, which authorize the Board of the Texas Department of Motor Vehicles to adopt rules that are necessary to implement and enforce Chapters 621, 622, and 623.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 621, 622, and 623.

§219.30. Permits for Over Axle and Over Gross Weight Tolerances.

(a) Purpose. In accordance with Transportation Code, §623.011, the department is authorized under certain conditions to issue an annual permit for the operation of a vehicle within certain tolerances above legal axle and gross weight limits, as provided in Transportation Code, Chapter 621. The sections under this subchapter set forth the requirements and procedures to be used in issuing an annual permit.

(b) Scope. A permit may be issued to an applicant under this subchapter to operate a vehicle that exceeds the legal axle weight by a tolerance of 10% and the legal gross weight by a tolerance of 5.0% on any county road and on any road in the state highway system provided the vehicle:

(1) is not operated on the national system of interstate and defense highways at a weight greater than authorized by federal law; and

(2) is not operated on a bridge for which the maximum weight and load limit has been established and posted under Transportation Code, §621.102 or §621.301, if the gross weight of the vehicle and load or the axles and wheel loads are greater than the established and posted limits, unless the bridge provides the only public vehicular access to or from the permittee's origin or destination.

(c) Eligibility. To be eligible for a permit under this section, a vehicle must be registered under Transportation Code, Chapter 502, for the maximum gross weight applicable to the vehicle under Transportation Code, §621.101, not to exceed 80,000 pounds in total gross weight.

(d) Security.

(1) Before a permit may be issued under this section, an applicant, other than an applicant who intends to operate a vehicle that is loaded with timber or pulp wood, wood chips, cotton, or agricultural products in their natural state, must have on file with the department one of the following forms of security in the amount of \$15,000, conditioned that payment will be made to the department for any damages to the state highway system and to any county for damages to a

road or bridge of such county caused by the operation of any vehicle for which a permit is issued under this section and which has an axle weight or gross weight that exceeds the weights authorized in Transportation Code, Chapter 621:

(A) an irrevocable letter of credit issued by a financial institution which deposits are guaranteed by the Federal Deposit Insurance Corporation; or

(B) a blanket surety bond.

(2) The department may reject a bond which it determines will not provide the intended security.

(3) If payment is made by the issuer in respect of the bond or letter of credit and the applicant does not file with the department a replacement bond or letter of credit in the full amount of \$15,000, or a notification from the issuer of the existing bond or letter of credit that the existing bond or letter of credit has been restored to the full \$15,000, within 30 days after the date of such payment, all permits held by the applicant under this section shall automatically expire on the 31st day after such date.

(e) Application for permit.

(1) A person who desires to permit a vehicle as provided in this section, must submit an application to the department. ~~[MCD.]~~

(2) The application shall be in a form prescribed by the department ~~[MCD]~~ and at a minimum will require the following:

(A) name and address of the applicant;

(B) name of contact person and telephone number;

(C) vehicle information;

(D) an indication as to whether the commodities to be transported will be agricultural or non-agricultural; and

(E) a list of counties in which the vehicle will operate.

(3) The application shall be accompanied by:

(A) ~~the total permit fee, which includes an administrative fee of \$5, the base fee, and the applicable annual fee based on the number of counties designated for travel; and [a base fee of \$75 and an administration fee of \$5.00;]~~

(B) an original bond or irrevocable letter of credit as required in Transportation Code §623.012. ~~[subsection (d) of this section, unless previously filed by the applicant; and]~~

~~[(C) an additional fee based on the following schedule:]~~
~~[Figure: 43 TAC §28.30(e)(3)(C)]~~

(4) Payment of fees. Fees for permits issued under this subchapter are payable as required by §219.11(f) of this title ~~[\$28.11(f) of this chapter]~~ (relating to General Oversize/Overweight Permit Requirements and Procedures).

(f) Issuance of permit and windshield sticker.

(1) A permit and a windshield sticker will be issued on the approval of the application and each will be mailed to the applicant at the address contained in the application.

(2) The permit shall be carried in the vehicle for which the permit is issued at all times.

(3) The windshield sticker shall be affixed to the inside of the windshield of the vehicle within six inches above the vehicle's inspection sticker in a manner that will not obstruct the vision of the driver. Any attempt to remove the sticker from the windshield will

render the sticker void, and will require a new permit and sticker. The windshield sticker must be removed from the vehicle upon expiration of the permit.

(4) A replacement sticker for a lost, stolen, or mutilated windshield sticker may be issued, provided that the permittee submits a request on a form approved by the department which shall include a statement, signed by the permittee, affirming that the sticker was lost, stolen, or mutilated. The replacement sticker shall only be valid for the permitted vehicle. The cost for a replacement sticker is \$3.00.

(5) Within 14 days of issuance of the permit, the department shall notify the county clerk of each county indicated on the application, and such notification shall contain or be accompanied by the following minimum information:

(A) the name and address of the person for whom a permit is issued; and

(B) the vehicle identification number, license plate number, and registration state of the vehicle, and the permit number.

(g) Issuance of a credit. Upon written application on a form prescribed by the department, ~~[MCD,]~~ a prorated credit for the remaining time on the permit may be issued for a vehicle that is destroyed or otherwise becomes permanently inoperable to an extent that it will no longer be utilized. The date for computing a credit will be based on the date of receipt of the credit request. The fee for a credit will be \$25, and will be issued on condition that the applicant provides to the department:

(1) the original permit; or

(2) if the original permit no longer exists, written evidence of the destruction or permanent incapacity from the insurance carrier of the vehicle.

(h) Use of credit. A credit issued under subsection (g) of this section may be used only towards the payment of permit fees under this section.

(i) Exceptions. A vehicle carrying timber, wood chips, wood pulp, cotton, or other agricultural products in their natural state, may be allowed to exceed the maximum allowable axle weight by 12% without a permit; however, if such vehicle exceeds the maximum allowable gross weight by an amount of up to 5.0%, a permit issued in accordance with this section will be required.

~~[(j) Semi-trailer registration. Transportation Code, §502.167, provides that the owner of a semi-trailer registered with either a Texas token trailer license plate or a Texas apportioned trailer license plate operated in combination with a permitted vehicle, shall pay a \$15 fee to the county where the semi-trailer is registered.]~~

(j) ~~[(k)]~~ Lapse or termination of permit. A permit shall lapse or terminate and the windshield sticker must be removed from the vehicle:

(1) when the lease of the vehicle expires;

(2) on the sale of the vehicle for which the permit was issued;

(3) on the sale, takeover, or dissolution of the firm, partnership, or corporation to which a permit was issued; or

(4) if the applicant does not replenish the letter of credit or bond as required in subsection (d) of this section.

(k) ~~[(h)]~~ Void permit. A permit will be voided when the department is informed by law enforcement that a citation has been issued for a violation of a permit's terms and conditions.

(1) ~~[(m)]~~ Movement with void permit. A permittee may not operate a permitted vehicle with a void permit; a new permit must be obtained.

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

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For further information, please call: (512) 465-5665



SUBCHAPTER D. PERMITS FOR OVERSIZE AND OVERWEIGHT OIL WELL RELATED VEHICLES

43 TAC §§219.41 - 219.45

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 adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code; and more specifically Transportation Code, §§621.008, 622.002, and 623.002, which authorize the Board of the Texas Department of Motor Vehicles to adopt rules that are necessary to implement and enforce Chapters 621, 622, and 623.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 621, 622, and 623.

§219.41. General Requirements.

(a) General information.

(1) Permits issued under this subchapter, with the exception of permits issued under §219.45 ~~§28.45~~ of this title (relating to Permits for Vehicles Transporting Liquid Products Related to Oil Well Production), are subject to the requirements of this section.

(2) Oil well related vehicles are eligible for:

- (A) single-trip mileage permits;
- (B) quarterly hubometer permits; and
- (C) annual permits.

(b) Prerequisites to obtaining an oversize/overweight permit. A unit permitted under this subchapter must be registered under Transportation Code, Chapter 502, for the maximum gross weight applicable to the vehicle under Transportation Code, §621.101, or have the distinguishing license plates as provided by Transportation Code, §502.146, ~~§504.504,~~ if applicable to the vehicle.

(c) Payment of permit fees. Fees for permits issued under this subchapter are payable as described in §219.11(f) ~~§28.11(f)~~ of this title (relating to General Oversize/Overweight Permit Requirements and Procedures).

(d) Restrictions.

(1) A vehicle permitted under this subchapter is subject to the restrictions specified in §219.11(1)(1), (3), and (4), ~~§28.11(t) of this title,~~ and the permittee is responsible for obtaining information concerning current restrictions from the department.

(2) Vehicles permitted under this subchapter may not cross a load restricted bridge when exceeding the posted capacity of such. Vehicles permitted under this subchapter may travel on a load restricted road unless otherwise noted.

(3) A vehicle permitted under this subchapter may travel through highway construction or maintenance areas provided the dimensions do not exceed the construction restrictions as published by the department.

(4) A unit exceeding nine feet in width, 14 feet in height, or 65 feet in length is restricted to daylight movement only.

(e) Void permits. A permit will be voided when the department is informed by law enforcement that a citation has been issued for a violation of a permit's terms and conditions.

(f) Transferability. Unless otherwise noted, a permit issued under this subchapter may not be transferred between units or permittees.

(g) Records retention. A unit permitted under this section must keep the permit and any attachments to the permit in the unit until the day after the date the permit expires.

(h) Escort requirements. In addition to any other escort requirements specified in this subchapter, vehicles permitted under this subchapter are subject to the escort requirements specified in §219.11(k). ~~§28.11(k) of this title.~~

§219.42. Single-Trip Mileage Permits.

(a) General information.

(1) Permits issued under this section are subject to the requirements of §219.41 ~~§28.41~~ of this title (relating to General Requirements).

(2) A single-trip mileage permit:

- (A) is limited to a maximum of seven consecutive days;
- (B) routes the vehicle from the point of origin to the point of destination and has the route listed on the permit; and
- (C) allows the unit to be returned to the point of origin on the same permit, provided the return trip is made within the time period stated in the permit.

(3) A unit exceeding 175,000 pounds gross weight must:

- (A) have front and rear escort vehicles to prevent traffic from traveling beside the unit as it crosses a bridge;
- (B) cross all multi-lane bridges by centering the unit on a lane line;
- (C) cross all two-lane bridges in the center of the bridge; and
- (D) cross each bridge at a speed not greater than 20 miles per hour.

(4) A unit exceeding 12 feet in width must be centered in the outside traffic lane of any highway that has paved shoulders.

(b) Maximum permit weight limits.

(1) The maximum permit weight for any single axle, not connected to another axle by a weight equalizing suspension system,

must not exceed 30,000 pounds or 850 pounds per inch of tire width, whichever is less.

(2) The maximum permit weight for any group of axles on a unit will be determined by calculating the "W" weight for the group, using the formulas shown in Figure 2: 43 TAC §219.42(f), [Appendix B,] titled "Maximum Permit Weight Formulas," and comparing the calculated "W" weight with the corresponding "W" weight that is established in Figure 1: 43 TAC §219.42(f), [Appendix A,] titled "Maximum Permit Weight Table." [,] both as shown in subsection (f) of this section.]

(3) The maximum permit weight per inch of tire width for axles that are steerable must not exceed 950 pounds, and the maximum permit weight per inch of tire width for axles that are not steerable must not exceed 850 pounds.

(4) A unit that does not have any group of axles that exceeds the limits established in Figure 1: 43 TAC §219.42(f), [Appendix A,] "Maximum Permit Weight Table," and Figure 2: 43 TAC §219.42(f), [Appendix B,] "Maximum Permit Weight Formulas" [,] as shown in subsection (f) of this section,] will be permitted with a single-trip mileage or quarterly hubometer permit for travel on any route that does not include a load restricted bridge.

(5) A unit that has any group of axles that exceeds the limits established by Figure 1: 43 TAC §219.42(f), [Appendix A,] "Maximum Permit Weight Table," and Figure 2: 43 TAC §219.42(f), [Appendix B,] "Maximum Permit Weight Formulas" [,] as shown in subsection (f) of this section,] will be eligible, on an individual case-by-case basis, for a single-trip mileage permit only; permit approval or denial will be based on a detailed route study and an analysis of each bridge on the proposed travel route to determine if the route and bridges are capable of sustaining the movement.

(6) A bridge that has been analyzed and determined to be incapable of sustaining the unit will be excluded from the permit route.

(c) Permit application and issuance.

(1) Application for single-trip mileage permit.

(A) The applicant must submit the completed application to the department [MCD] by telephone, facsimile, mail, or Internet. The application shall include, at a minimum, the following information:

- (i) name and address of applicant;
- (ii) origin and destination points of the unit;
- (iii) make and model of the unit;
- (iv) vehicle identification number of the unit;
- (v) license plate number of the unit;
- (vi) size and weight dimensions; and
- (vii) any other information required by law.

(B) Upon receipt of the application, the department [MCD] will review and verify unit size and weight information, check route and mileage to be traveled, compute the permit fee, and advise the applicant of the permit fee.

(2) Issuance of single-trip mileage permit. Upon receipt of the permit fee, the department [MCD] will advise the applicant of the permit number, and will provide a copy of the permit to the applicant if requested to do so.

(d) Permit fees and refunds.

(1) Minimum fee. The minimum fee for a single-trip mileage permit is either the calculated permit fee or \$31, whichever is the greater amount.

(2) Permit fee calculation. The fee for a single-trip mileage permit is calculated by multiplying the number of miles traveled, the highway use factor, the total rate per mile, and the indirect cost share. [the following formula.]
[Figure 4: 43 TAC §28.42(d)(2)]

(A) Highway use factor. The highway use factor for a single trip mileage permit is 0.6.

(B) Total rate per mile. The total rate per mile is the combined mileage rates for width, height, and weight for the unit. For a trailer mounted unit, the total rate per mile is based on the overall width, overall height, and all axle weights, including the truck-tractor axles.

(i) The mileage rate for width is \$.06 per mile for each foot (or fraction thereof) above legal width.

(ii) The mileage rate for height is \$.04 per mile for each foot (or fraction thereof) above legal height.

(iii) The mileage rate for a single axle or any axle within a group that exceeds 20,000 pounds, but is less than or equal to 25,000 pounds, is calculated by multiplying \$.045 times the amount by which the axle or axle group weight exceeds the legal weight for the axle or axle group and dividing the resultant figure by 1,000 pounds.

(iv) The mileage rate for a single axle or any axle within a group that exceeds 25,000 pounds, but is less than or equal to 30,000 pounds, is calculated by multiplying \$.055 times the amount by which the axle or axle group weight exceeds the legal weight for the axle or axle group and dividing the resultant figure by 1,000 pounds.

~~[(C) Registration reduction. A unit registered for maximum legal weight will receive a reduction of 25% in the computation of the permit fee.]~~

~~[(D) Indirect cost share. The indirect cost share is a prorated share of administering department activities, other than the direct cost of the activities, including the cost of providing statewide support services. The indirect cost share factor is based upon the previous year's expenditures.]~~

(3) Permit fees for trailer mounted units.

(A) The permit fee for a trailer mounted unit is based on the overall width, overall height, and all axle weights, including the truck-tractor axles.

(B) A unit with two or more axle groups that do not have a spacing of at least 12 feet between the closest axles of the opposing groups must have the permit fee calculated by the following method.

(i) The axle group with the lowest weight will have the axle closest to the next axle group temporarily disregarded from its group in order to create a spacing of at least 12 feet between the two groups for fee calculation purposes.

(ii) An axle group will not have more than one axle disregarded.

(iii) The permit fee for the axle group with the temporarily disregarded axle must be based on the actual weight of the entire axle group minus the legal weight for the remaining axles of the group.

(4) Refunds. Fees for permits issued under this section are non-refundable.

(e) Amendments. A single-trip mileage permit may not be amended unless an exception is granted by the department. [MCD-]

(f) Weight table and formulas. [Appendices.] The following table entitled "Maximum Permit Weight Table" is Figure 1: 43 TAC §219.42(f), [Appendix A-] and the list of formulas entitled, "Maximum Permit Weight Formulas," is Figure 2: 43 TAC §219.42(f), [Appendix B-]

Figure 1: 43 TAC §219.42(f)

Figure 2: 43 TAC §219.42(f)

[Figure: 43 TAC §28.42(f)]

§219.43. *Quarterly Hubometer Permits.*

(a) General information.

(1) Permits issued under this section are subject to the requirements of §219.41 [§28.41] of this title (relating to General Requirements).

(2) A quarterly hubometer permit:

(A) is effective for three consecutive months (for example, a permit issued with a beginning date of January 15 will terminate on April 14, or a permit issued with a beginning date of July 1 will terminate on September 30);

(B) allows the unit to travel on all state-maintained highways; and

(C) allows the unit to travel on a state-wide basis.

(3) A unit permitted under this subsection must not exceed any of the following dimensions:

(A) 12 feet in width;

(B) 14 feet, 6 inches in height; and

(C) 95 feet in length.

(4) With the exception of units that are overlength only, a unit operated with a permit issued under this section must be equipped with a hubometer. The permittee must maintain the hubometer in good working condition.

(5) A unit exceeding 175,000 pounds gross weight must:

(A) have front and rear escort vehicles to prevent traffic from traveling beside the unit as it crosses a bridge;

(B) cross all multi-lane bridges by centering the unit on a lane line;

(C) cross all two-lane bridges in the center of the bridge; and

(D) cross each bridge at a speed not greater than 20 miles per hour.

(b) Maximum permit weight limits.

(1) The maximum permit weight for any single axle, not connected to another axle by a weight equalizing suspension system, must not exceed 30,000 pounds or 850 pounds per inch of tire width, whichever is less.

(2) The maximum permit weight for any group of axles on a unit will be determined by calculating the "W" weight for the group, using the formulas in Figure 2: 43 TAC §219.42(f), [Appendix B-] "Maximum Permit Weight Formulas", and comparing the calculated "W" weight with the corresponding "W" weight that is established in Figure 1: 43 TAC §219.42(f), [Appendix A-] "Maximum Permit Weight Table." [5] both as shown in §28.42(f) of this title (relating to Single Trip Mileage Permits).]

(3) The maximum permit weight per inch of tire width for axles that are steerable must not exceed 950 pounds, and the maximum permit weight per inch of tire width for axles that are not steerable must not exceed 850 pounds.

(4) A unit that does not have any group of axles that exceeds the limits established in Figure 1: 43 TAC §219.42(f), [Appendix A-] "Maximum Permit Weight Table," and Figure 2: 43 TAC §219.42(f), [Appendix B-] "Maximum Permit Weight Formulas" [5] as shown in §28.42(f) of this title,] will be permitted with a single-trip mileage or quarterly hubometer permit for travel on any route that does not include a load restricted bridge.

(5) A unit that has any group of axles that exceeds the limits established by Figure 1: 43 TAC §219.42(f), [Appendix A-] "Maximum Permit Weight Table," and Figure 2: 43 TAC §219.42(f), [Appendix B-] "Maximum Permit Weight Formulas" [5] as shown in §28.42(f) of this title,] will be eligible, on an individual case-by-case basis, for a single-trip mileage permit only; permit approval or denial will be based on a detailed route study and an analysis of each bridge on the proposed travel route to determine if the route and bridges are capable of sustaining the movement.

(6) A bridge that has been analyzed and determined to be incapable of sustaining the unit will be excluded from the permit route.

(c) Initial permit application and issuance.

(1) Initial permit application.

(A) The applicant for an initial quarterly hubometer permit must submit a completed application to the department [MCD] by telephone, facsimile, mail, or Internet. The application shall include, at a minimum, the following information:

(i) name and address of applicant;

(ii) make and model of the unit;

(iii) vehicle identification number of the unit;

(iv) license plate number of the unit;

(v) size and weight dimensions; and

(vi) any other information required by law.

(B) Upon receipt of the initial quarterly hubometer permit application, the department [MCD] will verify unit information, calculate the permit fee, and advise the applicant of the permit fee.

(2) Issuance of initial quarterly hubometer permit. Upon receipt of the permit fee, the department [MCD] will provide the permit to the applicant if requested, and will also provide a renewal application form to the applicant.

(d) Permit renewals and closeouts.

(1) The applicant must complete and submit a renewal application form to the department [MCD] for each permit that is to be renewed or closed out.

(2) Upon receipt of the renewal application, the department [MCD] will verify unit information, check mileage traveled on the last permit, calculate the new permit fee, and advise the applicant of the permit fee.

(e) Permit fees and refunds.

(1) Minimum fee. The minimum fee for a quarterly hubometer permit is either the calculated permit fee or \$31, whichever is the greater amount.

(2) Fees for overlength units. A unit that is overlength only must obtain a quarterly hubometer permit with a fee of \$31, but is not required to have a hubometer.

(3) Quarterly hubometer permit fee calculation. The permit fee for a quarterly hubometer permit is calculated by multiplying the hubometer mileage, the highway use factor, the total rate per mile, and the indirect cost share. [~~the following formula:~~]
[Figure 1: 43 TAC §28.43(e)(3)]

(A) Hubometer mileage. Hubometer mileage for a quarterly hubometer permit is determined by an amount estimated by the applicant for the first quarterly hubometer permit, or from the unit's hubometer mileage reading from the previous quarterly hubometer permit.

(i) An applicant requesting a permit for a unit that has traveled in excess of the mileage stated in the previous quarterly hubometer permit must pay for the excess mileage traveled, in addition to the fee for the renewed quarterly hubometer permit.

(ii) An applicant requesting a permit for a unit that has traveled less than the mileage stated on the previous quarterly hubometer permit will receive a credit on the purchase price of the renewed quarterly hubometer permit for that unit or another unit.

(B) Highway use factor. The highway use factor for a quarterly hubometer permit is 0.3.

(C) Total rate per mile. The total rate per mile is the combined mileage rates for width, height, and weight for the unit. The rate per mile for a trailer mounted unit is based on the overall width, overall height, and all axle weights, including the truck-tractor axles.

(i) The mileage rate for width is \$.06 per mile for each foot (or fraction thereof) above legal width.

(ii) The mileage rate for height is \$.04 per mile for each foot (or fraction thereof) above legal height.

(iii) The mileage rate for a single axle or any axle within a group that exceeds 20,000 pounds, but is less than or equal to 25,000 pounds, is calculated by multiplying \$.045 times the amount by which the axle or axle group weight exceeds the legal weight for the axle or axle group and dividing the resultant figure by 1,000 pounds.

(iv) The mileage rate for a single axle or any axle within a group that exceeds 25,000 pounds, but is less than or equal to 30,000 pounds, is calculated by multiplying \$.055 times the amount by which the axle or axle group weight exceeds the legal weight for the axle or axle group and dividing the resultant figure by 1,000 pounds.

~~(D) Registration reduction. A unit registered for maximum legal weight will receive a reduction of 25% in the computation of the permit fee.~~

(D) ~~(E)~~ Indirect cost share. The indirect cost share is a prorated share of administering department activities, other than the direct cost of the activities, including the cost of providing statewide support services. The indirect cost share factor is based upon the previous year's expenditures.

(4) Permit fees for trailer mounted units.

(A) The permit fee for a trailer mounted unit is based on the overall width, overall height, and all axle weights, including the truck-tractor axles.

(B) A unit with two or more axle groups that does not have a spacing of at least 12 feet between the closest axles of the opposing groups must have the permit fee calculated by the following method.

(i) The axle group with the lowest weight will have the axle closest to the next axle group temporarily disregarded from its group in order to create a spacing of at least 12 feet between the two groups for fee calculation purposes.

(ii) An axle group will not have more than one axle disregarded.

(iii) The permit fee for the axle group with the temporarily disregarded axle must be based on the actual weight of the entire axle group minus the legal weight for the remaining axles of the group.

(5) Refunds. A refund is made to the applicant when the quarterly hubometer permit process is stopped for all units listed in the applicant's account, provided the amount of the refund exceeds \$25.

(f) Amendments. A quarterly hubometer permit may be amended only to indicate:

(1) a new hubometer serial number; or

(2) a new license plate number.

§219.44. Annual Permits.

(a) General information. Permits issued under this section are subject to the requirements of §219.41 [~~§28.41 of this title (relating to General Requirements)~~].

(1) Annual self-propelled oil well servicing unit permits.

(A) A unit that does not exceed legal size and weight limits and is registered with a permit plate must purchase an annual permit issued under this section.

(B) The fee for an annual self-propelled oil well servicing unit permit is \$52 per axle. The indirect cost share is included in this fee.

(2) Annual oil field rig-up truck permits.

(A) An oil field rig-up truck permitted under this section must not exceed:

(i) legal height or length limits, as provided in Transportation Code, Chapter 621, [~~623~~] Subchapter C;

(ii) 850 pounds per inch of tire width on the front axle;

(iii) 25,000 pounds on the front axle; or

(iv) legal weight on all other axles.

(B) An oil field rig-up truck, operating under an annual permit, must be registered in accordance with Transportation Code, Chapter 502.

(C) The annual permit fee for an oil field rig-up truck is \$52. The indirect cost share is included in this fee.

(D) An annual permit for an oil field rig-up truck allows the unit to travel at night, provided the unit does not exceed nine feet in width.

(3) A permit issued under this section may not be amended.

(4) A permit issued under this section allows travel on a statewide basis and on all state maintained highways.

(b) Permit application and issuance.

(1) Initial permit application. An applicant for an annual permit under this section must submit a completed application by telephone, facsimile, mail, or Internet. The application shall include, at a minimum, the following information:

- (A) name and address of applicant;
- (B) make and model of the unit;
- (C) vehicle identification number of the unit;
- (D) license plate number of the unit;
- (E) size and weight dimensions; and
- (F) any other information required by law.

(2) Permit issuance. Upon receipt of the application and the appropriate fees, the department [MCD] will provide the permit to the applicant if requested, and will also provide a renewal application form to the applicant.

§219.45. Permits for Vehicles Transporting Liquid Products Related to Oil Well Production.

(a) General provisions. This section applies to the following vehicles which may secure an annual permit issued under provisions of Transportation Code, Chapter 623, Subchapter G, to haul liquid loads over all state-maintained highways.

(1) A vehicle combination consisting of a truck-tractor and semi-trailer specifically designed with a tank and pump unit for transporting:

- (A) liquid fracing products, liquid oil well waste products, or unrefined liquid petroleum products to an oil well; or
- (B) unrefined liquid petroleum products or liquid oil well waste products from an oil well not connected to a pipeline.

(2) A permit issued under this section is effective for one year beginning on the "movement to begin" date.

(b) Application for permit.

(1) A request for an annual permit issued under Transportation Code, Chapter 623, Subchapter G, and this section, must be submitted to the department [MCD] by telephone, facsimile, mail, or Internet.

(2) The permit request must be received by the department [MCD] not more than 14 days prior to the date that the permit is to begin.

(c) Permit qualifications and requirements.

- (1) The semi-trailer must be of legal size and weight.
- (2) The semi-trailer must be registered for the maximum legal gross weight.
- (3) Only one semi-trailer will be listed on a permit.
- (4) The permit may be transferred from an existing trailer being removed from service and placed on a new trailer being added to the permittee's fleet, if the permittee supplies the department [MCD] with:

- (A) the existing valid permit number;
- (B) the make and model of the new trailer;
- (C) the license number of the new trailer; and
- (D) a transfer fee of \$31 per permit to cover administrative costs.

(d) Fees. All fees associated with permits issued under this section are payable as described in §219.11(f) [~~§28.11(f)~~] of this title (relating to General Oversize/Overweight Permit Requirements and Procedures).

(1) The permit fee is based on the axles of the semi-trailer and the drive axles of the truck-tractor. The fee for the permit, which includes the indirect cost share, is determined as follows:

- (A) \$52 per axle--to haul liquid oil well waste products or unrefined liquid petroleum products from oil wells not connected by a pipeline and return empty;
- (B) \$52 per axle--to haul liquid products related to oil well production to an oil well and return empty; and
- (C) \$104 per axle--to haul liquid products related to oil well production to an oil well and return with liquid oil well waste products or unrefined liquid petroleum products from an oil well not connected to a pipeline.

(2) Each permittee will be charged a \$20 issuance fee in addition to the permit fee.

(e) Permit movement conditions. The permit load must not cross any load-restricted bridge when exceeding the posted capacity of such.

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

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 David D. Duncan
 General Counsel
 Texas Department of Motor Vehicles
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 For further information, please call: (512) 465-5665



SUBCHAPTER E. PERMITS FOR OVERSIZE AND OVERWEIGHT UNLADEN LIFT EQUIPMENT MOTOR VEHICLES

43 TAC §§219.61 - 219.64

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 adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code; and more specifically Transportation Code, §§621.008, 622.002, and 623.002, which authorize the Board of the Texas Department of Motor Vehicles to adopt rules that are necessary to implement and enforce Chapters 621, 622, and 623.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 621, 622, and 623.

§219.61. General Requirements for Permits for Oversize and Overweight Unladen Lift Equipment Motor Vehicles.

(a) General information. [~~Information.~~] Unless otherwise noted, permits issued under this subchapter are subject to the requirements of this section. Unladen lift equipment motor vehicles (cranes) permitted under this subchapter are eligible for:

(1) permit weight limits above those established by §219.11(d)(2) [~~§28.11(d)(2)~~] of this title (relating to General Over-size/Overweight Permit Requirements and Procedures);

- (2) single-trip mileage permits;
- (3) quarterly hubometer permits; and
- (4) annual permits.

(b) Payment of permit fees. Fees for permits issued under this subchapter are payable as described in §219.11(f). [~~§28.11(f) of this title.~~]

(c) Restrictions.

(1) A vehicle permitted under this subchapter is subject to the restrictions specified in §219.11(l)(1), (3), and (4). [~~§28.11(l) of this title.~~] and the permittee is responsible for obtaining information concerning current restrictions from the department.

(2) A vehicle permitted under this subchapter may travel through highway construction or maintenance areas provided the dimensions do not exceed the construction restrictions as published by the department.

(d) Void permits. A permit will be voided when the department is informed by law enforcement that a citation has been issued for a violation of a permit's terms and conditions.

(e) Transferability. Unless otherwise noted, a permit issued under this subchapter may not be transferred between cranes or between permittees.

(f) Records retention. A crane permitted under this section must keep the permit and any attachments to the permit in the crane until the day after the date the permit expires.

(g) Escort requirements. In addition to any other escort requirements specified in this subchapter, cranes permitted under this subchapter are subject to the escort requirements specified in §219.11(k). [~~§28.11(k) of this title.~~]

§219.62. *Single-Trip [Single Trip] Mileage Permits.*

(a) General information.

(1) Permits issued under this section are subject to the requirements of §219.61 [~~§28.61~~] of this title (relating to General Requirements for Permits for Oversize and Overweight Unladen Lift Equipment Motor Vehicles).

(2) A single-trip [~~single trip~~] mileage permit:

- (A) is limited to a maximum of seven consecutive days;
- (B) is routed from the point of origin to the point of destination and has the route listed on the permit; and
- (C) allows the crane to be returned to the point of origin on the same permit, provided the return trip is made within the time period stated in the permit.

(3) A crane permitted under Transportation Code, Chapter 623, Subchapter J, must be registered under Transportation Code, Chapter 502, for the maximum gross weight applicable to the vehicle under Transportation Code, Section 621.101 or have the distinguishing license plates as provided by Transportation Code, §502.146 [~~§504.504~~] if applicable to the vehicle.

(4) A crane exceeding 175,000 pounds gross weight must:

(A) have front and rear escort vehicles to prevent traffic from traveling beside the crane as it crosses a bridge;

(B) cross all multi-lane bridges by centering the crane on a lane line;

(C) cross all two-lane bridges in the center of the bridge; and

(D) cross each bridge at a speed not greater than 20 miles per hour.

(5) A crane exceeding 12 feet in width must be centered in the outside traffic lane of any highway that has paved shoulders.

(6) The permitted vehicle must not cross a load restricted bridge when exceeding the posted capacity of such.

(b) Maximum permit weight limits.

(1) The maximum permit weight for any single axle, not connected to another axle by a weight equalizing suspension system, must not exceed 30,000 pounds or 850 pounds per inch of tire width, whichever is less.

(2) The maximum permit weight for any group of axles on a crane is determined by calculating the "W" weight for the group, using the formulas shown in Figure 2: 43 TAC §219.62(f), [Appendix B;] "Maximum Permit Weight Formulas," and comparing the calculated "W" weight with the corresponding "W" weight that is established in Figure 1: 43 TAC §219.62(f), [Appendix A;] "Maximum Permit Weight Table." [~~both as shown in subsection (f) of this section.~~]

(3) The maximum permit weight per inch of tire width for axles that are steerable must not exceed 950 pounds, and the maximum permit weight per inch of tire width for axles that are not steerable must not exceed 850 pounds.

(4) A crane that does not have any group of axles that exceeds the limits established in Figure 1: 43 TAC §219.62(f), [Appendix A;] "Maximum Permit Weight Table," and Figure 2: 43 TAC §219.62(f), [Appendix B;] "Maximum Permit Weight Formulas," [~~both shown in subsection (f) of this section.~~] will be permitted with a single-trip mileage permit or a quarterly hubometer permit for travel on any route that does not include a load restricted bridge.

(5) A crane that has any group of axles that exceeds the limits established by Figure 1: 43 TAC §219.62(f), [Appendix A;] "Maximum Permit Weight Table," and Figure 2: 43 TAC §219.62(f), [Appendix B;] "Maximum Permit Weight Formulas," [~~shown in subsection (f) of this section.~~] will be eligible, on an individual case-by-case basis, for a single-trip mileage permit only. Permit approval or denial will be based on a detailed route study and an analysis of each bridge on the proposed travel route to determine if the route and bridges are capable of sustaining the movement.

(6) A bridge that has been analyzed and determined to be incapable of sustaining the crane will be excluded from the permit route.

(c) Permit application and issuance.

(1) Application for single-trip mileage permit.

(A) The applicant must submit the completed application to the department [MCD] by telephone, facsimile, mail, or Internet. The application shall include, at a minimum, the following information:

- (i) name and address of applicant;
- (ii) origin and destination points of the crane;
- (iii) make and model of the crane;
- (iv) vehicle identification number of the crane;

- (v) license plate number of the crane;
- (vi) size and weight dimensions; and
- (vii) any other information required by law.

(B) Upon receipt of the application, the department [MCD] will review and verify size and weight information, check the route and mileage to be traveled, compute the permit fee, and advise the applicant of the permit fee.

(2) Issuance of single-trip mileage permit. Upon receipt of the permit fee, the department [MCD] will advise the applicant of the permit number, and will provide a copy of the permit to the applicant if requested to do so.

(d) Permit fees and refunds.

(1) Minimum fee. The minimum fee for a single-trip permit is either the calculated permit fee or \$31, whichever is the greater amount.

(2) Permit fee calculation. The permit fee for a single-trip mileage permit is calculated by multiplying the number of miles traveled, the highway use factor and the total rate per mile, and the indirect cost share. [the following formula:]
[Figure 1: 43 TAC §28.62(d)(2)]

(A) Highway use factor. The highway use factor for a single trip mileage permit is 0.6.

(B) Total rate per mile. The total rate per mile is the combined mileage rates for width, height, and weight for the unit. The rate per mile for a trailer mounted crane is based on the overall width, overall height, and all axle weights, including the truck-tractor axles.

(i) The mileage rate for width is \$.06 per mile for each foot (or fraction thereof) above legal width.

(ii) The mileage rate for height is \$.04 per mile for each foot (or fraction thereof) above legal height.

(iii) The mileage rate for a single axle or any axle within a group that exceeds 20,000 pounds, but is less than or equal to 25,000 pounds, is calculated by multiplying \$.045 times the amount by which the axle or axle group weight exceeds the legal weight for the axle or axle group and dividing the resultant figure by 1,000 pounds.

(iv) The mileage rate for a single axle or any axle within a group that exceeds 25,000 pounds, but is less than or equal to 30,000 pounds, is calculated by multiplying \$.055 times the amount by which the axle or axle group weight exceeds the legal weight for the axle or axle group and dividing the resultant figure by 1,000 pounds.

~~[(C) Registration reduction. A crane registered for maximum legal weight will receive a reduction of 25% in the computation of the permit fee.]~~

(C) ~~[(D)]~~ Indirect cost share. The indirect cost share is a prorated share of administering department activities, other than the direct cost of the activities, including the cost of providing statewide support services. The indirect cost share factor is based upon the previous year's expenditures.

(3) Exceptions to fee computations. A crane with two or more axle groups that does not have a spacing of at least 12 feet between the closest axles of the opposing groups must have the permit fee calculated by the following method.

(A) The axle group with the lowest weight will have the axle closest to the next axle group temporarily disregarded from its group in order to create a spacing of at least 12 feet between the two groups for fee calculation purposes.

(B) An axle group will not have more than one axle disregarded.

(C) The permit fee for the axle group with the temporarily disregarded axle must be based on the actual weight of the entire axle group minus the legal weight for the remaining axles of the group.

(4) Refunds. Fees for permits issued under this section are non-refundable.

(e) Amendments. A single-trip mileage permit issued under this section may not be amended unless an exception is granted by the department. [MCD:]

(f) Weight table and formulas. [Appendices:] The following table entitled "Maximum Permit Weight Table" is Figure 1: 43 TAC §219.62(f). [Appendix A:] and the list of formulas entitled "Maximum Permit Weight Formulas," is Figure 2: 43 TAC §219.62(f). [Appendix B:]

Figure 1: 43 TAC §219.62(f)

Figure 2: 43 TAC §219.62(f)

[Figure: 43 TAC §28.62(f)]

§219.63. *Quarterly Hubometer Permits.*

(a) General information.

(1) Permits issued under this section are subject to the requirements of §219.61 of this title [~~§28.64 of this subchapter~~] (relating to General Requirements for Permits for Oversize and Overweight Unladen Lift Equipment Motor Vehicles).

(2) A quarterly hubometer permit:

(A) is effective for three consecutive months (for example, a permit issued with a beginning date of January 15 will terminate on April 14, or a permit issued with a beginning date of July 1 will terminate on September 30);

(B) allows the vehicle to travel on all state-maintained highways; and

(C) allows the unit to travel on a state-wide basis.

(3) A crane permitted under this section must not exceed any of the following dimensions:

(A) 12 feet in width;

(B) 14 feet, 6 inches in height; or

(C) 95 feet in length.

(4) A crane permitted under this section must be registered under Transportation Code, Chapter 502, for the maximum gross weight applicable to the vehicle under Transportation Code, Section 621.101, or have the distinguishing license plates as provided by Transportation Code, §502.146, [~~§504.504~~] if applicable to the vehicle.

(5) With the exception of cranes that are overlength only, cranes operated with a quarterly hubometer permit must be equipped with a hubometer. The permittee must maintain the hubometer in good working condition.

(6) A crane exceeding 175,000 pounds gross weight must:

(A) have front and rear escort vehicles to prevent traffic from traveling beside the crane as it crosses a bridge;

(B) cross all multi-lane bridges by centering the crane on a lane line;

(C) cross all two-lane bridges in the center of the bridge; and

(D) cross each bridge at a speed not greater than 20 miles per hour.

(7) A crane exceeding 12 feet in width must be centered in the outside traffic lane of any highway that has paved shoulders.

(8) A crane will be permitted for night movement provided that it does not exceed 10 feet 6 inches in width, 14 feet in height, or 95 feet in length. A crane moving at night must be accompanied by a front and rear escort vehicle.

(9) The permitted vehicle must not cross a load restricted bridge when exceeding the posted capacity of such.

(10) The permit may be amended only to indicate:

- (A) a new hubometer serial number; or
- (B) a new license plate number.

(b) Maximum permit weight limits.

(1) The maximum permit weight for any single axle, not connected to another axle by a weight equalizing suspension system, must not exceed 30,000 pounds or 850 pounds per inch of tire width, whichever is less.

(2) The maximum permit weight for any group of axles on a crane will be determined by calculating the "W" weight for the group, using the formulas in Figure 2: 43 TAC §219.62(f), [Appendix B:] "Maximum Permit Weight Formulas," and comparing the calculated "W" weight with the corresponding "W" weight that is established in Figure 1: 43 TAC §219.62(f), [Appendix A:] "Maximum Permit Weight Table," [as shown in §28.62(f) of this title (relating to Single Trip Mileage Permits).]

(3) The maximum permit weight per inch of tire width for axles that are steerable must not exceed 950 pounds, and the maximum permit weight per inch of tire width for axles that are not steerable must not exceed 850 pounds.

(4) A crane that does not have any group of axles that exceeds the limits established in Figure 1: 43 TAC §219.62(f), [Appendix A:] "Maximum Permit Weight Table," and Figure 2: 43 TAC §219.62(f), [Appendix B:] "Maximum Permit Weight Formulas," [as shown in §28.62(f) of this title.] will be permitted with a single-trip mileage permit or a quarterly hubometer permit for travel on any route that does not include a load restricted bridge.

(5) A crane that has any group of axles that exceeds the limits established by Figure 1: 43 TAC §219.62(f), [Appendix A:] "Maximum Permit Weight Table," and Figure 2: 43 TAC §219.62(f), [Appendix B:] "Maximum Permit Weight Formulas," [shown in §28.62(f) of this title.] will be eligible, on an individual case-by-case basis, for a single-trip mileage permit only; permit approval or denial will be based on a detailed route study and an analysis of each bridge on the proposed travel route to determine if the route and bridges are capable of sustaining the movement.

(6) A bridge that has been analyzed and determined to be incapable of sustaining the crane will be excluded from the permit route.

(c) Initial permit application and issuance.

(1) Initial permit application.

(A) A completed application for an initial quarterly hubometer permit must be submitted to the department [MCD] by telephone, facsimile, mail, or Internet. The application shall include, at a minimum, the following information:

(i) name and address of applicant;

(ii) make and model;

(iii) the vehicle identification number;

(iv) license plate number of the vehicle;

(v) size and weight dimensions; and

(vi) any other information required by law.

(B) Upon receipt of the initial quarterly hubometer permit application, the department [MCD] will verify vehicle information, calculate the permit fee, and advise the applicant of the permit fee.

(2) Issuance of initial quarterly hubometer permit. Upon receipt of the permit fee, the department [MCD] will provide the permit to the applicant upon request, and will also provide a renewal application form to the applicant.

(d) Permit renewals and closeouts.

(1) The applicant must complete and submit a renewal application form to the department [MCD] for each permit that is to be renewed or closed out.

(2) Upon receipt of the renewal application, the department [MCD] will verify crane information, check mileage traveled on the last permit, calculate the new permit fee, and advise the applicant of the permit fee.

(e) Permit fees and refunds.

(1) Minimum fee. The minimum fee for a single-trip permit or time permit is either the calculated permit fee or \$31, whichever is the greater amount.

(2) Fees for overlength units. A crane that is overlength only must obtain a quarterly hubometer permit with a fee of \$31, and is not required to have a hubometer.

(3) Quarterly hubometer permit fee calculation. The permit fee for a quarterly hubometer permit is calculated by multiplying the hubometer mileage, the highway use factor, the total rate per mile, and the indirect cost share. [the following formula:] [Figure: 43 TAC §28.63(e)(3)]

(A) Hubometer mileage. Mileage for a quarterly hubometer permit is determined by an amount estimated by the applicant for the first quarterly hubometer permit, or from the crane's hubometer mileage reading from the previous quarterly hubometer permit.

(i) An applicant requesting a permit for a crane that has traveled in excess of the mileage stated in the previous quarterly hubometer permit must pay for the excess mileage traveled, in addition to the fee for the renewed quarterly hubometer permit.

(ii) An applicant requesting a permit for a crane that has traveled less than the mileage stated on the previous quarterly hubometer permit will receive a credit on the purchase price of the renewed quarterly hubometer permit for that crane or another crane.

(B) Highway use factor. The highway use factor for a quarterly hubometer [time] permit is 0.3.

(C) Total rate per mile. The total rate per mile is the combined mileage rates for width, height, and weight for the crane.

(i) The mileage rate for width is \$.06 per mile for each foot (or fraction thereof) above legal width.

(ii) The mileage rate for height is \$.04 per mile for each foot (or fraction thereof) above legal height.

(iii) The mileage rate for a single axle or any axle within a group that exceeds 20,000 pounds, but is less than or equal to 25,000 pounds, is calculated by multiplying \$.045 times the amount by which the axle or axle group weight exceeds the legal weight for the axle or axle group and dividing the resultant figure by 1,000 pounds.

(iv) The mileage rate for a single axle or any axle within a group that exceeds 25,000 pounds, but is less than or equal to 30,000 pounds, is calculated by multiplying \$.055 times the amount by which the axle or axle group weight exceeds the legal weight for the axle or axle group and dividing the resultant figure by 1,000 pounds.

~~[(D) Registration reduction. A crane registered for maximum legal weight will receive a reduction of 25% in the computation of the permit fee.]~~

~~(D) [(E)] Indirect cost share.~~ The indirect cost share is a prorated share of administering department activities, other than the direct cost of the activities, including the cost of providing statewide support services. The indirect cost share factor is based upon the previous year's expenditures.

(4) Special fee provisions. A crane with two or more axle groups that do not have a spacing of at least 12 feet between the closest axles of the opposing groups must have the permit fee calculated by the following method.

(A) The axle group with the lowest weight will have the axle closest to the next axle group temporarily disregarded from its group in order to create a spacing of at least 12 feet between the two groups for fee calculation purposes.

(B) An axle group will not have more than one axle disregarded.

(C) The permit fee for the axle group with the temporarily disregarded axle must be based on the actual weight of the entire axle group minus the legal weight for the remaining axles of the group.

(5) Refunds. The department [MCD] will refund fees for permits issued under this section when the quarterly hubometer permit process is stopped for all cranes listed in the applicant's account, provided the amount of the refund exceeds \$25.

§219.64. Annual Permits.

(a) General information. Permits issued under this section are subject to the requirements of §219.61 [~~§28.64~~] of this title (relating to General Requirements for Permits for Oversize and Overweight Unladen Lift Equipment Motor Vehicles).

(1) A crane permitted under this section must not exceed:

(A) the weight limits established in §219.11(d)(1), (2), and (3) [~~§28.11(d)(1), (2) and (3)~~] of this title (relating to General Oversize/Overweight Permit Requirements and Procedures);

(B) a gross weight of 120,000 pounds;

(C) legal length and height limits as specified in Transportation Code, Chapter 621, Subchapter C; and [~~§621.203 and §621.207; and~~]

(D) 10 feet in width.

(2) A permit issued under this section may not be amended.

(3) A crane permitted under this section must not cross a load restricted bridge or a load restricted road when exceeding the posted capacity of such.

(4) A crane permitted under this section may travel at night with front and rear escort vehicles.

(5) The fee for an annual permit issued under this section is \$100.

(b) Permit application and issuance.

(1) Initial permit application. An applicant for an annual permit under this section must submit a completed application and the appropriate fees by telephone, facsimile, mail, or Internet. The application shall include, at a minimum, the following information:

(A) name and address of applicant;

(B) make and model of the crane;

(C) vehicle identification number;

(D) license plate number;

(E) size and weight dimensions; and

(F) any other information required by law.

(2) Permit issuance. Upon receipt of the application and the appropriate permit fee, the department [MCD] will verify the application information, provide the permit to the applicant if requested, and also provide a renewal application form to the applicant.

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

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David D. Duncan

General Counsel

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For further information, please call: (512) 465-5665



SUBCHAPTER F. COMPLIANCE

43 TAC §219.82

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 adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code; and more specifically Transportation Code, §§621.008, 622.002, and 623.002, which authorize the Board of the Texas Department of Motor Vehicles to adopt rules that are necessary to implement and enforce Chapters 621, 622, and 623.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 621, 622, and 623.

§219.82. Falsification of Information on Application and Permit.

(a) A person who provides false information on the permit application or another form required by the department for the issuance of an oversize or overweight permit commits a violation of this chapter and is subject to revocation of an oversize or overweight permit and the enforcement provisions of Subchapter H [Subchapter K] of this chapter.

(b) A person violates this chapter if the person produces a counterfeit permit or alters a permit issued by the department.

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SUBCHAPTER H. ENFORCEMENT

43 TAC §§219.124 - 219.126

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 adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code; and more specifically Transportation Code, §§621.008, 622.002, and 623.002, which authorize the Board of the Texas Department of Motor Vehicles to adopt rules that are necessary to implement and enforce Chapters 621, 622, and 623.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 621, 622, and 623.

§219.124. Administrative Proceedings.

(a) If the department decides to take an enforcement action under §219.121 of this title (relating to Administrative Penalties) or §219.122 of this title (relating to Administrative Sanctions), [~~§28.301 or §28.302 of this subchapter,~~] the department shall give written notice to the person against whom the action is being taken by first class mail to the person's address as shown in the records of the department.

(b) The notice required by subsection (a) of this section must include:

- (1) a brief summary of the alleged violation;
- (2) a statement of each enforcement action being taken;
- (3) the effective date of each enforcement action;
- (4) a statement informing the person of the person's right to request a hearing;
- (5) a statement describing the procedure for requesting a hearing, including the period during which a hearing request must be made; and
- (6) a statement that the proposed penalties and sanctions will take effect on the date specified in the letter if the person fails to request a hearing.

(c) The person must submit a written request for a hearing to the address provided in the notice not later than the 26th day after the date the notice required by subsection (a) of this section is mailed.

(d) On receipt of the written request for a hearing, the department will refer the matter to the State Office of Administrative Hear-

ings. When the hearing is set, the department will give notice of the time and place of the hearing to the person.

(e) If the person does not make a written request for a hearing or enter into a settlement agreement under §219.125 of this title (relating to Settlement Agreements) [~~§28.305 of this subchapter~~] before the 27th day after the date that the notice is mailed, the department's decision becomes final [~~and unappealable~~] on that date.

§219.125. Settlement Agreements.

(a) The department and the alleged violator may enter into a compromise settlement agreement at any time before the issuance of a final decision. The compromise settlement agreement must provide that the alleged violator consents to the assessment of a specified administrative penalty or to the imposition of the specified administrative sanction by the department against the alleged violator and must be signed by the alleged violator and the director. A compromise agreement is not an admission of the alleged violation.

(b) If the settlement agreement requires the payment of a penalty to the department, the alleged violator must submit a cashier's check or money order to the department in the agreed amount before the agreement may be executed.

~~[(c) The settlement agreement must include a clause that authorizes the department to revoke the settlement agreement and initiate a hearing on the alleged violations if the alleged violator fails to abide by the terms of the settlement agreement.]~~

(c) [~~(d)~~] Upon the execution by the director of a settlement agreement, the administrative proceeding ends. The settlement agreement is a department order that is final. [~~and unappealable.~~]

§219.126. Administrative Penalty for False Information on Certificate by a Shipper.

(a) The department may investigate and impose an administrative penalty on a shipper who provides false information on a shipper's certificate of weight that the shipper delivers to a person transporting a shipment.

(b) The notice and hearing requirements of §219.124 of this title (relating to Administrative Proceedings) [~~§28.304 of this subchapter~~] apply to the imposition of an administrative penalty under this section.

(c) The amount of an administrative penalty imposed under this section is calculated in the same manner as the amount of an administrative penalty imposed under §219.121 of this title (relating to Administrative Penalties). [~~§28.301 of this subchapter.~~]

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

Filed with the Office of the Secretary of State on February 23, 2015.

TRD-201500609

David D. Duncan

General Counsel

Texas Department of Motor Vehicles

Earliest possible date of adoption: April 5, 2015

For further information, please call: (512) 465-5665





Eriberto Saavedra
9th Grade

WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 7. BANKING AND SECURITIES

PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 89. PROPERTY TAX LENDERS

SUBCHAPTER H. PAYOFF STATEMENTS

7 TAC §89.802

The Office of Consumer Credit Commissioner withdraws the proposed amended §89.802 which appeared in the December 26, 2014, issue of the *Texas Register* (39 TexReg 10122).

Filed with the Office of the Secretary of State on February 23, 2015.

TRD-201500603

Leslie L. Pettijohn
Commissioner

Office of Consumer Credit Commissioner

Effective date: February 23, 2015

For further information, please call: (512) 936-7621



TITLE 22. EXAMINING BOARDS

PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 291. PHARMACIES

SUBCHAPTER G. SERVICES PROVIDED BY PHARMACIES

22 TAC §291.133

The Texas State Board of Pharmacy withdraws proposed amendments to §291.133 which appeared in the December 26, 2014, issue of the *Texas Register* (39 TexReg 10154).

Filed with the Office of the Secretary of State on February 23, 2015.

TRD-201500601

Gay Dodson, R.Ph.
Executive Director

Texas State Board of Pharmacy

Effective date: February 23, 2015

For further information, please call: (512) 305-8073





Janet Pena
11th Grade

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 6. ORGANIZATION AND ADMINISTRATION

SUBCHAPTER A. GENERAL RULES

1 TAC §6.1

The Texas Ethics Commission (the commission) adopts an amendment to §6.1, relating to definitions. The amendment is adopted without changes to the proposed text as published in the November 14, 2014, issue of the *Texas Register* (39 TexReg 8809) and will not be republished.

The amendment is being made to add a definition for the phrase "first responder" as used in Texas Ethics Commission Rules, 1 TAC §18.23.

Section 18.23 relates to reports required to be filed with the commission. The public benefit will be clarity in the law as it relates to the definition of "first responder."

No comments were received regarding the adoption of the amended section.

The amendment to §6.1 is adopted under Texas Government Code §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The adopted amendment to §6.1 affects 1 TAC §18.23.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 18, 2015.

TRD-201500509

Natalia Luna Ashley

Executive Director

Texas Ethics Commission

Effective date: March 10, 2015

Proposal publication date: November 14, 2014

For further information, please call: (512) 463-5800



CHAPTER 18. GENERAL RULES CONCERNING REPORTS

1 TAC §18.23

The Texas Ethics Commission (the commission) adopts an amendment to §18.23, relating to administrative waiver of fine. The amendment is adopted without changes to the proposed text as published in the November 14, 2014, issue of the *Texas Register* (39 TexReg 8809) and will not be republished.

Section 18.23 relates to reports required to be filed with the commission, and it amends subsection (a)(1) and adds subsections (a)(2) and (a)(3) to expand the circumstances in which the Executive Director may waive a late filing penalty.

Section 18.23 relates to reports required to be filed with the commission. The public benefit will be consistent determinations of waivers and reductions of late report fines.

No comments were received regarding the adoption of the amended section.

The amendment to §18.23 is adopted under Texas Government Code §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The adopted amendment to §18.23 affects Texas Election Code §254.042(b) and Texas Government Code §305.033(c) and §572.033(b).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 18, 2015.

TRD-201500510

Natalia Luna Ashley

Executive Director

Texas Ethics Commission

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Proposal publication date: November 14, 2014

For further information, please call: (512) 463-5800



1 TAC §18.24

The Texas Ethics Commission (the commission) adopts new §18.24, relating to general guidelines for administrative waiver or reduction of fines imposed when a report required to be filed with the commission is filed late and the filer does not qualify for a waiver of a fine under commission rule §18.23 of this title. The new section is adopted without changes to the proposed text as published in the November 14, 2014, issue of the *Texas Register* (39 TexReg 8810) and will not be republished.

Section 18.24 is being added to categorize the type of filer and the type of late report, to define "critical report," and to determine

good cause, for purposes of an administrative waiver or reduction of a late fine.

Section 18.24 relates to reports required to be filed with the commission. The public benefit will be consistent determinations of waivers and reductions of late report fines.

No comments were received regarding the adoption of the new section.

The new section is adopted under Texas Government Code §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The adoption of §18.24 affects Texas Election Code §254.042(b) and Texas Government Code §305.033(c) and §572.033(b).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 18, 2015.

TRD-201500511

Natalia Luna Ashley

Executive Director

Texas Ethics Commission

Effective date: March 10, 2015

Proposal publication date: November 14, 2014

For further information, please call: (512) 463-5800



1 TAC §18.25

The Texas Ethics Commission (the commission) adopts new §18.25 relating to administrative waiver or reduction of a fine imposed when a report required to be filed with the commission is filed late and the filer does not qualify for a waiver or reduction under other commission rules. The new section is adopted without changes to the proposed text as published in the November 14, 2014, issue of the *Texas Register* (39 TexReg 8812) and will not be republished.

Section 18.25 is being added to classify non-critical reports that meet certain criteria.

Section 18.25 relates to reports required to be filed with the commission. The public benefit will be consistent determinations of waivers and reductions of late report fines.

No comments were received regarding the adoption of the new section.

The new section is adopted under Texas Government Code §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The adoption of §18.25 affects Texas Election Code §254.042(b) and Texas Government Code §305.033(c) and §572.033(b).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 18, 2015.

TRD-201500512

Natalia Luna Ashley

Executive Director

Texas Ethics Commission

Effective date: March 10, 2015

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For further information, please call: (512) 463-5800



1 TAC §18.26

The Texas Ethics Commission (the commission) adopts new §18.26 relating to administrative waiver or reduction of a fine for critical reports that are filed with the commission after the deadline. The new section is adopted without changes to the proposed text as published in the November 14, 2014, issue of the *Texas Register* (39 TexReg 8812) and will not be republished.

Section 18.26 is being added to classify critical reports that meet certain criteria in order to determine whether a fine will be waived or reduced.

Section 18.26 relates to reports required to be filed with the commission. The public benefit will be consistent determinations of waivers and reductions of late report fines.

No comments were received regarding the adoption of the new section.

The new section is adopted under Texas Government Code §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The adoption of §18.26 affects Texas Election Code §254.042(b) and Texas Government Code §305.033(c) and §572.033(b).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Natalia Luna Ashley

Executive Director

Texas Ethics Commission

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For further information, please call: (512) 463-5800



CHAPTER 50. LEGISLATIVE SALARIES AND PER DIEM

1 TAC §50.1

The Texas Ethics Commission (the commission) adopts an amendment to §50.1, relating to the legislative per diem as required by the Texas Constitution, Article III, section 24a. The amendment is adopted without changes to the proposed text as published in the December 19, 2014 issue of the *Texas Register* (39 TexReg 9771) and will not be republished.

The amendment is being made to set the per diem for members of the legislature and the lieutenant governor at \$190 for each day during the regular session and any special session.

The public benefit is a determination, in compliance with the Texas Constitution, of the per diem entitled to be received by each member of the legislature and the lieutenant governor under the Texas Constitution, Article III, section 24, and Article IV, section 17, during the regular session and any special session.

No comments were received regarding the adoption of the amended rule.

The amendment to §50.1 is adopted under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 13, 2015.

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Natalia Luna Ashley

Executive Director

Texas Ethics Commission

Effective date: March 5, 2015

Proposal publication date: December 19, 2014

For further information, please call: (512) 463-5800



TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 2. RESIDENTIAL MORTGAGE LOAN ORIGINATORS APPLYING FOR LICENSURE WITH THE OFFICE OF CONSUMER CREDIT COMMISSIONER UNDER THE SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT

SUBCHAPTER A. APPLICATION PROCEDURES FOR OFFICE OF CONSUMER CREDIT COMMISSIONER APPLICANTS

7 TAC §2.104

The Finance Commission of Texas (commission) adopts amendments to 7 TAC §2.104, concerning Application and Renewal Fees for residential mortgage loan originators applying for licensure with the Office of Consumer Credit Commissioner (OCCC) under the Secure and Fair Enforcement for Mortgage Licensing Act.

The commission adopts the amendments without changes to the proposed text as published in the December 26, 2014, issue of the *Texas Register* (39 TexReg 10116).

The commission received no written comments on the proposal.

In general, the purpose of the amendments to §2.104 is to implement changes resulting from the commission's review of Chapter 2 under Texas Government Code, §2001.039. The notice of in-

tention to review 7 TAC, Part 1, Chapter 2 was published in the *Texas Register* on November 7, 2014 (39 TexReg 8745). The agency did not receive any comments on the notice of intention to review.

The adopted amendments to §2.104 provide clarification regarding the refunding of application and renewal fees for OCCC applicants under Texas Finance Code, Chapter 180, Residential Mortgage Loan Originators (RMLOs), the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009.

Section 2.104 sets out the required application and renewal fees for OCCC applicants and licensees. These fees must be submitted to the Nationwide Mortgage Licensing System and Registry (NMLS). The amendments are contained in subsection (a), which previously stated that all fees may not be refunded or transferred without exception.

The NMLS does not provide refunds of NMLS system fees, but defers to individual states whether the state in question wishes to refund the state portion of the application or renewal fee. The OCCC has frequently encountered extenuating circumstances that would warrant the refunding of state RMLO fees. The amendments allow the OCCC to refund state RMLO fees in appropriate situations.

Accordingly, the adopted amendments revise §2.104(a) by adding a new sentence after the existing last sentence, resulting in the last two sentences to read as follows: "All fees are nonrefundable and nontransferable. However, upon review of individual circumstances, the OCCC may refund or transfer the state fees."

These amendments are adopted under Texas Finance Code, §180.004, which authorizes the commission to implement rules necessary to comply with Chapter 180 and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Pub. L. No. 110-289). Additionally, the amendments are also adopted under Texas Finance Code, §180.061, which authorizes the commission to adopt rules establishing requirements as necessary for payment of fees to apply for or renew licenses through the NMLS, and under Texas Finance Code, §14.107, which authorizes the commission by rule to set the fees for licensing and examination under Chapter 342, 347, 348, or 351 at amounts or rates necessary to recover the costs of administering those and other chapters.

The statutory provisions affected by the adopted amendments are contained in Texas Finance Code, Chapter 180, Residential Mortgage Loan Originators, the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009, and Texas Finance Code, Chapters 342, 347, 348, and 351.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 20, 2015.

TRD-201500546

Leslie L. Pettijohn

Commissioner

Finance Commission of Texas

Effective date: March 12, 2015

Proposal publication date: December 26, 2014

For further information, please call: (512) 936-7621

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CHAPTER 3. STATE BANK REGULATION

SUBCHAPTER E. BANKING HOUSE AND OTHER FACILITIES

7 TAC §3.92

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to §3.92, concerning user safety at unmanned teller machines, typically referred to as automated teller machines or ATMs, with changes to the proposed text as published in the December 26, 2014, issue of the *Texas Register* (39 TexReg 10117).

The amended rule will reduce regulatory burden while still providing important protections to consumers, by eliminating repetitive annual notice requirements and by authorizing delivery of notice by electronic means in certain circumstances. In addition, the recommended basic safety precautions in subsection (e) have been updated to address security issues that have emerged in recent years.

Subsection (e) formerly required a bank, at the time the initial disclosure of terms and conditions is provided to the customer, to furnish its customers with a printed notice of basic safety precautions that a customer should employ while using an ATM, and subsequently furnish the same notice at least annually. This requirement has remained in place since 1996, despite significant public experience gained in almost 20 years of ATM usage and the proliferation of electronic communications between consenting parties.

As amended, §3.92(e) requires a bank to provide notice of basic ATM safety precautions to its customer whenever an access device (e.g., an ATM card or debit or credit card) is issued or renewed, and an annual notice is no longer required. Further, the notice can be delivered to a customer electronically if the customer has agreed to conduct transactions by electronic means, and only one notice is required in the event the bank furnishes an access device to more than one customer on the same account.

In addition, the example list of possible safety precautions in §3.92(e)(2) has been updated to mention online fraud and other relatively new cyber threats, and other ATM risks, important information for bank customers.

The Department received one comment supporting the proposed amendments from the Independent Bankers Association of Texas (IBAT), a trade association representing over 400 independent, community banks domiciled in Texas. IBAT also offered two suggestions for improving the proposal.

IBAT noted that the requirement to re-send the notice every time an access device is replaced is not necessary or required by statute. Finance Code §59.309 does not actually require the notice of safety precautions to be sent more than once. IBAT recommended that the notice should only be required when the access device is issued or renewed, and not when the access device is replaced. In support, IBAT observed that significant security breaches at major retailers have recently caused banks to replace debit cards multiple times in the same year, and providing the notice of user safety each time is both burdensome and duplicative. In addition, IBAT requested additional clarification that the notice may be included in an initial or periodic disclo-

sure statement and need not be in a stand-alone mailing, citing Finance Code §59.309(c) in support. The commission concurs with and accepts both suggestions, and has modified the amendments to §3.92(e) accordingly.

The amendments are adopted pursuant to Finance Code, §59.310, which provides the commission with authority to adopt rules to implement Subchapter D of Finance Code, Chapter 59 (§§59.301 - 59.310).

§3.92. *User Safety at Unmanned Teller Machines.*

(a) Definitions. Words and terms used in this subchapter that are defined in the Finance Code, §59.301, have the same meanings as defined in the Finance Code.

(b) Measurement of candle foot power. For purposes of measuring compliance with the Finance Code, §59.307, candle foot power should be determined under normal, dry weather conditions, without complicating factors such as fog, rain, snow, sand or dust storm, or other similar condition.

(c) Leased premises.

(1) Noncompliance by landlord. Pursuant to the Finance Code, §59.306, the landlord or owner of property is required to comply with the safety procedures of the Finance Code, Chapter 59, Subchapter D, if an access area or defined parking area for an unmanned teller machine is not controlled by the owner or operator of the unmanned teller machine. If an owner or operator of an unmanned teller machine on leased premises is unable to obtain compliance with safety procedures from the landlord or owner of the property, the owner or operator shall notify the landlord in writing of the requirements of the Finance Code, Chapter 59, Subchapter D, and of those provisions for which the landlord is in noncompliance.

(2) Enforcement. Noncompliance with safety procedures required by the Finance Code, Chapter 59, Subchapter D, by a landlord or owner of property after receipt of written notification from the owner or operator constitutes a violation of the Finance Code, Chapter 59, Subchapter D, which may be enforced by the Texas Attorney General.

(d) Safety evaluations.

(1) The owner or operator of an unmanned teller machine shall evaluate the safety of each machine on a basis no less frequently than annually.

(2) The safety evaluation shall consider at the least the factors identified in the Finance Code, §59.308.

(3) The owner or operator of the unmanned teller machine may provide the landlord or owner of the property with a copy of the safety evaluation if an access area or defined parking area for an unmanned teller machine is not controlled by the owner or operator of the machine.

(e) Notice. An issuer of access devices shall furnish its customers with a notice of basic safety precautions that each customer should employ while using an unmanned teller machine. The notice must be personally delivered or sent to each customer whose mailing address is in this state, according to records for the account to which the access device relates, and may be included with other disclosures related to the access device, including an initial or periodic disclosure statement furnished under the Electronic Fund Transfer Act (15 U.S.C. §1693 et seq.). The notice may be delivered electronically if permissible under Business & Commerce Code, §322.008.

(1) When notice is required. The issuer must furnish the notice to its customer whenever an access device is issued or renewed. If the issuer furnishes an access device to more than one customer on

the same account, the issuer is not required to furnish the notice to more than one of the customers.

(2) Content of notice. The notice of basic safety precautions required by this subsection may include recommendations or advice regarding:

(A) security at walk-up and drive-up unmanned teller machines, such as recommendations that the customer should:

(i) remain aware of surroundings and exercise caution when withdrawing funds;

(ii) inspect an unmanned teller machine before use for possible tampering, or for the presence of an unauthorized attachment that could capture information from the access device or the customer's personal identification number;

(iii) refrain from displaying cash and put it away as soon as the transaction is completed; and

(iv) wait to count cash until the customer is in the safety of a locked enclosure, such as a car or home;

(B) protection of the customer's code or personal identification number, such as a recommendation that the customer ensure no one can observe entry of the customer's code or personal identification number;

(C) safeguarding and protection of the customer's access device, such as a recommendation that the customer treat the access device as if it were cash, and if the access device has an embedded chip, that the customer keep the access device in a safety envelope to avoid undetected and unauthorized scanning;

(D) procedures for reporting a lost or stolen access device and for reporting a crime;

(E) reaction to suspicious circumstances, such as a recommendation that a customer who observes suspicious persons or circumstances, while approaching or using an unmanned teller machine, should not use the unmanned teller machine at that time or, if the customer is in the middle of a transaction, should cancel the transaction, take the access device, leave the area, and come back at another time, or use an unmanned teller machine at another location;

(F) safekeeping and secure disposition of unmanned teller machine receipts;

(G) the inadvisability of surrendering information about the customer's access device over the telephone or over the Internet, unless to a trusted merchant in a call or transaction initiated by the customer;

(H) protection against unmanned teller machine fraud, such as a recommendation that the customer promptly review the customer's monthly statement and compare unmanned teller machine receipts against the statement;

(I) protection against Internet fraud, such as a recommendation that the customer, if purchasing online with the access device, should end transactions by logging out of websites instead of just closing the web browser; and

(J) other recommendations that the issuer reasonably believes are appropriate to facilitate the security of its unmanned teller machine customers.

(f) Video surveillance equipment. Video surveillance equipment is not required to be installed at all unmanned teller machines. The owner or operator must determine whether video surveillance or

unconnected video surveillance equipment should be installed at a particular unmanned teller machine site, based on the safety evaluation required under the Finance Code, §59.308. If an owner or operator determines that video surveillance equipment should be installed, the owner or operator must provide for selecting, testing, operating, and maintaining appropriate equipment.

(g) Unmanned teller machines located in a bank vestibule. The provisions of the Finance Code, Chapter 59, Subchapter D, and this section are applicable to an unmanned teller machine located in a bank vestibule if there is 24 hour access to the vestibule from outside the building.

(h) Certification of Compliance. The security officer of each depository shall certify compliance with the Finance Code, Chapter 59, Subchapter D, and this section on a basis no less frequently than annually.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 20, 2015.

TRD-201500543

Catherine Reyer

General Counsel

Finance Commission of Texas

Effective date: March 12, 2015

Proposal publication date: December 26, 2014

For further information, please call: (512) 475-1301



PART 4. TEXAS DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 67. SAVINGS AND DEPOSIT ACCOUNTS

7 TAC §67.17

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Savings and Mortgage Lending (the department), adopts amendments to §67.17, concerning user safety at unmanned teller machines, typically referred to as automated teller machines or ATMs, with changes to the proposed text as published in the December 26, 2014, issue of the *Texas Register* (39 TexReg 10118).

The amended rule will reduce regulatory burden while still providing important protections to consumers, by eliminating repetitive annual notice requirements and by authorizing delivery of notice by electronic means in certain circumstances. In addition, the recommended basic safety precautions in subsection (e) have been updated to address security issues that have emerged in recent years.

Subsection (e) formerly required a state savings and loan association, at the time the initial disclosure of terms and conditions is provided to the customer, to furnish its customers with a printed notice of basic safety precautions that a customer should employ while using an ATM, and subsequently furnish the same notice at least annually. This requirement has remained in place since 1996, despite significant public experience gained in almost 20

years of ATM usage and the proliferation of electronic communications between consenting parties.

As amended, §67.17(e) requires a state savings and loan association to provide notice of basic ATM safety precautions to its customer whenever an access device (e.g., an ATM card or debit or credit card) is issued or renewed, and an annual notice is no longer required. Further, the notice can be delivered to a customer electronically if the customer has agreed to conduct transactions by electronic means, and only one notice is required in the event the state savings and loan association furnishes an access device to more than one customer on the same account.

In addition, the example list of possible safety precautions in §67.17(e)(2) has been updated to mention online fraud and other relatively new cyber threats, and other ATM risks, important information for state savings and loan association customers.

The Department received one comment supporting the proposed amendments by the Finance Commission of Texas to 7 TAC §3.92, from the Independent Bankers Association of Texas (IBAT), a trade association representing over 400 independent, community banks domiciled in Texas. IBAT offered two suggestions for improving such proposal and such suggestions apply equally to the proposed amendments to 7 TAC §67.17.

IBAT noted that the requirement to re-send the notice every time an access device is replaced is not necessary or required by statute. Finance Code 59.309 does not actually require the notice of safety precautions to be sent more than once. IBAT recommended that the notice should only be required when the access device is issued or renewed, and not when the access device is replaced. In support, IBAT observed that significant security breaches at major retailers have recently caused banks to replace debit cards multiple times in the same year, and providing the notice of user safety each time is both burdensome and duplicative. In addition, IBAT requested additional clarification that the notice may be included in an initial or periodic disclosure statement and need not be in a stand-alone mailing, citing Finance Code §59.309(c) in support. The commission concurs with and accepts both suggestions, and has modified the amendments to §67.17(e) accordingly.

The amendments are adopted pursuant to Finance Code, §11.302, which provides that the Finance Commission of Texas may adopt rules applicable to state savings associations or to savings banks and under Finance Code, §59.310, which provides the commission with authority to adopt rules to implement Subchapter D of Finance Code, Chapter 59 (§§59.301 - 59.310).

§67.17. User Safety at Unmanned Teller Machines.

(a) Definitions. Words and terms used in this chapter that are defined in the Finance Code, §59.301, have the same meanings as defined in the Finance Code.

(b) Measurement of candle foot power. For purposes of measuring compliance with the Finance Code, §59.307, candle foot power should be determined under normal, dry weather conditions, without complicating factors such as fog, rain, snow, sand or dust storm, or other similar condition.

(c) Leased premises.

(1) Noncompliance by landlord. Pursuant to the Finance Code, §59.306, the landlord or owner of property is required to comply with the safety procedures of the Finance Code, Chapter 59, Subchapter D, if an access area or defined parking area for an unmanned teller

machine is not controlled by the owner or operator of the unmanned teller machine. If an owner or operator of an unmanned teller machine on leased premises is unable to obtain compliance with safety procedures from the landlord or owner of the property, the owner or operator shall notify the landlord in writing of the requirements of the Finance Code, Chapter 59, Subchapter D, and of those provisions for which the landlord is in noncompliance.

(2) Enforcement. Noncompliance with safety procedures required by the Finance Code, Chapter 59, Subchapter D, by a landlord or owner of property after receipt of written notification from the owner or operator constitutes a violation of the Finance Code, Chapter 59, Subchapter D, which may be enforced by the Texas Attorney General.

(d) Safety evaluations.

(1) The owner or operator of an unmanned teller machine shall evaluate the safety of each machine on a basis no less frequently than annually.

(2) The safety evaluation shall consider at the least the factors identified in the Finance Code, §59.308.

(3) The owner or operator of the unmanned teller machine may provide the landlord or owner of the property with a copy of the safety evaluation if an access area or defined parking area for an unmanned teller machine is not controlled by the owner or operator of the machine.

(e) Notice. An issuer of access devices shall furnish its customers with a notice of basic safety precautions that each customer should employ while using an unmanned teller machine. The notice must be personally delivered or sent to each customer whose mailing address is in this state, according to records for the account to which the access device relates, and may be included with other disclosures related to the access device, including an initial or periodic disclosure statement furnished under the Electronic Fund Transfer Act (15 U.S.C. §1693 et seq.). The notice may be delivered electronically if permissible under Business & Commerce Code, §322.008.

(1) When notice is required. The issuer must furnish the notice to its customer whenever an access device is issued or renewed. If the issuer furnishes an access device to more than one customer on the same account, the issuer is not required to furnish the notice to more than one of the customers.

(2) Content of notice. The notice of basic safety precautions required by this subsection may include recommendations or advice regarding:

(A) security at walk-up and drive-up unmanned teller machines, such as recommendations that the customer should:

(i) remain aware of surroundings and exercise caution when withdrawing funds;

(ii) inspect an unmanned teller machine before use for possible tampering, or for the presence of an unauthorized attachment that could capture information from the access device or the customer's personal identification number;

(iii) refrain from displaying cash and put it away as soon as the transaction is completed; and

(iv) wait to count cash until the customer is in the safety of a locked enclosure, such as a car or home;

(B) protection of the customer's code or personal identification number, such as a recommendation that the customer ensure no one can observe entry of the customer's code or personal identification number;

(C) safeguarding and protection of the customer's access device, such as a recommendation that the customer treat the access device as if it were cash, and if the access device has an embedded chip, that the customer keep the access device in a safety envelope to avoid undetected and unauthorized scanning;

(D) procedures for reporting a lost or stolen access device and for reporting a crime;

(E) reaction to suspicious circumstances, such as a recommendation that a customer who observes suspicious persons or circumstances, while approaching or using an unmanned teller machine, should not use the unmanned teller machine at that time or, if the customer is in the middle of a transaction, should cancel the transaction, take the access device, leave the area, and come back at another time, or use an unmanned teller machine at another location;

(F) safekeeping and secure disposition of unmanned teller machine receipts;

(G) the inadvisability of surrendering information about the customer's access device over the telephone or over the Internet, unless to a trusted merchant in a call or transaction initiated by the customer;

(H) protection against unmanned teller machine fraud, such as a recommendation that the customer promptly review the customer's monthly statement and compare unmanned teller machine receipts against the statement;

(I) protection against Internet fraud, such as a recommendation that the customer, if purchasing online with the access device, should end transactions by logging out of websites instead of just closing the web browser; and

(J) other recommendations that the issuer reasonably believes are appropriate to facilitate the security of its unmanned teller machine customers.

(f) Video surveillance equipment. Video surveillance equipment is not required to be installed at all unmanned teller machines. The owner or operator must determine whether video surveillance or unconnected video surveillance equipment should be installed at a particular unmanned teller machine site, based on the safety evaluation required under the Finance Code, §59.308. If an owner or operator determines that video surveillance equipment should be installed, the owner or operator must provide for selecting, testing, operating, and maintaining appropriate equipment.

(g) Unmanned teller machines located in a bank vestibule. The provisions of the Finance Code, Chapter 59, Subchapter D, and this section are applicable to an unmanned teller machine located in a bank vestibule if there is 24 hour access to the vestibule from outside the building.

(h) Certification of compliance. The security officer of each depository shall certify compliance with the Finance Code, Chapter 59, Subchapter D, and this section on a basis no less frequently than annually.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 20, 2015.

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Caroline Jones

Commissioner

Texas Department of Savings and Mortgage Lending

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For further information, please call: (512) 475-1352

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CHAPTER 77. LOANS, INVESTMENTS,
SAVINGS, AND DEPOSITS
SUBCHAPTER B. SAVINGS AND DEPOSITS

7 TAC §77.115

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Savings and Mortgage Lending (the department), adopts amendments to §77.115, concerning user safety at unmanned teller machines, typically referred to as automated teller machines or ATMs, with changes to the proposed text as published in the December 26, 2014, issue of the *Texas Register* (39 TexReg 10119).

The amended rule will reduce regulatory burden while still providing important protections to consumers, by eliminating repetitive annual notice requirements and by authorizing delivery of notice by electronic means in certain circumstances. In addition, the recommended basic safety precautions in subsection (e) have been updated to address security issues that have emerged in recent years.

Subsection (e) formerly required a state savings bank, at the time the initial disclosure of terms and conditions is provided to the customer, to furnish its customers with a printed notice of basic safety precautions that a customer should employ while using an ATM, and subsequently furnish the same notice at least annually. This requirement has remained in place since 1996, despite significant public experience gained in almost 20 years of ATM usage and the proliferation of electronic communications between consenting parties.

As amended, §77.115(e) requires a state savings bank to provide notice of basic ATM safety precautions to its customer whenever an access device (e.g., an ATM card or debit or credit card) is issued or renewed, and an annual notice is no longer required. Further, the notice can be delivered to a customer electronically if the customer has agreed to conduct transactions by electronic means, and only one notice is required in the event the state savings bank furnishes an access device to more than one customer on the same account.

In addition, the example list of possible safety precautions in §77.115(e)(2) has been updated to mention online fraud and other relatively new cyber threats, and other ATM risks, important information for state savings bank customers.

The Department received one comment supporting the proposed amendments by the Finance Commission to 7 TAC §3.92, from the Independent Bankers Association of Texas (IBAT), a trade association representing over 400 independent, community banks domiciled in Texas. IBAT offered two suggestions for improving such proposal and such suggestions apply equally to the proposed amendments to 7 TAC §77.115.

IBAT noted that the requirement to re-send the notice every time an access device is replaced is not necessary or required by statute. Finance Code 59.309 does not actually require the no-

tice of safety precautions to be sent more than once. IBAT recommended that the notice should only be required when the access device is issued or renewed, and not when the access device is replaced. In support, IBAT observed that significant security breaches at major retailers have recently caused banks to replace debit cards multiple times in the same year, and providing the notice of user safety each time is both burdensome and duplicative. In addition, IBAT requested additional clarification that the notice may be included in an initial or periodic disclosure statement and need not be in a stand-alone mailing, citing Finance Code §59.309(c) in support. The commission concurs with and accepts both suggestions, and has modified the amendments to §77.115(e) accordingly.

The amendments are adopted pursuant to Finance Code, §11.302, which provides that the Finance Commission of Texas may adopt rules applicable to state savings associations or to savings banks and §96.002, which provides that the commission may adopt rules necessary to protect public investment in savings banks and under Finance Code, §59.310, which provides the commission with authority to adopt rules to implement Subchapter D of Finance Code, Chapter 59 (§§59.301 - 59.310).

§77.115. User Safety at Unmanned Teller Machines.

(a) Definitions. Words and terms used in this subchapter that are defined in the Finance Code, §59.301, have the same meanings as defined in the Finance Code.

(b) Measurement of candle foot power. For purposes of measuring compliance with the Finance Code, §59.307, candle foot power should be determined under normal, dry weather conditions, without complicating factors such as fog, rain, snow, sand or dust storm, or other similar condition.

(c) Leased premises.

(1) Noncompliance by landlord. Pursuant to the Finance Code, §59.306, the landlord or owner of property is required to comply with the safety procedures of the Finance Code, Chapter 59, Subchapter D, if an access area or defined parking area for an unmanned teller machine is not controlled by the owner or operator of the unmanned teller machine. If an owner or operator of an unmanned teller machine on leased premises is unable to obtain compliance with safety procedures from the landlord or owner of the property, the owner or operator shall notify the landlord in writing of the requirements of the Finance Code, Chapter 59, Subchapter D, and of those provisions for which the landlord is in noncompliance.

(2) Enforcement. Noncompliance with safety procedures required by the Finance Code, Chapter 59, Subchapter D, by a landlord or owner of property after receipt of written notification from the owner or operator constitutes a violation of the Finance Code, Chapter 59, Subchapter D, which may be enforced by the Texas Attorney General.

(d) Safety evaluations.

(1) The owner or operator of an unmanned teller machine shall evaluate the safety of each machine on a basis no less frequently than annually.

(2) The safety evaluation shall consider at the least the factors identified in the Finance Code, §59.308.

(3) The owner or operator of the unmanned teller machine may provide the landlord or owner of the property with a copy of the safety evaluation if an access area or defined parking area for an unmanned teller machine is not controlled by the owner or operator of the machine.

(e) Notice. An issuer of access devices shall furnish its customers with a notice of basic safety precautions that each customer should employ while using an unmanned teller machine. The notice must be personally delivered or sent to each customer whose mailing address is in this state, according to records for the account to which the access device relates, and may be included with other disclosures related to the access device, including an initial or periodic disclosure statement furnished under the Electronic Fund Transfer Act (15 U.S.C. §1693 et seq.). The notice may be delivered electronically if permissible under Business & Commerce Code, §322.008.

(1) When notice is required. The issuer must furnish the notice to its customer whenever an access device is issued or renewed. If the issuer furnishes an access device to more than one customer on the same account, the issuer is not required to furnish the notice to more than one of the customers.

(2) Content of notice. The notice of basic safety precautions required by this subsection may include recommendations or advice regarding:

(A) security at walk-up and drive-up unmanned teller machines, such as recommendations that the customer should:

(i) remain aware of surroundings and exercise caution when withdrawing funds;

(ii) inspect an unmanned teller machine before use for possible tampering, or for the presence of an unauthorized attachment that could capture information from the access device or the customer's personal identification number;

(iii) refrain from displaying cash and put it away as soon as the transaction is completed; and

(iv) wait to count cash until the customer is in the safety of a locked enclosure, such as a car or home;

(B) protection of the customer's code or personal identification number, such as a recommendation that the customer ensure no one can observe entry of the customer's code or personal identification number;

(C) safeguarding and protection of the customer's access device, such as a recommendation that the customer treat the access device as if it were cash, and if the access device has an embedded chip, that the customer keep the access device in a safety envelope to avoid undetected and unauthorized scanning;

(D) procedures for reporting a lost or stolen access device and for reporting a crime;

(E) reaction to suspicious circumstances, such as a recommendation that a customer who observes suspicious persons or circumstances, while approaching or using an unmanned teller machine, should not use the unmanned teller machine at that time or, if the customer is in the middle of a transaction, should cancel the transaction, take the access device, leave the area, and come back at another time, or use an unmanned teller machine at another location;

(F) safekeeping and secure disposition of unmanned teller machine receipts;

(G) the inadvisability of surrendering information about the customer's access device over the telephone or over the Internet, unless to a trusted merchant in a call or transaction initiated by the customer;

(H) protection against unmanned teller machine fraud, such as a recommendation that the customer promptly review the cus-

tomers' monthly statement and compare unmanned teller machine receipts against the statement;

(I) protection against Internet fraud, such as a recommendation that the customer, if purchasing online with the access device, should end transactions by logging out of websites instead of just closing the web browser; and

(J) other recommendations that the issuer reasonably believes are appropriate to facilitate the security of its unmanned teller machine customers.

(f) Video surveillance equipment. Video surveillance equipment is not required to be installed at all unmanned teller machines. The owner or operator must determine whether video surveillance or unconnected video surveillance equipment should be installed at a particular unmanned teller machine site, based on the safety evaluation required under the Finance Code, §59.308. If an owner or operator determines that video surveillance equipment should be installed, the owner or operator must provide for selecting, testing, operating, and maintaining appropriate equipment.

(g) Unmanned teller machines located in a bank vestibule. The provisions of the Finance Code, Chapter 59, Subchapter D, and this section are applicable to an unmanned teller machine located in a bank vestibule if there is 24 hour access to the vestibule from outside the building.

(h) Certification of compliance. The security officer of each depository shall certify compliance with the Finance Code, Chapter 59, Subchapter D, and this section on a basis no less frequently than annually.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 20, 2015.

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Caroline Jones

Commissioner

Texas Department of Savings and Mortgage Lending

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For further information, please call: (512) 475-1352



PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 86. RETAIL CREDITORS

SUBCHAPTER A. REGISTRATION OF RETAIL CREDITORS

7 TAC §86.102

The Finance Commission of Texas (commission) adopts amendments to §86.102, concerning Annual Registration Fees for retail creditors.

The commission adopts the amendments without changes to the proposed text as published in the December 26, 2014, issue of the *Texas Register* (39 TexReg 10121).

The commission received no written comments on the proposal.

In general, the purpose of the amendments to §86.102 is to implement changes resulting from the commission's review of Chapter 86 under Texas Government Code, §2001.039. The notice of intention to review 7 TAC, Part 5, Chapter 86 was published in the *Texas Register* on November 7, 2014 (39 TexReg 8745). The agency did not receive any comments on the notice of intention to review.

Overall, the adopted changes provide streamlined procedures, improved grammar and punctuation, and technical corrections. Revisions concerning the evidence of registration and related fees have been updated to conform the rule with the agency's current use of an online licensing and self-service portal. The individual purposes of the amendments to each subsection are provided in the following paragraphs.

In subsection (b) concerning annual fee, the verb "shall" has been replaced by "will" or "must" as appropriate, since the latter language is reflective of a more modern and plain language approach in regulations. The date reference in subsection (b)(3) has been revised as "October 31," in place of the former "October 31st," in accordance with updated grammatical guidelines. Additionally, a comma has been included after "e.g." in the parenthetical at the end of subsection (b)(5) to provide more accurate punctuation.

Subsection (c) has experienced several changes in order to incorporate the agency's implementation of an online licensing and self-service portal, along with technical corrections. First, the agency's acronym "(OCCC)" has been added to the first sentence to allow appropriate use later in the rule. Due to the new online system, the agency has discontinued the issuance of renewal decals to registered retail creditors. As a result, the second change to this subsection replaces the word "decals" with the word "certificates." Third, to complete the removal of references to the decals no longer issued, everything after the word "section" has been deleted, including former paragraphs (1) and (2). And fourth, the following sentence has been added as the new final sentence to subsection (c): "A registrant may print a copy of its registration certificate through the OCCC's online licensing portal."

Adopted new subsection (d) provides that the OCCC will mail a registration certificate for a fee of \$10 if a registrant does not print its certificate through the online portal. This fee is the same amount that the agency charges to mail duplicate licenses for its other regulated entities.

The amendments are adopted under Texas Finance Code, §345.352(b), which authorizes the commission to establish by rule procedures to facilitate the registration and collection of fees for retail creditors. Additionally, the amendments are adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code.

The statutory provisions affected by the adopted amendments are contained in Texas Finance Code, Chapter 345.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 20, 2015.



CHAPTER 89. PROPERTY TAX LENDERS

The Finance Commission of Texas (commission) adopts amendments to §§89.102, 89.207, 89.504, and 89.601 concerning Property Tax Lenders.

The commission adopts the amendments to §89.102 and §89.504 without changes to the re-proposed text as published in the December 26, 2014, issue of the *Texas Register* (39 TexReg 10122). The commission adopts the amendments to §89.207 and §89.601 with changes to the re-proposed text as published in the December 26, 2014, issue of the *Texas Register* (39 TexReg 10122). The commission withdraws the proposed amendments to §89.802 which appeared in the December 26, 2014, issue of the *Texas Register* (39 TexReg 10122). The withdrawal of the amendments to §89.802 is published elsewhere in this issue of the *Texas Register*.

The commission received eighteen written comments on the re-proposal from the following organizations and entities: Atlas, Hall & Rodriguez, LLP; Harrison Duncan, PLLC; Homefront Tax Loans; Home Tax Solutions; Hunter-Kelsey of Texas, LLC; the Law Firm of Daniel J. Young PLLC; the Law Office of Nathan C. Cace, PC; Ovation Financial Services; Propel Financial Services, LLC; Protect My Texas Property; Resolution Finance LLC; Sombrero Capital, LLC; Tax Advances LLC; Tax Ease; the Texas Mortgage Bankers Association; the Texas Property Tax Lienholders Association; Texas Property Tax Loans; and USPTL LLC.

The following is a summary of the issues raised by the commenters, as well as the number of comments received on each particular issue: (1) disclosure of affiliated businesses (one comment), (2) the general maximum fee limit on closing costs (six comments), (3) clarification on costs for additional parcels and costs necessary to address title defects (two comments), and (4) the use of legitimate discount points (eighteen comments).

All eighteen commenters discussed the re-proposed provisions on legitimate discount points. The comments fell into four main groups. Three comments supported the rule amendments as re-proposed. Two comments were generally supportive, but suggested additional disclosures for discount points. Eight commenters argued that discount points should be prohibited, contrary to the re-proposed rule, which acknowledged circumstances where discount points would be authorized. Five commenters argued that the rule went too far in regulating discount points.

A more detailed analysis of the comments related to discount points is included after the purpose discussion regarding §89.601(d). Additionally, comments on the remaining issues will be addressed by discussion following the purpose of the provisions receiving comments.

In general, the purpose of the adopted amendments is to provide updated guidelines on the costs allowed for property tax loans. The major areas of amendment involve the replacement of tiers

with a general fee cap for reasonable closing costs, the disclosure of affiliated businesses used by property tax lenders, and a prohibition on charging discount points in connection with property tax loans.

The rule provisions regarding reasonable closing costs were initially adopted in 2008, with maximum amounts categorized into five tiers based on the size of the loan. Since that time, the property tax loan industry has seen growth and increased competition, resulting in changing costs over the last five years. The agency believed it to be an appropriate time to revisit the structure and amounts of costs outlined in §89.601, Fees for Closing Costs, as well as explore guidelines for post-closing costs.

The agency decided that it would be in the best interest of consumers as well as the industry to gather information from interested stakeholders in order to prepare an informed and well-balanced rule action for the commission on the costs allowed for property tax loans. Accordingly, the agency distributed an Advance Notice of Proposed Rulemaking (ANPR) and held a stakeholders meeting where several stakeholders provided verbal statements regarding the issues presented in the ANPR. Subsequently, a number of stakeholders provided written comments, elaborating on their statements from the stakeholders meeting.

Upon review of all the thorough and insightful commentary provided, the agency also distributed a rule draft to the stakeholders for specific early or pre-comment prior to the presentation of the rules to commission. The agency believes that this early participation of stakeholders in the rulemaking process has greatly benefited the resulting amendments.

The agency carefully evaluated the stakeholders' comments and incorporated numerous recommendations offered by the stakeholders into the rules as proposed. As a result of the feedback provided from stakeholders prior to the proposal, provisions concerning definitions, recordkeeping, and disclosures were in need of related amendments to fully incorporate the updated cost provisions. Thus, in addition to §89.601, the amendments also include changes to §89.102, Definitions; §89.207, Files and Records Required; and §89.504, Requirements for Disclosure Statement to Property Owner. Also, certain technical corrections have been made in order to better align these rules with prior changes made to other sections within the chapter. The following paragraphs outline the purposes of each rule amendment.

I. Affiliated businesses and recordkeeping

The amendments to §89.102, concerning Definitions, contain a few technical corrections, as well as the addition of the definition of "Affiliated business."

The first technical correction deletes the title of Texas Finance Code, Chapter 351 ("Property Tax Lenders"), along with the deletion of the short title and citation in two instances in the rule. When Chapter 89 was first adopted, this language was needed in order to distinguish the chapter regarding property tax lenders from another chapter with an identical number. The legislature has since corrected the duplicate numbering and hence made this language unnecessary.

The second technical change replaces the verb "shall" with "will" in the introductory paragraph. Similar changes have been made to numerous rules in Chapter 89 in the past, as well as other chapters under the agency's authority. The agency believes that the latter language is reflective of a more modern and plain language approach in regulations.

The definition of "Affiliated business" has been added as new (renumbered) §89.102(1). The purpose of this definition is to implement recordkeeping requirements in §89.207 and disclosure requirements in §89.504, which will be discussed further under the purpose paragraphs for those sections.

New paragraph (1) provides that an "Affiliated business" is a person that shares common management with a property tax lender, shares more than 10% common ownership with a property tax lender, or is controlled by a property tax lender through a controlling interest greater than 10%. The common ownership or controlling interest may occur either directly or indirectly. The 10% threshold has been selected to maintain consistency with the ownership disclosure requirements found in the following property tax lender licensing regulations: §89.302, concerning Filing of New Application; §89.303, concerning Transfer of License; and §89.304, concerning Change in Form or Proportionate Ownership. The disclosure of a 10% ownership or controlling interest is also well established in similar regulations for industries under the agency's authority. With the addition of new paragraph (1), the remaining definitions existing in §89.102 have been renumbered accordingly.

In §89.207, concerning Files and Records Required, the amendments provide clarification regarding records that must be retained relating to payments made to attorneys, and records regarding affiliated businesses. New provisions are contained in §89.207(3)(A)(ix) concerning receipts or invoices along with proof of payment for recording costs or attorney's fees necessary to address a defect in title. The re-proposed version of §89.207(3)(A)(x), which required lenders to retain records related to discount points, has been removed for this adoption because of the prohibition on discount points under §89.601(d).

The purpose of §89.207(3)(A)(ix) is to implement another new provision that has been added in §89.601(c)(5) regarding additional costs for preparing documents necessary to address a defect in title to real property. Section §89.601(c)(5) allows a property tax lender to charge a reasonable fee for costs directly incurred in preparing, executing, and recording documents necessary to address a title defect, in addition to the general maximum fee limit described in §89.601(c)(3) (discussed later in this adoption). The purpose of §89.601(c)(5) is to ensure that property tax lenders can be compensated for costs incurred to address title defects. As a result, the recordkeeping provision in §89.207(3)(A)(ix) has been added to clarify what records must be maintained to establish compliance.

The purpose of the amendments in §89.207(3)(l)(iii) and (7) is to enable the agency to verify that a property tax lender has complied with Texas Finance Code, §351.0021(d), which provides that certain post-closing costs "must be for services performed by a person that is not an employee of the property tax lender." Certain property tax lenders impose post-closing costs that are paid to companies affiliated with the property tax lender through common management, ownership, or control. By requiring property tax lenders to maintain records of their business relationships with affiliated businesses, as well as records of all amounts paid to affiliated businesses, the amended provisions ensure that property tax lenders can substantiate their relationship with affiliated businesses and the fact that costs are not paid to employees of the property tax lender.

Additionally, please refer to the discussion following §89.601(c)(5) regarding documentation related to attorney's fees to address title defects.

In §89.207(3)(L)(i), concerning notices sent by attorneys involving judicial foreclosures under Texas Tax Code, §32.06, the changes provide language that better tracks the statute. For this adoption, the phrase "a non-salaried attorney of the licensee" has been replaced by the phrase "an attorney who is not an employee of the licensee."

Throughout §89.207, minor technical changes have been made to accommodate the new and revised provisions, including the renumbering of the last two paragraphs. In addition, the agency's acronym "OCCC," as defined in §89.102(8) (as renumbered), replaces the use of "Office of Consumer Credit Commissioner" and "commissioner" in §89.207(9) (as renumbered). The first instance is simply for abbreviation purposes. In the second instance, the agency believes that the use of "OCCC" will provide better clarity as the context calls for action by the agency, as opposed to the commissioner specifically.

In §89.504, concerning Requirements for Disclosure Statement to Property Owner, the adoption adds subsection (f) relating to the disclosure of affiliated businesses. New subsection (f) requires property tax lenders that impose post-closing costs paid to affiliated businesses to include additional information in the disclosure form that the property tax lender must provide to the borrower before closing. In particular, the subsection requires the disclosure to include the name of the affiliated business, a statement that it is affiliated with the property tax lender, and a statement that costs paid to the affiliated business cannot be for services performed by employees of the property tax lender. The purpose of this amendment is to provide the borrower with additional information regarding the property tax lender's use of affiliated businesses, and to ensure that a property tax lender has complied with Texas Finance Code, §351.0021(d), which provides that certain post-closing costs "must be for services performed by a person that is not an employee of the property tax lender."

In addition, regarding the affiliated business disclosure statement required by §89.504(f), the agency believes that these revisions are appropriately contained in the rule text as opposed to the corresponding forms in each rule. Only certain property tax lenders use affiliated businesses. Thus, to avoid potential confusion, the changes focus this voluntary practice in the rule text, without placing optional language in the forms used by the entire industry.

One commenter stated: "The idea that the disclosure of affiliated business arrangements is sufficient to avoid abuses is illogical. The disclosures would mean practically nothing to property owners. Without a scheme for enforcing prohibitions for affiliate businesses charging unreasonable fees and costs to circumvent fee and cost regulations, it is difficult to understand what purpose these proposed regulations will serve."

The commission disagrees with this comment. As discussed earlier, certain property tax lenders impose post-closing costs that are paid to companies affiliated with the property tax lender through common management, ownership, or control. By requiring property tax lenders to disclose the identities of affiliated businesses, the amended provision ensures transparency and enables the borrower to make an informed decision before closing. Thus, the commission maintains new §89.504(f) for this adoption.

II. Closing cost limitation

The majority of the amendments are contained in §89.601, concerning Fees for Closing Costs.

A. Repeal of closing cost tiers

During the early stages of rule development, most stakeholders agreed that the rule's former five-tier system based on the total tax lien payment amount did not correlate to the costs incurred by a property tax lender to obtain a transfer of a residential property tax lien. Thus, all the language relating to the five tiers has been deleted from §89.601. Specifically, the deletions are as follows: the introductory sentence in subsection (c), the last sentence of subsection (c)(2), and subparagraphs (A) - (E) of subsection (c)(2).

One commenter argued that the tiered system should be maintained, stating that "a complete flattening of the closing cap tiers is ill advised. While it may be true that some expenses of origination are constant regardless of the size of the transaction, this is not true of all expenses. For example, it would be imprudent to apply the same level of scrutiny when considering a loan of \$5,000 versus a loan of \$50,000. A prudent originator would certainly pay for a more definitive title report. They would examine more closely the property value. Additionally, they would use more scrutiny in examining the borrowers' ability to pay." The agency is unaware of increased costs for a "more definitive title report" on a larger loan, because the cost of an abstract of title generally does not vary with the loan amount. The commission believes that the commenter's concerns are addressed by the provisions in §89.601(c)(4) and (5), which authorize additional amounts for multiple parcels of residential property and documents necessary to address title defects, as discussed later in this adoption. These provisions should enable property tax lenders to recover their costs in more complex transactions.

B. General maximum fee limit

In place of the five tiers, this adoption adds paragraphs (3) - (5) to subsection (c), which provide a \$900 general maximum fee limit, as well as two areas of exception to that general maximum fee limit for loans involving multiple parcels and costs for preparing documents to address title defects. The commission believes that the \$900 limitation will help ensure that lenders' closing-related costs are accurately reflected in the amounts that they charge, ensuring that prices are transparent and result in informed credit decisions.

Data collected in annual reports from property tax lenders indicates a downward trend in closing costs for residential property tax loans between 2008 and 2013. In particular, a 2012 study by the commission indicated a decrease in average residential closing costs from \$1,259 in 2008 to \$866 in 2011. Finance Commission of Texas, *Legislative Report: Property Tax Lending Study* at 21 fig. 3 (2012). The average closing costs for residential property tax loans in 2013 was \$707. Furthermore, many property tax lender stakeholders provided oral and written information stating that they charge well below the former maximums in the rule and even the new re-proposed maximum limit.

One commenter "urge[d] the Commission to consider a \$500 general maximum closing cost cap." The commenter stated: "Although \$900 is much better than the caps provided by the current system, it far exceeds an amount necessary to recover costs directly associated with closing most transactions. [The commenter's] average third party costs on a single property transfer are below \$300, and we believe that most or all tax lien transferees can comply with a \$500 cap with relative ease. The closing cost cap is intended to reflect costs associated with each transaction, and should not serve as a method of recovering overhead or creating a profit center for tax lien transferees."

The commission agrees that the closing cost limitation should reflect costs directly related to closing. As stated in §89.601(b)(1), "the term 'closing costs' includes costs incurred by a property tax lender from the time of application through the time of closing." Closing costs should not include overhead or serve as a profit center. However, based on available information, the commission believes that a \$500 maximum would be too low. The agency received several informal comments prior to the proposal indicating that an \$800 cap would be too low. In addition, property tax lenders charged an average of \$707 in closing costs during 2013. It is important to note that \$707 is an average amount, whereas the \$900 cap in §89.601(c)(3) is a maximum amount. An average by definition reflects numbers both below and above that number. Consequently, new §89.601(c)(3), which sets the general maximum fee limit for closing costs at \$900, is maintained for this adoption.

Five commenters argued that the \$900 limit is too low and would not cover the costs of certain property tax lenders. Two of these commenters provided itemizations of their costs per loan. One commenter stated that the lenders in its network make \$100.73 net profit per loan, charging an average of \$1,099.49 in closing fees. This commenter stated that the lenders' average costs of goods sold are \$393.55 (which includes an attorney fee, closing fee, courier and delivery, flood, inspection, recording, and title), and that their average expenses are \$1,470.50 (which includes salaries and benefits, commissions, marketing, facilities, postage, office supplies, and other general and administrative expenses). The other commenter stated that its costs per loan are \$1,408, consisting of \$325 for advertising; \$253 for title, legal, and mobile notaries; \$680 for payroll and benefits; and \$150 for office expenses.

It appears that these two commenters are including advertising and overhead expenses in their closing costs, even though advertising and overhead expenses are outside the intended scope of the closing cost limitation. As stated in §89.601(b)(1), "the term 'closing costs' includes costs incurred by a property tax lender from the time of application through the time of closing." Advertising costs are incurred long before a prospective borrower applies for a loan, so they do not directly relate to closing. Similarly, overhead expenses (including general and administrative expenses) are incurred continuously and have no direct relationship to closing. These expenses should not be included in closing costs. Rather, interest charges are the proper avenue to compensate the lender for general overhead expenses. See *Stedman v. Georgetown Sav. & Loan Ass'n*, 595 S.W.2d 486, 494 (Tex. 1979) ("Interest is charged to compensate the lender for the risk of making the loan and for the lender's overhead costs."). When advertising and overhead expenses are removed from these commenters' closing costs, it appears that the costs fall within the \$900 maximum. In addition, the new provisions in §89.601(c)(4) and (5) authorize additional amounts for multiple parcels of residential property and documents necessary to address title defects, enabling these commenters to recover their costs in more complex transactions.

Two commenters argued that a reduction in maximum closing costs is unnecessary because competition is already causing a decline in average closing costs. One commenter stated that "market forces are already operating to lower closing costs on residential property tax loans. We believe market forces will do a better job regulating closing costs than regulatory amendments." Similarly, another commenter stated that "the marketplace has achieved your objective without adding new regulations regarding closing fees."

The commission disagrees with the contention that the decrease in average closing costs makes the rule amendments unnecessary. On the contrary, as discussed earlier, the comments indicated that some property tax lenders are currently including non-closing-related amounts (such as advertising and overhead) in the closing costs that they charge to borrowers. Reducing the closing cost limitation to \$900 will help ensure that lenders' closing-related costs are accurately reflected in the amounts that they charge. This will make lenders' prices more transparent and help ensure that borrowers can make informed credit decisions, leading to a more competitive marketplace.

The commission believes that the \$900 cap provides an appropriate balance between consumer protection and industry cost recovery, and represents a reasonable amount of closing costs. Therefore, the commission declines to revise §89.601(c)(3) and maintains the \$900 general maximum fee limit for this adoption. Property tax lenders are welcome to charge below the general maximum fee cap to continue to foster a competitive marketplace.

C. Additional fees for multiple parcels of real property and documents to address title defects

For property tax loans including the payment of taxes for more than one parcel of real property, new §89.601(c)(4) states that a property tax lender may charge up to \$100 for each additional parcel, in addition to the general maximum fee limit in paragraph (3).

One commenter requested clarification that the additional \$100 per parcel applies to residential property, stating: "We request clarification that the additional \$100.00 for each additional parcel be clarified to only apply to the aforementioned Category A and Category E Property Classification, as published by the Texas Comptroller." The commission agrees with this suggestion and has added text specifying that the \$100 amount is authorized for each additional piece of residential property described by §89.601(a), which states: "The fee limitations contained in this section are applicable to property tax loans secured by property designated as 'Category A (Real Property: Single-Family Residential),' and homesteads designated as 'Category E (Real Property: Farm and Ranch Improvements)' by the Property Classification Guide published by the Texas Comptroller of Public Accounts."

A new provision is also contained in §89.601(c)(5) regarding additional costs for preparing documents necessary to address a defect in title to real property. The provision allows a property tax lender to charge a reasonable fee for costs directly incurred in preparing, executing, and recording documents necessary to address a title defect, in addition to the general maximum fee limit described in paragraph (3). The fee for these documents is limited to recording costs and reasonable attorney's fees paid to a person who is not an employee of the property tax lender. The purpose of this provision is to ensure that property tax lenders can be compensated for costs incurred to address title defects. Several precommenters identified situations where title defects require different types of documents to be prepared, executed, and recorded, such as deeds and affidavits of heirship. The fee is limited to recording costs and attorney's fees in order to ensure that property tax lenders do not violate Texas Government Code, §83.001(a), which generally prohibits a person other than an attorney from "charg[ing] or receiv[ing], either directly or indirectly, any compensation for all or any part of the preparation of a legal instrument affecting title to real property, including a deed, deed of trust, note, mortgage, and transfer or release of lien."

One commenter suggested that §89.601(c)(5) be amended to include costs charged by private entities designated for electronic recording. Regarding the proposed language, the commenter stated: "We believe this language prohibits recovery of legitimate third party recording fees incurred when e-recording documents with a county clerk's office. Since this language could potentially exclude certain charges legitimately associated with the recording process, we object to this section and request amendment to include e-recording fees paid to a licensed e-recording provider." The commission agrees with this suggestion and has added text to §89.601(c)(5) specifying that the additional amount charged by the property tax lender may include recording costs paid to "a private entity designated by a governmental entity for electronic recording."

One commenter objected to a provision in the re-proposed version of §89.601(c)(5) stating that in order for the property tax lender to include additional amounts for attorney's fees, the attorney must provide a signed statement to the borrower. The commenter stated: "The Agency may require a licensee to produce invoices or other documentation to ensure that allowable charges for attorney review are in fact legitimate or paid. There is no authorization, however, to dictate what an attorney representing a licensee must provide to a non-client. Further, many property owners may be confused and think they have an attorney representing their interests in the transaction." To address this comment, the commission has amended §89.601(c)(5) to remove the word "signed" and specify that the property tax lender, rather than the attorney, must provide the statement to the property owner describing the nature of the title defect and the work performed by the attorney. A conforming change has been made to §89.207(3)(A)(ix).

Additionally, as a result of new §89.601(c)(3) - (5), the remaining paragraph has been renumbered and includes corresponding technical corrections.

II. Discount points

A. Prohibition on charging discount points

New §89.601(d) prohibits property tax lenders from charging discount points in connection with a property tax loan. The subsection also provides that a property tax lender may not use the term "discount point" in connection with a property tax loan. The subsection explains that this prohibition applies notwithstanding subsection (a), which limits the rule's general fee limitations to residential and agricultural property tax loans.

In the December 26 re-proposal, §89.601(d) allowed legitimate discount points but prohibited including them in the principal balance of a property tax loan. All eighteen comments discussed the proposed provisions on legitimate discount points. After carefully reviewing the comments, the commission has determined that discount points are an unreasonable charge in connection with a property tax loan. The commission has therefore amended the rule to prohibit discount points. This prohibition is adopted under Texas Tax Code, §32.06(a-4)(2), which allows the commission to "adopt rules relating to the reasonableness of closing costs, fees, and other charges permitted under this section," and Texas Finance Code, §351.007, which provides: "The finance commission may adopt rules to ensure compliance with this chapter and Sections 32.06 and 32.065, Tax Code."

The commission has four main reasons for determining that discount points are an unreasonable charge in connection with a property tax loan.

First, the comments revealed that the property tax loan industry, unlike the general mortgage lending industry, has no standard method for calculating the benefit that a borrower receives in exchange for discount points. In determining whether charges are commercially reasonable, Texas courts have looked at whether a charge is customary and made in conformity with reasonable commercial practices. See *Regal Fin. Co., Ltd. v. Tex Star Motors, Inc.*, 355 S.W.3d 595, 601-02 (Tex. 2010); *Avia Jet Mgmt Corp. v. Aeroplance Serv., Inc.*, 626 S.W.2d 325, 326-37 (Tex. App.--Tyler 1981, no writ). The comments suggest that standardized, customary practices for calculating discount points do not exist in the property tax loan industry. One commenter stated that "tax transferees do not have the ability to have a 'standard rate' off which discount point can give meaningful interest reductions. Mortgage rates are determined by national and international financial forces through large institutions." Two commenters were property tax lenders that currently charge discount points, and they provided example calculations that purportedly showed the benefits of discount points. However, it did not appear that either of these commenters used an industry-standard method for calculating discount points. One of these commenters apparently calculated the reduced interest rate based on average rates in the property tax loan industry, rather than a higher interest rate offered by the commenter. The other commenter provided an example where the borrower pays 2.5% of the loan amount for each percentage point discount in the interest rate, but it was unclear how the commenter arrived at this calculation. Because there is no standard methodology, each lender can arbitrarily select its own method for calculating discount points, with no uniform correspondence between the amount charged for discount points and the reduction in the interest rate. This distinguishes the property tax loan industry from the mortgage industry, which relies on standard rate sheets in order to calculate discount points, as discussed in one of the comments. The commission believes that this practice is unreasonable.

Second, the comments revealed that property tax lenders are unable to charge discount points in a manner that complies with the limitation on funds advanced in Texas Tax Code, §32.06(e). The limitation on funds advanced prohibits lenders from including discount points in the principal balance of a property tax loan. The definition of "funds advanced" in Texas Tax Code, §32.06(e) provides: "Funds advanced are limited to the taxes, penalties, interest, and collection costs paid as shown on the tax receipt, expenses paid to record the lien, plus reasonable closing costs." In addition, if property tax lenders charge interest on the discount points, this could lead to a usury violation for charging interest on interest. See *William C. Dear & Assocs., Inc. v. Plastronics, Inc.*, 913 S.W.2d 251, 254 (Tex. App.--Amarillo 1996, writ denied) (interpreting a usury statute to prohibit compounding of interest where it was not expressly authorized). As re-proposed, §89.601(d)(4) and (5) prohibited property tax lenders from including discount points in the principal balance of a property tax loan, and required any discount points to be paid by the borrower before closing. The comments indicated that property tax lenders cannot charge discount points in a manner that complies with this limitation, because borrowers are unable to pay for the discount points up front. Ten commenters supported the re-proposed rule's prohibition on including discount points in the principal balance of a property tax loan. For example, one commenter stated: "ensuring that prepaid interest is kept separate from interest bearing principal to avoid charging property owners interest on the prepaid interest." However, five commenters objected to the prohibition on including discount points in the principal bal-

ance. One commenter stated: "Overwhelmingly, the property owner who is seeking a tax lien loan is cash strapped. . . . Requiring discount points to be paid in cash takes yet one more option away from borrowers who have precious few options in the first place." Furthermore, one commenter who supported prohibiting discount points stated that the rule would substantially reduce the number of transactions with discount points, stating: "We have always offered the ability for customers to pay some or all of the closing costs up front, and they never elect to use this option. This experience leads me to confidently predict that less than 1 out of 1,000 tax lien transfer transactions will have a borrower elect to pay upfront for the discount points." Because borrowers in property tax loans are unable to pay discount points up front, property tax lenders are unable to charge discount points in a manner that complies with the limitation on funds advanced. This is another reason why discount points are not a reasonable charge in connection with property tax loans.

Third, the comments indicated that certain property tax lenders have used discount points as disguised closing costs, rather than an option to obtain a lower interest rate. For example, one commenter expressed concern "that a handful of licensees are attempting to disguise a portion of their closing costs as discount points. . . . [C]ertain licensees originate transfers but immediately sell them to an unrelated funding company, keeping the closing costs and 'discount points' as their sole compensation for each transaction. What this practice has created is a system whereby these originators have incentive to charge high discount points, although the rate charged by the licensee actually funding the loan does not decrease proportionally." Along the same lines, some comments suggested that certain property tax lenders currently rely on discount points as a primary source of funding. For example, one commenter stated: "Without our own funding capabilities, we rely on the origination fees and discount points to be able to meet our financial obligations in running our business." In other words, certain property tax lenders are relying on discount points in order to compensate them for the costs incurred in closing a loan. Discount points should be a method for providing borrowers with an option to obtain a lower interest rate. They should not be a method of maximizing profits or charging disguised closing costs. In order to be legitimate, discount points must be an option available to the borrower, rather than a fee necessary to originate the loan. See, e.g., *Fin. Comm'n of Tex. v. Norwood*, 418 S.W.3d 566, 596 (Tex. 2013). The comments did not indicate that any property tax lenders have offered a borrower a clear statement of the option to obtain a higher interest rate, versus a lower rate with discount points. So it is unclear whether any of the small number of property tax lenders that charge discount points are doing so in a legitimate manner. Therefore, this is another reason that discount points are not a reasonable charge in connection with a property tax loan.

Fourth, the comments indicated that discount points provide little benefit to borrowers. Property tax lenders could provide equivalent benefits to borrowers through more transparent, less confusing practices. Some commenters argued that discount points should be prohibited for property tax loans because they are confusing, and borrowers are unfamiliar with discount points in this context. One commenter stated: "Approximately half of our customers do not have a mortgage and therefore have probably not been exposed to the concept of discount points." In addition, due to the relatively short terms of property tax loans, discount points provide little benefit to the consumer. For example, one commenter stated: "The only way for borrowers to benefit from discount points is to make regular payments on the mort-

gage long enough that the front loaded points are spread enough to lower the effective interest rate below the standard rate they could have chosen without points. That break-even point is typically 6 to 8 years into a 30 year mortgage." However, for a property tax loan, where the typical term is five years, the benefit of a lower interest rate is greatly reduced. In the case of financed discount points, the property tax lender exaggerates the apparent savings that the borrower is receiving in exchange for paying for the discount points. It may appear to the borrower that there will be a substantial savings through an interest rate reduction, but this savings is partially offset by the extra principal that the borrower will have to repay over the life of the loan. Two commenters argued that discount points can benefit borrowers, and provided example transaction comparisons showing that financed discount points can result in savings for borrowers, assuming that closing costs remain constant, the note rate is decreased by approximately 3%, and each discount point is approximately \$350 for a \$12,000 loan. The commenters argued that borrowers would be deprived of these benefits if the lenders were unable to finance discount points. The commission disagrees with these comments. Both commenters could provide substantially the same savings to borrowers by offering lower interest rates without discount points. This approach would enable borrowers to more easily compare the cost of credit among different property tax lenders, helping ensure that the marketplace remains competitive. This approach would also help reduce borrowers' confusion resulting from financed discount points, where the savings is partially offset by the extra principal that the borrower will have to repay over the life of the loan. One commenter stated: "The economic benefit of discount points is even greater for another customer class. That customer who is certain that they will pay off their loan significantly early can benefit greatly by negotiating a longer term, buying down the rate for a lower monthly payment and then paying off the loan early. They benefit in two ways. They free more operating capital for their family or business in the near term and when they receive the lump sum to pay off the loan they pay less total interest expenses." The commission disagrees with this comment. Whether the discount points benefit the borrower in this situation would depend on the date of prepayment and how much of the discount points are refundable. Again, it appears that property tax lenders could provide an equivalent benefit by charging a lower interest rate, which would be less confusing to borrowers. These disclosure problems and lack of a clear benefit for borrowers are another reason that discount points are unreasonable in connection with property tax loans.

The comments described additional reasons why discount points should be prohibited for property tax loans. Eight commenters argued that discount points should be prohibited for property tax loans. The commenters' primary argument for prohibiting discount points focuses on differences between property tax loans and standard mortgages. Because of the differences between property tax loans and standard mortgages, they argue that discount points should be prohibited for property tax loans. For example, two commenters stated: "I believe discount points should be prohibited from Transfer of Tax liens because they are confusing and are a mortgage like product." One commenter included a table with a list of differences: for standard mortgages, the lien is created voluntarily, priority is based on time of recording, nonjudicial foreclosure is allowed, there is a larger average loan amount and number of loans made, credit ratings of borrowers are higher, there is more sophistication in the market, there is more statistical information available, and there are standard rates.

Along the same lines, several commenters pointed out that Texas Tax Code, §32.06 does not expressly authorize discount points. One commenter stated: "Texas mortgage law deals with the reality of discount points that are offered nationwide for mortgages, but our law does not address whether all Texas businesses have a right to offer discount points for any type of loan--mortgages or otherwise. The statutory scheme governing transferred property tax liens does not authorize the charging of discount points, and there is no reason why the OCCC should create the additional charge that is inappropriate and for which compliance is unclear and unenforceable." Another stated: "Because Section 32.06 does not contemplate the imposition of discount points, [the commenter] would urge that the proposed rules be amended to prohibit the imposition of discount points."

Some commenters expressed concern that certain property tax lenders would not comply with requirements for discount points, or that certain lenders would use discount points as a disguised method of collecting closing costs. One commenter stated: "Successfully servicing a property tax loan that incorporates discount points is very difficult. Interest may not be charged on the prepaid interest component, refunds of the unamortized portions of the prepaid interest have to be calculated and refunded, and APR calculations have to correctly incorporate the prepaid interest. It is our observation that the property tax lenders that currently offer discount points do not consistently follow these requirements due to their complexity. I am concerned they may evolve and continue their business model of pushing discount points, and subsequently not properly service the loan. The result will be additional consumer complaints"

Several commenters suggested additional disclosures and calculation requirements for discount points, if discount points were allowed. For the reasons discussed in this preamble, the commission has determined that discount points are an unreasonable charge in connection with property tax loans. Because the rule prohibits discount points, additional disclosures and calculation requirements are unnecessary.

The re-proposed amendment to §89.601(d)(4), which required unearned discount points to be itemized on payoff statements, has been withdrawn for this adoption because of the prohibition on discount points under §89.601(d).

One commenter stated: "[W]e further object to the requirement in the proposed 7 TAC 89.601(d)(4) requiring that any discount point be paid by cash, check, or electronic fund transfer before or at closing of a property tax loan. . . . We believe this rule serves no purpose and, pursuant to Tex. Gov't Code §2001.031, we hereby request a concise statement to the principal reasons for and against its adoption." It appears that this commenter made a typographical error and intended to request a statement under Texas Government Code, §2001.030, which provides: "On adoption of a rule, a state agency, if requested to do so by an interested person either before adoption or not later than the 30th day after the date of adoption, shall issue a concise statement of the principal reasons for and against its adoption. The agency shall include in the statement its reasons for overruling the considerations urged against adoption."

The following is a concise statement of reasons for adopting the prohibition on discount points in §89.601(d). Discount points are an unreasonable charge in connection with property tax loans for four reasons. First, the property tax loan industry, unlike the general mortgage lending industry, has no standard method for calculating the benefit that a borrower receives in exchange for discount points. Second, the comments revealed that property

tax lenders are unable to charge discount points in a manner that complies with the limitation on funds advanced in Texas Tax Code, §32.06(e), because borrowers are unable to pay discount points up front. Third, certain property tax lenders have used discount points as disguised closing costs, rather than an option to obtain a lower interest rate. Fourth, the comments indicated that discount points are particularly confusing to property tax loan borrowers, and that they provide little benefit to borrowers.

The following is a concise statement of objections that commenters proposed against adopting a prohibition on discount points, along with the commission's reasons for disagreeing with the objections. First, some commenters argued that the commission does not have authority to regulate discount points. The commission disagrees with this objection, because the commission has the authority to adopt the rule under both Texas Finance Code, §351.007 and Texas Tax Code, §32.06(a-4)(2). Second, some commenters argued that prohibiting discount points would deprive borrowers of benefits associated with discount points. The commission believes that similar benefits can be achieved with different pricing structures, and that the different pricing structures would result in less confusion on the part of borrowers. Third, some commenters argued that the rule would disproportionately affect small businesses. The commission believes that the impact on small businesses should be minimal, and that small businesses should be able to adjust their pricing practices to comply with the rule, as discussed in more detail in the "Impact on small businesses" section.

B. Commission's authority to regulate discount points

Two commenters argued that the commission does not have authority to regulate or prohibit discount points. The commission disagrees with these comments. Rules governing discount points are within the commission's rulemaking authority under two different sections. First, the rules are authorized under Texas Finance Code, §351.007, which provides: "The finance commission may adopt rules to ensure compliance with this chapter and Sections 32.06 and 32.065, Tax Code." Second, the rules are authorized under Texas Tax Code, §32.06(a-4)(2), which authorizes the commission to "adopt rules relating to the reasonableness of closing costs, fees, and other charges permitted under this section." The commenters made three arguments to support the conclusion that the commission does not have authority to adopt rules regulating discount points.

First, one of the commenters argued that Texas Finance Code, §351.007 does not authorize the commission to adopt rules relating to interest. The commenter stated: "§351.007 gives the Finance Commission a broad mandate to 'adopt rules to ensure compliance with this chapter'. However, this language only provides the Finance Commission authority to adopt rules to implement the statutes embodied in Chapter 351 of the Tex. Finance Code. There is nothing in Chapter 351 of the Finance Code that addresses interest rates and §351.007 does not give the Finance Commission the authority to regulate interest."

The commission disagrees with this comment. The commenter failed to quote the last seven words of §351.007, which authorize the commission to adopt rules to ensure compliance with Texas Tax Code, §32.06. In particular, the commission may adopt rules to ensure compliance with §32.06(e), which includes the limitation on funds advanced and the reasonable-closing-costs requirement. The provisions in §89.601(d) help ensure that property tax lenders do not use discount points to violate the limitation on funds advanced. They also help ensure that property tax

lenders do not use discount points as a disguised closing cost in violation of the reasonable-closing-costs requirement.

Second, both commenters argued that the rulemaking authority in Texas Tax Code, §32.06(a-4)(2) is limited to closing costs and other non-interest charges. One commenter stated: "'Interest' isn't a fee or closing cost, even if it is added at the beginning of a transaction rather than spread over time. As such, the proposed rules on discount points can't get their authority under [§32.06(a-4)(2)], relating to the reasonableness of a closing cost, fee or charge." The other commenter stated: "Since the legislative rule making authority granted to the Finance Commission only authorizes the Finance Commission to adopt rules relating to the reasonableness of closing costs, fees, and other charges, the Finance Commission does not have the authority to regulate interest rates."

The commission also disagrees with these comments. Interest is a charge authorized under §32.06(e), so it falls within the "other charges permitted under this section" described in §32.06(a-4)(2). The commenters' argument appears to be based on the premise that interest is not a charge, but this premise is incorrect. Texas courts have routinely referred to interest as a charge. *See, e.g., Danziger v. San Jacinto Sav. Ass'n*, 732 S.W.2d 300, 304 (Tex. 1987) ("A usurious charge may be contained in an invoice, a letter, a ledger sheet or other book or document. . . . A pay-off quote which reflects a charge of interest in excess of that allowed by law constitutes 'charging' of usurious interest.") (emphasis added). Because interest is a charge authorized under §32.06(e), the commission is authorized to adopt rules relating to interest under §32.06(a-4)(2). The commission may also adopt a rule prohibiting discount points because they are an unreasonable charge in connection with a property tax loan.

Third, both commenters argued that a rule governing discount points would be inconsistent with the 18% interest limitation in §32.06(e). One commenter stated: "The Legislature capped the interest rate on tax loans covered by Tex. Tax Code §32.06 at 18%. Accordingly, so long as a lender follows the appropriate rules for calculating interest already provided by the Legislature regarding interest calculations, the OCC and Finance Commission are only authorized to enforce the existing statutes regarding property tax loan interest rates and does not have the independent authority to implement rules regulating interest rates." Similarly, the other commenter stated: "A prohibition is inconsistent because §32.06(e) is unambiguous: the interest rate cap is 18% per year. If the aggregate interest rate calculation falls below 18%, compliance is achieved."

The commission disagrees with the suggestion that the rule is inconsistent with the 18% interest limitation. The provisions in §89.601(d) do not substitute a different maximum interest rate for the 18% maximum in §32.06(e). Rather, the provisions help ensure that lenders do not impose an unreasonable charge, and that they do not violate the limitation on funds advanced. They also help ensure that property tax lenders do not mischaracterize discount points as closing costs.

IV. Impact on small businesses

The adopted rules may have an economic impact on some small and micro-businesses. Many small property tax lenders will be unaffected by the adopted rules, because they already charge closing costs below the adopted \$900 limitation, do not use affiliated business arrangements, and do not charge discount points. However, the comments indicated that a segment of small prop-

erty tax lenders relies exclusively on closing costs and discount points to compensate the lenders for all origination costs. These lenders will have to adjust their pricing practices in order to comply with the rule and with Texas Tax Code, §32.06(e). The primary impact will be on lenders whose closing costs currently include costs that are unrelated to closing (such as advertising and overhead), as well as lenders that charge discount points. Ultimately, however, the commission estimates that the impact on these lenders will be minimal, because they should be able to recoup these costs through other methods, such as charging a higher interest rate and ensuring that they are able to retain a portion of that interest rate. Because many small lenders currently operate without charging closing costs over \$900 and without charging discount points, the commission believes that the segment of small property tax lenders referenced earlier will be able to adjust their practices to comply with the rule.

In the original proposal of these rules in October 2014, as well as the re-proposal as published in the December 26, 2014, issue of the *Texas Register* (39 TexReg 10122, 10128), the preamble explained that the agency was not aware of any adverse economic impact on small businesses, but the agency invited comments on the effects that the rules would have on small businesses. After the re-proposal, five commenters argued that as re-proposed, the rules would disproportionately affect small businesses. One commenter stated: "As a small originator in an extremely competitive market, it is necessary for [the commenter], and many other small originators, to utilize investment capital from larger firms to offer flexible property tax loans to homeowners so they will not lose their homes. Without our own funding capabilities, we rely on the origination fees and discount points to be able to meet our financial obligations in running our businesses." Another commenter stated: "As a small business that depends on origination profits we are unable to originate loans at a loss unlike large players in the marketplace . . . which in some cases are publicly held companies that are happy to originate loans at a loss and then make up for it in profits from the interest rate spread they enjoy from those assets." Another commenter stated: "Evidence shows that competition has lowered the average closing costs to a level that is below the true cost of origination. It is one thing for a business to *choose* to take a loss on origination (at least for a time) for a competitive advantage. It is quite another to *force* all originators to operate at a loss in originations. To do so will drive most originators out of business who do not meet a certain business profile, i.e. large, established originators with access to institutional or extremely cheap financing who originate and own their own loans. Such an originator is able to capitalize their losses in their origination arm and make it up in the interest rate spread over the life of the loan. A small originator without access to cheap investment capital or who sells their loans must make a profit at origination or they will be forced to close their doors."

These commenters have stated that they rely on closing costs and discount points to compensate them for the costs of origination. But closing costs and discount points are not intended to cover *all* costs of origination. Closing costs are intended to cover costs that arise between the loan application and closing, and discount points, in transactions where they are permitted, should be an optional offset that enables a borrower to obtain a lower interest rate than the standard par rate offered by the lender. Therefore, in order to comply with the rule as adopted, these lenders may have to adjust their pricing practices. These lenders may have to recoup their origination costs by charging a higher interest rate and ensuring that they are able to retain a

portion of that higher interest rate. It appears that there is room for them to do so; two of the commenters stated that they charge fixed interest rates between 9.90% and 10%, well below the 18% maximum. After making this adjustment, these small lenders will still be able to recover their costs and effectively receive the same stream of payments, but the amounts they charge for closing costs will more accurately reflect costs actually related to closing. The commission disagrees with the contention that the rule will force lenders to operate at a loss.

Some commenters emphasized that the combination of a \$900 closing cost cap and a prohibition on discount points would put certain small property tax lenders out of business. For example, one commenter stated: "Lowering origination fees to \$900 and in effect eliminating discount points would put us out of business." Another commenter stated that "to further reduce origination fees beyond the current well thought out guidelines and to, in effect, eliminate discount points, will create an injustice to the property owners by putting them more at risk in the long run with fewer options to assist them with their property taxes which will increase their cost and risk of losing their property." Again, the commission disagrees with the contention that the rule will force lenders to operate at a loss, because of the alternative pricing structures available to lenders.

The commission believes that small-business-related exceptions to the rule would be legally infeasible. Creating a higher alternative closing cost cap for small businesses would be infeasible because it would mean that the cap would include costs that are not related to closing (such as advertising and overhead). In addition, exempting small businesses from the prohibition on discount points would fail to ensure that these small businesses impose reasonable charges and comply with the limitation on funds advanced in Tax Code, §32.06(e). The commission also considered the rule as re-proposed in December, which allowed legitimate discount points but prohibited including them in the principal balance of a property tax loan. However, after reviewing the comments, the commission has determined that this would be infeasible because property tax lenders are unable to charge discount points in a manner that complies with the prohibition on financing discount points, and because this would fail to ensure that property tax lenders impose reasonable charges in connection with property tax loans.

The agency does not know exactly how many small and micro-businesses will be affected by the adopted rules, because it does not know how many small and micro-businesses engage in the practice described earlier (i.e., relying on closing costs and discount points to compensate the lender for all origination costs, and assigning the loan to another party). The agency estimates that five property tax loan companies engage in this practice. This estimate is based on the number of property tax lenders that filed an annual report in 2014 stating that they made loans but did not have any loan receivables. If these lenders are charging closing costs that exceed the limitations specified in adopted §89.601(c), or if they are charging discount points, then they will have to amend their pricing practices in order to comply with the rule.

The precise amount of the rule's economic impact on small businesses is difficult to estimate, and depends partly on information that the agency does not have. For example, the agency does not know how many secondary-market participants will be willing to purchase loans from small originators on terms that comply with the adopted rule. Nonetheless, the commission believes that the impact on small businesses will be minimal. As

outlined in the previous discussion, the property tax lenders that currently rely exclusively on closing costs and discount points should be able to recover their costs and effectively receive the same stream of payments by charging higher interest rates. So it is unclear why secondary-market participants would refuse to purchase the loans on terms that allow the lenders to recover substantially the same costs that they recover today.

While the adopted rules may have an impact on certain small property tax lenders, the commission believes that this impact will be minimal. For the reasons discussed earlier, small property tax lenders should be able to amend their pricing practices in a manner that enables them to comply with the rule and recoup their actual costs.

V. Conclusion

The amended provisions in this adoption, including the amended recordkeeping requirements, the disclosure of affiliated businesses, the amended limitation on closing costs, and the prohibition on discount points, will only apply to loans made on or after the effective date of these rules, which is anticipated to be March 15, 2015.

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §89.102

All of the amendments are adopted under Texas Finance Code, §351.007, which authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Chapter 351 and Texas Tax Code, §32.06. Additionally, the amendments are adopted under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code.

The amendments related to affiliated businesses contained in §§89.102, 89.207, and 89.504 are adopted under Texas Finance Code, §351.0021(e), which authorizes the commission to adopt rules implementing and interpreting authorized charges that a property tax lender may impose after closing.

The Texas Tax Code also contains specific authority for the amendments to certain rules. In particular, the amendments to §89.504 are adopted under §32.06(a-4)(1) of the Tax Code, which authorizes the commission to prescribe the form and content of an appropriate disclosure statement to be provided to a property owner before the execution of a tax lien transfer. The amendments to §89.601 are adopted under §32.06(a-4)(2) of the Tax Code, which authorizes the commission to adopt rules relating to the reasonableness of closing costs, fees, and other charges permitted under §32.06.

The statutory provisions affected by the adopted amendments are contained in Texas Finance Code, Chapter 351, and Texas Tax Code, §32.06 and §32.065.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
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SUBCHAPTER B. AUTHORIZED ACTIVITIES

7 TAC §89.207

The amendments are adopted under Texas Finance Code, §351.007, which authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Chapter 351 and Texas Tax Code, §32.06. Additionally, the amendments are adopted under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code.

The amendments related to affiliated businesses contained in §89.207 are adopted under Texas Finance Code, §351.0021(e), which authorizes the commission to adopt rules implementing and interpreting authorized charges that a property tax lender may impose after closing.

The statutory provisions affected by the adopted amendments are contained in Texas Finance Code, Chapter 351, and Texas Tax Code, §32.06 and §32.065.

§89.207. Files and Records Required.

Each licensee must maintain records with respect to each property tax loan made under Texas Finance Code, Chapter 351 and Texas Tax Code, §32.06 and §32.065, and make those records available for examination under Texas Finance Code, §351.008. The records required by this section may be maintained by using either a paper or manual recordkeeping system, electronic recordkeeping system, optically imaged recordkeeping system, or a combination of the preceding types of systems, unless otherwise specified by statute or regulation. If federal law requirements for record retention are different from the provisions contained in this section, the federal law requirements prevail only to the extent of the conflict with the provisions of this section.

(1) Required records. A licensee must maintain the following items:

(A) A loan register, containing the date of the property tax loan, the last name of the borrower, the "total tax lien payment amount" as defined in §89.601 of this title (relating to Fees for Closing Costs), and the loan number;

(B) General business and accounting records, including receipts, documents, canceled checks, or other records for each disbursement made at the borrower's direction or request, or made on his behalf or for his benefit, including foreclosure or legal fees applied to the borrower's account;

(C) Advertising and solicitation records, including examples of all written and electronic communications soliciting loans (including scripts of radio and television broadcasts, and reproductions of billboards and signs not at the licensed place of business) for a period of not less than one year from the date of use or until the next examination by OCCC staff, whichever is later, in order to show compliance with Texas Finance Code, §341.403 and §351.0023;

(D) Adverse action records regarding all applications relating to Texas Finance Code, Chapter 351 property tax loans main-

tained for 25 months for consumer credit and 12 months for business credit; and

(E) An official correspondence file, including all communications from the OCCC, copies of correspondence and reports addressed to the OCCC, and examination reports issued by the OCCC.

(2) Record of individual borrower's account. A separate record must be maintained for the account of each borrower and the record must contain at least the following information on each loan:

(A) Loan number as recorded on loan register;

(B) Loan schedule and terms itemized to show:

(i) date of loan;

(ii) number of installments;

(iii) due date of installments;

(iv) amount of each installment; and

(v) maturity date;

(C) Name, address, and telephone number of borrower;

(D) Names and addresses of co-borrowers, if any;

(E) Legal description of real property;

(F) Principal amount;

(G) Total interest charges, including the scheduled base finance charge, points (i.e., prepaid finance charge), and per diem interest;

(H) Amount of official fees for recording, amending, or continuing a notice of security interest that are collected at the time the loan is made;

(I) Individual payment entries itemized to show:

(i) date payment received (dual postings are acceptable if date of posting is other than date of receipt);

(ii) actual amounts received for application to principal and interest; and

(iii) actual amounts paid for default, deferment, or other authorized charges;

(J) Any refunds of unearned charges that are required in the event a loan is prepaid in full, including records of final entries, and entries to substantiate that refunds due were paid to borrowers, with refund amounts itemized to show interest charges refunded, including the refund of any unearned points;

(K) Collection contact history, including a written or electronic record of each contact made by a licensee with the borrower or any other person and each contact made by the borrower with the licensee, in connection with amounts due, with each record including the date, method of contact, contacted party, person initiating the contact, and a summary of the contact;

(L) Transfer, assignment, or sale records.

(3) Property tax loan transaction file. A licensee must maintain a paper or imaged copy of a property tax loan transaction file for each individual property tax loan or be able to produce the same information within a reasonable amount of time. The property tax loan transaction file must contain documents that show the licensee's compliance with applicable law, including Texas Finance Code, Chapter 351; Texas Tax Code, §32.06 and §32.065, and any applicable state and federal statutes and regulations. If a substantially equivalent electronic record for any of the following documents exists, a paper

copy of the record does not have to be included in the property tax loan transaction file if the electronic record can be accessed upon request. The property tax loan transaction file must include copies of the following records or documents, unless otherwise specified:

(A) For all property tax loan transactions:

(i) all lien transfer and security documents signed by the borrowers, including any promissory note, loan agreement, deed of trust, contract, security deed, other security instrument, or other lien transfer document, executed in accordance with or under Texas Tax Code, §32.06 or §32.065, or Texas Finance Code, §351.002(2)(C);

(ii) the application for credit or transfer of the lien and any other written or recorded information used in evaluating the application;

(iii) the disclosure statement to property owner as required by Texas Tax Code, §32.06(a-4)(1) and §89.504 of this title (relating to Requirements for Disclosure Statement to Property Owner) and §89.506 of this title (relating to Disclosures), including verification of delivery of the statement;

(iv) the sworn document authorizing transfer of tax lien as required by Texas Tax Code, §32.06(a-1) and §89.701 of this title (relating to Sworn Document Authorizing Transfer of Tax Lien), including written documentation to support that the sworn document was sent by certified mail to any mortgage servicer and to each holder of a recorded first lien encumbering the property;

(v) the certified statement of transfer of tax lien as required by Texas Tax Code, §32.06(b) and §89.702 of this title (relating to Certified Statement of Transfer of Tax Lien), including information verifying the date that the certified statement was received by the licensee from the tax assessor-collector;

(vi) a final itemization of the actual fees, points, interest, costs, and charges that were charged at closing and to whom the charges were paid as specified by Texas Tax Code, §32.06(e);

(vii) if available, any tax certificate or other similar record used to determine the status of a tax account for the property subject to the tax lien as required by Texas Tax Code, §32.06(a-2) or authorization by property owner to pay the taxes;

(viii) copies of any other agreements or disclosures signed by the borrower applicable to the property tax loan;

(ix) receipts, invoices, or statements describing the nature of the title defect and the work performed by an attorney, along with proof of payment for recording costs or attorney's fees necessary to address a defect in title, as described by §89.601(c)(5) of this title (relating to Fees for Closing Costs), unless the records required by this clause are maintained under paragraph (1)(B) of this section, and upon request, the licensee produces these records within a reasonable amount of time, and itemizes or otherwise indexes individual entries to a particular property tax loan transaction file;

(B) If the property is residential property owned and used by the property owner for personal, family, or household use, the right of rescission as specified by Texas Tax Code, §32.06(d-1) and Truth in Lending (Regulation Z), 12 C.F.R. §1026.23;

(C) Copies of any requests for payoff statements received by the licensee or its agent under Texas Tax Code, §32.06(a-6) and §89.801 of this title (relating to Requests for Payoff Statements); copies of any requests for payoff statements received by the licensee or its agent under Texas Tax Code, §32.06(f), (f-1), or §32.065(b-1); and copies of any other requests for payoff statements received by the licensee or its agent;

(D) Copies of any payoff statements issued by the licensee or its agent as required by Texas Tax Code, §32.06(a-6) and (f-3), §89.603 of this title (relating to Fee for Payoff Statement or for Information on Current Balance Owed), and §89.802 of this title (relating to Payoff Statements); and copies of any other payoff statements issued by the licensee or its agent;

(E) Copies of any notifications issued by the licensee or its agent that a request for a payoff statement was deficient, or that a payoff statement was returned undeliverable, as required by §89.802(k) and (l) of this title;

(F) If the property tax loan is delinquent for 90 consecutive days, a notice of delinquency as required by Texas Tax Code, §32.06(f) including evidence that the notice was sent by certified mail;

(G) If received by the licensee, a copy of the notice of delinquency to the licensee from the mortgage servicer or holder of the first lien as specified by Texas Tax Code, §32.06(f-1) and §89.505 of this title (relating to Requirements for Notice of Delinquency to Transferee) and §89.506 of this title;

(H) If the property tax loan is paid off or otherwise satisfied, a copy of the release of lien as required by Texas Tax Code, §32.06(b);

(I) If fees are assessed, charged, or collected after closing, copies of the receipts, invoices, checks or other records substantiating the fees as authorized by Texas Finance Code, §351.0021 and Texas Tax Code, §32.06(e-1) including the following:

(i) if the licensee acquires collateral protection insurance, a copy of the insurance policy or certificate of insurance and the notice required by Texas Finance Code, §307.052;

(ii) receipts or invoices along with proof of payment for attorney's fees assessed, charged, and collected under Texas Finance Code, §351.0021(a)(4) and (a)(5), including specific descriptions of services performed by the attorney, unless the records required by this clause are maintained under paragraph (1)(B) of this section, and upon request, the licensee produces these records within a reasonable amount of time, and itemizes or otherwise indexes individual entries to a particular property tax loan transaction file; and

(iii) records identifying all amounts paid to an affiliated business described by paragraph (7) of this section, including a designation that an amount was paid to an affiliated business and a statement of which affiliated business was paid, unless the records required by this clause are maintained under paragraph (1)(B) of this section, and upon request, the licensee produces these records within a reasonable amount of time, and itemizes or otherwise indexes individual entries to a particular property tax loan transaction file;

(J) Copies of any collection letters or notices sent by the licensee or its agent to the borrower;

(K) For a property tax loan where any separate disclosures or notices have been given, copies of the disclosures and notices sent;

(L) For property tax loan transactions involving a foreclosure or attempted foreclosure, the following records required by Texas Tax Code, Chapters 32 and 33:

(i) For transactions involving judicial foreclosures under Texas Tax Code, §32.06(c):

(I) any records pertaining to a judicial foreclosure including records from the licensee's attorneys, the court, or the borrower or borrower's agent;

(II) if sent by an attorney who is not an employee of the licensee, any notice to cure the default sent to the property owner and each holder of a recorded first lien on the property as specified by Texas Property Code, §51.002(d) including verification of delivery of the notice;

(III) if sent by an attorney who is not an employee of the licensee, any notice of intent to accelerate sent to the property owner and each holder of a recorded first lien on the property, including verification of delivery of the notice;

(IV) if sent by an attorney who is not an employee of the licensee, any notice of acceleration sent to the property owner and each holder of a recorded first lien on the property;

(V) any written documentation that confirms that the borrower has deferred their property tax on the property subject to the property tax loan as permitted under Texas Tax Code, §33.06, such as the Tax Deferral Affidavit for 65 or Over or Disabled Homeowner, Form 50-126 filed with the appraisal district, attorney, or court;

(VI) records relating to the distribution of excess proceeds as required by Texas Tax Code, §34.02 and §34.04;

(VII) the foreclosure deed upon sale of the property;

(VIII) if the property is purchased at the foreclosure sale by the licensee, copies of receipts or invoices substantiating any amounts reasonably spent by the purchaser in connection with the property as costs within the meaning of Texas Tax Code, §34.21(g);

(ii) For transactions closed before May 29, 2013, involving nonjudicial foreclosures under Act of May 7, 1995, 74th Leg., R.S., ch. 131, §1, sec. 32.06(c)(2), 1995 Tex. Gen. Laws 957, as amended by Act of May 25, 2007, 80th Leg., R.S., ch. 1329, §1, sec. 32.06(c)(2), 2007 Tex. Gen. Laws 4484, 4485 (repealed 2013) (previously codified at Texas Tax Code, §32.06(c)(2)):

(I) the notice to cure the default sent to the property owner and each holder of a recorded first lien on the property as required by Texas Property Code, §51.002(d) including verification of delivery of the notice;

(II) the notice of intent to accelerate sent to the property owner and each holder of a recorded first lien on the property, including verification of delivery of the notice;

(III) the notice of acceleration sent to the property owner and each holder of a recorded first lien on the property;

(IV) any written documentation that confirms that the borrower has deferred their property tax on the property subject to the property tax loan as permitted under Texas Tax Code, §33.06, such as the Tax Deferral Affidavit for 65 or Over or Disabled Homeowner, Form 50-126 filed with the appraisal district, attorney, or court;

(V) the application for Order for Foreclosure under Texas Rules of Civil Procedure, Rule 736.1;

(VI) copies of any returns of citations issued under Texas Rules of Civil Procedure, Rule 736.3, showing the date and time the citation was placed in the custody of the U.S. Postal Service;

(VII) copies of any responses filed contesting the Application for Order for Foreclosure as described in Texas Rules of Civil Procedure, Rule 736.5;

(VIII) the motion and proposed order to obtain a default order, if any, under Texas Rules of Civil Procedure, Rule 736.7;

(IX) the order granting or denying the application for foreclosure as specified under Texas Rules of Civil Procedure, Rule 736.8;

(X) the notice provided to the recorded preexisting lienholder, at least, 60 days before the date of the proposed foreclosure;

(XI) the notice of sale as required by Texas Property Code, §51.002(b) including verification of delivery of the notice;

(XII) records relating to the distribution of excess proceeds as required by Texas Tax Code, §34.021 and §34.04;

(XIII) the foreclosure deed upon sale of the property;

(XIV) if the property is purchased at the foreclosure sale by the licensee, copies of receipts or invoices substantiating any amounts reasonably spent by the purchaser in connection with the property as costs within the meaning of Texas Tax Code, §34.21(g);

(M) Any other documents necessary to establish the licensee's compliance with the law.

(4) Corrective entries to the borrower's account record, if justified, including the reason and supporting documentation for each corrective entry and any supporting documentation justifying the corrective entry, maintained under the following documentation guidelines:

(A) Dual recording in collection contact history permissible. The reason for the corrective entry may also be recorded in the collection contact history of the borrower's account record.

(B) Supporting documentation. The supporting documentation justifying the corrective entry may be maintained in the individual borrower's account file or properly stored and indexed in a licensee's optically imaged recordkeeping system.

(C) Manual recordkeeping systems. If a licensee manually maintains the borrower's account record, the licensee must properly correct an improper entry by drawing a single line through the improper entry and entering the correct information above or below the improper entry. No erasures or other obliterations may be made on the payments received or collection contact history section of the manual borrower's account record.

(5) Transfer, assignment, or sale records and register.

(A) A licensee must maintain transfer, assignment, or sale records, whether paper or electronic, when any Texas Finance Code, Chapter 351 property tax loan made by or acquired by the licensee is transferred to another individual or entity.

(B) Copies of any transfers, assignments, or sales of liens must be maintained in each individual borrower's property tax loan transaction file.

(C) A licensee must also maintain a transfer, assignment, or sale records register for any property tax loan transferred, assigned, or sold by the licensee to another party. The transfer, assignment, or sale register must show the name of the borrower, the loan number assigned in the loan register, the date of the transfer or assignment, and the name, address, and license number or exemption certificate number of the party to which the accounts are transferred, assigned, or sold.

(6) Record of loans in litigation and foreclosure.

(A) An index of each foreclosure as it occurs and each legal action by or against the licensee as it is initiated must be recorded.

The index must show the borrower's name, account number, and date of action.

(B) All loan records, correspondence, and any other information pertinent to the litigation or foreclosure must be maintained in the borrower's account folders or files.

(7) Records of affiliated businesses. A property tax lender must maintain records describing its relationship with any affiliated business with which the property tax lender regularly contracts for services under Texas Finance Code, §351.0021(a)(4), (a)(5), (a)(6), (a)(7), (a)(8), or (a)(10) that are not performed by an employee of the property tax lender. The records must include any agreements between the property tax lender and the affiliated business, as well as any filings with the Texas Secretary of State that show the relationship between the property tax lender and the affiliated business.

(8) Disaster recovery plan. A property tax lender must maintain a sufficient disaster recovery plan to ensure that property tax loan transaction information is not destroyed, lost, or damaged.

(9) Retention and availability of records. All books and records required by this section must be available for inspection at any time by OCCC staff, and must be retained for a period of four years from the date of the contract, two years from the date of the final entry made thereon by the licensee, whichever is later, or a different period of time if required by federal law. The records required by this section must be available or accessible at an office in the state designated by the licensee except when the property tax loan transactions are transferred under an agreement which gives the OCCC access to the documents. Documents may be maintained out of state if the licensee has in writing acknowledged responsibility for either making the records available within the state for examination or by acknowledging responsibility for additional examination costs associated with examinations conducted out of state.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. DISCLOSURES

7 TAC §89.504

The amendments are adopted under Texas Finance Code, §351.007, which authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Chapter 351 and Texas Tax Code, §32.06. Additionally, the amendments are adopted under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code.

The amendments related to affiliated businesses contained in §89.504 are adopted under Texas Finance Code, §351.0021(e), which authorizes the commission to adopt rules implementing

and interpreting authorized charges that a property tax lender may impose after closing. The Texas Tax Code also contains specific authority for the amendments to certain rules. In particular, the amendments to §89.504 are adopted under §32.06(a-4)(1) of the Tax Code, which authorizes the commission to prescribe the form and content of an appropriate disclosure statement to be provided to a property owner before the execution of a tax lien transfer.

The statutory provisions affected by the adopted amendments are contained in Texas Finance Code, Chapter 351, and Texas Tax Code, §32.06 and §32.065.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER F. COSTS AND FEES

7 TAC §89.601

The amendments are adopted under Texas Finance Code, §351.007, which authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Chapter 351 and Texas Tax Code, §32.06. Additionally, the amendments are adopted under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code.

The Texas Tax Code also contains specific authority for the amendments to certain rules. The amendments to §89.601 are adopted under §32.06(a-4)(2) of the Tax Code, which authorizes the commission to adopt rules relating to the reasonableness of closing costs, fees, and other charges permitted under §32.06.

The statutory provisions affected by the adopted amendments are contained in Texas Finance Code, Chapter 351, and Texas Tax Code, §32.06 and §32.065.

§89.601. Fees for Closing Costs.

(a) **Applicability.** The fee limitations contained in this section are applicable to property tax loans secured by property designated as "Category A (Real Property: Single-Family Residential)," and homesteads designated as "Category E (Real Property: Farm and Ranch Improvements)" by the Property Classification Guide published by the Texas Comptroller of Public Accounts.

(b) **Closing costs for which fees may be charged, contracted for, or received.**

(1) **Scope of closing costs.** For purposes of this section, the term "closing costs" includes costs incurred by a property tax lender from the time of application through the time of closing.

(2) **Examples of closing costs.** The following is a non-comprehensive list of examples of closing costs for which a property tax

lender may charge, contract for, or receive fees in connection with a property tax loan. Other law may limit the ability to charge these and other fees. Examples of some allowable fees for closing costs include the following:

- (A) an application fee;
- (B) an appraisal or inspection fee;
- (C) a title examination fee;
- (D) a property survey fee;
- (E) a fee for flood and plat determinations;
- (F) a document preparation fee;
- (G) a closing or escrow fee;
- (H) a fee for a tax certificate or tax payoff determination;
- (I) a loan processing fee;
- (J) an underwriting fee;
- (K) a fee for obtaining credit reports;
- (L) a fee for courier and delivery services.

(c) **Total maximum fees for closing costs.**

(1) **Maximum fees include funds received by third parties or retained by property tax lender.** The maximum fees provided for by this section encompass fees related to closing costs, whether the charge is paid by a property owner directly to a third party, paid to a third party through a property tax lender, or paid by a property owner directly to and retained by a property tax lender. A property tax lender may absorb any closing costs and may pay third parties out of the total compensation paid to it by a property owner.

(2) **Maximum fee limits for closing costs.** A property owner may not be charged, directly or indirectly, by a property tax lender an amount related to closing costs in excess of the amounts authorized by this section. A property tax lender may not directly or indirectly charge, contract for, or receive any amount related to closing costs from a property owner in excess of the amounts authorized by this section.

(3) **General maximum fee limit.** The general maximum fee for closing costs is \$900.

(4) **Cost for additional parcels of real property.** If a property tax loan includes the payment of taxes for more than one parcel of real property, then the property tax lender may charge up to \$100 for each additional parcel of residential property described by subsection (a), in addition to the general maximum fee limit described in paragraph (3) of this subsection.

(5) **Cost for preparing documents to address title defect.** If one or more documents must be prepared in order to address a defect in title on the real property subject to the property tax loan, then the property tax lender may charge a reasonable fee for costs directly incurred in preparing, executing, and recording any necessary documents, in addition to the general maximum fee limit described in paragraph (3) of this subsection. The fee for preparing documents is limited to recording costs paid to a governmental entity (or a private entity designated by a governmental entity for electronic recording) and reasonable attorney's fees paid to a person who is not an employee of the property tax lender. In order for the fee for these documents to be authorized, any documents must comply with all applicable laws, including recording requirements. In particular, any affidavit of heirship must comply with the substantive and procedural requirements of Texas Estates Code,

Chapter 203, and must be recorded in the deed records of a county as provided in Texas Estates Code, §203.001(a)(2). For attorney's fees, the property tax lender must provide a statement to the property owner describing the nature of the title defect and the work performed by the attorney. The fee for preparing documents is not authorized under this paragraph if the fee includes any of the following:

(A) recording costs that are not paid to a governmental entity or a private entity designated by a governmental entity for electronic recording;

(B) attorney's fees that are not reasonable;

(C) costs that are not necessary in order to address a defect in title on the real property; or

(D) costs that are not substantiated by receipts or invoices that are maintained under §89.207(3)(A)(ix) of this title (relating to Files and Records Required).

(6) Reasonable closing costs. The maximum fees contained in paragraphs (3), (4), and (5) of this subsection constitute "reasonable closing costs" under Texas Tax Code, §32.06.

(d) Discount points. A property tax lender may not charge any discount points in connection with a property tax loan. A property tax lender may not use the term "discount point" to describe any fee or charge in connection with a property tax loan. This prohibition applies to all property tax loans, notwithstanding subsection (a).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 101. ASSESSMENT

SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING IMPLEMENTATION OF THE ACADEMIC CONTENT AREAS TESTING PROGRAM

DIVISION 4. PERFORMANCE STANDARDS

19 TAC §101.3041

The Texas Education Agency (TEA) adopts an amendment to §101.3041, concerning student assessment. The amendment is adopted without changes to the proposed text as published in the December 19, 2014 issue of the *Texas Register* (39 TexReg 9775) and will not be republished. The section addresses

performance standards for the State of Texas Assessments of Academic Readiness (STAAR®). The adopted amendment establishes the revised phase-in performance standards for the STAAR® assessments and establishes in rule a methodology for converting the STAAR® scale scores to a score between 0 and 100. The adopted amendment also maintains the phase-in 1 performance standard for the STAAR® program for the 2014-2015 school year.

As determined by the commissioner of education, revised phase-in academic cut scores for the Level II standard, satisfactory academic performance, are adopted for all general education STAAR® assessments. The Level II standard indicates that students are sufficiently prepared for the next grade or course. Students who perform at this level generally demonstrate the ability to think critically and apply the assessed knowledge and skills in familiar contexts. Though these students have a reasonable likelihood of success in the next grade or course, they may need short-term, targeted academic intervention.

Except for English I and English II, where the phase-in 1 Level II performance standard has been established at one standard deviation (SD) below the panel recommended standard, the phase-in 2 standard has been adjusted to fall 0.7 SD below the panel recommended standard, and the new phase-in 3 standard will only be 0.3 SD below the panel recommended standard. The English I and English II assessments phase-in 1 standard was established at 0.5 SD below the panel recommended standard, the phase-in 2 at 0.35 SD, and the phase-in 3 at 0.15 SD. The revised standards are intended to allow for smaller, incremental improvements toward the final panel recommended Level II performance measure.

The commissioner has determined that the current phase-in 1 performance standard will be maintained for the 2014-2015 school year. Beginning with the 2015-2016 school year through the 2017-2018 school year, the phase-in 2 performance standard will be implemented. The new phase-in 3 performance standard will become effective beginning in the 2018-2019 school year until the implementation of the final recommended performance standard in the 2021-2022 school year. The standard in place when a student first takes an end-of-course (EOC) assessment is the standard that will be maintained on all EOC assessments throughout the student's high school career.

Phase-in 1, phase-in 2, phase-in 3, and final recommended cut scores will be reported in the 2015 statewide test reports.

The Level III standard, advanced academic performance, remains unchanged.

In addition, as required by the Texas Education Code (TEC), §39.025(a), the adopted amendment establishes a methodology to convert current scale scores to a 0-100 scale. The STAAR® 100-point scale will allow for the comparison of a student's performance with the performance of other students who took the same STAAR® assessment. The 100-point scale is defined using percentiles, which represent the percentage of students across the state that took the assessment and received a scale score less than the scale score of interest. Percentiles are based on the performance of students who took the paper, on-line, Braille, and L versions of the assessment during the spring administration of any given year. Adopted new subsection (e) establishes and explains the formula to calculate the percentile for a scale score.

The 100-point score tables for each assessment will be posted annually to the agency's website after results have been reported for the spring administration.

The adopted amendment to 19 TAC §101.3041 revises subsections (b) and (c) to remove performance standards for the STAAR® modified and alternate assessments since those tests are no longer administered. Students previously administered a modified assessment will now use an assessment with appropriate accommodations. House Bill 5, 83rd Texas Legislature, Regular Session, 2013, required the redesign of the alternate assessments, now known as STAAR® Alternate 2. The STAAR® Alternate 2 will first be administered in February 2015, and the performance standards will be set in spring 2015.

The adopted amendment has no procedural and reporting implications beyond those that apply to all Texas students. The adopted amendment has minimal effect on the paperwork required and maintained by school districts, language proficiency assessment committees, and/or admission, review, and dismissal committees in making and tracking assessment and accommodation decisions for Texas students.

The TEA determined that there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal began December 19, 2014, and ended January 20, 2015. Following is a summary of the public comments received and corresponding agency responses regarding the proposed amendment to 19 TAC Chapter 101, Assessment, Subchapter CC, Commissioner's Rules Concerning Implementation of the Academic Content Areas Testing Program, Division 4, Performance Standards, §101.3041, Performance Standards.

Comment: The Texas Classroom Teachers Association (TCTA) expressed support for the extended phase-in period for the STAAR® passing standards, as well as the corollary adjustments to the scale scores required in each of the three phase-in levels.

Agency Response: The agency agrees.

Comment: TCTA commented that a review of the final passing standards for the STAAR® assessments might be in order given that the state now has a large set of student performance data. According to TCTA, the review may be more pertinent due to funding levels of Texas curriculum standards, including a reduction of Student Success Initiative funds, and the changes to both the state's curriculum and the STAAR® program as announced by the commissioner in his August 21, 2014 letter to district administrators. This letter announced the implementation of the new mathematics curriculum, the elimination of STAAR® Modified, and the first administrations of STAAR® A and STAAR® Alternate 2, as well as the new phase-in performance standards as proposed.

Agency Response: The agency provides the following clarification. As part of any adjustment to the phase-in levels like the one in this proposal, the agency does conduct a review of the STAAR® performance standards. Further, as was done with the other STAAR® assessments, standards for the Grades 3-8 STAAR® mathematics and STAAR® Alternate 2 will be set for the first time after students have taken those assessments in spring 2015 to give the agency a wide breadth of data to use in standard setting. After the spring 2015 standard setting, the

agency will continue to periodically review all performance standards for the STAAR® program and make adjustments as determined to be necessary.

Comment: Based on previous assessment data and field test results, an educator from Gus Garcia Middle School, Austin Independent School District, commented that the commissioner should be able to establish the needed raw score to pass a STAAR® assessment prior to the test's administration. The educator expressed the belief that this information would allow realistic goals to be established for students.

Agency Response: The agency disagrees. Equating is the process that takes into account the slight differences in difficulty across individual items on test forms and administrations and allows scores to be placed onto a common scale. Equating is done to promote equitability, and slight differences in difficulty across test forms and administrations are more reliably measured after a test has been given, not before. By accounting for the small differences across test forms and administrations, post-equating enables fair and reliable comparisons of results by ensuring test forms are equal in difficulty.

Comment: An individual commented that the rulemaking process for this proposal was opaque and that the proposed amendment is unclear.

Agency Response: The agency disagrees. The rulemaking process for this proposal followed normal rulemaking procedures, including publication in the *Texas Register* to notify the public of proposed changes and ensure a 30-day public comment period. The proposal was also published on the agency's rulemaking website. Also, the agency has determined that the amendment is written in clear, concise language.

Comment: An individual asked if the proposed rule is assigning a 0-100 score to a STAAR® test result. An individual also opposed the proposed amendment, stating that it is unfair to make the public and parents believe that a student's STAAR® score can be compared to other school assignments.

The Texas Parents' Educational Rights Network (TPERN) expressed opposition to proposed subsection (e), the 0-100 scale. According to TPERN, the rule is unnecessary and will increase confusion and confuse grading concepts with assessment scoring. TPERN requested that subsection (e) be amended to remove any formulas and to state that reporting is based on a percentile rank without reference to a 100-point scale.

Agency Response: As stipulated by the Texas Education Code (TEC), §39.025(a), the agency is required to implement a method to convert a STAAR® scale score to a 0-100 scale. The amendment establishes a methodology to convert current scale scores to a 0-100 scale using percentiles.

The STAAR® 100-point scale could allow for the comparison of a student's performance with the performance of other students who took the same STAAR® assessment.

Relating to the commenters' concerns that the proposed 0-100 scale may be confused with other grading concepts and that the agency did not make clear what the 0-100 scale is reporting, in the description of the proposed rule action, the agency specified that the 100-point scale is defined using percentiles, which represent the percentage of students across the state that took the assessment and received a scale score less than the scale score of interest. Further, the agency included the formula for calculating a percentile in subsection (e) to ensure clarity about what the 0-100 scale score is reporting. As such, the agency

disagrees with TPERN's request to remove the formula from the rule, as well as with the comments that the agency has not been clear what the 0-100 scale reports.

Comment: Two individuals asked if the 0-100 score would help districts incorporate STAAR® scores into a student's grade. Another individual commented that the proposed amendment potentially gives districts another means to misuse a student's test results. TPERN requested that the agency prohibit the use of the score by districts in the calculation of a student's grade or grade point average.

Agency Response: The agency provides the following clarification. How a district uses the 100-point scale is outside the scope of the proposed rule action. Local grading policy is at the discretion of the district. In accordance with TEC, §28.0216, a school district must adopt a grading policy, including provisions for the assignment of grades on examinations, before each school year.

Comment: An individual stated that STAAR® results should not be used in evaluating whether a student is retained or promoted to the next grade.

Agency Response: This comment is outside the scope of the proposed rule action. Assessment grade promotion and retention policies are governed by TEC, §28.0211, and 19 TAC Chapter 101, Assessment, Subchapter BB, Commissioner's Rules Concerning Grade Advancement and Accelerated Instruction.

Comment: An individual expressed opposition to the proposal by stating that proposed subsection (e) is unfair because the STAAR® assessments are not externally verified or aligned to the Texas Essential Knowledge and Skills (TEKS) curriculum.

Agency Response: The agency disagrees. The Standards for Educational and Psychological Testing by the American Educational Research Association and the National Council on Measurement in Education provide a set of guidelines for evaluating the quality of testing practices. By using these standards to guide test development, the Texas assessment program reflects best practices in educational measurement. The Texas Technical Advisory Committee (TTAC), a panel of national testing experts created specifically for the Texas assessment program, provides ongoing input to the agency about STAAR® validity and reliability evidence based on national standards in measuring student learning.

Test development begins by convening Texas educator meetings to review the TEKS curriculum and develop appropriate assessment categories for each grade and subject. In 2013-2014, more than 2,000 Texas educators participated in over 140 educator meetings. These Texas educators consisted of Kindergarten-Grade 12 classroom teachers, higher education representatives, curriculum specialists, administrators, and education service center staff. For each grade and course, educator committees prepare and review performance level descriptors as an aligned system, which describe a reasonable progression of skills within each content area (English, mathematics, science, and social studies).

When test scores are used to make inferences about student achievement, it is important that the assessments support those inferences. Texas collects validity evidence annually to support the interpretations and uses of the STAAR® test scores. Texas follows national standards and best practices used to satisfy federal peer review to continue to ensure the validity of the STAAR® assessments.

Evidence-based studies were used to inform the establishment of performance standards across the STAAR® assessments. These studies can be grouped in the following categories: STAAR®-to-TAKS comparison studies; STAAR® linking studies, which link performance on the STAAR® assessments across grade levels or courses in the same content areas; STAAR® correlation estimates, which evaluate the strength of the relationship between scores on the STAAR® assessments across different content areas; grade correlation studies, which link performance on the STAAR® end-of-course (EOC) assessments to course grades; and external validity studies, which link performance on the STAAR® assessments to external measures (specifically: SAT, ACT, THEA, ACCUPLACER, Explore, and Readistep).

Last, the STAAR® assessments are directly aligned with the TEKS curriculum in order to measure student learning of that curriculum.

Comment: Concerning the agency's notice in the description of the proposed rule action that the new STAAR® Alternate 2 will be first administered during the spring 2015 administration, an individual asked if this means the agency plans to again administer a modified assessment to be used for some students receiving special education services. TPERN commented that it appears the agency is eliminating STAAR® A and STAAR® Modified assessments, implying that any elimination of a test serving special education or English language learner populations is failing to take into account the unique obstacles faced by those populations.

Agency Response: The agency provides the following clarification. As a result of a change in federal regulation, STAAR® Modified has been eliminated. STAAR® A is an accommodated version of STAAR® designed for students receiving special education services and is offered as an online assessment in the same grades and subjects as STAAR®. The passing standards for STAAR® A are the same as any STAAR® test. STAAR® A provides embedded supports designed to help the students access the content being assessed. These embedded supports include visual aids, graphic organizers, clarifications of construct-irrelevant terms, and text-to-speech functionality.

STAAR® Alternate was repealed by the 83rd Texas Legislature, 2013, to be replaced with the STAAR® Alternate 2, administered for the first time in spring 2015 to the state's most severely cognitively disabled students. The STAAR® Alternate 2 has been developed to meet the federal requirements mandated under the Elementary and Secondary Education Act (ESEA). The agency designed the STAAR® Alternate 2 to assess students in Grades 3-8 and high school who have significant cognitive disabilities and are receiving special education services.

For English language learners (ELLs), STAAR® L is a linguistically accommodated English version of the STAAR® Grades 3-8 and EOC mathematics, science, and social studies assessments. ELLs also have available to them other linguistic accommodations that may be appropriate as determined by a student's Language Proficiency Assessment Committee.

The amendment is adopted under the Texas Education Code (TEC), §39.0241(a), which authorizes the commissioner to determine the level of performance considered to be satisfactory on the assessment instruments, and TEC, §39.025(a), which authorizes the commissioner to determine satisfactory performance on each end-of-course assessment instrument listed under TEC, §39.023(c), including a methodology for the conversion

of a scale score to an equivalent score based on a 100-point scale scoring system.

The amendment implements the Texas Education Code, §39.0241(a) and §39.025(a).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 19, 2015.

TRD-201500520

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: March 11, 2015

Proposal publication date: December 19, 2014

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



CHAPTER 109. BUDGETING, ACCOUNTING, AND AUDITING

SUBCHAPTER B. TEXAS EDUCATION AGENCY AUDIT FUNCTIONS

19 TAC §109.23

The State Board of Education (SBOE) adopts amendment to §109.23, concerning Texas Education Agency (TEA) audit functions. The amendment is adopted without changes to the proposed text as published in the December 19, 2014 issue of the *Texas Register* (39 TexReg 9777) and will not be republished. The section provides requirements for school district independent audits and agreed-upon procedures. The adopted amendment addresses provisions relating to a school district or other educational entity hiring an independent auditor. The adopted amendment also adds and clarifies other administrative provisions and makes technical edits.

During its July 2014 meeting, the SBOE adopted the four-year review of its rules in 19 TAC Chapter 109, Budgeting, Accounting, and Auditing. During the discussion of that review, an SBOE member asked whether there was a provision requiring school districts to periodically change independent auditors. A TEA staff member responded that there was no such provision, and the SBOE member requested the staff member to bring a proposed rule to that effect to the September 2014 meeting for discussion. Concurrently, staff members in the TEA offices of Legal Services and School Finance identified a need for a rule to help the TEA ensure that school districts and other educational entities hire independent auditors who are properly qualified to perform their duties. The proposed amendment to 19 TAC §109.23 presented to the Committee on School Finance/Permanent School Fund at its September 2014 meeting for discussion and at its November 2014 meeting for first reading and filing authorization addressed both of these provisions. However, based on public testimony and discussion during its November meeting, the committee made changes to remove from the proposal the requirements for a five-year rotation and request for qualifications process. The proposed amendment to 19 TAC §109.23, as amended by the committee, was approved by the SBOE during its November 2014 meeting for first reading and filing authoriza-

tion. The SBOE approved the proposed amendment for second reading and final adoption at its February 2015 meeting, as follows.

The amendment clarifies the requirements for a school district or other entity to hire an independent auditor to conduct an audit and give an opinion on the annual financial and compliance report of a school district, governmental charter school, open-enrollment charter school, nonprofit service provider, county education district, or regional education service center. The amendment also moves the auditors' requirements, which had been dispersed in various sections of the Financial Accountability System Resource Guide (FASRG), into a single location so the requirements are easy to find. The existing provisions in the rule were also edited for plain language.

New subsection (d) states that a school district or other entity must hire at its own expense an independent auditor and sets forth the criteria for the independent auditor and the associated certified public accountancy (CPA) firm. New subsection (e) states that the TEA division responsible for financial compliance may require a district or other entity to select a new audit firm if at any time the division finds a deficiency in a working paper review.

The adopted amendment has no new procedural and reporting implications. The adopted amendment has no new locally maintained paperwork requirements.

The SBOE took action to approve the proposed amendment for second reading and final adoption during its February 13, 2015 meeting. In accordance with the Texas Education Code, §7.102(f), the SBOE approved the amendment for final adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2015-2016 school year in order to implement the latest policy in a timely manner. The effective date for the amendment is 20 days after filing as adopted.

Following is a summary of the public comments and corresponding responses regarding the proposed amendment.

Comment. The assistant superintendent for finance at Atlanta Independent School District commented that limiting the number of years that a district could retain the same auditor would be costly and is unnecessary. The commenter stated that costs would increase because new auditors have to perform a comprehensive study that continuing auditors do not have to perform at the same level. The commenter added that changing auditors increases the time it takes to perform the audit and could increase costs by as much as 25-30%. The commenter also stated that changing auditors increases demand on school district staff and could cause the district staff to have to work overtime. The commenter noted that AICPA rules of independence and other current rules are sufficient to maintain auditor independence. Additionally, the commenter stated that requiring auditor rotations may increase the chance of a bad audit because first-year audits have a higher percentage of failure.

Response. The SBOE agrees. The amendment does not make it mandatory for school districts to rotate auditors.

Comment. The financial services manager at Region 14 Education Service Center commented that districts should rotate auditors every five years. The commenter stated that an auditor may become complacent when retained at a district for too long. The commenter also stated that auditors should not have multiyear contracts with a district and that the local board should review the audit annually for overall satisfaction.

Response. The SBOE disagrees. The amendment does not make it mandatory for school districts to rotate auditors due to costs to school districts; however, the board maintained the provision that allows the TEA to require a district to change auditors if deficiencies are found.

The amendment is adopted under the Texas Education Code (TEC), §7.102(c)(32), which authorizes the SBOE to adopt rules concerning school district budgets and audits of school district fiscal accounts as required under TEC, Chapter 44, Subchapter A; TEC, §44.001, which requires the commissioner to report annually to the SBOE the status of school district fiscal management; TEC, §44.007, which directs the SBOE to require each district to file a report of revenues and expenditures by a date set by the SBOE; and TEC, §44.008, which requires each district's independent audit to meet minimum standards and be in the format prescribed by the SBOE.

The amendment implements the Texas Education Code, §§7.102(c)(32), 44.001, 44.007, and 44.008.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 18, 2015.

TRD-201500505

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: March 10, 2015

Proposal publication date: December 19, 2014

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



TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 185. PHYSICIAN ASSISTANTS

22 TAC §185.16, §185.18

The Texas Medical Board adopts amendments to §185.16, concerning Employment Guidelines, and §185.18, concerning Discipline of Physician Assistants, without changes to the proposed text as published in the August 22, 2014, issue of the *Texas Register* (39 TexReg 6365). The rules will not be republished.

The rules were proposed and adopted by the Texas Physician Assistant Board and approved by the Texas Medical Board.

The Medical Board and Physician Assistant Board sought stakeholder input through Stakeholder Groups, which made comments on the suggested changes to the rules at a meeting held on June 3, 2014. The comments were incorporated into the proposed rules.

The amendments to §185.16 delete language related to limits on the number of physician assistants (PAs) that may be supervised by a physician. The amendments relate to general supervision only. The amendments are not intended to change laws related to limits on the numbers of PAs that may have prescriptive delegation authority.

The amendment to §185.18 changes the word "shall" to "may" in subsection (a), to reflect that the PA Board has the authority to enter non-disciplinary remedial plans to resolve certain matters.

Public written comments from the Texas Academy of Physician Assistants (TAPA), Texas Medical Association, and Texas Tech University Health Sciences Center in support of the amendments were received. No one appeared at the public hearing held by the Physician Assistant Board on December, 5, 2014. The president of TAPA and an individual appeared at the public hearing held during the Texas Medical Board meeting on February 13, 2015, expressing support of the amendments.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure. The amendments are also adopted under the authority of §204.101 of the Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 20, 2015.

TRD-201500564

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: March 12, 2015

Proposal publication date: August 22, 2014

For further information, please call: (512) 305-7016



PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 281. ADMINISTRATIVE PRACTICE AND PROCEDURES

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §281.8

The Texas State Board of Pharmacy adopts amendments to §281.8 concerning Grounds for Discipline for a Pharmacy License. The amendments are adopted without changes to the proposed text as published in the December 26, 2014, issue of the *Texas Register* (39 TexReg 10150).

The amendments to §281.8 add failure to reimburse the board for expenses relating to an inspection of a non-resident pharmacy as grounds for discipline of a pharmacy's license.

No comments were received.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board inter-

prets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 23, 2015.

TRD-201500591

Gay Dodson, R.Ph.

Executive Director

Texas State Board of Pharmacy

Effective date: March 15, 2015

Proposal publication date: December 26, 2014

For further information, please call: (512) 305-8073



CHAPTER 291. PHARMACIES

SUBCHAPTER A. ALL CLASSES OF PHARMACIES

22 TAC §291.1, §291.3

The Texas State Board of Pharmacy adopts amendments to §291.1 concerning Pharmacy License Application and §291.3 concerning Required Notifications. The amendments are adopted with changes to the proposed text as published in the December 26, 2014, issue of the *Texas Register* (39 TexReg 10151).

The amendments to §291.1 update the requirements for a pharmacy license application to include copies of the owners' or managing officers' driver licenses and social security cards; an approved credit application showing credit worthiness; the entity's business filing structure; and a current certificate of good standing from the state where the entity is located. The amendments also remove items no longer required for a pharmacy license application and eliminate the requirements for pharmacies owned by management companies. The amendments to §291.3 update the notification for a pharmacy that changes managing officers to include copies of the managing officers' driver licenses, social security cards, state issued photo identification or passport; clarify the requirements for a change of ownership; eliminate the references to pharmacies owned by management companies; and add Class A-S and C-S pharmacies to the change of pharmacist-in-charge notification requirements.

The National Association of Chain Drug Stores and Myron Lewis, R.Ph., expressed concern regarding requiring a copy of the social security card be submitted with applications. The Board changed the proposed language and amended the rules to allow applicants to submit an official document showing the applicant's social security number. Express Scripts requested that an annual report be accepted in lieu of a completed credit application. The Board changed the proposed amendment to allow for other documents showing credit worthiness as approved by the Board.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing

the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.1. Pharmacy License Application.

(a) To qualify for a pharmacy license, the applicant must submit an application including the following information:

- (1) name and address of pharmacy;
- (2) type of ownership;
- (3) names, addresses, phone numbers, dates of birth, copies of social security cards or other official documents showing the social security numbers as approved by the board, and copies of current driver's licenses, state issued photo identification cards, or passports of all owners, or of all managing officers if the pharmacy is owned by a partnership or corporation. If an individual is unable to obtain a social security number, an individual taxpayer identification number may be provided in lieu of a social security number along with documentation indicating why the individual is unable to obtain a social security number;
- (4) name and license number of the pharmacist-in-charge;
- (5) name(s) and license number(s) of other pharmacists employed by the pharmacy;
- (6) anticipated date of opening and hours of operation;
- (7) copy of lease agreement or if the location of the pharmacy is owned by the applicant, a notarized statement certifying such location ownership;
- (8) the signature of the pharmacist-in-charge;
- (9) the notarized signature of the owner, or if the pharmacy is owned by a partnership or corporation, the notarized signature of an owner or managing officer;
- (10) federal tax ID number of the owner;
- (11) description of business services that will be offered;
- (12) name and address of malpractice insurance carrier or statement that the business will be self-insured;
- (13) documents from a primary wholesaler showing credit worthiness or other documents showing credit worthiness as approved by the board;
- (14) official copy of the business formation documents filed with the Secretary of State;
- (15) current certificate of Good Standing for the business structure from the state where the business structure is located; and
- (16) any other information requested on the application.

(b) The applicant may be required to meet all requirements necessary in order for the Board to access the criminal history record information, including submitting fingerprint information and being responsible for all associated costs. The criminal history information may be required for each individual owner, or if the pharmacy is owned by a partnership or a closely held corporation for each managing officer.

(c) A fee as specified in §291.6 of this title (relating to Pharmacy License Fees) will be charged for the issuance of a pharmacy license.

(d) For purpose of this section, managing officers are defined as the top four executive officers, including the corporate officer in charge of pharmacy operations, who are designated by the partnership or corporation to be jointly responsible for the legal operation of the pharmacy.

(e) Prior to the issuance of a license for a pharmacy located in Texas, the board shall conduct an on-site inspection of the pharmacy in the presence of the pharmacist-in-charge and owner or representative of the owner, to ensure that the pharmacist-in-charge and owner can meet the requirements of the Texas Pharmacy Act and Board Rules.

(f) If the applicant holds an active pharmacy license in Texas on the date of application for a new pharmacy license or for other good cause shown as specified by the board, the board may waive the pre-inspection as set forth in subsection (e) of this section.

§291.3. *Required Notifications.*

(a) Change of Location and/or Name.

(1) When a pharmacy changes location and/or name, the following is applicable.

(A) A new completed pharmacy application containing the information outlined in §291.1 of this title (relating to Pharmacy License Application), must be filed with the board within 10 days of the change of location of the pharmacy.

(B) The previously issued license must be returned to the board office.

(C) An amended license reflecting the new location and/or name of the pharmacy will be issued by the board; and

(D) A fee as specified in §291.6 of this title (relating to Pharmacy License Fees) will be charged for issuance of the amended license.

(2) At least 14 days prior to the change of location of a pharmacy that dispenses prescription drug orders, the pharmacist-in-charge shall post a sign in a conspicuous place indicating that the pharmacy is changing locations. Such sign shall be in the front of the prescription department and at all public entrance doors to the pharmacy and shall indicate the date the pharmacy is changing locations.

(3) Disasters, accidents, and emergencies which require the pharmacy to change location shall be immediately reported to the board. If a pharmacy changes location suddenly due to disasters, accidents, or other emergency circumstances and the pharmacist-in-charge cannot provide notification 14 days prior to the change of location, the pharmacist-in-charge shall comply with the provisions of paragraph (2) of this subsection as far in advance of the change of location as allowed by the circumstances.

(b) Change of Managing Officers.

(1) The owner of a pharmacy shall notify the board in writing within 10 days of a change of any managing officer of a partnership or corporation which owns a pharmacy. The written notification shall include the effective date of such change and the following information for all managing officers:

(A) name and title;

(B) home address and telephone number;

(C) date of birth;

(D) a copy of social security card or other official document showing the social security number as approved by the board; however, if an individual is unable to obtain a social security number, an individual taxpayer identification number may be provided in lieu

of a social security number along with documentation indicating why the individual is unable to obtain a social security number; and

(E) a copy of current driver's license, state issued photo identification card, or passport.

(2) For purposes of this subsection, managing officers are defined as the top four executive officers, including the corporate officer in charge of pharmacy operations, who are designated by the partnership or corporation to be jointly responsible for the legal operation of the pharmacy.

(c) Change of Ownership.

(1) When a pharmacy changes ownership, a new pharmacy application must be filed with the board following the procedures as specified in §291.1 of this title (relating to Pharmacy License Application). In addition, a copy of the purchase contract or mutual agreement between the buyer and seller must be submitted.

(2) The license issued to the previous owner must be returned to the board.

(3) A fee as specified in §291.6 of this title will be charged for issuance of a new license.

(d) Change of Pharmacist Employment.

(1) Change of pharmacist employed in a pharmacy. When a change in pharmacist employment occurs, the pharmacist shall report such change in writing to the board within 10 days.

(2) Change of pharmacist-in-charge of a pharmacy.

(A) On the date of change of the pharmacist-in-charge of a Class A, Class A-S, Class C, Class C-S, or Class F pharmacy, an inventory specified in §291.17 of this title (relating to Inventory Requirements) shall be taken.

(B) This inventory shall constitute, for the purpose of this section, the closing inventory of the departing pharmacist-in-charge and the beginning inventory of the incoming pharmacist-in-charge.

(C) If the departing and the incoming pharmacists-in-charge are unable to conduct the inventory together, a closing inventory shall be conducted by the departing pharmacist-in-charge and a new and separate beginning inventory shall be conducted by the incoming pharmacist-in-charge.

(D) The incoming pharmacist-in-charge shall be responsible for notifying the board within 10 days in writing on a form provided by the board that a change of pharmacist-in-charge has occurred. The notification shall include the following:

(i) the name and license number of the departing pharmacist-in-charge;

(ii) the name and license number of the incoming pharmacist-in-charge;

(iii) the date the incoming pharmacist-in-charge became the pharmacist-in-charge; and

(iv) a statement signed by the incoming pharmacist-in-charge attesting that:

(I) an inventory has been conducted by the departing and incoming pharmacists-in-charge; if the inventory was not taken by both pharmacists, the statement shall provide an explanation; and

(II) the incoming pharmacist-in-charge has read and understands the laws and rules relating to this class of pharmacy.

(e) Notification of Theft or Loss of a Controlled Substance or a Dangerous Drug.

(1) Controlled substances. For the purposes of the Act, §562.106, the theft or significant loss of any controlled substance by a pharmacy shall be reported in writing to the board immediately on discovery of such theft or loss. A pharmacy shall be in compliance with this subsection by submitting to the board a copy of the Drug Enforcement Administration (DEA) report of theft or loss of controlled substances, DEA Form 106, or by submitting a list of all controlled substances stolen or lost.

(2) Dangerous drugs. A pharmacy shall report in writing to the board immediately on discovery the theft or significant loss of any dangerous drug by submitting a list of the name and quantity of all dangerous drugs stolen or lost.

(f) Fire or Other Disaster. If a pharmacy experiences a fire or other disaster, the following requirements are applicable.

(1) Responsibilities of the pharmacist-in-charge.

(A) The pharmacist-in-charge shall be responsible for reporting the date of the fire or other disaster which may affect the strength, purity, or labeling of drugs, medications, devices, or other materials used in the diagnosis or the treatment of the injury, illness, and disease; such notification shall be immediately reported to the board, but in no event shall exceed 10 days from the date of the disaster.

(B) The pharmacist-in-charge or designated agent shall comply with the following procedures.

(i) If controlled substances, dangerous drugs, or Drug Enforcement Administration (DEA) order forms are lost or destroyed in the disaster, the pharmacy shall:

(I) notify the DEA, Department of Public Safety (DPS), and Texas State Board of Pharmacy (board) of the loss of the controlled substances or order forms. A pharmacy shall be in compliance with this section by submitting to each of these agencies a copy of the DEA's report of theft or loss of controlled substances, DEA Form-106, immediately on discovery of the loss; and

(II) notify the board in writing of the loss of the dangerous drugs by submitting a list of the dangerous drugs lost.

(ii) If the extent of the loss of controlled substances or dangerous drugs is not able to be determined, the pharmacy shall:

(I) take a new, complete inventory of all remaining drugs specified in §291.17(c) of this title (relating to Inventory Requirements);

(II) submit to DEA and DPS a statement attesting that the loss of controlled substances is indeterminable and that a new, complete inventory of all remaining controlled substances was conducted and state the date of such inventory; and

(III) submit to the board a statement attesting that the loss of controlled substances and dangerous drugs is indeterminable and that a new, complete inventory of the drugs specified in §291.17(c) of this title was conducted and state the date of such inventory.

(C) If the pharmacy changes to a new, permanent location, the pharmacist-in-charge shall comply with subsection (a) of this section.

(D) If the pharmacy moves to a temporary location, the pharmacist shall comply with subsection (a) of this section. If the pharmacy returns to the original location, the pharmacist-in-charge shall again comply with subsection (a) of this section.

(E) If the pharmacy closes due to fire or other disaster, the pharmacy may not be closed for longer than 90 days as specified in §291.11 of this title (relating to Operation of a Pharmacy).

(F) If the pharmacy discontinues business (ceases to operate as a pharmacy), the pharmacist-in-charge shall comply with §291.5 of this title (relating to Closing a Pharmacy).

(G) The pharmacist-in-charge shall maintain copies of all inventories, reports, or notifications required by this section for a period of two years.

(2) Drug stock.

(A) Any drug which has been exposed to excessive heat, smoke, or other conditions which may have caused deterioration shall not be dispensed.

(B) Any potentially adulterated or damaged drug shall only be sold, transferred, or otherwise distributed pursuant to the provisions of the Texas Food Drug and Cosmetics Act (Chapter 431, Health and Safety Code) administered by the Bureau of Food and Drug Safety of the Texas Department of State Health Services.

(g) Notification to Consumers.

(1) Pharmacy.

(A) Every licensed pharmacy shall provide notification to consumers of the name, mailing address, Internet site address, and telephone number of the board for the purpose of directing complaints concerning the practice of pharmacy to the board. Such notification shall be provided as follows.

(i) If the pharmacy serves walk-in customers, the pharmacy shall either:

(I) post in a prominent place that is in clear public view where prescription drugs are dispensed a sign furnished by the board which notifies the consumer that complaints concerning the practice of pharmacy may be filed with the board and list the board's name, mailing address, Internet site address, telephone number of the board, and if applicable a toll-free telephone number for filing complaints; or

(II) provide with each dispensed prescription a written notification in a type size no smaller than ten-point Times Roman which states the following: "Complaints concerning the practice of pharmacy may be filed with the Texas State Board of Pharmacy at: (list the mailing address, Internet site address, telephone number of the board, and if applicable a toll-free telephone number for filing complaints)."

(ii) If the prescription drug order is delivered to patients at their residence or other designated location, the pharmacy shall provide with each dispensed prescription a written notification in type size no smaller than ten-point Times Roman which states the following: "Complaints concerning the practice of pharmacy may be filed with the Texas State Board of Pharmacy at: (list the mailing address, Internet site address, telephone number of the board, and if applicable a toll-free telephone number for filing complaints)." If multiple prescriptions are delivered to the same location, only one such notice shall be required.

(iii) The provisions of this subsection do not apply to prescriptions for patients in facilities where drugs are administered to patients by a person required to do so by the laws of the state (i.e., nursing homes).

(B) A pharmacy that maintains a generally accessible site on the Internet that is located in Texas or sells or distributes drugs through this site to residents of this state shall post the following infor-

mation on the pharmacy's initial home page and on the page where a sale of prescription drugs occurs.

(i) Information on the ownership of the pharmacy, to include at a minimum, the:

(I) owner's name or if the owner is a partnership or corporation, the partnership's or corporation's name and the name of the chief operating officer;

(II) owner's address;

(III) owner's telephone number; and

(IV) year the owner began operating pharmacies in the United States.

(ii) The Internet address and toll free telephone number that a consumer may use to:

(I) report medication/device problems to the pharmacy; and

(II) report business compliance problems.

(iii) Information about each pharmacy that dispenses prescriptions for this site, to include at a minimum, the:

(I) pharmacy's name, address, and telephone number;

(II) name of the pharmacist responsible for operation of the pharmacy;

(III) Texas pharmacy license number for the pharmacy and a link to the Internet site maintained by the Texas State Board of Pharmacy; and

(IV) the names of all other states in which the pharmacy is licensed, the license number in that state, and a link to the Internet site of the entity that regulates pharmacies in that state, if available.

(C) A pharmacy whose Internet site has been awarded a Verified Internet Pharmacy Practice Site (VIPPS) certification by the National Association of Boards of Pharmacy shall be in compliance with subparagraph (B) of this paragraph by displaying the VIPPS seal on the pharmacy internet site.

(2) Texas State Board of Pharmacy. On or before January 1, 2005, the board shall establish a pharmacy profile system as specified in §2054.2606, Government Code.

(A) The board shall make the pharmacy profiles available to the public on the agency's Internet site.

(B) A pharmacy profile shall contain at least the following information:

(i) name, address, and telephone number of the pharmacy;

(ii) pharmacy license number, licensure status, and expiration date of the license;

(iii) the class and type of the pharmacy;

(iv) ownership information for the pharmacy;

(v) names and license numbers of all pharmacists working at the pharmacy;

(vi) whether the pharmacy has had prior disciplinary action by the board;

(vii) whether the pharmacy's consumer service areas are accessible to disabled persons, as defined by law;

(viii) the type of language translating services, including translating services for persons with impairment of hearing, that the pharmacy provides for consumers; and

(ix) insurance information including whether the pharmacy participates in the state Medicaid program.

(C) The board shall gather this information on initial licensing and update the information in conjunction with the license renewal for the pharmacy.

(h) Notification of Licensees or Registrants Obtaining Controlled Substances or Dangerous Drugs by Forged Prescriptions. If a licensee or registrant obtains controlled substances or dangerous drugs from a pharmacy by means of a forged prescription, the pharmacy shall report in writing to the board immediately on discovery of such forgery. A pharmacy shall be in compliance with this subsection by submitting to the board the following:

(1) name of licensee or registrant obtaining controlled substances or dangerous drugs by forged prescription;

(2) date(s) of forged prescription(s);

(3) name(s) and amount(s) of drug(s); and

(4) copies of forged prescriptions.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Gay Dodson, R.Ph.

Executive Director

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For further information, please call: (512) 305-8073



CHAPTER 295. PHARMACISTS

22 TAC §295.1

The Texas State Board of Pharmacy adopts amendments to §295.1 concerning Change of Address and/or Name. The amendments are adopted without changes to the proposed text as published in the December 26, 2014, issue of the *Texas Register* (39 TexReg 10169).

The amendments to §295.1 eliminate the requirement for pharmacists to return their renewal certificate when requesting a change of name.

No comments were received.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 297. PHARMACY TECHNICIANS AND PHARMACY TECHNICIAN TRAINEES

22 TAC §297.9

The Texas State Board of Pharmacy adopts amendments to §297.9 concerning Notifications. The amendments are adopted without changes to the proposed text as published in the December 26, 2014, issue of the *Texas Register* (39 TexReg 10170).

The amendments to §297.9 eliminate the requirement for pharmacy technicians to return their renewal certificate when requesting a change of name and eliminate the requirement for pharmacy technicians to post their registration certificates at the pharmacy where they are working.

No comments were received.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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CHAPTER 303. DESTRUCTION OF DRUGS

22 TAC §303.1, §303.2

The Texas State Board of Pharmacy adopts amendments to §303.1 concerning Destruction of Dispensed Drugs and §303.2 concerning Disposal of Stock Prescription Drugs. The amendments are adopted with changes to the proposed text as published in the December 26, 2014, issue of the *Texas Register* (39 TexReg 10171). The changes remove the specific requirements for destruction of stock prescription drugs and require the destruction to be made according to DEA requirements.

The amendments to §303.1 and §303.2 update the rules to be consistent with DEA requirements.

No comments were received.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§303.1. *Destruction of Dispensed Drugs.*

(a) Drugs dispensed to patients in health care facilities or institutions.

(1) Destruction by the consultant pharmacist. The consultant pharmacist, if in good standing with the Texas State Board of Pharmacy, is authorized to destroy dangerous drugs dispensed to patients in health care facilities or institutions. A consultant pharmacist may destroy controlled substances as allowed to do so by federal laws or rules of the Drug Enforcement Administration. Dangerous drugs may be destroyed provided the following conditions are met.

(A) A written agreement exists between the facility and the consultant pharmacist.

(B) The drugs are inventoried and such inventory is verified by the consultant pharmacist. The following information shall be included on this inventory:

- (i) name and address of the facility or institution;
- (ii) name and pharmacist license number of the consultant pharmacist;
- (iii) date of drug destruction;
- (iv) date the prescription was dispensed;
- (v) unique identification number assigned to the prescription by the pharmacy;
- (vi) name of dispensing pharmacy;
- (vii) name, strength, and quantity of drug;
- (viii) signature of consultant pharmacist destroying drugs;
- (ix) signature of the witness(es); and
- (x) method of destruction.

(C) The signature of the consultant pharmacist and witness(es) to the destruction and the method of destruction specified in subparagraph (B) of this paragraph may be on a cover sheet attached to the inventory and not on each individual inventory sheet, provided

the cover sheet contains a statement indicating the number of inventory pages that are attached and each of the attached pages are initialed by the consultant pharmacist and witness(es).

(D) The drugs are destroyed in a manner to render the drugs unfit for human consumption and disposed of in compliance with all applicable state and federal requirements.

(E) The actual destruction of the drugs is witnessed by one of the following:

- (i) a commissioned peace officer;
- (ii) an agent of the Texas State Board of Pharmacy;
- (iii) an agent of the Texas Health and Human Services Commission, authorized by the Texas State Board of Pharmacy to destroy drugs;

(iv) an agent of the Texas Department of State Health Services, authorized by the Texas State Board of Pharmacy to destroy drugs; or

(v) any two individuals working in the following capacities at the facility:

- (I) facility administrator;
- (II) director of nursing;
- (III) acting director of nursing; or
- (IV) licensed nurse.

(F) If the actual destruction of the drugs is conducted at a location other than the facility or institution, the consultant pharmacist and witness(es) shall retrieve the drugs from the facility or institution, transport, and destroy the drugs at such other location.

(2) Destruction by a waste disposal service. A consultant pharmacist may utilize a waste disposal service to destroy dangerous drugs dispensed to patients in health care facilities or institutions. A consultant pharmacist may destroy controlled substances as allowed to do so by federal laws or rules of the Drug Enforcement Administration. Dangerous drugs may be transferred to a waste disposal service for destruction provided the following conditions are met.

(A) The waste disposal service is in compliance with applicable rules of the Texas Commission on Environmental Quality and United States Environmental Protection Agency relating to waste disposal.

(B) The drugs are inventoried and such inventory is verified by the consultant pharmacist prior to placing the drugs in an appropriate container, and sealing the container. The following information must be included on this inventory:

- (i) name and address of the facility or institution;
- (ii) name and pharmacist license number of the consultant pharmacist;
- (iii) date of packaging and sealing of the container;
- (iv) date the prescription was dispensed;
- (v) unique identification number assigned to the prescription by the pharmacy;
- (vi) name of dispensing pharmacy;
- (vii) name, strength, and quantity of drug;
- (viii) signature of consultant pharmacist packaging and sealing the container; and

(ix) signature of the witness(es).

(C) The consultant pharmacist seals the container of drugs in the presence of the facility administrator and the director of nursing or one of the other witnesses listed in paragraph (1)(E) of this subsection as follows:

(i) tamper resistant tape is placed on the container in such a manner that any attempt to reopen the container will result in the breaking of the tape; and

(ii) the signature of the consultant pharmacist is placed over this tape seal.

(D) The sealed container is maintained in a secure area at the facility or institution until transferred to the waste disposal service by the consultant pharmacist, facility administrator, director of nursing, or acting director of nursing.

(E) A record of the transfer to the waste disposal service is maintained and attached to the inventory of drugs specified in subparagraph (B) of this paragraph. Such record shall contain the following information:

- (i) date of the transfer;
- (ii) signature of the person who transferred the drugs to the waste disposal service;
- (iii) name and address of the waste disposal service; and
- (iv) signature of the employee of the waste disposal service who receives the container.

(F) The waste disposal service shall provide the facility with proof of destruction of the sealed container. Such proof of destruction shall contain the date, location, and method of destruction of the container and shall be attached to the inventory of drugs specified in subparagraph (B) of this paragraph.

(3) Record retention. All records required in this subsection shall be maintained by the consultant pharmacist at the health care facility or institution for two years from the date of destruction.

(b) Drugs returned to a pharmacy. A pharmacist in a pharmacy may accept and destroy dangerous drugs that have been previously dispensed to a patient and returned to a pharmacy by the patient or an agent of the patient. A pharmacist may accept controlled substances that have been previously dispensed to a patient as allowed by federal laws of the Drug Enforcement Administration. The following procedures shall be followed in destroying dangerous drugs.

(1) The dangerous drugs shall be destroyed in a manner to render the drugs unfit for human consumption and disposed of in compliance with all applicable state and federal requirements.

(2) Documentation shall be maintained that includes the following information:

- (A) name and address of the dispensing pharmacy;
- (B) unique identification number assigned to the prescription, if available;
- (C) name and strength of the dangerous drug; and
- (D) signature of the pharmacist.

§303.2. *Disposal of Stock Prescription Drugs.*

(a) Definition of stock. "Stock" as used in these sections means dangerous drugs or controlled substances which are packaged in the original manufacturer's container.

(b) Disposal of stock dangerous drugs. A pharmacist, licensed by the board, is authorized to destroy stock dangerous drugs owned by a licensed pharmacy if such dangerous drugs are destroyed in a manner to render the drugs unfit for human consumption and disposed of in compliance with all applicable state and federal requirements.

(c) Disposal of stock controlled substances. A pharmacist, licensed by the board, shall dispose of stock controlled substances owned by a licensed pharmacy in accordance with procedures authorized by the Federal and Texas Controlled Substances Acts and sections adopted pursuant to such Acts.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Gay Dodson, R.Ph.

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TITLE 25. HEALTH SERVICES

PART 11. CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS

CHAPTER 703. GRANTS FOR CANCER PREVENTION AND RESEARCH

25 TAC §703.6, §703.11

The Cancer Prevention and Research Institute of Texas ("CPRIT" or "the Institute") adopts amendments to §703.6 and §703.11, regarding the grants review process and the matching fund requirements, without changes to the rule text as published in the December 26, 2014, issue of the *Texas Register* (39 TexReg 10185).

Reasoned Justification

The rule changes affect the grants review process and clarify both the calculation of federal indirect cost rate for institutions of higher education and the matching fund requirement. The amendment to §703.6(g) allows the Institute's Chief Compliance Officer, in place of a third-party observer, to attend and observe peer review meetings. The Chief Compliance Officer would then be required to report to the Oversight Committee any issues that may have occurred. The changes to §703.11 provide guidance for institutions of higher education in calculating their federal indirect cost rate, which is applicable to the matching funds credit, as well as address how funds spent by subcontractors or subawardees may be calculated as part of a grantee's matching requirement.

Summary of Public Comments and Staff Recommendations

The Institute accepted public comments in writing and by fax through January 26, 2015. Comments were received from The University of Texas M.D. Anderson Cancer Center ("M.D. Ander-

son") regarding proposed rule changes to §703.6 and §703.11. These were the only comments received. M.D. Anderson's comment relating to §703.6(e)(1) does not address the rule subsection that CPRIT proposes to amend and is not germane to the Institute's proposed rulemaking. M.D. Anderson's comment regarding the proposed change to §703.11 seeks clarity on the proposed amendment, but does not require a change to the proposed text. The amendments to Chapter 703 rules will be adopted as published in the December 26, 2014, issue of the *Texas Register* and will not be republished.

§703.6, Grants Review Process

M.D. Anderson submitted a proposed change to the grant application process set forth in §703.6(e)(1). The proposed change would incorporate a letter of intent process for grant mechanisms that are subject to the preliminary evaluation stage of review. M.D. Anderson did not offer comments or changes regarding the Institute's proposed rule changes to §703.6(g) affecting the third party observer.

Response: The Institute declines to make the requested change to §703.6(e). M.D. Anderson's proposed change to the grant application process is not responsive to the proposed rulemaking as published by the Institute in the *Texas Register*.

§703.11, Requirement to Demonstrate Available Funds for Cancer Research Grants

M.D. Anderson requested clarity or alternate language for the proposed rule change to §703.11(c)(6) relating to the calculation of subcontractor or subawardee funds as part of the required match of the grantee. M.D. Anderson did not indicate opposition to the proposed rule change.

Response: The Institute declines to change the proposed rule. For clarity, the following example is provided for additional guidance regarding the allowable amount of matching funds a subcontractor or subawardee may contribute toward the total matching fund requirement for the CPRIT grant project.

For a grantee that receives a \$1,000,000 CPRIT grant and pays a subcontractor \$300,000 for work conducted in furtherance of the CPRIT funded grant project, the grantee may contribute up to 30% of the grantee's total matching funds requirement. In this example, the grantee's matching fund obligation is \$500,000. The subcontractor may contribute up to \$150,000 (30%) toward the grantee's \$500,000 matching fund requirement. As stated in the proposed rule change, the subcontractor's funds must be spent on the grant project.

The Oversight Committee approved the final order adopting the amendments to Chapter 703 rules on February 18, 2015.

Statutory Authority

The amendments are adopted under the authority of the Texas Health and Safety Code Annotated, §102.108 and §102.251, which provide the Institute with broad rulemaking authority to administer the chapter.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Heidi McConnell
Chief Operating Officer
Cancer Prevention and Research Institute of Texas
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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 51. EXECUTIVE SUBCHAPTER Q. PROMOTIONAL DRAWINGS

31 TAC §51.750

The Texas Parks and Wildlife Commission (the Commission) in a duly noticed meeting on January 22, 2015, adopted new §51.750, concerning Promotional Drawings, without changes to the proposed text as published in the December 12, 2014, issue of the *Texas Register* (39 TexReg 9658).

The new rule authorizes the executive director of the department to approve drawings for promotional hunting, fishing, and special event packages among persons who provide the department with valid email addresses and satisfy certain additional conditions. The new rule is intended to facilitate enhanced communication with members of the public in support of the department's mission to manage and conserve the natural and cultural resources of Texas and to provide hunting, fishing, and outdoor recreation opportunities for the use and enjoyment of present and future generations. See, Texas Parks and Wildlife Code §§1.011, 11.043(c)(6), 13.001, and 13.005.

Under Parks and Wildlife Code, §11.0271, the department may conduct public drawings to select applicants for public hunting programs, packages, or events. Under Parks and Wildlife Code, §11.0272, the department may conduct public drawings to select applicants for special fishing or other special programs, packages, or events. Under Parks and Wildlife Code, §42.012, the commission may waive the fee for a hunting license for a resident who is participating in an event sponsored or co-sponsored by the department with the approval of the executive director. Under Parks and Wildlife Code, §46.002, a person who is participating in an event sponsored or co-sponsored by the department with the approval of the executive director is exempt from fishing license requirements. Under Parks and Wildlife Code, §50.001, the commission is required to establish combination licenses or license packages for hunting, fishing, or other activities and may establish fees for combination license or license packages, provided the fee is less than the fees for the individual components of the package. Under Parks and Wildlife Code, §13.015, the commission may establish park user fees. Under Parks and Wildlife Code, §81.403, the department may issue a permit authorizing access to public hunting land or for specific hunting, fishing, recreational, or other use of public hunting land or a wildlife management area and the commission is required to prescribe the fees and conditions for the issuance and use of such permits by rule.

Email is one of the most effective and cost-efficient vehicles for increasing revenue and engagement, creating an avenue for ongoing communications with customers, and for reaching and recruiting new and diverse audiences to help achieve outreach goals. There are nearly three times as many email accounts as there are Facebook and Twitter accounts combined (http://emailcritic.com/wp-content/uploads/2011/09/the_value_of_email_marketing_large.jpg), which makes email the most widely-used digital channel, with 91% of all U.S. consumers using it daily (http://www.mckinsey.com/insights/marketing_sales/why_marketers_should_keep_sending_you_emails).

The Direct Marketing Association estimates that for every dollar spent on email marketing, the average return on investment is \$44.25 (<http://keystoneclick.com/blog/infographics/value-email-marketing>). Smart Insights research indicates that businesses experienced 20% higher daily revenue on days that they sent email marketing messages versus days that they did not (<http://www.smartinsights.com/email-marketing/email-marketing-analytics/measuring-the-unmeasured-value-of-email-marketing/>), and the McKinsey Research Study estimated that email drives purchases at a rate roughly three times higher than social media with an average order value that is 17% higher (http://www.mckinsey.com/insights/marketing_sales/why_marketers_should_keep_sending_you_emails). In light of these factors, email marketing strategies are a sound business practice.

At the current time, the department has valid email addresses for only a small percentage of existing customers (for example, 5% of recreational license purchasers, 23% of Texas Parks and Wildlife magazine subscribers, 24% of persons who registered boats, and 31% of State Park Pass purchasers). In order to enhance its ability to create and sustain communications with customers, the department wishes to make a robust effort to gather valid email addresses. The intent of the department is to develop a reliable and effective communications link with customers and constituents who would like to know more about the department, what the department does, and opportunities to participate in activities central to the department's mission, such as hunting and fishing, visiting state parks and participating in outdoor recreation and conservation practices.

The department is charged with providing outreach and education regarding the wise use and conservation of fish and wildlife resources; with increasing participation in outdoor recreation; and, with providing education and information about a variety of topics regarding conservation and recreation. See, Texas Parks and Wildlife Code, §§11.0181, 11.033(a)(2), 11.035(b)(2), 11.054(a)(1), 13.017(a), 31.002, and 88.007(d). As a result, the department currently produces a number of targeted e-newsletters and email updates to increase engagement and reach new audiences. For example, the *State Parks Getaways* e-newsletter, sent on a bimonthly basis to more than 149,000 subscribers, provides information on upcoming park events, educates about conservation initiatives, and promotes park programs such as the Junior Ranger Program and Texas Outdoor Family.

The department has conducted email marketing tests on a limited basis; in every case, the use of email by itself or in conjunction with direct mail has resulted in increased revenue. In 2013, monthly renewal reminder emails sent to State Park Pass holders throughout the year resulted in a 3% increase in sales (\$56,420) compared to customers who received no email reminder. In 2012, the department employed email marketing to

solicit donations for state parks with an email sent to state park visitors, resulting in more than \$32,000 in donations within a 24-hour period. And for the past several years, *Texas Parks & Wildlife* magazine has conducted successful email marketing efforts during the holidays that have resulted in increased subscriptions and net revenue.

Using email in combination with direct mail has also proven to be effective. In 2013 the department partnered with the Recreational Boating and Fishing Foundation on a fishing license marketing effort. Anglers who received both a direct mail postcard and an email reminder exhibited the highest response rate, resulting in a 1.91% increase in sales (more than enough to cover the cost of the campaign). In 2012, the department partnered with the National Shooting Sports Foundation to test the effectiveness of renewal marketing to hunters. Sending a direct mail postcard in combination with email proved to be the most effective strategy, resulting in a 1.29% increase in sales and a positive return on investment. Similarly, in 2013, the response rate of customers who received both direct mail and email for the Big Time Texas Hunts Program (a department drawing for a suite of premium hunting opportunities) was 33%, double the response rate of people who received only direct mail (16%).

Other state agencies have proven the effectiveness of email coupled with social media at retaining existing customers and generating additional revenue. For example, a pilot study conducted by the Florida Fish and Wildlife Conservation Commission and evaluated by Southwick Associates in 2011 demonstrated that email together with social media can reduce "churn" (the tendency of some persons to purchase licenses irregularly, rather than annually) of hunting license purchasers. As a result of their efforts, nearly 6,400 more people bought a hunting license than would have without the marketing strategy, generating more than \$300,000 in additional revenue (http://www.southwickassociates.com/wp-content/uploads/downloads/2014/06/July2014Newsletter_Long_PH.pdf).

The department's current contract with its email service provider allows for an unlimited amount of emails to be sent for an annual fee of \$25,389. Collecting additional email addresses will enable the department to communicate with customers and constituents in a manner that is efficient, sustainable and fiscally sound in order to educate, inform and engage Texas citizens in support of conservation and recreation, thus fulfilling the department's mission and the goals of the department's Land and Water Resources Conservation and Recreation Plan. See, Texas Parks and Wildlife Code, §11.104.

The email addresses collected by the department under the provisions of the new section will be protected from public disclosure under the provisions of Government Code, §552.137, and would be used only for department purposes and not be publicly disclosed. The department also stresses that customers will easily be able to opt out of participation.

New §51.750(a) authorizes the executive director of the department to approve specific promotional event packages to be made available to individual members of the public by means of random drawing. The department believes that it is prudent to establish reasonable limitations on the scope and frequency of drawings for promotional event packages. Therefore, the new subsection would stipulate that the aggregate value of the components of event packages (not including goods or services provided or paid for by third parties) not exceed \$5,000 for any fiscal year; that the projected value or benefit to the department of any specific promotional event package equal or exceed the

costs of the components of the package (not to include package components provided or paid for by third parties); and that the terms and conditions of each drawing for a promotional event package covered by the proposed section be enumerated.

New §51.750(b) sets forth the various types of goods and services that could be included in packages authorized by the executive director pursuant to the new section.

New §51.750(c) provides that a person who gives the department a valid email address and purchases an item listed in the rule (recreational hunting, fishing, or combination license; state parks annual entrance permit; entry and/or lodging at a state park, state natural area, wildlife management area, or other facility owned, leased, or operated by the department; one-year subscription to *Texas Parks & Wildlife* magazine); or who subscribes to one or more of the department's email subscription topics or pays a specified entry fee not to exceed \$25 may be entered into a specified drawing for a promotional event package. Promotional event packages will consist of a specified combination of a recreational hunting, fishing, or combination hunting and fishing license (stamp endorsements included); a state parks annual entrance permit; a one-year subscription to *Texas Parks and Wildlife* magazine; entry and/or lodging at a state park, state natural area, wildlife management area, or other facility owned, leased, or operated by the department; hunting or fishing privileges (including all necessary permits) on lands owned or leased by the department (including a state park, wildlife management area, or state natural area); or goods, products, or services provided to the department by a third party.

New §51.750(d) stipulates that the department will notify drawing winners via the email address provided at the time of entry. Since the point of conducting the drawings is to encourage customers to furnish the department with a reliable email address for future communications efforts, notification via valid email address will discourage the use of spurious email addresses simply to obtain a benefit. The new subsection also would stipulate that persons who satisfy an entry requirement by subscribing to the department's email updates must be subscribed at the time of the drawing in order to win. If the means of entry for the promotional event package is a subscription to one or more of the department's email topics (the only option that does not involve the payment of an entry fee or purchase of a license, park visitation, or magazine subscription), the entrant would be required to be subscribed at the time the drawing is conducted in order for the department to be able to notify them should they be selected.

New §51.750(e) requires the department to publish specific information regarding each promotional event package drawing on the department's website. Because each special promotional event will be unique, the department considers that it is impractical to exhaustively delineate the many possible permutations of drawing requirements by rule. The new rule sets forth the most important components of the process and the department will provide detailed information on each drawing by means of the department's website.

New §51.750(f) provides that a person who is selected to receive a magazine subscription, state parks annual pass, or recreational hunting, fishing, or combination hunting and fishing license that the person already holds will be issued the subscription, pass, or license at no cost valid at the time of renewal or for the following year. Obviously, it would be redundant and counterproductive to award a magazine subscription, parks pass, or recreational hunting or fishing license to a person who already possesses one of those items (in the case of recre-

ational licenses, the issuance of more than one of any license in any license year is prohibited by statute); therefore, the new rule would allow the issuance of the drawn item for the following year.

New §51.750(g) stipulates that a promotional event package may not be sold, exchanged for anything of value, or transferred to another person. The department believes that only the person who enters a drawing should be able to receive a promotional event package.

The new rule will function by establishing the parameters and requirements for promotional drawings conducted by the department.

The department received one comment opposing adoption of the proposed rule. The commenter stated that the rule should be simple. The department agrees with the commenter. No changes were made as a result of the comment.

The department received 11 comments supporting adoption of the proposed rule.

No groups or associations commented on the proposed rule.

The new rule is adopted under Parks and Wildlife Code, §11.0271, which authorizes the department to conduct public drawings to select applicants for public hunting privileges; §11.0272, which authorizes the department to conduct public drawings to select applicants for special fishing or other special programs, packages, or events; Parks and Wildlife Code, §13.015, which authorizes the commission to establish park user fees; Parks and Wildlife Code, §42.012, which authorizes the commission to waive hunting license fees for a resident who is participating in an event sponsored or co-sponsored by the department with the approval of the executive director; Parks and Wildlife Code, §46.002, which exempts a person who is participating in an event sponsored or co-sponsored by the department with the approval of the executive director from fishing license requirements; Parks and Wildlife Code, §50.001, which requires the commission to establish combination licenses or license packages for hunting, fishing, or other activities and authorizes the commission to establish fees for combination license or license packages, provided the fee is less than the fees for the individual components of the package; and Parks and Wildlife Code, §81.403, which authorizes the department to issue a permit authorizing access to public hunting land or for specific hunting, fishing, recreational, other used of public hunting land or a wildlife management area and requires the commission to prescribe the fees and conditions of the issuance and use of such permits by rule.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Ann Bright

General Counsel

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 159. SPECIAL PROGRAMS

37 TAC §159.15

The Texas Board of Criminal Justice adopts amendments to §159.15, GO KIDS Initiative, without changes to the proposed text as published in the October 31, 2014, issue of the *Texas Register* (39 TexReg 8565).

The adopted amendments are necessary to update the agency web address.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §492.013.

Cross Reference to Statutes: Texas Government Code §492.001.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 163. COMMUNITY JUSTICE ASSISTANCE DIVISION STANDARDS

37 TAC §163.37

The Texas Board of Criminal Justice adopts amendments to §163.37, Reports and Records, without changes to the proposed text as published in the December 26, 2014, issue of the *Texas Register* (39 TexReg 10386).

The adopted amendments are necessary to clarify and provide more specific guidance to community supervision and corrections departments regarding required reports and other records.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §493.012 and §509.003.

Cross Reference to Statutes: Texas Government Code §492.013 and §509.003.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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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) adopts the repeal of Chapter 217, Subchapters A - H, §§217.1 - 217.9, 217.20 - 217.33, 217.35 - 217.44, 217.53 - 217.55, 217.60 - 217.68, 217.70 - 217.81, 217.90 - 217.93, 217.100 - 217.102, and 217.111, and adopts new Subchapters A - I, §§217.1 - 217.14, 217.21 - 217.56, 217.71 - 217.73, 217.81 - 217.89, 217.101 - 217.106, 217.121 - 217.124, 217.141 - 217.143, 217.161, and 217.181 - 217.192. The repeals are adopted without changes to the proposal as published in the December 19, 2014, issue of the *Texas Register* (39 TexReg 9818). New §§217.2, 217.6, and 217.54 are adopted with changes to the proposed text as published in the December 19, 2014, issue of the *Texas Register* (39 TexReg 9818) and the rest of the new sections are adopted without changes.

EXPLANATION OF ADOPTED REPEALS AND NEW SUBCHAPTERS

The department conducted a review of its rules in compliance with Government Code, §2001.039. Notice of the department's intention to review was published in the December 19, 2014, issue of the *Texas Register* (39 TexReg 10037).

Section 217.2 is being republished to reflect a change based on a comment received. Section 217.6 is being republished with a statutory correction. Section 217.54 is being republished with a minor grammatical change.

As a result of the review, the department has determined that a comprehensive restructuring and renumbering of the chapter was needed to improve clarity and to simplify future amendments to the chapter. Most significantly, this adoption breaks up current §217.3, Motor Vehicle Titles, and current §217.22, Motor Vehicle Registration, into shorter, more accessible, and more easily comprehended sections; §217.3 is broken up into twelve new sections, and §217.22 into fourteen new sections. Adding these new sections necessitates renumbering nearly all of the current Chapter 217 sections.

Other structural changes include moving the sections governing salvage vehicle dealers, which currently comprise Subchapter E, to a new Subchapter I. The department anticipates that under a future proposed rule change, the salvage vehicle dealer subchapter will be removed from Chapter 217 entirely and relocated to Chapter 215, which governs motor vehicle distribution. Plac-

ing these sections in the final subchapter of Chapter 217 now will allow the eventual deletion of that subchapter without leaving a gap in Chapter 217's subchapter lettering scheme. In addition, those sections of current Subchapter A addressing liens are moved to a new Subchapter E governing liens and insurance claims.

In addition to these adopted structural and renumbering changes, the department has also identified various substantive changes that should be made to Chapter 217, and is identifying additional substantive changes to complete the rule review process. To simplify the rule review process, the department will propose most of the substantive changes after the renumbering and structural changes are adopted. Therefore, with the exception of the amendments to §217.54, described in more detail in the paragraph below regarding changes to Subchapter B, relatively few substantive changes to the text of Chapter 217 were proposed. However, some changes to correct punctuation, grammar, capitalization, and references were proposed and are being adopted as necessary.

The adopted changes to Chapter 217 are described by subchapter.

Subchapter A ("Motor Vehicle Titles") is renumbered and restructured as follows. Current §217.3 is broken up into the following new sections of Subchapter A: §217.3, Motor Vehicle Titles (current §217.3(a), except §217.3(a)(4)); §217.4, Initial Application for Title (current §217.3(b)); §217.5, Evidence of Motor Vehicle Ownership (current §217.3(c)); §217.6, Title Issuance (current §217.3(d)); §217.7, Replacement of Title (current §217.3(e)); §217.8, Second Hand Vehicle Transfers (current §217.3(f)); §217.9, Bonded Title (current §217.3(g)); §217.10, Appeal to the County (current §217.3(h)); §217.11, Rescission, Cancellation or Revocation by Affidavit (current §217.3(i)); and §217.12, Fees (current §217.3(k)). The text of current §217.3(a)(4) is adopted as §217.14, Exemptions from Title. In addition, the text of current §217.3(j), Discharge of Liens, is adopted as a new section within new Subsection E, Title Liens and Claims, as described in more detail below.

Adopted substantive changes to the current text of Subchapter A are as follows. Section 217.1, Purpose and Scope, changes references to "certificates of title" to "titles" to ensure applicability to a certificate or record of title issued under Transportation Code, §501.024. Section 217.2(8) clarifies the definition of an "exempt agency" as a governmental body exempt from paying not only registration fees but also title fees. Section 217.2(11) corrects a reference from "Transportation Code, §548.256" to "Transportation Code, Chapter 548." Two definitions in the current text, §217.2(20) ("semitrailer") and §217.2(22) ("token trailer"), are deleted as unnecessarily duplicative of statutory language, and §217.2 is renumbered internally to account for these deletions. New §217.2(20) is amended for clarity. Current §217.3(b)(4), addressing vehicle identification numbers, is deleted as no longer needed in the new §217.4, Initial Application for Title. Section 217.4(d)(4) changes a reference from "Transportation Code, §548.256" to "Transportation Code, Chapter 548" for clarity. Section 217.6(a)(3)(B) is amended to correct a statutory citation. Section 217.9(e)(6) changes the required out-of-state inspection form required to obtain a bonded title when no Texas record exists from a specific Texas Department of Public Safety form to the out-of-state vehicle inspection form described by §217.9(d). Finally, the title of §217.10 is shortened to "Appeal to the County."

Subchapter B ("Motor Vehicle Registration") is renumbered and restructured as follows. Current §217.22 is broken up into the following sections of Subchapter B: §217.23, Initial Application for Vehicle Registration (current §217.22(b), except §217.22(b)(4)); §217.24, Vehicle Last Registered in Another Jurisdiction (current §217.22(b)(4), except §217.22(b)(4)(E)); §217.25, Out-of-State Vehicles (current §217.22(g)); §217.26, Identification Required (current §217.22(b)(4)(E)); §217.27, Vehicle Registration Insignia (current §217.22(c)); §217.28, Vehicle Registration Renewal (current §217.22(d), except §217.22(d)(6) and §217.22(d)(7)); §217.30, Refusal to Renew Registration for Delinquent Child Support (current §217.22(d)(6)); §217.31, License Plate Reissuance Program (current §217.22(d)(7)); §217.32, Replacement of License Plates, Symbols, Tabs, and Other Devices (current §217.22(e)); §217.33, Commercial Farm Motor Vehicles, Farm Trailers, and Farm Semitrailers (current §217.22(f)); §217.34, Electric Personal Assistive Mobility Device (current §217.22(h)); §217.35, Neighborhood Electric Vehicle (current §217.22(i)); §217.36, Refusal to Register by Local Government and Record Notation (current §§217.22(j), (k), (l), and (m)); and §217.37, Fees (current §217.22(n)).

Also within Subchapter B, §217.29, Vehicle Registration Renewal via Internet, retains the same section number in both the current and adopted structure. Section 217.49, Water Well Drilling Equipment and Vehicles, combines the text of two current rules, §217.36, Water Well Drilling Equipment, and §217.39, Water Well Drilling Vehicles.

The other sections in Subchapter B are renumbered as follows: §217.21, Purpose and Scope (current §217.20); §217.22, Definitions (current §217.21); §217.38, Registration Fee Credit: Application (current §217.32); §217.39, Registration Fee Credit: Nontransferable (current §217.33); §217.40, Special Registration Permits (current §217.23); §217.41, Disabled Person License Plates and Identification Placards (current §217.24); §217.42, Construction Machinery Criteria (current §217.25); §217.43, Military Specialty License Plates (current §217.26); §217.44, Privately Owned Buses (current §217.27); §217.45, Specialty License Plates, Symbols, Tabs, and Other Devices (current §217.28); §217.46, Commercial Vehicle Registration (current §217.30); §217.47, Vehicle Emissions Enforcement System (current §217.31); §217.48, Machinery (current §217.35); §217.50, Equipment and Vehicles Within Road Construction Projects (current §217.37); §217.51, Change of Classification: Truck and Truck-Tractors (current §217.38); §217.52, Marketing of Specialty License Plates Through a Private Vendor (current §217.40); §217.53, Removal of License Plates and Registration Insignia Upon Sale of Motor Vehicle (current §217.41); §217.54, Registration of Fleet Vehicles (current §217.42); §217.55, Exempt and Alias Vehicle Registration (current §217.43); and §217.56, Registration Reciprocity Agreements (current §217.44).

Substantive changes from the current text of Subchapter B are as follows. Citation to Transportation Code, §502.055, is added to clarify §217.44, Privately Owned Buses. Repetitive language is deleted from, and a clarifying citation to Transportation Code, Chapter 551 is added to, §217.45, Specialty License Plates, Symbols, Tabs, and Other Devices. A citation to Transportation Code, §502.055, replaces an incorrect citation in §217.46(c)(2)(A). Finally, adopted amendments to §217.54 implement House Bill 2305, 83rd Regular Session, regarding single sticker for commercial fleet vehicles and, as described above, a minor grammatical amendment not originally proposed is being adopted as well.

The sections in Subchapter C ("Registration and Title System") are renumbered as follows: §217.71, Automated Vehicle Registration and Title System (current §217.53); §217.72, Automated Equipment (current §217.54); and §217.73, Agreement (current §217.55).

The substantive changes to Subchapter C include replacing the term "certificates of title" with "titles" in §217.71 to reflect the increasing importance of electronic titles, and the addition of a statutory reference to Transportation Code, §502.356, and other language to clarify §217.72(c).

The sections in Subchapter D ("Non-Repairable and Salvage Motor Vehicles") are renumbered as follows: §217.81, Purpose and Scope (current §217.60); §217.82, Definitions (current §217.61); §217.83, Requirement for Non-repairable or Salvage Vehicle Title (current §217.62); §217.84, Application for Non-repairable or Salvage Vehicle Title (current §217.63); §217.85, Replacement of Non-repairable or Salvage Motor Vehicle Ownership Documents (current §217.64); §217.86, Dismantling, Scrapping, or Destruction of Motor Vehicles (current §217.65); §217.87, Rights of Holder of Non-repairable or Salvage Motor Vehicle Documents (current §217.66); §217.88, Sale, Transfer, or Release of Ownership of a Non-repairable or Salvage Motor Vehicle (current §217.67); and §217.89, Rebuilt Salvage Motor Vehicles (current §217.68).

The substantive changes to Subchapter D include replacing references to "certificates of title" to "titles" in §217.81 and §217.82 to ensure applicability to a certificate or record of title issued under Transportation Code, §501.024, and the correction of an erroneous internal citation in §217.88(g)(2)(B).

The adoption moves all sections in current Subchapter E ("Salvage Vehicle Dealers") to a new Subchapter I, as described below. Subchapter E (to be titled "Title Liens and Claims") contains those sections currently in Subchapter A governing title liens and insurance claims, which are grouped into a single subchapter and renumbered as follows: §217.101, Landowner's Lien (current §217.5); §217.102, Child Support Lien (current §217.6); §217.103, Restitution Liens (current §217.7); §217.104, Electronic Lien Title Program (current §217.8); §217.105, Insurance Company Claims (current §217.9); and §217.106, Discharge of Liens (current §217.3(j)).

Substantively, the text of the sections moved to Subchapter E corrects citations to rules in this chapter.

The sections in Subchapter F ("Motor Vehicle Record Information") are renumbered as follows: §217.121, Purpose and Scope (current §217.90); §217.122, Definitions (current §217.91); §217.123, Access to Motor Vehicle Records (current §217.92); and §217.124, Cost of Motor Vehicle Records (current §217.93).

A substantive change in Subchapter F deletes references to repealed and irrelevant statutes in §217.123.

The sections in Subchapter G ("Inspections") are renumbered as follows: §217.141, Purpose and Scope (current §217.100); §217.142, Definitions (current §217.101); and §217.143, Inspection Requirements (current §217.102). No substantive change to the text of these sections was made.

The sole section in Subchapter H ("Deputies") is renumbered §217.161 (currently §217.111), with no substantive change to the text.

The adoption moves all sections currently in Subchapter E ("Salvage Vehicle Dealers") to a newly created Subchapter I,

renumbering these sections as follows: §217.181, Purpose and Scope (current §217.70); §217.182, Definitions (current §217.71); §217.183, Classification of Salvage Vehicle Dealer Licenses (current §217.72); §217.184, Salvage Vehicle Dealer License (current §217.73); §217.185, Salvage Vehicle Agent License (current §217.74); §217.186, Investigation, Report by the Department, and Issuance of License (current §217.75); §217.187, Place of Business (current §217.76); §217.188, Change of Licensee's Status (current §217.77); §217.189, License Renewal (current §217.78); §217.190, Licensee Duties (current §217.79); §217.191, Record of Purchases, Sales and Inventory (current §217.80); and §217.192, Administrative Sanctions and Procedures (current §217.81).

Substantive changes to the text of the sections moved into new Subchapter I include a correction to the internal numbering of §217.182, and the addition in §217.186(b) of a reference to proposed §217.192.

In addition to the substantive changes described above, other changes are made throughout the new subchapters to revise terminology for consistency with other department rules and with current department practice, and nonsubstantive amendments are adopted to correct punctuation, grammar, capitalization, and references throughout the amended sections.

COMMENT

The department received one written comment from John R. Ames, Dallas County Tax Assessor-Collector with regard to §217.2(20). Mr. Ames expressed a preference that should the department proceed with new language under consideration, the department further define "involved parties" to clarify who is authorized to complete the statement of fact.

RESPONSE

The department modified the proposed definition of "involved party" to clarify that an involved party is the seller or an agent of the seller involved in the motor vehicle transaction.

SUBCHAPTER A. MOTOR VEHICLE TITLES

43 TAC §§217.1 - 217.9

STATUTORY AUTHORITY

The repeals are adopted under Transportation Code, §1002.001, which provides the board of the Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code.

CROSS REFERENCE TO STATUTE

Transportation Code, §502.0023, §502.047, and Chapters 551, 643, 645, 646, and 648.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

43 TAC §§217.20 - 217.33, 217.35 - 217.44

STATUTORY AUTHORITY

The repeals are adopted under Transportation Code, §1002.001, which provides the board of the Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code.

CROSS REFERENCE TO STATUTE

Transportation Code, §502.0023, §502.047, and Chapters 551, 643, 645, 646, and 648.

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SUBCHAPTER C. REGISTRATION AND TITLE SYSTEM

43 TAC §§217.53 - 217.55

STATUTORY AUTHORITY

The repeals are adopted under Transportation Code, §1002.001, which provides the board of the Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code.

CROSS REFERENCE TO STATUTE

Transportation Code, §502.0023, §502.047, and Chapters 551, 643, 645, 646, and 648.

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SUBCHAPTER D. NON-REPAIRABLE AND SALVAGE MOTOR VEHICLES

43 TAC §§217.60 - 217.68

STATUTORY AUTHORITY

The repeals are adopted under Transportation Code, §1002.001, which provides the board of the Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code.

CROSS REFERENCE TO STATUTE

Transportation Code, §502.0023, §502.047, and Chapters 551, 643, 645, 646, and 648.

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SUBCHAPTER E. SALVAGE VEHICLE DEALERS

43 TAC §§217.70 - 217.81

STATUTORY AUTHORITY

The repeals are adopted under Transportation Code, §1002.001, which provides the board of the Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code.

CROSS REFERENCE TO STATUTE

Transportation Code, §502.0023, §502.047, and Chapters 551, 643, 645, 646, and 648.

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SUBCHAPTER F. MOTOR VEHICLE RECORD INFORMATION

43 TAC §§217.90 - 217.93

STATUTORY AUTHORITY

The repeals are adopted under Transportation Code, §1002.001, which provides the board of the Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code.

CROSS REFERENCE TO STATUTE

Transportation Code, §502.0023, §502.047, and Chapters 551, 643, 645, 646, and 648.

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SUBCHAPTER G. INSPECTIONS

43 TAC §§217.100 - 217.102

STATUTORY AUTHORITY

The repeals are adopted under Transportation Code, §1002.001, which provides the board of the Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code.

CROSS REFERENCE TO STATUTE

Transportation Code, §502.0023, §502.047, and Chapters 551, 643, 645, 646, and 648.

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SUBCHAPTER H. DEPUTIES

43 TAC §217.111

STATUTORY AUTHORITY

The repeal is adopted under Transportation Code, §1002.001, which provides the board of the Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code.

CROSS REFERENCE TO STATUTE

Transportation Code, §502.0023, §502.047, and Chapters 551, 643, 645, 646, and 648.

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SUBCHAPTER A. MOTOR VEHICLE TITLES

43 TAC §§217.1 - 217.14

STATUTORY AUTHORITY

The new subchapter is adopted under Transportation Code, §1002.001, which provides the board of the Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code.

CROSS REFERENCE TO STATUTE

Transportation Code, §502.0023, §502.047, and Chapters 551, 643, 645, 646, and 648.

§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 title, when the name on the title is different from the name of the legal owner of the vehicle.

(2) **Alias 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) **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) **Date of sale**--The date of the transfer of possession of a specific vehicle from a seller to a purchaser.

(6) **Division director**--The director of the department's Vehicle Titles and Registration Division.

(7) **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) **Exempt agency**--A governmental body exempt by law from paying title or registration fees for motor vehicles.

(9) **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.

(10) **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.

(11) **Identification certificate**--A form issued by an inspector of an authorized safety inspection station in accordance with Transportation Code, Chapter 548.

(12) **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.

(13) **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 title, showing, on appropriate forms prescribed by the department, each subsequent transfer between distributor and dealer, dealer and dealer, and dealer and owner.

(14) **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.

(15) **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.

(16) Non United States standard motor vehicle--A motor vehicle not manufactured in compliance with federal motor vehicle safety standards.

(17) Obligor--An individual who is required to make payments under the terms of a support order for a child.

(18) Person--An individual, firm, corporation, company, partnership, or other entity.

(19) 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) Statement of fact--A written declaration that supports an application for a title, that is executed by an involved party to a transaction involving a motor vehicle, and that clarifies an error made on a title or other negotiable evidence of ownership. An involved party is the seller or an agent of the seller involved in the motor vehicle transaction. When a written declaration is necessary to correct an odometer disclosure error, the signatures of both the seller and buyer when the error occurred are required.

(21) Verifiable proof--Additional documentation required of a vehicle owner, lienholder, or agent executing an application for a certified copy of a 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 or foreign passport.

(B) Business applicant. If the applicant is a business, verifiable proof consists of an original or copy of a letter of signature authority on letterhead, a business card, or employee identification and a copy of current photo identification issued by this state or by the United States or foreign passport.

(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.

§217.6. Title Issuance.

(a) Issuance. The department or its designated agent will issue a receipt and process the application for title on receipt of:

- (1) a completed application for title;
- (2) required accompanying documentation;
- (3) the statutory fee for a title application, unless exempt under:

(A) Transportation Code, §501.138; or

(B) Government Code, §437.217 and copies of official military orders are presented as evidence of the applicant's active duty status and deployment orders to a hostile fire zone; and

- (4) any other applicable fees.

(b) Titles. The department will issue and mail or deliver a title to the applicant or, in the event that there is a lien disclosed in the application, to the first lienholder unless the title is an electronic record of title.

(c) Receipt. The receipt issued at the time of application for title may be used only as evidence of title and may not be used to trans-

fer any interest or ownership in a motor vehicle or to establish a new lien.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

43 TAC §§217.21 - 217.56

STATUTORY AUTHORITY

The new subchapter is adopted under Transportation Code, §1002.001, which provides the board of the Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code.

CROSS REFERENCE TO STATUTE

Transportation Code, §502.0023, §502.047, and Chapters 551, 643, 645, 646, and 648.

§217.54. *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) No fewer than twenty-five vehicles will be registered as a fleet;

(2) Vehicles may be registered in annual increments for up to eight years;

(3) All vehicles in a fleet must be owned by or leased to the same business entity;

(4) All vehicles must be vehicles that are not registered under the International Registration Plan; and

(5) Each vehicle must currently be titled in Texas or be issued a registration receipt, or the registrant must submit an application for a 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 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, unless otherwise exempted by law;

(E) annual proof of payment of Heavy Vehicle Use Tax;

(F) the state's portion of the vehicle inspection fee for the vehicle inspections conducted in Texas; and

(G) any other documents or fees required by law.

(d) Registration period.

(1) The fleet owner will designate a single registration period for a fleet so the registration period for each vehicle will expire on the same date.

(2) The fleet registration period will begin on the first day of a calendar month and end on the last day of a calendar month.

(e) Insignia.

(1) As evidence of registration, the department will issue distinguishing insignia for each vehicle in a fleet.

(2) The insignia shall be included on the license plate and affixed to the vehicle.

(3) The insignia shall be attached to the rear license plate if the vehicle has no windshield.

(4) The registration receipt for each vehicle shall at all times be carried in that vehicle and be available to law enforcement personnel.

(5) Insignia may not be transferred between vehicles, owners, or registrants.

(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 falls below twenty-five during the registration period, fleet registration will remain in effect. If the number of vehicles in an account 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) Fees.

(1) When a fleet is first established, the department will charge a registration fee for each vehicle for the entire registration period selected. A currently registered vehicle, however, will be given credit for any remaining time on its separate registration.

(2) When a vehicle is added to an existing fleet, the department will charge a registration fee that is prorated based on the number of months of fleet registration remaining. If the vehicle is currently registered, this fee will be adjusted to provide credit for the number of months of separate registration remaining.

(3) When a vehicle is removed from fleet registration, it will be considered to be registered separately. The vehicle's separate registration will expire on the date that the fleet registration would have expired. The registrant must pay the statutory replacement fee to obtain regular registration insignia before the vehicle may be operated on a public highway.

(h) Payment. Payment will be made in the manner prescribed by the department.

(i) Cancellation.

(1) The department will cancel registration for non-payment and lack of proof of annual payment of the Heavy Vehicle Use Tax.

(2) The department may cancel registration on any fleet vehicle that is not in compliance with the inspection requirements under Transportation Code, Chapter 548 and the Texas Department of Public Safety rules regarding inspection requirements on the anniversary date(s) of the registration.

(3) A vehicle with a cancelled registration may not be operated on a public highway.

(4) If the department cancels the registration of a vehicle under this subsection, the registrant can request the department to reinstate the registration by doing the following:

(A) complying with the requirements for which the department cancelled the registration;

(B) providing the department with notice of compliance on a form prescribed by the department; and

(C) paying an administrative fee in the amount of \$10.

(5) A registrant is only eligible for reinstatement of the registration within 90 calendar days of the department's notice of cancellation.

(6) If a registrant fails to timely reinstate the registration of a cancelled vehicle registration under this section, the registrant:

(A) is not entitled to a credit or refund of any registration fees for the vehicle; and

(B) must immediately return the registration insignia to the department.

(j) Inspection fee. The registrant must pay the department by the deadline listed in the invoice for the state's portion of the vehicle inspection fee for a vehicle inspection conducted in Texas.

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SUBCHAPTER C. REGISTRATION AND TITLE SYSTEM

43 TAC §§217.71 - 217.73

STATUTORY AUTHORITY

The new subchapter is adopted under Transportation Code, §1002.001, which provides the board of the Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code.

CROSS REFERENCE TO STATUTE

Transportation Code, §502.0023, §502.047, and Chapters 551, 643, 645, 646, and 648.

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SUBCHAPTER D. NON-REPAIRABLE AND SALVAGE MOTOR VEHICLES

43 TAC §§217.81 - 217.89

STATUTORY AUTHORITY

The new subchapter is adopted under Transportation Code, §1002.001, which provides the board of the Department of Mo-

tor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code.

CROSS REFERENCE TO STATUTE

Transportation Code, §502.0023, §502.047, and Chapters 551, 643, 645, 646, and 648.

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SUBCHAPTER E. TITLE LIENS AND CLAIMS

43 TAC §§217.101 - 217.106

STATUTORY AUTHORITY

The new subchapter is adopted under Transportation Code, §1002.001, which provides the board of the Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code.

CROSS REFERENCE TO STATUTE

Transportation Code, §502.0023, §502.047, and Chapters 551, 643, 645, 646, and 648.

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SUBCHAPTER F. MOTOR VEHICLE RECORD INFORMATION

43 TAC §§217.121 - 217.124

STATUTORY AUTHORITY

The new subchapter is adopted under Transportation Code, §1002.001, which provides the board of the Department of Mo-

tor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code.

CROSS REFERENCE TO STATUTE

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SUBCHAPTER G. INSPECTIONS

43 TAC §§217.141 - 217.143

STATUTORY AUTHORITY

The new subchapter is adopted under Transportation Code, §1002.001, which provides the board of the Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code.

CROSS REFERENCE TO STATUTE

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SUBCHAPTER H. DEPUTIES

43 TAC §217.161

STATUTORY AUTHORITY

The new subchapter is adopted under Transportation Code, §1002.001, which provides the board of the Department of Motor Vehicles with the authority to adopt rules that are necessary

and appropriate to implement the powers and duties of the department under the Transportation Code.

CROSS REFERENCE TO STATUTE

Transportation Code, §502.0023, §502.047, and Chapters 551, 643, 645, 646, and 648.

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SUBCHAPTER I. SALVAGE VEHICLE DEALERS

43 TAC §§217.181 - 217.192

STATUTORY AUTHORITY

The new subchapter is adopted under Transportation Code, §1002.001, which provides the board of the Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code.

CROSS REFERENCE TO STATUTE

Transportation Code, §502.0023, §502.047, and Chapters 551, 643, 645, 646, and 648.

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CHAPTER 218. MOTOR CARRIERS

The Texas Department of Motor Vehicles (department) adopts the repeal of Chapter 218, Subchapter D, §218.40, Applicability. The department also adopts the amendments to Subchapter A, §218.1, Purpose; §218.2, Definitions; Subchapter B, §218.11, Motor Carrier Registration; §218.12, Issuance of United States Department of Transportation Numbers; §218.13, Application for Motor Carrier Registration; §218.14, Expiration and Re-

newal of Commercial Motor Vehicle Registration; §218.16, Insurance Requirements; §218.17, Unified Carrier Registration System; §218.18, Short-term Lease and Substitute Vehicles; Subchapter C, §218.31, Investigations and Inspections of Motor Carrier Records; §218.32, Motor Carrier Records; §218.33, Enforcement; Subchapter D, §218.41, Bond; §218.42, Fees; Subchapter E, §218.51, Household Goods Agents; §218.52, Advertising; §218.54, Selling Insurance to Shippers; §218.55, Information for Shippers; §218.56, Proposals and Estimates for Moving Services; §218.57, Moving Services Contract; §218.58, Moving Services Contract - Options for Carrier Limitation of Liability; §218.61, Claims; §218.62, Mediation by the Department; §218.64, Rates; §218.65, Tariff Registration; Subchapter F, §218.70, Purpose; §218.71, Administrative Penalties; §218.73, Administrative Proceedings; §218.74, Settlement Agreements; and §218.76, Registration Suspension Ordered under Family Code. The department further adopts new Subchapter G, Financial Responsibility for Foreign Commercial Motor Vehicles, §218.80, Purpose and Scope; §218.81, Definitions; and §218.82, Financial Responsibility. The amendments to §218.52 and §218.71 are adopted with changes to the proposed text as published in the October 17, 2014, issue of the *Texas Register* (39 TexReg 8240) and will be republished. The amendments to §§218.1, 218.2, 218.11 - 218.14, 218.16 - 218.18, 218.31 - 218.33, 218.41, 218.42, 218.51, 218.54 - 218.58, 218.61, 218.62, 218.64, 218.65, 218.70, 218.73, 218.74, and 218.76; the repeal of §218.40; and new §§218.80 - 218.82, are adopted without changes and therefore, will not be republished.

EXPLANATION OF REPEAL, AMENDMENTS, AND NEW SUBCHAPTER

The department conducted a review of its rules in compliance with Government Code, §2001.039. Notice of the department's intention to review was published in the October 17, 2014, issue of the *Texas Register* (39 TexReg 8273).

As a result of the review, the department determined that §218.40 should be repealed because it duplicates language that is already in statute.

Amendments to §218.1, Purpose, include Transportation Code, Chapters 646 and 648 because the rules in Chapter 218 also implement the provisions of these two chapters of the Transportation Code.

Amendments to §218.2, Definitions, modify definitions of existing terms and add new terms for consistency and accuracy. An amendment deletes a portion of the definition of a commercial motor vehicle because the definition of a commercial motor vehicle under Transportation Code, §643.051(a) differs from the definition under 49 C.F.R. §390.5 and because an amendment adds a definition for a foreign commercial motor vehicle. An amendment adds a definition for a foreign commercial motor vehicle for those motor carriers that are required to comply with Transportation Code, Chapter 643 and department rules adopted under Transportation Code, §648.102.

Amendments to §218.12 delete language that is already contained in statute.

Amendments to §218.13 delete language that is already contained in statute and in a Texas Department of Public Safety administrative rule. An amendment clarifies that certain qualifying interstate motor carriers are not required to renew certificates of registration. Also, an amendment allows motor carriers to display insurance cab card information via a wireless communication device. Further, an amendment deletes language about

incomplete applications because the language is not consistent with agency practice.

Amendments to §218.14 are adopted for consistency with 49 U.S.C. §14504a and Transportation Code, Chapter 643. Additional amendments clarify the procedure for a motor carrier to obtain a non-expiring certificate of registration, as well as the procedure when the motor carrier no longer qualifies for a non-expiring certificate of registration.

Amendments to §218.16 are adopted for those motor carriers that are required to comply with Transportation Code, Chapter 643 and department rules adopted under Transportation Code, §648.102. Amendments to Figure: 43 TAC §218.16(a) are made for clarity and for consistency with Transportation Code, Chapter 643 and 49 C.F.R. Part 387. An amendment deletes the adoption of all final orders of the Railroad Commission of Texas because department rules establish the current procedures regarding self-insurance and because any final orders that were in effect on August 31, 1995, are outdated. In addition, the department adopts amendments to clarify the procedures for self-insurance versus the procedures for a motor carrier's insurer to file evidence of insurance with the department. Further, amendments replace terminology with defined terms and delete language that is already contained in statute.

Amendments to §218.17 correct the citation to 49 U.S.C. §14504a. Amendments also clarify that the department, interstate motor carriers, brokers, freight forwarders, motor private carriers of property, and leasing companies must comply with 49 U.S.C. §14504a, as well as the plan and agreement under 49 U.S.C. §14504a. Amendments are further made to adopt the Unified Carrier Registration Agreement by reference and to address the methods for applying for registration under the plan and agreement under 49 U.S.C. §14504a.

An amendment to §218.32 adds a reference regarding the display of the insurance cab card information via a wireless communication device. An amendment also clarifies that a motor carrier is not required to carry in its vehicle proof of compliance with 49 U.S.C. §14504a or the plan or agreement under 49 U.S.C. §14504a.

An amendment to §218.52 deletes "nationally placed billboards" because all billboards are considered to be print advertisements. Household goods carriers are currently required to include on their Internet websites the department's toll-free telephone number as listed in §218.52. An amendment deletes the department's toll-free telephone number from §218.52 and replaces the language with a reference to the department's toll-free consumer helpline as listed on the department's website, in case the department ever changes this number.

The amendments to §218.52 will not be effective until August 5, 2015, to give the household goods carriers time to implement the changes and to lessen any economic impact to the household goods carriers. If a household goods carrier chooses to implement the adopted amendments sooner than August 5, 2015, the household goods carrier will not be in violation of the requirements of §218.52.

Amendments to §218.61 direct questions or complaints concerning household goods carrier's claims handling to the department's Enforcement Division because the department's Motor Carrier Division does not handle these questions or complaints. Also, an amendment deletes the department's toll-free telephone number from §218.61 and replaces the language with a reference to the department's toll-free consumer helpline

as listed on the department's website. Similar amendments to §218.65 regarding public inspection of the tariffs that household goods carriers file with the department pursuant to Transportation Code, §643.153 are adopted.

Amendments to §218.71 revise the definition of "knowingly" because the current definition is not sufficient. Also, amendments delete language already contained in statute.

Amendments to §218.73 and §218.74 delete the word "unappealable," so the language is consistent with Transportation Code, §643.2525.

An additional amendment to §218.74 deletes subsection (d) regarding the revocation of the settlement agreement because the clause is unnecessary. According to §218.74(b), if the settlement agreement requires the payment of a penalty, the motor carrier must submit payment in an agreed amount before the agreement may be executed. In addition, if the settlement agreement involves revocation or suspension of the operating authority, the revocation or suspension is activated by the department.

New Subchapter G, §§218.80 - 218.82, complies with Transportation Code, §648.102, which requires the department to adopt rules that conform with 49 C.F.R. Part 387, requiring motor carriers operating foreign commercial motor vehicles in Texas to maintain financial responsibility.

Amendments are made throughout the amended sections to revise terminology for consistency with other department rules and with current department practice. In addition, nonsubstantive amendments correct punctuation, grammar, capitalization, and references throughout the amended sections.

COMMENT

The department received one written comment from the Texas Trucking Association (TXTA) and Southwest Movers Association (SMA) expressing their opposition to the proposed amendments to §218.52 and §218.71.

TXTA and SMA requested the department to remove proposed language in §218.52 that requires both a TxDMV certificate of registration number and the U.S. DOT registration number on print advertisements and websites. They feel that either number is adequate to identify the motor carrier, and the requirement to list both numbers adds unnecessary costs. TXTA and SMA also requested the department to modify the proposed definition of the word "knowingly" in §218.71 because they do not think the proposed definition is appropriate for an administrative enforcement case.

RESPONSE

The department deleted the proposed language that requires the U.S. DOT registration number on print advertisements and websites because the TxDMV certificate of registration number is sufficient to identify the motor carrier. The department also modified the proposed definition of the word "knowingly."

SUBCHAPTER A. GENERAL PROVISIONS

43 TAC §218.1, §218.2

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties

of the department under the Transportation Code; and more specifically, Transportation Code, §643.003 which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §645.003, which requires the department to adopt rules consistent with federal law providing for administrative penalties and sanctions; and Transportation Code, §648.102, which requires the department to adopt rules that conform with 49 C.F.R. Part 387, requiring motor carriers operating foreign commercial motor vehicles in Texas to maintain financial responsibility.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 643, 645, 646, and 648.

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SUBCHAPTER B. MOTOR CARRIER REGISTRATION

43 TAC §§218.11 - 218.14, 218.16 - 218.18

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code; and more specifically, Transportation Code, §643.003 which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §645.003, which requires the department to adopt rules consistent with federal law providing for administrative penalties and sanctions; and Transportation Code, §648.102, which requires the department to adopt rules that conform with 49 C.F.R. Part 387, requiring motor carriers operating foreign commercial motor vehicles in Texas to maintain financial responsibility.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 643, 645, 646, and 648.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 20, 2015.

TRD-201500552

David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Effective date: March 12, 2015
Proposal publication date: October 17, 2014
For further information, please call: (512) 465-5665



SUBCHAPTER C. RECORDS AND INSPECTIONS

43 TAC §§218.31 - 218.33

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code; and more specifically, Transportation Code, §643.003 which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §645.003, which requires the department to adopt rules consistent with federal law providing for administrative penalties and sanctions; and Transportation Code, §648.102, which requires the department to adopt rules that conform with 49 C.F.R. Part 387, requiring motor carriers operating foreign commercial motor vehicles in Texas to maintain financial responsibility.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 643, 645, 646, and 648.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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David D. Duncan
General Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 465-5665



SUBCHAPTER D. MOTOR TRANSPORTATION BROKERS

43 TAC §218.40

STATUTORY AUTHORITY

The repeal is adopted under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code; and more specifically, Transportation Code, §643.003 which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §645.003, which requires the de-

partment to adopt rules consistent with federal law providing for administrative penalties and sanctions; and Transportation Code, §648.102, which requires the department to adopt rules that conform with 49 C.F.R. Part 387, requiring motor carriers operating foreign commercial motor vehicles in Texas to maintain financial responsibility.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 643, 645, 646, and 648.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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David D. Duncan
General Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 465-5665



43 TAC §218.41, §218.42

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code; and more specifically, Transportation Code, §643.003 which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §645.003, which requires the department to adopt rules consistent with federal law providing for administrative penalties and sanctions; and Transportation Code, §648.102, which requires the department to adopt rules that conform with 49 C.F.R. Part 387, requiring motor carriers operating foreign commercial motor vehicles in Texas to maintain financial responsibility.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 643, 645, 646, and 648.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 20, 2015.

TRD-201500555
David D. Duncan
General Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 465-5665



SUBCHAPTER E. CONSUMER PROTECTION

43 TAC §§218.51, 218.52, 218.54 - 218.58, 218.61, 218.62, 218.64, 218.65

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code; and more specifically, Transportation Code, §643.003 which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §645.003, which requires the department to adopt rules consistent with federal law providing for administrative penalties and sanctions; and Transportation Code, §648.102, which requires the department to adopt rules that conform with 49 C.F.R. Part 387, requiring motor carriers operating foreign commercial motor vehicles in Texas to maintain financial responsibility.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 643, 645, 646, and 648.

§218.52. Advertising.

(a) Print advertising through August 4, 2015. A household goods carrier shall include the following information on print advertisements primarily addressing a local market within this state:

- (1) the name of the household goods carrier as shown on the certificate of registration;
- (2) the street address of the household goods carrier's or its agent's place of business in this state; and
- (3) the household goods carrier's certificate of registration number in the following form, "DMV No. _____".

(b) Print advertising on or after August 5, 2015. A household goods carrier shall include the following information on print advertisements primarily addressing a local market within this state:

- (1) the name of the household goods carrier as shown on the certificate of registration;
- (2) the street address of the household goods carrier's or its agent's place of business in this state; and
- (3) the household goods carrier's certificate of registration number in the following form, "TxDMV No. _____".

(c) Use of household goods agent's name. A household goods carrier may include the name of its household goods agent as filed with the department in its print advertisements.

(d) Items not considered to be print advertisements through August 4, 2015. For the purposes of this section, print advertisement shall not include:

- (1) promotional items of nominal value such as ball caps, tee shirts, and pens;
- (2) business cards;
- (3) internet websites;
- (4) listings not paid for by the household goods carrier or its household goods carrier's agent;
- (5) nationally placed billboards; and

(6) single-line listings of a carrier name, address, and telephone number in a directory or similar publication.

(e) Items not considered to be print advertisements on or after August 5, 2015. For the purposes of this section, print advertisement shall not include:

- (1) promotional items of nominal value such as ball caps, tee shirts, and pens;
- (2) business cards;
- (3) Internet websites;
- (4) listings not paid for by the household goods carrier or its household goods carrier's agent; and
- (5) single-line listings of a household goods carrier's name, address, and telephone number in a directory or similar publication.

(f) Internet websites through August 4, 2015. A household goods carrier shall provide the department's toll-free telephone number (1-888-368-4689) and the household goods carrier's certificate of registration number on any website operated by or for the household goods carrier.

(g) Internet websites on or after August 5, 2015. A household goods carrier shall provide the following information on any website operated by or for the household goods carrier:

- (1) department's toll-free consumer helpline as listed on the department's website; and
 - (2) the household goods carrier's certificate of registration number in the following form, "TxDMV No. _____".
- (h) Identifying markings on household goods carrier's vehicles.

(1) A household goods carrier or its agent shall display the following information on both sides of either the power unit or trailer:

- (A) the name of the carrier as it appears on the motor carrier certificate of registration; and
- (B) the carrier's registration number as it appears on the motor carrier certificate of registration.

(2) The markings required by paragraph (1) of this subsection shall have clearly legible letters and numbers at least two inches in height.

(3) This subsection does not apply to vehicles:

- (A) required to comply with Transportation Code, Chapter 642; or
- (B) operated under a short-term lease.

(i) Prohibited advertisements. For the purposes of this subsection, an advertisement is any communication to the public in connection with an offer or sale of an intrastate transportation service. A household goods carrier and its household goods agents may not use any false, misleading, or deceptive advertisements.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 20, 2015

TRD-201500556

David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Effective date: March 12, 2015
Proposal publication date: October 17, 2014
For further information, please call: (512) 465-5665



SUBCHAPTER F. ENFORCEMENT

43 TAC §§218.70, 218.71, 218.73, 218.74, 218.76

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code; and more specifically, Transportation Code, §643.003 which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §645.003, which requires the department to adopt rules consistent with federal law providing for administrative penalties and sanctions; and Transportation Code, §648.102, which requires the department to adopt rules that conform with 49 C.F.R. Part 387, requiring motor carriers operating foreign commercial motor vehicles in Texas to maintain financial responsibility.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 643, 645, 646, and 648.

§218.71. *Administrative Penalties.*

(a) Authority. The department, after notice and opportunity for hearing, may impose an administrative penalty against the following:

(1) a motor carrier that violates a provision of Transportation Code, Chapter 643 or Chapter 645 or violates a rule or order adopted under Transportation Code, Chapter 643 or Chapter 645; or

(2) a motor carrier or broker that violates a federal law or regulation, the enforcement of which has been delegated to the department.

(b) Amount of administrative penalty for violations of state laws, rules, or orders.

(1) In an action brought by the department, the aggregate amount of administrative penalty shall not exceed \$5,000 unless it is found that the motor carrier knowingly committed a violation.

(2) In an action brought by the department, if it is found that the motor carrier knowingly committed a violation, the aggregate amount of administrative penalty shall not exceed \$15,000. "Knowingly" means actual awareness of the act or practice that is the alleged violation, or acting with deliberate ignorance of or reckless disregard for the violation involved. Actual awareness may be inferred from the conduct of the alleged violator or from the history of previous violations by the alleged violator.

(3) In an action brought by the department, if it is found that the motor carrier knowingly committed multiple violations, the aggregate amount of administrative penalty for the multiple violations shall not exceed \$30,000.

(4) Each day a violation continues or occurs is a separate violation for purposes of imposing an administrative penalty.

(c) Memorandum of Agreement. Pursuant to a Memorandum of Agreement between the department and the Federal Motor Carrier Safety Administration, United States Department of Transportation, the department is authorized to initiate an enforcement action and assess civil penalties against a motor carrier or broker, as applicable, under the authority of the following:

(1) 49 U.S.C. §§13702, 13704, 13707(b), 13901, 14104(b), 14706(f), 14708, 14710, 14901(d)(2) and (3), 14901(e), and 14915, as amended;

(2) 49 C.F.R. §§366.4, 370.3-370.9, 371.3(c), 371.7, 371.105, 371.107, 371.109, 371.111, 371.113, 371.115, 371.117, 371.121, 373.201, Part 375, §§378.3 - 378.9, 387.301(b), 387.307, 387.403, and Part 386 Appendix B(g)(22) - (23), as amended; and

(3) any future delegations pursuant to 49 U.S.C. §14710.

(d) Enforcement process for federal laws and regulations. The department will follow the process set forth in Transportation Code, §643.2525 when enforcing the federal laws and regulations cited in subsection(c) of this section via an administrative proceeding.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 20, 2015

TRD-201500557
David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Effective date: March 12, 2015
Proposal publication date: October 17, 2014
For further information, please call: (512) 465-5665



SUBCHAPTER G. FINANCIAL RESPONSIBILITY FOR FOREIGN COMMERCIAL MOTOR VEHICLES

43 TAC §§218.80 - 218.82

STATUTORY AUTHORITY

The new subchapter is adopted under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code; and more specifically, Transportation Code, §643.003 which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §645.003, which requires the department to adopt rules consistent with federal law providing for administrative penalties and sanctions; and Transportation Code, §648.102, which requires the department to adopt rules that conform with 49 C.F.R. Part 387, requiring motor carriers operating foreign commercial motor vehicles in Texas to maintain financial responsibility.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 643, 645, 646, and 648.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 20, 2015

TRD-201500558

David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Effective date: March 12, 2015
Proposal publication date: October 17, 2014
For further information, please call: (512) 465-5665



REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Education Agency

Title 19, Part 2

The Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 75, Curriculum, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the TEA in 19 TAC Chapter 75 are organized under the following subchapters: Subchapter AA, Commissioner's Rules Concerning Driver Education Standards of Operation for Public Schools, Education Service Centers, and Colleges or Universities; and Subchapter BB, Commissioner's Rules Concerning Provisions for Career and Technical Education.

As required by the Texas Government Code, §2001.039, the TEA will accept comments as to whether the reasons for adopting 19 TAC Chapter 75, Subchapters AA and BB, continue to exist.

The public comment period on the review of 19 TAC Chapter 75, Subchapters AA and BB, begins March 6, 2015, and ends April 6, 2015. Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-5337.

TRD-201500641

Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: February 25, 2015



The Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 76, Extracurricular Activities, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the TEA in 19 TAC Chapter 76 are organized under Subchapter AA, Commissioner's Rules.

As required by the Texas Government Code, §2001.039, the TEA will accept comments as to whether the reasons for adopting 19 TAC Chapter 76, Subchapter AA, continue to exist.

The public comment period on the review of 19 TAC Chapter 76, Subchapter AA, begins March 6, 2015, and ends April 6, 2015. Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-5337.

TRD-201500642

Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: February 25, 2015



Texas Department of Motor Vehicles

Title 43, Part 10

The Texas Department of Motor Vehicles (department) files this notice of intent to review 43 TAC Chapter 206, Management. This review is conducted pursuant to Government Code, §2001.039, which requires state agencies to review their rules every four years and to readopt, readopt with amendments, or repeal the current rules. The department's review will include an assessment of whether the reasons for initially adopting the rules continue to exist.

The department is conducting this rule review in conjunction with proposing amendments and repeals, which are published in the Proposed Rules section of this issue of the *Texas Register*.

Comments regarding this rule review may be submitted to David D. Duncan, General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731 or by email to rules@txdmv.gov. The deadline for receipt of comments is 5:00 p.m. on April 6, 2015.

TRD-201500575

David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Filed: February 23, 2015



State Securities Board

Title 7, Part 7

The State Securities Board (Agency), beginning March 2015, will review and consider for readoption, revision, or repeal Chapter 105, Rules of Practice in Contested Cases, and Chapter 106, Guidelines for the Assessment of Administrative Fines, in accordance with Texas Government Code, §2001.039. The rules to be reviewed are located in Title 7, Part 7, of the Texas Administrative Code.

The assessment made by the Agency at this time indicates that the reasons for initially adopting the chapters continue to exist.

The Agency's Board will consider, among other things, whether the reasons for adoption of these rules continue to exist and whether amend-

ments are needed. Any changes to the rules proposed by the Agency's Board after reviewing the rules and considering the comments received in response to this notice will appear in the "Proposed Rules" section of the *Texas Register* and will be adopted in accordance with the requirements of the Administrative Procedure Act, Texas Government Code Annotated, Chapter 2001. The comment period will last for 30 days beginning with the publication of this notice of intention to review.

Comments or questions regarding this notice of intention to review may be submitted in writing, within 30 days following the publication of this notice in the *Texas Register*, to Marlene Sparkman, General Counsel, P.O. Box 13167, Austin, Texas 78711-3167 or sent by facsimile to Ms. Sparkman at (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. Comments will be reviewed and discussed in a future Board meeting.

TRD-201500610
John Morgan
Securities Commissioner
State Securities Board
Filed: February 23, 2015

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Adopted Rule Reviews

Credit Union Department

Title 7, Part 6

The Credit Union Commission (Commission) has completed its review of 7 TAC §91.501 (Director Eligibility and Disqualification), §91.502 (Director/Committee Member Fees, Insurance, Reimbursable Expenses, and Other Authorized Expenditures), §91.503 (Change in Credit Union President), §91.510 (Bond and Insurance Requirements), §91.515 (Financial Reporting), §91.516 (Audits and Verifications), §91.601 (Share and Deposit Accounts), §91.602 (Solicitation and Acceptance of Brokered Deposits), §91.608 (Confidentiality of Member Records), and §91.610 (Safe Deposit Box Facilities), as published in the November 14, 2014, issue of the *Texas Register* (39 TexReg 9077). The Commission readopts these rules.

The rules were reviewed as a result of the Credit Union Department's (Department) general rule review.

The Commission received no comments with respect to these rules. The Department believes that the reasons for initially adopting these rules continue to exist. The Commission finds that the reasons for initially adopting 7 TAC §§91.501, 91.502, 91.503, 91.510, 91.515, 91.516, 91.601, 91.602, 91.608, and 91.610 continue to exist and readopts these rules without changes pursuant to the requirements of Government Code, §2001.039.

TRD-201500565
Harold E. Feeney
Commissioner
Credit Union Department
Filed: February 23, 2015

◆ ◆ ◆

Texas Department of Criminal Justice

Title 37, Part 6

The Texas Board of Criminal Justice adopts the review of 37 TAC §159.15 concerning GO KIDS Initiative, pursuant to Texas Government Code §2001.039, which requires rule review every four years.

The proposed rule review was published in the October 31, 2014, issue of the *Texas Register* (39 TexReg 8565).

Elsewhere in this issue of the *Texas Register*, the Texas Board of Criminal Justice adopts amendments to §159.15.

No comments were received regarding the rule review.

The agency's reason for adopting the rule continues to exist.

TRD-201500580
Sharon Felfe Howell
General Counsel
Texas Department of Criminal Justice
Filed: February 23, 2015

◆ ◆ ◆

The Texas Board of Criminal Justice adopts the review of 37 TAC §163.37 concerning Reports and Records, pursuant to Texas Government Code §2001.039, which requires rule review every four years.

The proposed rule review was published in the December 26, 2014, issue of the *Texas Register* (39 TexReg 10386).

Elsewhere in this issue of the *Texas Register*, the Texas Board of Criminal Justice adopts amendments to §163.37.

No comments were received regarding the rule review.

The agency's reason for adopting the rule continues to exist.

TRD-201500581
Sharon Felfe Howell
General Counsel
Texas Department of Criminal Justice
Filed: February 23, 2015

◆ ◆ ◆

Texas Education Agency

Title 19, Part 2

The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 150, Commissioner's Rules Concerning Educator Appraisal, Subchapter AA, Teacher Appraisal, and Subchapter BB, Administrator Appraisal, pursuant to the Texas Government Code, §2001.039. The TEA proposed the review of 19 TAC Chapter 150, Subchapters AA and BB, in the December 12, 2014 issue of the *Texas Register* (39 TexReg 9709).

Relating to the review of 19 TAC Chapter 150, Subchapters AA and BB, the TEA finds that the reasons for adopting Subchapters AA and BB continue to exist and readopts the rules. The TEA received comments related to the review of Subchapters AA and BB. Following is a summary of the public comments received and the corresponding responses.

Comment: Texas Classroom Teachers Association commented that the reasons for adopting 19 TAC Chapter 150 continue to exist and that the rules should be continued.

Agency Response: The agency agrees.

Comment: Disability Rights of Texas, The Arc of Texas, and the Texas Council for Developmental Disabilities commented that the domains on which teachers are appraised should be expanded or revised to include more metrics on individualized instruction for diverse learners.

Agency Response: The agency agrees and plans to begin to update Chapter 150 in the fall of 2015 in accordance with the new teacher evaluation system scheduled for statewide rollout during the 2016-2017 school year. The new evaluation system includes many descriptors in the evaluation rubric that prioritize individualized instruction and instruction that meets the needs of all learners. 19 TAC §149.1001,

Teacher Standards, which is the foundation of the new evaluation system currently being piloted, emphasizes instruction that meets the diverse needs of all learners.

Comment: Disability Rights of Texas, The Arc of Texas, and the Texas Council for Developmental Disabilities commented that the evaluation domain that addresses professional development should focus more on implementing individualized educational programs.

Agency Response: The agency provides the following clarification. The revisions to Chapter 150 in the fall of 2015 in accordance with the new teacher evaluation system scheduled for statewide rollout during the 2016-2017 school year will update appraisal rules to capture the components of the new evaluation system, which include a strong emphasis on monitoring student progress, identifying the diverse needs of all students, and pursuing professional development activities that allow teachers to better reach all students moving forward.

Comment: Disability Rights of Texas, The Arc of Texas, and the Texas Council for Developmental Disabilities commented that administrator appraisal should have a similarly increased focus on individualized instruction, the diversity of student needs, and the implementation of individualized educational programs.

Agency Response: The agency agrees and plans to begin to update Chapter 150 in the fall of 2015 in accordance with the new principal evaluation system scheduled for statewide rollout during the 2016-2017 school year. The new evaluation system includes many descriptors in the evaluation rubric that prioritize campus-wide instruction and learning that meets the needs of all learners. The standards in 19 TAC §149.2001, Principal Standards, which is the foundation of the new evaluation system currently being piloted, emphasize campus leadership that drives instruction that meets the diverse needs of all learners.

Comment: Disability Rights of Texas, The Arc of Texas, and the Texas Council for Developmental Disabilities commented that the language in 19 TAC §150.1021(a)(6) should be revised to read, "School-wide positive behavioral supports are utilized to ensure that all students are treated in an effective and fair manner in response to misconduct."

Agency Response: The agency agrees that fair, equitable, and effective behavior management for all students is a core competency for effective campus leadership and will consider the language change when it begins the revision process in the fall of 2015.

Comment: Texans for Education Reform commented that the review and modification of rules in Chapter 150 is timely with the development of the new teacher evaluation system.

Agency Response: The agency agrees and plans to begin to update Chapter 150 in the fall of 2015 in accordance with the new teacher evaluation system scheduled for statewide rollout during the 2016-2017 school year.

This concludes the review of 19 TAC Chapter 150.

TRD-201500643

Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: February 25, 2015



The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 153, School District Personnel, Subchapter AA, Commissioner's Rules Concerning School District Personnel Duties and Benefits; Subchapter BB, Commissioner's Rules Concerning Professional Development; Subchapter CC, Commissioner's Rules on Creditable Years of Service; and Subchapter DD, Criminal History

Record Information Review, pursuant to the Texas Government Code, §2001.039. The TEA proposed the review of 19 TAC Chapter 153, Subchapters AA-DD, in the December 12, 2014 issue of the *Texas Register* (39 TexReg 9709).

Relating to the review of 19 TAC Chapter 153, Subchapters AA - DD, the TEA finds that the reasons for adopting Subchapters AA-DD continue to exist and readopts the rules. The TEA received comments related to the review of Subchapters AA-DD. Following is a summary of the public comments received and the corresponding responses.

Comment: Texas Classroom Teachers Association commented that the reasons for adopting 19 TAC Chapter 153 continue to exist and that the rules should be continued.

Agency Response: The agency agrees.

Comment: Texans for Education Reform commented in support of a comprehensive review of 19 TAC Chapter 153.

Agency Response: The agency agrees.

No changes to 19 TAC Chapter 153, Subchapters AA and BB, are necessary as a result of the review.

At a later date, the TEA may revise 19 TAC Chapter 153, Subchapter CC, to clarify creditable years of service, add language on updating service records, and update cross references.

At a later date, the TEA may revise 19 TAC Chapter 153, Subchapter DD, to clarify provisions related to fingerprinting.

This concludes the review of 19 TAC Chapter 153.

TRD-201500644

Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: February 25, 2015



Texas Department of Motor Vehicles

Title 43, Part 10

The Texas Department of Motor Vehicles (department) files this notice of the completed rule review of 43 TAC Chapter 217, Vehicles, Titles and Registration, pursuant to Government Code, §2001.039. Notice of the department's intention to review was published in the December 19, 2014, issue of the *Texas Register* (39 TexReg 10037).

As a result of the review, the department determined that the reasons for initially adopting the rules contained in Chapter 217 continue to exist; however, a comprehensive restructuring and renumbering of the chapter is needed to improve clarity and simplify for future amendments. The subchapter repeals and new subchapters may be found in the Adopted Rules section of this issue of the *Texas Register*.

No comments on the proposed review were received.

This concludes the review of Chapter 217.

TRD-201500524

David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Filed: February 20, 2015



The Texas Department of Motor Vehicles (department) files this notice of readoption of 43 TAC Chapter 218, Motor Carriers, pursuant to

Government Code, §2001.039. Notice of the department's intention to review was published in the October 17, 2014, issue of the *Texas Register* (39 TexReg 8273).

As a result of the review, the department determined that, with the exception of §218.40, the reasons for initially adopting rules under Chapter 218 continue to exist, but that amendments to certain rules are necessary.

No comments on the proposed review were received.

The department is also publishing in this issue of the *Texas Register* the adoption of the repeal of §218.40, amendments to Subchapters A - F, and the adoption of new Subchapter G.

This concludes the review of Chapter 218, Motor Carriers.

TRD-201500563

David D. Duncan

General Counsel

Texas Department of Motor Vehicles

Filed: February 20, 2015



Texas State Board of Pharmacy

Title 22, Part 15

The Texas State Board of Pharmacy adopts the review of Chapter 291 (§§291.1 - 291.3, 291.5 - 291.11, 291.14 - 291.19, 291.22 - 291.24, and 291.27 - 291.29), concerning Pharmacies (All Classes of Pharmacies), pursuant to the Texas Government Code §2001.039, regarding Agency Review of Existing Rules. The proposed rule review was published in the December 12, 2014, issue of the *Texas Register* (39 TexReg 9713).

No comments were received.

The agency finds the reason for adopting the rules continues to exist.

TRD-201500577

Gay Dodson, R.Ph.

Executive Director

Texas State Board of Pharmacy

Filed: February 23, 2015



The Texas State Board of Pharmacy adopts the review of Chapter 291 (§§291.91 - 291.94), concerning Pharmacies (Clinic Pharmacy (Class D)), pursuant to the Texas Government Code §2001.039, regarding Agency Review of Existing Rules. The proposed rule review was published in the December 12, 2014, issue of the *Texas Register* (39 TexReg 9713).

No comments were received.

The agency finds the reason for adopting the rules continues to exist.

TRD-201500578

Gay Dodson, R.Ph.

Executive Director

Texas State Board of Pharmacy

Filed: February 23, 2015



TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 43 TAC §219.11(d)(2)(G)(iii)

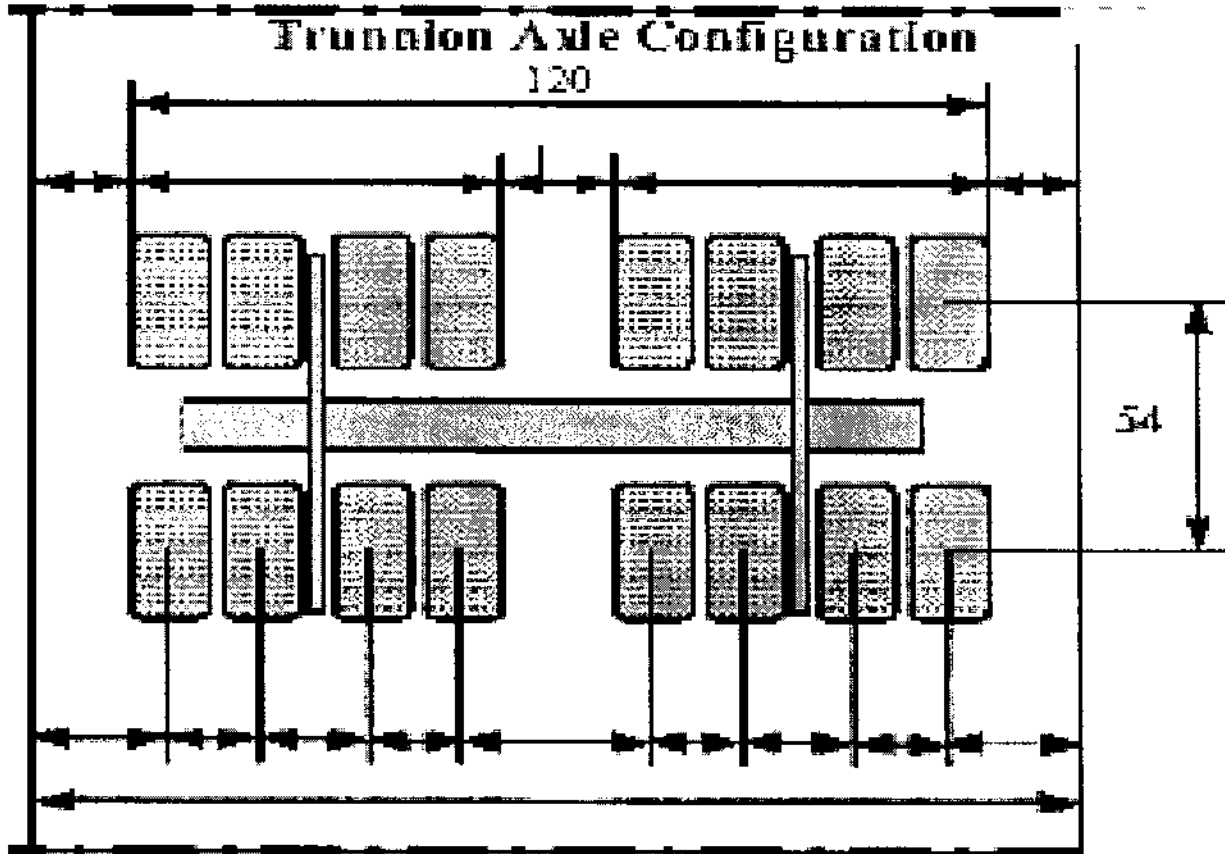
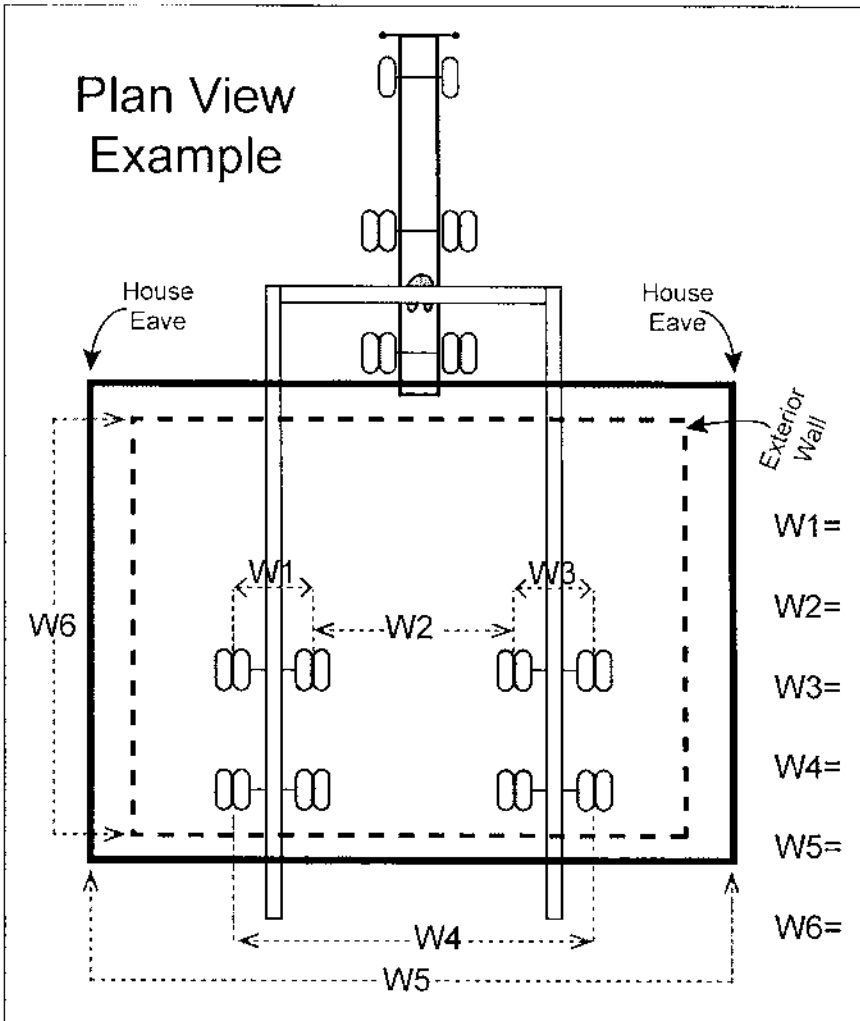
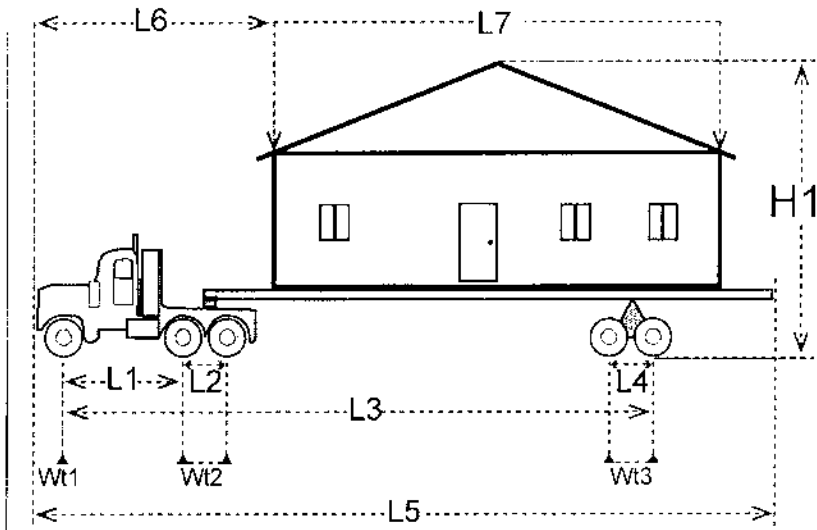


Figure: 43 TAC §219.12(e)



Side View Example



L1= L2= L3= L4= L5= L6= L7= H1=
 Weight (Wt)
 Per Dolly Wt1= Wt2= Wt3=

Figure 1: 43 TAC §219.42(f)

**MAXIMUM PERMIT WEIGHT
TABLE**

Length (L) Feet	Weight (W) (lb/ft)	Length (L) Feet	Weight (W) (lb/ft)	Length (L) Feet	Weight (W) (lb/ft)
4	7520	30	3676	55	3111
5	6345	31	3646	56	3094
6	5947	32	3616	57	3077
7	5698	33	3586	58	3061
8	5500	34	3557	59	3045
9	5326	35	3529	60	3030
10	5169	36	3501	61	3015
11	5027	37	3474	62	3000
12	4898	38	3448	63	2985
13	4781	39	3423	64	2971
14	4675	40	3399	65	2957
15	4579	41	3376	66	2943
16	4492	42	3354	67	2929
17	4413	43	3333	68	2915
18	4340	44	3313	69	2901
19	4272	45	3293	70	2887
20	4208	46	3274	71	2874
21	4146	47	3255	72	2861
22	4087	48	3236	73	2848
23	4030	49	3218	74	2835
24	3974	50	3200	75	2822
25	3920	51	3182	76	2809
26	3867	52	3164	77	2796
27	3815	53	3146	78	2783
28	3764	54	3128	79	2771
29	3714	55	3111	80	2759

MAXIMUM PERMIT WEIGHT FORMULAS

$$W = T / (L + 4)$$

- "W" - The value of the equivalent distributed load expressed in pounds per linear foot.
"T" - The sum of the axle loads or equivalent axle loads of any group of two or more axles expressed in pounds. Any combination of axle loads may be considered as a group, up to the total number of axles for the unit.
"L" - The length between axles, expressed in feet and measured to the nearest inch, from the center of the first axle to the center of last axle in the axle group, series of groups, or total axles for the unit.

A unit with axle groups composed of various numbers of tires per axle or with axle groups with a gauge distance greater than 6.0 feet on each axle may have additional reduction factors applied to each axle before summing "T." The revised equivalent axle load is calculated by the following formula.

$$A = (RS)(\text{THE AXLE LOAD})$$

- "A" - Equivalent axle load for axles with gauge greater than 6.0 feet and/or more than four tires.
"R" - A reduction factor for a unit with a gauge distance greater than 6.0 feet, calculated by the following formula.

$$R = (6.0 + G) / (2 G)$$

- "G" - The gauge distance, expressed in feet and measured to the nearest inch, from the center of the outside dual wheels on one side of the axle to the center of the outside dual wheels on the opposite side of the axle. The gauge distance of an axle equipped with two tires per axle must be measured to the nearest inch from center of tire to center of opposite tire.
"S" - A reduction factor based on the number of tires per axle.
S = 1.0 for axles with four or fewer tires, and
S = 0.96 for axles with eight tires.

Figure 1: 43 TAC §219.62(f)

MAXIMUM PERMIT WEIGHT TABLE

Length (L) Feet	Weight (W) (lb/ft)	Length (L) Feet	Weight (W) (lb/ft)	Length (L) Feet	Weight (W) (lb/ft)
4	7520	30	3676	55	3111
5	6345	31	3646	56	3094
6	5947	32	3616	57	3077
7	5698	33	3586	58	3061
8	5500	34	3557	59	3045
9	5326	35	3529	60	3030
10	5169	36	3501	61	3015
11	5027	37	3474	62	3000
12	4898	38	3448	63	2985
13	4781	39	3423	64	2971
14	4675	40	3399	65	2957
15	4579	41	3376	66	2943
16	4492	42	3354	67	2929
17	4413	43	3333	68	2915
18	4340	44	3313	69	2901
19	4272	45	3293	70	2887
20	4208	46	3274	71	2874
21	4146	47	3255	72	2861
22	4087	48	3236	73	2848
23	4030	49	3218	74	2835
24	3974	50	3200	75	2822
25	3920	51	3182	76	2809
26	3867	52	3164	77	2796
27	3815	53	3146	78	2783
28	3764	54	3128	79	2771
29	3714	55	3111	80	2759

MAXIMUM PERMIT WEIGHT FORMULAS

$$W = T / (L + 4)$$

- “W” - The value of the equivalent distributed load expressed in pounds per linear foot.
- “T” - The sum of the axle loads or equivalent axle loads of any group of two or more axles expressed in pounds. Any combination of axle loads may be considered as a group, up to the total number of axles for the unit.
- “L” - The length between axles, expressed in feet and measured to the nearest inch, from the center of the first axle to the center of last axle in the axle group, series of groups, or total axles for the unit.

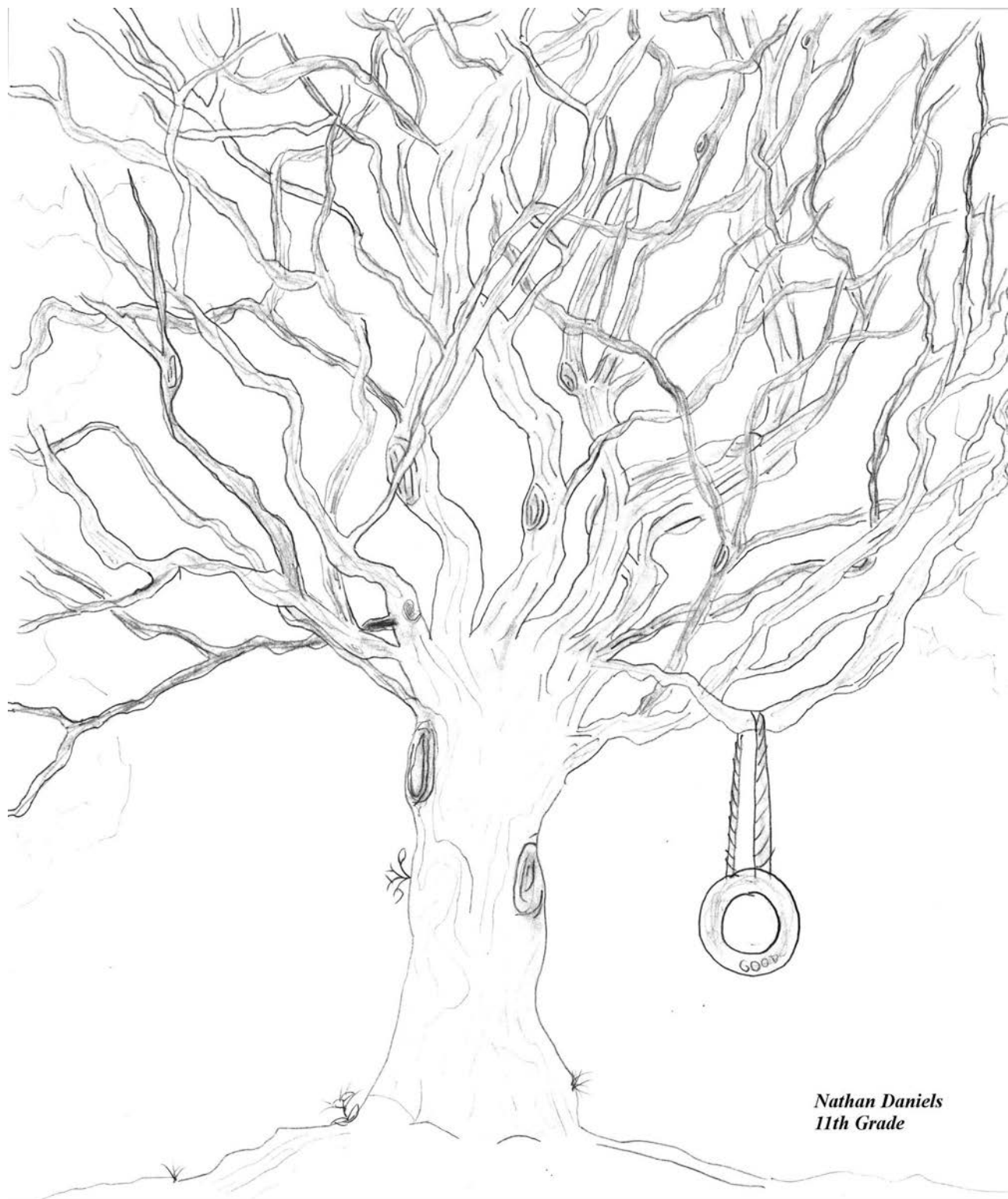
A unit with axle groups composed of various numbers of tires per axle or with axle groups with a gauge distance greater than 6.0 feet on each axle may have additional reduction factors applied to each axle before summing “T.” The revised equivalent axle load is calculated by the following formula.

$$A = (RS)(\text{THE AXLE LOAD})$$

- “A” - Equivalent axle load for axles with gauge greater than 6.0 feet and/or more than four tires.
- “R” - A reduction factor for a unit with a gauge distance greater than 6.0 feet, calculated by the following formula.

$$R = (6.0 + G) / (2 G)$$

- “G” - The gauge distance, expressed in feet and measured to the nearest inch, from the center of the outside dual wheels on one side of the axle to the center of the outside dual wheels on the opposite side of the axle. The gauge distance of an axle equipped with two tires per axle must be measured to the nearest inch from center of tire to center of opposite tire.
- “S” - A reduction factor based on the number of tires per axle.
 - S = 1.0 for axles with four or fewer tires, and
 - S = 0.96 for axles with eight tires.



Nathan Daniels
11th Grade

Texas Department of Agriculture

Request for Proposals: 2015 Specialty Crop Block Grant Program

The Texas Department of Agriculture (TDA) is accepting proposals for the Specialty Crop Block Grant Program (Program). The Program is designed to solely enhance the competitiveness of specialty crops. Projects must demonstrate a positive measurable impact on the specialty crop industry.

The SCBGP is authorized under section 101 of the Specialty Crops Competitiveness Act of 2004 (7 U.S.C. 1621 note) and amended under section 10010 of the Agricultural Act of 2014, Public Law 113-79 (the Farm Bill). SCBGP is currently implemented under 7 CFR Part 1291 (published March 27, 2009; 74 FR 13313).

Eligibility.

Responses will **only** be accepted from producer, industry or community-based organizations involved with, or that promote specialty crops.

Projects must demonstrate that they enhance the competitiveness of Texas' specialty crop industry.

Project funds may only be used for activities benefiting specialty crops.

Projects must benefit more than one individual, institution or organization. Grant funds will not be awarded for projects that directly benefit or provide a profit to a single organization, institution or individual.

Applications will not be accepted where the primary applicant is an educational institution.

Producer, industry or community-based organizations involved with specialty crops may partner with an educational institution; however, the primary applicant must be a producer, industry or community-based organizations involved with specialty crops.

Funding Parameters, Award Information and Notification.

Selected projects will receive funding on a **cost reimbursement basis**. Funds will not be advanced to grantees. Selected applicants must have the financial capacity to pay all costs up-front.

Projects may be funded at varying levels depending on the nature of the project.

Projects must demonstrate strong justification for the requested budget, as well as, the potential for providing significant demonstrable benefits to Texas specialty crops.

Where more than one (1) proposal on an eligible research topic is acceptable for funding, TDA may request cooperation between grantees or revision/adjustment to a proposal in order to avoid duplication and to realize the maximum benefit to the state.

TDA reserves the right to accept or reject any or all proposals submitted. TDA is under no legal or other obligation to execute a grant on the basis of a response submitted to this RFP. TDA shall not pay for any costs incurred by any entity in responding to this RFP.

The public announcements and written notifications will be made to all applicants and their affiliated agencies, organizations, or institutions. Favorable decisions will indicate the amount of award, duration of the grant, and any special conditions associated with the project.

Submitting an Application.

Applications are currently being accepted, and must be submitted on the form provided by TDA by the submission deadline. Application form and guidance documents are available on TDA's website at www.TexasAgriculture.gov.

Applications must be complete and have all required documentation to be considered. Applications without required documentation will be returned. TDA reserves the right to request additional information or documentation to determine eligibility. Applications must be signed by the applicant, and include all required supporting documentation.

Deadline for Submission of Responses.

The complete application packet including the proposal with signatures must be RECEIVED by **5:00 p.m. (Central Time) on Tuesday, March 24, 2015**. It is the applicant's responsibility to submit all materials necessary for evaluation early enough to ensure timely delivery. *Late or incomplete proposals will not be accepted. Applicants may not supplement or amend the application after the deadline.*

In addition, the narrative **must** be submitted via email to Grants@TexasAgriculture.gov in a format which allows the text copy function to be operational, such as Microsoft Word (.doc, .docx) or Adobe Acrobat (.pdf).

The preferred method of submission is electronic. Complete proposal narrative and application with signature must be submitted to:

Contact Information.

Email:

Grants@TexasAgriculture.gov

Physical Address:

Texas Department of Agriculture
Trade & Business Development - Grants Office
1700 North Congress Avenue
Austin, Texas 78701

Mailing Address:

Texas Department of Agriculture
Trade & Business Development - Grants Office
P.O. Box 12847
Austin, Texas 78711

For questions regarding submission of the proposal and TDA documentation requirements, please contact Ms. Mindy Weth Fryer, Grants Specialist, at (512) 463-6908 or by email at Grants@TexasAgriculture.gov.

Texas Public Information Act. Once submitted, all applications shall be deemed to be the property of the TDA and are subject to the Texas Public Information Act, Texas Government Code, Chapter 552.

TRD-201500635

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Filed: February 24, 2015

◆ ◆ ◆
Alamo Area Metropolitan Planning Organization

Request for Proposal - Regional Multimodal Study for Managed and/or Transit Priority Lanes

The Alamo Area Metropolitan Planning Organization (MPO) is seeking proposals from qualified firms to conduct the Regional Multimodal Study for Managed and/or Transit Priority Lanes.

A copy of the Request for Proposals (RFP) may be requested by downloading the RFP and attachments from the MPO's website at www.alamoareampo.org or calling Jeanne Geiger, Deputy Director, at (210) 227-8651. Anyone wishing to submit a proposal must do so by 12:00 p.m. (CT), Wednesday, April 1, 2015, at the MPO office to:

Isidro "Sid" Martinez

Director

Alamo Area MPO

825 S. St. Mary's Street

San Antonio, Texas 78205

Funding for this study, in the amount of \$300,000, is contingent upon the availability of Federal transportation planning funds.

TRD-201500547

Jeanne Geiger

Deputy Director

Alamo Area Metropolitan Planning Organization

Filed: February 20, 2015

◆ ◆ ◆
Office of the Attorney General

Texas Water Code and Texas Health and Safety Code Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code. 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 Code.

Case Title and Court: *Harris County, Texas, and the State of Texas v. The Kroger Co.*, Cause No. 2014-37673; in the 189th Judicial District Court, Harris County, Texas.

Nature of Defendant's Operations: Defendant The Kroger Co. is a publicly held company head-quartered in Ohio and does business in Harris County, Texas. It owns and operates two commercial grocery stores in an unincorporated area in Harris County - store #107 located at 5235 Aldine Mail Route, and store #600 located at 9325 Katy Freeway. Defendant has allegedly violated the Texas Solid Waste Disposal Act

and the Texas Clean Air Act by allowing foul odors to emanate from dumpsters and compactors located behind the two grocery stores on several days in 2012. Specifically, Defendant allegedly failed to collect putrescible solid waste at least once weekly; to store food wastes in closed container that is leak proof; to maintain reusable containers in a clean condition; and to maintain its stationery compactors in a way that does not create a public nuisance through material loss or spillage, odor, vector breeding or harborage.

Proposed Agreed Final Judgment: The proposed Agreed Final Judgment assesses against Defendant civil penalties in the amount of \$36,000, to be equally divided between Harris County and the State; and attorney's fees in the amount of \$2,000, to be equally divided between Harris County and 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 Amy Davis, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, MC 066, Austin, Texas 78711-2548, phone (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-201500624

Amanda Crawford

General Counsel

Office of the Attorney General

Filed: February 23, 2015

◆ ◆ ◆
Brazos G Regional Water Planning Group

Notice of Application for Regional Water Planning Grant Funding

Notice is hereby given that the Brazos River Authority will submit by 12:00 p.m. Tuesday, March 3, 2015, a grant application for financial assistance to the Texas Water Development Board (TWDB), on behalf of Region G, to carry out planning activities to develop the 2021 Region G Regional Water Plan as part of the state's Fifth Cycle (2017 - 2021) of Regional Water Planning.

The Brazos G Regional Water Planning Group (Region G) includes the following counties:

Bell, Bosque, Brazos, Burleson, Callahan, Comanche, Coryell, Eastland, Erath, Falls, Fisher, Grimes, Hamilton, Haskell, Hill, Hood, Johnson, Jones, Kent, Knox, Lampasas, Lee, Limestone, McLennan, Milam, Nolan, Palo Pinto, Robertson, Shackelford, Somervell, Stephens, Stonewall, Taylor, Throckmorton, Washington, Williamson, and Young

Copies of the grant application may be obtained from the Brazos River Authority when it becomes available or online at www.brazos.org. Written comments from the public regarding the grant application must be submitted to the Brazos River Authority and TWDB by no later than March 24, 2015. Comments can be submitted to the Brazos River Authority and the TWDB as follows:

Trey Buzbee

Administrative Agent for Region G

Brazos River Authority

P.O. Box 7555

Waco, Texas 76714

Kevin Patteson

Executive Administrator
Texas Water Development Board
P.O. Box 13231
Austin, Texas 78711-3231

For additional information, please contact Trey Buzbee, Brazos River Authority, c/o Region G, P.O. Box 7555 Waco, Texas 76714, (254) 761-3168, Trey.Buzbee@brazos.org, or David Carter, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711, (512) 463-7847.

TRD-201500508
Trey Buzbee
Administrative Agent
Brazos G Regional Water Planning Group
Filed: February 18, 2015

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Cancer Prevention and Research Institute of Texas

Request for Applications R-16-RTA-1

The Cancer Prevention and Research Institute of Texas (CPRIT) seeks applications from eligible organizations for the integrated institutional research training programs to support promising individuals who seek specialized training in the area of cancer research. The goals of the Research Training Awards (RTA) are to attract outstanding predoctoral (Ph.D. or M.D./Ph.D.) and postdoctoral trainees committed to pursuing a career in basic, population-based, translational, or clinical cancer research; to expand the skills and expertise of trainees to promote the next generation of investigators and leaders in cancer research; to position most trainees for independent research careers; and to support the development of high-quality, innovative, and creative research that, if successful, could provide the basis for a significant impact on cancer prevention, detection, and/or treatment. Successful applicant institutions are expected to provide trainees with broad access to research opportunities across disciplinary and departmental lines and to maintain high standards for intellectual rigor and creativity. Institutions may submit only one new or renewal application under this RFA during this funding cycle. An exception will be made for institution submitting applications for cancer prevention training; in this case, institutions may submit one prevention training program application and one additional application in another aspect of cancer research

The maximum amount that may be requested by applicants is \$800,000 in total costs per year for up to five years.

Applications will be accepted beginning at 7:00 a.m. Central Time on Friday, March 20, 2015, through 3:00 p.m. Central Time on Wednesday, May 20, 2015. Only applications submitted via the CPRIT Application Receipt System (www.CPRITGrants.org) portal will be considered eligible for evaluation. CPRIT will not accept late applications or applications that are not submitted via the portal. A detailed Request for Applications (RFA) is available online at www.cprit.state.tx.us.

TRD-201500654
Heidi McConnell
Chief Operating Officer
Cancer Prevention and Research Institute of Texas
Filed: February 25, 2015

◆ ◆ ◆
Comptroller of Public Accounts

**Certification of the Average Closing Price of Gas and Oil -
January 2015**

The Comptroller of Public Accounts, administering agency for the collection of the Crude Oil Production Tax, has determined, as required by Tax Code, §202.058, that the average taxable price of crude oil for reporting period January 2015 is \$54.41 per barrel for the three-month period beginning on October 1, 2014, and ending December 31, 2014. Therefore, pursuant to Tax Code, §202.058, crude oil produced during the month of January 2015 from a qualified low-producing oil lease is not eligible for a credit on the crude oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined, as required by Tax Code, §201.059, that the average taxable price of gas for reporting period January 2015 is \$3.02 per mcf for the three-month period beginning on October 1, 2014, and ending December 31, 2014. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of January 2015 from a qualified low-producing well is eligible for a 25% credit on the natural gas production tax imposed by Tax Code, Chapter 201.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of West Texas Intermediate crude oil for the month of January 2015 is \$47.33 per barrel. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall not exclude total revenue received from oil produced during the month of January 2015 from a qualified low-producing oil well.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of gas for the month of January 2015 is \$2.93 per MMBtu. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall exclude total revenue received from gas produced during the month of January 2015 from a qualified low-producing gas well.

TRD-201500628
Lita Gonzalez
General Counsel
Comptroller of Public Accounts
Filed: February 24, 2015

◆ ◆ ◆
**Notice of Public Hearing on Proposed Rule Amendment
Concerning the Texas Economic Development Act Agreement
Form**

The Comptroller of Public Accounts will conduct a public hearing to receive comments from interested persons concerning proposed changes to Form 50-826 (formerly form 50-286), the Texas Economic Development Act Agreement, which is proposed to be adopted by reference pursuant to 34 TAC §9.1052(a)(6) (relating to Forms).

The hearing is scheduled for March 13, 2015, at 10:00 a.m., in Room 1-100 of the William B Travis Building, 1701 North Congress Ave., Austin, Texas 78701.

Any interested person may appear and offer comments or statements, either orally or in writing. Organizations, associations, or groups are encouraged to present their commonly held views or similar comments through a representative member where possible.

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services should contact Brenda Perez at brenda.perez@cpa.texas.gov. Requests should be made as far in advance as possible so that appropriate arrangements can be made.

TRD-201500638

◆ ◆ ◆
Office of the 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, 303.008, 303.009, 304.003, and 346.101, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/02/15 - 03/08/15 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/02/15 - 03/08/15 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005 and §303.009³ for the period of 02/01/15 - 02/28/15 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The monthly ceiling as prescribed by §303.005 and §303.009 for the period of 02/01/15 - 02/28/15 is 18% for Commercial over \$250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 04/01/15 - 06/30/15 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 04/01/15 - 06/30/15 is 18% for Commercial over \$250,000.

The retail credit card quarterly rate as prescribed by §303.009¹ for the period of 04/01/15 - 06/30/15 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The lender credit card quarterly rate as prescribed by §346.101, Texas Finance Code¹ for the period of 04/01/15 - 06/30/15 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The standard annual rate as prescribed by §303.008 and §303.009⁴ for the period of 04/01/15 - 06/30/15 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The standard annual rate as prescribed by §303.008 and §303.009 for the period of 04/01/15 - 06/30/15 is 18% for Commercial over \$250,000.

The retail credit card annual rate as prescribed by §303.009¹ for the period of 04/01/15 - 06/30/15 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 03/01/15 - 03/31/15 is 5.00% for Consumer/Agricultural/Commercial credit through \$250,000.

The judgment ceiling as prescribed §304.003 for the period of 03/01/15 - 03/31/15 is 5.00% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

³ For variable rate commercial transactions only.

⁴ Only for open-end credit as defined in §301.002(14), Texas Finance Code.

TRD-201500633

◆ ◆ ◆
East Texas Regional Water Planning Group (Region I)

City of Nacogdoches Notice of Application 5th Cycle Regional Water Planning

Notice is hereby given that the City of Nacogdoches will submit by 12:00 p.m. March 3, 2015, a grant application for financial assistance to the Texas Water Development Board (TWDB) on behalf of Region I, to carry out planning activities to develop the 2021 (Region I) East Texas Regional Water Plan as part of the state's Fifth Cycle (2017-2021) of Regional Water Planning.

The East Texas Regional Water Planning Group (Region I) includes the following counties: Anderson, Angelina, Cherokee, Hardin, Henderson, Houston, Jasper, Jefferson, Nacogdoches, Newton, Orange, Panola, Polk, Rusk, Sabine, San Augustine, Shelby, Smith, Trinity and Tyler counties.

Notice is hereby given that written comments from the public regarding the grant application must be submitted to City of Nacogdoches and TWDB by no later than April 6, 2015. Copies of the grant application may be obtained from City of Nacogdoches or online at www.etexwaterplan.org. Comments can be submitted to the City of Nacogdoches and the TWDB as follows:

Lila Fuller, Administrative Agent for Region I

City of Nacogdoches
202 E. Pilar, RM 315
Nacogdoches TX 75961

Kevin Patteson, Executive Administrator

Texas Water Development Board
P.O. Box 13231
Austin TX 78711-3231

For additional information, please contact Region I c/o Lila Fuller, City of Nacogdoches, 202 E Pilar, RM 315, Nacogdoches TX 75961, (936) 559-2504, lfuller@ci.nacogdoches.tx.us, or David Carter, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711, (512) 463-7847.

TRD-201500562
Lila Fuller
Administrative Agent
East Texas Regional Water Planning Group (Region I)
Filed: February 20, 2015

◆ ◆ ◆
Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs.

TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the Texas Register no later than the 30th day before the date on which the public comment period closes, which in this case is April 6, 2015. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on April 6, 2015. 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: Atco-Valley Plaza, LLC; DOCKET NUMBER: 2014-1423-IWD-E; IDENTIFIER: RN102182474; LOCATION: Houston, Harris County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: TWC, §26.121(a)(1) and 30 TAC §305.65 and §305.125(2), by failing to maintain authorization to treat and dispose of wastewater and stormwater via irrigation and evaporation; and TWC, §5.702 and Texas Health and Safety Code, §361.606, by failing to pay Voluntary Cleanup Program fees, including late fees, for the TCEQ Financial Administration Account Number 0902721 for Fiscal Years 2013 and 2014; PENALTY: \$7,875; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Cabot Norit Americas, Incorporated; DOCKET NUMBER: 2014-1579-AIR-E; IDENTIFIER: RN102609724; LOCATION: Marshall, Harrison County; TYPE OF FACILITY: activated carbon manufacturing plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), Texas Health and Safety Code, §382.085(b), Federal Operating Permit Number O3335, Special Terms and Conditions Number 8, and New Source Review Permit Number 56552, Special Conditions Number 9, by failing to maintain the minimum pH level for Kiln 2, 3, and 4; PENALTY: \$82,507; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(3) COMPANY: CALLAHAN COUNTY WATER SUPPLY CORPORATION; DOCKET NUMBER: 2014-1597-PWS-E; IDENTIFIER: RN101206522; LOCATION: Clyde, Callahan County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.060 milligrams per liter for haloacetic acids, based on the locational running annual average; PENALTY: \$213; ENFORCEMENT COORDINATOR: James Fisher, (512) 239-2537; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(4) COMPANY: CIRCLE K STORES INCORPORATED dba Circle K 2706111; DOCKET NUMBER: 2014-1688-PST-E; IDENTIFIER:

RN100700269; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; PENALTY: \$7,500; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: City of Asherton; DOCKET NUMBER: 2014-1874-PWS-E; IDENTIFIER: RN101211647; LOCATION: Asherton, Dimmit County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(e), by failing to provide the results of annual nitrate sampling to the executive director for the 2013 monitoring period; 30 TAC §290.109(f)(3) and Texas Health and Safety Code, §341.031(a), by failing to comply with the maximum contaminant level for total coliform for the month of November 2014; 30 TAC §290.117(c)(2)(D) and (i)(1), by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed by an approved laboratory, and provide the results to the executive director for the January 1, 2003 - December 31, 2011 monitoring period; and 30 TAC §290.117(c)(2)(B) and (i)(1), by failing to collect lead and copper tap samples at the required ten samples, have the samples analyzed at an approved laboratory, and submit the results to the executive director for the 2013 and 2014 monitoring periods; PENALTY: \$747; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(6) COMPANY: City of Camp Wood; DOCKET NUMBER: 2014-1549-PWS-E; IDENTIFIER: RN101428381; LOCATION: near Camp Wood, Real County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(e)(6)(A), by failing to employ a Class C or higher licensed individual at a surface water system serving no more than 1,000 connections to operate the water system while a part-time operator with a Class B or higher license is absent from the plant; 30 TAC §290.44(h)(4), by failing to have all backflow prevention assemblies tested on an annual basis by a recognized backflow assembly tester and certify that they are operating within specifications; 30 TAC §290.46(s)(1), by failing to calibrate the facility's flow measuring devices at least once every 12 months; 30 TAC §290.121(a) and (b), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; 30 TAC §290.46(s)(2)(B)(i), by failing to calibrate the facility's benchtop turbidimeter with primary standards at least once every 90 days; and 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of the manual disinfectant residual analyzer at least once every 90 days using chlorine solutions of known concentrations; PENALTY: \$1,075; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(7) COMPANY: City of Glen Rose; DOCKET NUMBER: 2014-1717-PWS-E; IDENTIFIER: RN101179075; LOCATION: Glen Rose, Somervell County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; and 30 TAC §290.117(i)(6) and (j), by failing to timely mail consumer notification of lead tap water monitoring results to persons served at the locations that were sampled and failed to timely submit to the TCEQ a copy of the consumer notification and certification that the

consumer notification has been distributed to the persons served at the locations in a manner consistent with TCEQ requirements for the January 1, 2011 - December 31, 2013 monitoring period; PENALTY: \$740; ENFORCEMENT COORDINATOR: Katy Montgomery, (210) 403-4016; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: City of Gregory; DOCKET NUMBER: 2014-1610-PWS-E; IDENTIFIER: RN101384956; LOCATION: Gregory, San Patricio County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.109(f)(3) and §290.122(b)(2)(A) and (f) and Texas Health and Safety Code, §341.031(a), by failing to comply with the maximum contaminant level (MCL) for total coliform during the months of August and September 2014 and failed to provide public notification and submit a copy of the public notification to the executive director regarding the failure to comply with the MCL for total coliform for the month of August 2014; and 30 TAC §290.117(i)(6) and (j), by failing to mail consumer notification of lead tap water monitoring results to persons served at the locations that were sampled and failed to submit to the TCEQ a copy of the consumer notification and certification that the consumer notification has been distributed to the persons served at the locations in a manner consistent with TCEQ requirements for the 2013 monitoring period; PENALTY: \$525; ENFORCEMENT COORDINATOR: Katie Hargrove, (512) 239-2569; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(9) COMPANY: City of Savoy; DOCKET NUMBER: 2014-0891-MWD-E; IDENTIFIER: RN102921988; LOCATION: Savoy, Fannin County; TYPE OF FACILITY: domestic wastewater treatment plant; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0014273001 Final Effluent Limitations and Monitoring Requirements Numbers 1 and 6, by failing to comply with permitted effluent limits; PENALTY: \$70,000; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: COLUMBIA KWIK STOP LLC dba T and M Beer and Wine; DOCKET NUMBER: 2014-1793-PST-E; IDENTIFIER: RN102242807; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: \$3,692; ENFORCEMENT COORDINATOR: John Duncan, (512) 239-2720; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: Ellinger Materials, LLC; DOCKET NUMBER: 2014-1538-WQ-E; IDENTIFIER: RN107732570; LOCATION: Columbus, Colorado County; TYPE OF FACILITY: aggregate production operation and sand mining; RULES VIOLATED: 30 TAC §342.25(a), by failing to register the site as an aggregate production operation by October 31, 2012; 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 industrial activities under Texas Pollutant Discharge Elimination System General Permit Number TXR050000; and TWC, §26.121(a)(1), by failing to prevent an unauthorized discharge of solids into or adjacent to water in the state; PENALTY: \$19,500; ENFORCEMENT COORDINATOR: Katelyn Samples, (512) 239-4728; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: Knapp Chevrolet, Incorporated; DOCKET NUMBER: 2014-1782-PST-E; IDENTIFIER: RN100546597; LOCATION: Houston, Harris County; TYPE OF FACILITY: fleet refueling facility;

RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: \$3,514; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2520; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: LAKE LIVINGSTON HEIGHTS WATER SUPPLY CORPORATION; DOCKET NUMBER: 2014-1763-PWS-E; IDENTIFIER: RN101455103; LOCATION: Huntsville, Walker County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.080 milligrams per liter (mg/L) for total trihalomethanes (TTHM), based on the locational running annual average concentration; and 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by failing to comply with the MCL of 0.080 mg/L for TTHM, based on the running annual average concentration; PENALTY: \$315; ENFORCEMENT COORDINATOR: Larry Butler, (512) 239-2543; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: Mark Stewart; DOCKET NUMBER: 2014-1172-PWS-E; IDENTIFIER: RN101194447; LOCATION: Atlanta, Cass County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(q)(1), by failing to issue a boil water notification to the customers of the facility within 24 hours of a low chlorine residual using the prescribed notification format; 30 TAC §290.42(m), by failing to provide the facility with an intruder-resistant fence with a lockable gate that remains locked during periods of darkness and when the facility is unattended; 30 TAC §290.46(t), by failing to post a legible sign at the facility's production, treatment and storage facilities that contains the name of the facility and emergency telephone numbers where a responsible official can be contacted; and 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay public health service fees, including associated late fees, for TCEQ Financial Administration Account Number 90340019 for Fiscal Years 2007 - 2014; PENALTY: \$357; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(15) COMPANY: Maverick County; DOCKET NUMBER: 2014-1592-PWS-E; IDENTIFIER: RN101253565; LOCATION: Eagle Pass, Maverick County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.060 milligrams per liter for total haloacetic acids based on the locational running annual average; 30 TAC §290.117(c)(2)(D) and (i)(1), by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed by an approved laboratory, and provide the results to the executive director for the January 1, 2004 - December 31, 2012 monitoring period; 30 TAC §290.117(c)(2)(B) and (i)(1), by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed by an approved laboratory, and provide the results to the executive director for the January 1, 2013 - December 31, 2013 monitoring period; 30 TAC §290.122(b)(2)(A), (c)(2)(A), and (f), by failing to provide public notification and submit a copy of the public notification to the executive director regarding the failure to timely submit the results of the synthetic organic chemical contaminants, volatile organic chemical contaminants, metals, minerals, and nitrate sampling for the 2012 monitoring period and regarding the treatment technique violation in February 2014; 30 TAC §290.114(a)(4)(A) and (B), by failing to submit a chlorine dioxide monthly operating report and the results of monthly chlorite monitoring in the distribution system by the tenth day of the month following the end of the

reporting period for the months of July and August 2014; 30 TAC §290.110(e)(2) and (e)(5) and §290.111(h)(2) and (12), by failing to submit a surface water monthly operating report with the required turbidity and disinfectant residual data to the executive director by the tenth day of the month following the end of the reporting period for July 2014; and 30 TAC §312.9 and TWC, §5.702, by failing to pay Waste Management Sludge Haulers fee for Financial Administration Division Account Number 0803551H for fiscal year 2014; PENALTY: \$1,015; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 425-6010.

(16) COMPANY: Montgomery Materials, LLC; DOCKET NUMBER: 2014-1723-AIR-E; IDENTIFIER: RN107277428; LOCATION: Montgomery, Montgomery County; TYPE OF FACILITY: soil mining operation; RULES VIOLATED: 30 TAC §101.4 and Texas Health and Safety Code (THSC), §382.085(a) and (b), by failing to prevent nuisance dust emissions; and 30 TAC §111.201 and THSC, §382.085(b), by failing caused, suffered, allowed, or permitted outdoor burning within the state of Texas; PENALTY: \$2,188; ENFORCEMENT COORDINATOR: Rachel Bekowies, (512) 239-2608; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(17) COMPANY: NH & SS Enterprises LLC dba D & D Store; DOCKET NUMBER: 2014-1872-PST-E; IDENTIFIER: RN102263712; LOCATION: Glen Rose, Somervell County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; PENALTY: \$3,750; ENFORCEMENT COORDINATOR: Tiffany Maurer, (512) 239-2696; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: PORT ALTO HOMEOWNERS' ASSOCIATION DISTRICT #1, INCORPORATED; DOCKET NUMBER: 2014-1776-PWS-E; IDENTIFIER: RN101212132; LOCATION: Port Lavaca, Calhoun County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st of each year and failed to submit to the TCEQ by July 1st of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data for the year 2010, 2011 and 2012; 30 TAC §290.272 and §290.274(a), by failing to meet the adequacy, availability, and/or content requirements for the CCR for the year of 2013; 30 TAC §290.115(e), by failing to provide the results of Stage 2 Disinfectant Byproducts sampling to the executive director for the first and second quarters of 2014; 30 TAC §290.117(i)(6) and (j), by failing to mail consumer notification of lead tap water monitoring results to persons served at the locations that were sampled and failed to submit to the TCEQ a copy of the consumer notification and certification that the consumer notification has been distributed to the persons served at the locations in a manner consistent with TCEQ requirements for the January 1, 2013 - December 31, 2013 monitoring periods; and 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the executive director regarding the failure to collect groundwater source *Escherichia coli* samples from each active well following a coliform positive sample result for the months of July 2011 and February 2013; PENALTY: \$650; ENFORCEMENT COORDINATOR: Katy Montgomery, (210) 403-4016; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(19) COMPANY: SHENOOR Enterprise, Incorporated dba Rochelle Fuel Center; DOCKET NUMBER: 2014-1666-PST-E; IDENTIFIER: RN101563872; LOCATION: Irving, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Tiffany Maurer, (512) 239-2696; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(20) COMPANY: SOUTH TEXAS ELECTRIC COOPERATIVE, INCORPORATED; DOCKET NUMBER: 2015-0007-PWS-E; IDENTIFIER: RN100222652; LOCATION: Nursery, Victoria County; TYPE OF FACILITY: electrical cooperative; 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 for review and approval prior to the establishment of a new public water supply system; PENALTY: \$54; ENFORCEMENT COORDINATOR: Katy Montgomery, (210) 403-4016; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(21) COMPANY: Stone Oak Hidden Canyon, L.L.C.; DOCKET NUMBER: 2014-1128-EAQ-E; IDENTIFIER: RN102891918; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: single family residential project; RULES VIOLATED: 30 TAC §213.5(f)(2) and Water Pollution Abatement Plan Number 13-13010401 Standard Conditions Number 10, by failing to suspend regulated activities in the area of a sensitive feature after discovery; and 30 TAC §213.4(k) and §213.5(c)(3)(L), and Water Pollution Abatement Plan Number 13-13010401 Standard Conditions Number 6, by failing to install temporary best management practices and measures; PENALTY: \$15,750; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2520; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(22) COMPANY: Union Carbide Corporation; DOCKET NUMBER: 2014-1455-AIR-E; IDENTIFIER: RN100219351; LOCATION: Texas City, Galveston County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), Texas Health and Safety Code, §382.085(b), New Source Review Permit Number 2468, Special Conditions Number 1, and Federal Operating Permit Number O1920, General Terms and Conditions and Special Terms and Conditions Number 13, by failing to comply with the maximum allowable emission rates for Tank 9001C, Tank 9004C, and Tank 9106; PENALTY: \$67,600; Supplemental Environmental Project offset amount of \$24,040 applied to Houston-Galveston Area Council - AERCO; ENFORCEMENT COORDINATOR: Farhad Abbaszadeh, (512) 239-0779; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-201500634

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: February 24, 2015



Enforcement Orders

An agreed order was entered regarding Richard Rudnick, Jack Sinton, and Dennis Ray Hammett, Docket No. 2011-1833-IHW-E on February 12, 2015 assessing \$5,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney at (512) 239-3400, Texas

Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ricky Ray dba Rayco Roll Off and Demolition Recycling Yard, Docket No. 2012-1090-MSW-E on February 12, 2015 assessing \$2,675 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elizabeth Carroll Harkrider, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pat Weber dba Weber's Chevron, Docket No. 2013-0726-PST-E on February 12, 2015 assessing \$5,725 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michael Vitris, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sugar Land Alliance Enterprises, Inc. dba Sunmart 451 and Baber Mohammed dba Sunmart 451, Docket No. 2013-1332-PST-E on February 12, 2015 assessing \$1,660 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elizabeth Carroll Harkrider, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Petrus Adrianus Boekhorst, Docket No. 2013-1859-AGR-E on February 12, 2015 assessing \$4,751 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Sallans, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Carol Ann Norra dba Carol Norra Mobile Home Park, Docket No. 2013-2064-UTL-E on February 12, 2015 assessing \$2,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven M. Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ross Ridge Sand Company, L.P., Docket No. 2014-0035-MLM-E on February 12, 2015 assessing \$5,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Sallans, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding N & H Enterprises And Son Inc. dba Super Stop 7, Docket No. 2014-0367-PST-E on February 12, 2015 assessing \$7,347 in administrative penalties with \$3,747 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Vitris, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Daniel H. Dake and Kathy Lott dba Twin Lakes Water, Docket No. 2014-0462-PWS-E on February 12, 2015 assessing \$2,885 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding C & S Petroleum, Inc. dba C & S Mini Mart, Docket No. 2014-0695-PST-E on February 12, 2015 assessing \$5,813 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laura Evans, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201500640
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 25, 2015

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Notice of Public Comment Period and Hearing on Draft Oil and Gas General Operating Permits

The Texas Commission on Environmental Quality (TCEQ) is providing an opportunity for public comment and a notice and comment hearing (hearing) on the draft Oil and Gas General Operating Permits (GOPs) Numbers 511, 512, 513, and 514. In addition to renewal of the GOPs, the draft GOPs contain revisions based on recent federal and state rule changes, which include updates to the requirements tables; the addition of new requirements tables; and updates to the terms. This renewal also corrects typographical errors, and updates language for administrative preferences.

The draft GOPs are subject to a 30-day comment period. During the comment period, any person may submit written comments on the draft GOPs. A hearing will be held in Austin on April 6, 2015, at 10:00 a.m. in Building E, Room 201S of the TCEQ offices, located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, TCEQ staff members will be available to discuss the draft GOPs 30 minutes prior to the hearing and will be available to answer questions after the hearing.

Copies of the draft GOPs may be obtained from the TCEQ website at https://www.tceq.texas.gov/permitting/air/nav/titlev_news.html or by contacting the TCEQ Office of Air, Air Permits Division at (512) 239-1250. Written comments may be mailed to Ms. Tasha Burns, Texas Commission on Environmental Quality, Office of Air, Air Permits Division, MC 163, P.O. Box 13087, Austin, Texas 78711-3087 or emailed to tasha.burns@tceq.texas.gov. All comments should reference the appropriate draft Oil and Gas GOP number. Comments must be received by 5:00 p.m. on April 7, 2015. For further information, contact Ms. Burns at (512) 239-5868.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact the TCEQ at (512) 239-4000. Requests should be made as far in advance as possible.

TRD-201500623
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: February 23, 2015

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Request for Preliminary Comments for Review and Revision
of the Texas Surface Water Quality Standards

The Texas Commission on Environmental Quality (TCEQ) is requesting preliminary written comments on the Texas Surface Water Quality Standards (30 Texas Administrative Code Chapter 307). This request for written comments is in preparation of review and revision as needed of the Texas Surface Water Quality Standards.

The Texas Surface Water Quality Standards establish instream water quality requirements for Texas streams, rivers, lakes, estuaries, and other water bodies. The TCEQ is directed to establish water quality standards in Texas Water Code, §26.023. The Federal Clean Water Act, §303(c), requires that states publicly review and revise their water quality standards as needed every three years. Revisions are made to: (1) incorporate new information on potential pollutants, (2) include additional data about water quality conditions in specific water bodies, (3) address new state and federal regulatory requirements, and (4) accommodate public concerns and public goals for water quality in the state.

The TCEQ will review and consider preliminary comments during the development of draft proposals for revisions of the Texas Surface Water Quality Standards. Written responses to these preliminary comments will not be provided. Any proposed revisions whether resulting from these comments or not will be subject to a formal public hearing and a public comment period prior to adoption.

Written comments on the Texas Surface Water Quality Standards may be submitted to Ms. Debbie Miller, MC-234, Water Quality Planning Division, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4410. Electronic comments may be submitted via e-mail to standards@tceq.state.tx.us. File size restrictions may apply to comments being submitted via e-mail. All comments should reference the Texas Surface Water Quality Standards. **The preliminary comment period closes at 5:00 p.m. on April 6, 2015.**

Copies of the 2014 versions of the Texas Surface Water Quality Standards are available on the TCEQ's website at: http://www.tceq.texas.gov/permitting/water_quality/wq_assessment/standards/eq_swqs.html/.

For further information on the Texas Surface Water Quality Standards, please contact Ms. Miller, Water Quality Planning Division, at (512) 239-1703 or via e-mail to standards@tceq.texas.gov.

TRD-201500523
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: February 20, 2015

◆ ◆ ◆
Texas Facilities Commission

Request for Proposals #303-6-20489

The Texas Facilities Commission (TFC), on behalf of the Comptroller of Public Accounts (CPA), announces the issuance of Request for Proposals (RFP) #303-6-20489. TFC seeks a five (5) or ten (10) year lease of approximately 2,889 square feet of office space in City/County, Texas.

The deadline for questions is March 16, 2015 and the deadline for proposals is March 25, 2015 at 3:00 p.m. The award date is April 15, 2015. TFC reserves the right to accept or reject any or all proposals submit-

ted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=115921.

TRD-201500625
Kay Molina
General Counsel
Texas Facilities Commission
Filed: February 23, 2015

◆ ◆ ◆
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(s) during the period of December 22, 2014 through February 23, 2015. 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 Texas General Land Office web site. The notice was published on the web site on Friday, February 27, 2015. The public comment period for this project will close at 5:00 p.m. on Monday, March 30, 2015.

FEDERAL AGENCY ACTIONS:

Applicant: Endeavour Marina

Location: The project site is located in Clear Lake, at 3101 NASA Parkway, in Seabrook, Harris County, Texas. The project can be located on the United States Geological Survey (U.S.G.S.) quadrangle map titled League City, Texas.

LATITUDE & LONGITUDE (NAD 83):

Latitude: 29.55908° North; Longitude: 95.04162° West

Project Description: The applicant is seeking After-the-Fact authorization to retain existing marina structures that deviated from permitted plans and repair, in place, approximately 428 linear feet of bulk-heading. The permitted pier alignment, as well as the as-built drawings, is shown on page 3 of 7. The piers consist of one six-foot-wide by 150-foot-long walkway leading to a 6-foot-wide by 260-foot-long T-head pier; two 12-foot-wide by 100-foot-long floating piers; an 8-foot-wide by 100-foot-long fixed pier, and a 6-foot-wide by 157-foot-long walkway leading to a 6-foot-wide by 100-foot-long T-head pier with seven finger piers to create mooring slips.

CMP Project No: 15-1286-F1

Type of Application: United States Army Corp of Engineers (USACE) permit application #SWG-2002-00355. This application will be reviewed pursuant to §10 of the Rivers and Harbors Act of 1899 and §404 of the Clean Water Act.

Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action or activity is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Land Commissioner for review.

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection may be obtained from Mr. Ray Newby, P.O. Box 12873, Austin, Texas 78711-2873 or via email at federal.consistency@glo.texas.gov. Comments should be sent to Mr. Newby at the above address or by email.

TRD-201500651

Larry L. Laine

Chief Clerk/Deputy Land Commissioner

General Land Office

Filed: February 25, 2015



Texas Health and Human Services Commission

Public Notice - Nonemergency Medical Transportation Waiver and State Plan Amendment

The Texas Health and Human Services Commission (HHSC) intends to submit to the Centers for Medicare & Medicaid Services (CMS) a request for an amendment to the Managed Transportation Organization (MTO) Nonemergency Medical Transportation (NEMT) waiver, under the authority of §1915(b) of the Social Security Act. Additionally, HHSC is submitting an amendment to the Medicaid State Plan under Title XIX of the Social Security Act. The proposed effective date for the amendments is June 1, 2015.

Waiver Amendment

Background of the 1915(b) waiver:

The MTO NEMT waiver allows MTOs to provide the full range of NEMT services to clients in their MTO Region (e.g., mass transit, mileage reimbursement, meals and lodging and demand response). Through this waiver, a managed transportation delivery model was implemented in several Texas counties in September 2014. These MTOs have the flexibility to meet clients' transportation needs through

direct delivery and subcontracting for transportation services. The waiver does not change the NEMT scope of benefits for the individuals who use this service. The waiver allows the MTOs to own their own vehicles and the State pays the MTOs per member per month capitated rate. The counties are divided into eleven MTO Regions. The waiver is in effect through August 31, 2016.

Changes proposed by this amendment:

The purpose of this amendment is to change the contractor in MTO Region 8 from an MTO that owns its own vehicles to an MTO that does not own its own vehicles. This amendment does not impact eligibility standards, methods or procedures. HHSC will remove references to these counties in the waiver. The following counties in MTO Region 8 will be impacted: Atascosa, Bandera, Bexar, Comal, Frio, Guadalupe, Karnes, Kendall, Kerr, Medina and Wilson.

State Plan Amendment (SPA)

The change described above will also be the subject of State Plan Amendment (SPA) 15-008 to cover the counties in MTO Region 8 who will be served by the MTO that does not own its own vehicles. This SPA does not have a direct impact on client eligibility, acute care services, acute care providers, or acute care provider reimbursement. Nonemergency Medical Transportation is not an acute care service. In addition, the SPA involves neither a change in eligibility for transportation services, nor a rate reduction. The State is changing only the counties covered under the State Plan for NEMT services.

HHSC requests that the waiver amendment and the state plan amendment be approved for the period beginning June 1, 2015.

To obtain copies of the proposed waiver application or the SPA, interested parties may contact Béren Dutra by mail at Texas Health and Human Services Commission, P.O. Box 13247, mail code H600, Austin, Texas 78711-3247, by phone at (512) 428-1932, by fax at (512) 424-4035 or by e-mail at beren.dutra@hhsc.state.tx.us.

TRD-201500646

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: February 25, 2015



Department of State Health Services

Licensing Actions for Radioactive Materials

LICENSING ACTIONS FOR RADIOACTIVE MATERIALS

The Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department's Radiation Safety Licensing Branch has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC) Chapter 289 for the noted action. 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 - MC 2835, PO Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

NEW LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Bremond	Major Oak Power L.L.C.	L06688	Bremond	00	01/27/15
Fort Worth	North Texas MCA L.L.C. dba Medical Center Alliance	L06687	Fort Worth	00	01/21/15
Throughout Tx	Diamond J W Inc.	L06686	Fort Worth	00	01/21/15
Throughout Tx	JRB Engineering L.L.C.	L06689	Houston	00	01/28/15

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Austin	Seton Family of Hospitals	L00268	Austin	134	01/30/15
Austin	St. Davids Healthcare Partnership L.P., L.L.P. dba St. Davids South Austin Medical Center	L03273	Austin	98	01/30/15
Austin	Veterinary Diagnostic Imaging of Texas P.A.	L05917	Austin	04	01/26/15
Beaumont	Cardiac Imaging Inc.	L06565	Beaumont	04	01/26/15
Brownsville	VIIS Brownsville Hospital Company L.L.C. dba Valley Baptist Medical Center Brownsville	L06500	Brownsville	02	01/29/15
Burleson	Heartplace P.A.	L05883	Burleson	15	01/29/15
Cedar Park	Cedar Park Health System L.P. dba Cedar Park Regional Medical Center	L06140	Cedar Park	12	01/16/15
College Station	Scott & White - College Station	L06557	College Station	04	01/20/15
Dallas	The University of Texas Southwestern Medical Center at Dallas	L00384	Dallas	119	01/23/15
Dallas	Texas Health Presbyterian Hospital Dallas	L01586	Dallas	101	01/30/15
Dallas	Texas Health Presbyterian Hospital Dallas	L04288	Dallas	35	01/30/15
Dallas	Heartplace P.A.	L04607	Dallas	65	01/30/15
Dallas	Medi Physics Inc. dba GE Healthcare	L05529	Dallas	37	01/16/15

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

Dallas	Crown Imaging L.L.C.	L06223	Dallas	09	01/26/15
Dallas	Walnut Hill Physicians Hospital L.L.C. dba Walnut Hill Medical Center	L06579	Dallas	06	01/23/15
Denison	Texomacare Specialty Physicians dba Texoma Cardiovascular Care Associates	L06504	Denison	01	01/26/15
Denton	Numed Inc.	L02129	Denton	68	01/16/15
Fort Worth	Cook Childrens Medical Center	L04518	Fort Worth	25	01/26/15
Fort Worth	Texas Oncology P.A.	L05545	Fort Worth	53	01/15/15
Graham	City of Graham dba Graham Regional Medical Center	L03271	Graham	26	01/28/15
Houston	Spectracell Laboratories Inc.	L04617	Houston	15	01/29/15
Houston	American Diagnostic Tech L.L.C.	L05514	Houston	107	01/23/15
La Grange	St. Marks Medical Center	L03572	La Grange	29	01/26/15
La Porte	Occidental Chemical Corp. dba Oxy Vinyls L.P.	L06131	La Porte	05	01/21/15
La Porte	The Chemours Company F.C., L.L.C.	L06683	La Porte	01	01/29/15
Longview	Westlake Longview Corporation	L06294	Longview	08	01/28/15
Lufkin	Piney Woods Healthcare System L.P. dba Woodland Heights Medical Center	L01842	Lufkin	62	01/29/15
Pampa	Hunting Titan Inc.	L06610	Pampa	03	01/21/15
Pasadena	CHCA Bayshore L.P. dba Bayshore Medical Center	L00153	Pasadena	100	01/27/15
Plano	Heartplace P.A.	L05699	Plano	13	01/29/15
Port Neches	Huntsman Petrochemical L.L.C.	L06323	Port Neches	03	01/21/15
Richardson	Methodist Hospitals of Dallas dba Methodist Richardson Medical Center	L06475	Richardson	03	01/16/15
San Antonio	Christus Santa Rosa Healthcare	L02237	San Antonio	148	01/30/15
San Antonio	Veterinary Imaging Center of South Texas P.A.	L05559	San Antonio	09	01/20/15
Spring	Vintage Park Cardiovascular Associates P.A.	L06438	Spring	02	01/30/15
Sugar Land	Chris Xiaoguang Chen M.D., P.A.	L06054	Sugar Land	03	01/28/15
Throughout Tx	Weatherford International L.L.C.	L04286	Benbrook	107	01/27/15
Throughout Tx	Sanjel USA Inc.	L06419	Cibolo	05	01/29/15
Throughout Tx	OSCS Inc.	L05813	Cleburne	12	01/27/15
Throughout Tx	CME Testing and Engineering Inc.	L05263	College Station	12	01/29/15
Throughout Tx	Inspection Associates Inc.	L06601	Cypress	02	01/16/15
Throughout Tx	Bonded Inspections Inc.	L00693	Dallas	92	01/20/15
Throughout Tx	Rone Engineering Services Ltd.	L02356	Dallas	47	01/21/15
Throughout Tx	Mistras Group Inc.	L06369	Deer Park	20	01/21/15
Throughout Tx	AMEC Foster Wheeler Environment & Infrastructure Inc.	L03622	El Paso	32	01/20/15
Throughout Tx	Techcorr USA L.L.C.	L05972	Flint	107	01/16/15
Throughout Tx	Halliburton Energy Services Inc.	L02113	Houston	128	01/22/15
Throughout Tx	Ulrich Engineers Inc.	L03950	Houston	12	01/20/15
Throughout Tx	Pioneer Wireline Services L.L.C.	L06220	Houston	29	01/28/15
Throughout Tx	Rew Group L.L.C.	L06405	Houston	01	01/16/15
Throughout Tx	Amerapex Corporation	L06417	Houston	10	01/29/15
Throughout Tx	Baker Hughes Oilfield Operations Inc.	L06453	Houston	14	01/27/15
Throughout Tx	Texcom Environmental Services L.L.C.	L06596	Houston	01	01/16/15
Throughout Tx	Oceanering International Inc.	L04463	Ingleside	82	01/29/15
Throughout Tx	Dialog Wireline Services L.L.C.	L06104	Kilgore	10	01/16/15
Throughout Tx	Acuren Inspection Inc.	L01774	La Porte	286	01/23/15
Throughout Tx	Southern Services Inc. dba Southern Technical Services	L05270	Lake Jackson	58	01/22/15
Throughout Tx	Turner Specialty Services L.L.C.	L05417	Nederland	45	01/20/15
Throughout Tx	Petrochem Inspection Services Inc.	L04460	Pasadena	122	01/29/15
Throughout Tx	Schlumberger Technology Corporation	L00764	Sugar Land	142	01/20/15

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

Valley View	Pumpco Energy Services Inc.	L06507	Valley View	07	01/16/15
Victoria	Citizens Medical Center	L00283	Victoria	89	01/27/15
Waco	Baylor University	L00343	Waco	35	01/13/15
Waxahachie	Baylor Medical Center at Waxahachie	L04536	Waxahachie	42	01/28/15

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Austin	Thermo Finnigan L.L.C.	L01186	Austin	52	01/29/15
Houston	OCTG L.L.P.	L05871	Houston	04	01/22/15
Houston	E- PET Imaging II L.P. Dba PET Imaging of Houston	L05620	Houston	14	01/28/15
Odessa	Texas Oncology P.A. dba Texas Oncology	L05140	Odessa	16	01/20/15
Pasadena	Mohamed O. Jeroudi M.D., P.A.	L05753	Pasadena	15	01/28/15
Throughout Tx	Fugro Consultants Inc.	L05843	Fort Worth	13	01/27/15

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Denison	Texoma Heart Group	L05208	Denison	16	01/26/15
Houston	Nawar Tayyan M.D., P.A.	L06035	Houston	02	01/21/15
San Marcos	Central Texas Center for Cancer Care	L05189	San Marcos	07	01/23/15

TRD-201500647
 Lisa Hernandez
 General Counsel
 Department of State Health Services

Filed: February 25, 2015



Licensing Actions for Radioactive Materials

LICENSING ACTIONS FOR RADIOACTIVE MATERIALS

The Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department's Radiation Safety Licensing Branch has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC) Chapter 289 for the noted action. 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 – MC 2835, PO Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

NEW LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
San Antonio	Capitol Aggregates Inc.	L06690	San Antonio	00	02/06/15

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Addison	Rockwall Regional Hospital L.L.C. dba Texas Health Presbyterian Hospital Rockwall	L06103	Addison	06	02/13/15
Allen	Texas Health Presbyterian Hospital Allen	L05765	Allen	27	02/11/15
Amarillo	Amarillo Heart Group L.L.P. dba Amarillo Heart Group	L04697	Amarillo	25	02/02/15
Austin	Applied Nanotech Inc.	L06277	Austin	05	02/12/15
Brenham	Scott and White Hospital Brenham	L03419	Brenham	30	02/02/15
Conroe	Bellur & Mobley Interests L.L.P.	L05728	Conroe	09	01/28/15
Corpus Christi	Sherwin Alumina L.P. dba Sherwin Alumina Company	L00200	Corpus Christi	50	02/09/15
Dallas	Baylor University Medical Center	L01290	Dallas	127	02/10/15
Dallas	Tenet Hospitals Limited A Texas Limited Partnership dba Doctors Hospital at White Rock Lake	L01366	Dallas	55	02/11/15
Dallas	Medi Physics Inc. dba GE Healthcare	L05529	Dallas	38	02/05/15
Dallas	Healthtexas Provider Network dba Cardiology Consultants of Texas	L06572	Dallas	04	02/12/15
Deer Park	Hexion Inc.	L05323	Deer Park	07	02/10/15
Denison	Texomacare Specialty Physicians	L06504	Denison	02	02/04/15
Denton	University of North Texas	L00101	Denton	98	02/11/15
Edinburg	The University of Texas Pan American	L00656	Edinburg	37	02/06/15

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

Fort Worth	Fort Worth Surgicare Partners Ltd. dba Baylor Surgical Hospital at Fort Worth	L05668	Fort Worth	15	02/09/15
Houston	The University of Texas M.D. Anderson Cancer Center	L00466	Houston	157	02/12/15
Houston	Baylor College of Medicine	L00680	Houston	116	02/03/15
Houston	University of Houston Environmental Health and Life Safety Department	L01886	Houston	72	02/09/15
Houston	Texas Childrens Hospital Diagnostic Imaging 2-2521	L04612	Houston	64	02/11/15
Houston	American Diagnostic Tech L.L.C.	L05514	Houston	108	02/03/15
Houston	NIS Holdings Inc. dba Nuclear Imaging Services	L05775	Houston	96	02/03/15
Houston	Oncology Consultants P.A.	L06339	Houston	06	02/12/15
Houston	RWG (Repair & Overhauls) USA Inc.	L06531	Houston	01	02/03/15
Houston	Yongqi Yong M.D., P.A.	L06603	Houston	02	02/11/15
Houston	Surefire Industries L.L.C.	L06679	Houston	01	02/10/15
Humble	Cardiovascular Association P.L.L.C.	L05421	Humble	16	02/12/15
Humble	Humble Surgical Hospital	L06357	Humble	07	02/06/15
Irving	Columbia Medical Center of Las Colinas Inc. dba Las Colinas Medical Center	L05084	Irving	20	02/12/15
League City	Gulf Coast Heart Clinic P.L.L.C.	L06286	League City	03	02/03/15
Longview	Texas Oncology P.A. dba East Texas PET Imaging	L05489	Longview	26	02/11/15
Lubbock	University Medical Center	L04719	Lubbock	137	02/09/15
Midland	Midland County Hospital District dba Midland Memorial Hospital	L00728	Midland	106	02/02/15
Midland	Texas Oncology P.A. dba Allison Cancer Center	L04905	Midland	21	02/06/15
Orange	E. I. Dupont De Nemours & Co.	L00005	Orange	76	02/06/15
Pasadena	Albemarle Corporation	L04072	Pasadena	22	02/12/15
Pasadena	PMC Hospital L.L.C. dba St. Lukes Patients Medical Center	L06384	Pasadena	03	02/05/15
Plano	Texas Heart Hospital of the Southwest L.L.P. dba The Heart Hospital Baylor Plano	L06004	Plano	26	02/05/15
San Antonio	Arias & Associates Inc.	L04964	San Antonio	42	02/11/15
Throughout Tx	Texas Department of Transportation	L00197	Austin	174	02/05/15
Throughout Tx	Rodriguez Engineering Laboratories L.L.C. dba Rodriguez Engineering Laboratories	L04700	Austin	20	02/10/15
Throughout Tx	Equistar Chemicals L.P.	L03938	Bay City	34	02/03/15
Throughout Tx	Exxonmobil Oil Corporation	L00603	Beaumont	97	02/12/15
Throughout Tx	Inspection Associates Inc.	L06601	Cypress	03	02/03/15
Throughout Tx	Inspection Associates Inc.	L06601	Cypress	04	02/12/15
Throughout Tx	Bonded Inspections Inc.	L00693	Dallas	93	02/10/15
Throughout Tx	United States Environmental Services L.L.C.	L05801	Deer Park	09	02/04/15
Throughout Tx	Hydrochem L.L.C.	L06665	Deer Park	01	02/09/15
Throughout Tx	D&S Engineering Labs L.L.C.	L06677	Denton	01	02/16/15
Throughout Tx	Integrated Testing & Engineering Company of DFW Metro Inc.	L06525	Eules	03	02/10/15
Throughout Tx	J&J Solutions E&S L.L.C.	L06442	Fairfield	03	02/10/15
Throughout Tx	FTS International Services L.L.C.	L06188	Fort Worth	15	02/10/15
Throughout Tx	Allied International Emergency L.L.C.	L06394	Fort Worth	03	02/12/15
Throughout Tx	Archer Wireline L.L.C.	L06620	Fort Worth	04	02/05/15
Throughout Tx	Archer Wireline L.L.C.	L06620	Fort Worth	05	02/06/15
Throughout Tx	TAS Environmental Services L.P.	L06646	Fort Worth	01	02/09/15
Throughout Tx	Environmental Safety & Health Services Inc. dba ES&H Consulting Services Inc.	L06498	Grand Prairie	02	02/11/15
Throughout Tx	Testmasters Inc.	L03651	Houston	32	02/06/15

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

Throughout Tx	Protechnics Division of Core Laboratories L.P.	L03835	Houston	62	02/05/15
Throughout Tx	Digirad Imaging Solutions Inc.	L05414	Houston	39	02/06/15
Throughout Tx	Enercon Services Inc.	L05447	Houston	10	02/05/15
Throughout Tx	NIS Holdings Inc. dba Nuclear Imaging Services	L05775	Houston	97	02/12/15
Throughout Tx	Allied Wireline Services L.L.C.	L06374	Houston	09	02/13/15
Throughout Tx	Rew Group L.L.C.	L06405	Houston	02	02/10/15
Throughout Tx	Ensource Corporation	L06496	Houston	02	02/11/15
Throughout Tx	Texcom Environmental Services L.L.C.	L06596	Houston	02	02/09/15
Throughout Tx	Oceaneering International Inc.	L04463	Ingleside	83	02/05/15
Throughout Tx	Jacobra Energy Services L.L.C.	L06667	Jacksonville	01	02/09/15
Throughout Tx	Oil Mop L.L.C. dba Omi Environmental Solutions	L06528	La Porte	01	02/06/15
Throughout Tx	Chief Inspection Service Inc.	L06541	Longview	04	02/05/15
Throughout Tx	Norm Pipe Inc.	L06560	Marshall	02	02/09/15
Throughout Tx	Sunset Well Service Inc.	L06426	Midland	04	02/10/15
Throughout Tx	Nova Training Inc. dba Nova Safety and Environmental	L06428	Midland	02	02/11/15
Throughout Tx	J. Z. Russell Industries Inc.	L06459	Nederland	08	02/13/15
Throughout Tx	One Source Industrial Services L.L.C.	L06605	Odessa	01	02/09/15
Throughout Tx	Effective Environmental Inc.	L06322	Pasadena	06	02/09/15
Throughout Tx	Carrillo & Associates Inc.	L05804	San Antonio	11	02/03/15
Throughout Tx	CIMA Services L.P.	L06530	South Houston	02	02/09/15
Throughout Tx	Schlumberger Technology Corporation	L00764	Sugar Land	143	02/12/15
Throughout Tx	Bitswave Inc.	L06606	Sugar Land	02	02/06/15
Throughout Tx	New Ventures Leasing L.L.C.	L06609	Sunset	01	02/09/15
Throughout Tx	Smartt Move L.L.C.	L06516	Sweetwater	02	02/11/15
Throughout Tx	Pumpco Energy Services Inc.	L06507	Valley View	08	02/04/15
Throughout Tx	ARC Abatement Holdings Inc.	L06622	Waco	01	02/09/15
Waco	Baylor University	L00343	Waco	36	02/12/15
Waco	Hillcrest Baptist Medical Center	L00845	Waco	99	02/06/15
Waxahachie	Baylor Medical Center at Waxahachie	L04536	Waxahachie	43	02/02/15

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Orange	Invista Sarl	L05777	Orange	13	02/02/15
Throughout Tx	City of Amarillo	L02320	Amarillo	23	02/12/15
Throughout Tx	N-Spec Quality Services Inc.	L05113	Corpus Christi	43	02/03/15
Throughout Tx	Suntrac Services Inc.	L03062	League City	28	02/03/15
Waco	Texas State Technical College Waco	L01926	Waco	40	02/11/15

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Austin	North Austin Surgery Center L.P.	L05832	Austin	05	02/04/15
Denton	Daniel W. Caldwell M.D., P.A.	L05984	Denton	06	02/09/15
Harlingen	South Texas Imaging Center-K P.A.	L05636	Harlingen	11	02/12/15
San Antonio	Radiation Oncology of San Antonio P.A. dba Oncology San Antonio	L05853	San Antonio	21	02/13/15

◆ ◆ ◆
Texas Parks and Wildlife Department

Notice of Hearing and Opportunity for Public Comment

This is a notice of an opportunity for public comment and a public hearing on a City of Austin application for a Texas Parks and Wildlife Department (TPWD) permit to remove or disturb approximately 3,000 cubic yards of sand and gravel from and within Shoal Creek in Austin, Travis County from approximately the 5th Street crossing to 250 feet upstream of the 3rd Street crossing. The purpose is bank stabilization and trail improvements.

The hearing will be held at 10:00 a.m. on Friday, March 27, 2015 at TPWD headquarters, located at 4200 Smith School Road, Austin, TX 78744. The hearing is not a contested case hearing under the Administrative Procedure Act.

Written comments must be submitted within 30 days of the publication of this notice in the *Texas Register* or the newspaper, whichever is later, or at the public hearing. Submit written comments, questions, or requests to review the application to: Tom Heger, TPWD, by mail: 4200 Smith School Road, Austin, TX 78744; fax (512) 389-4405; e-mail tom.heger@tpwd.texas.gov; or phone (512) 389-4583.

TRD-201500627
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: February 23, 2015

◆ ◆ ◆
Texas Board of Professional Engineers

Policy Advisory Regarding Utility and Telephone Company Exemptions - EAOR #37

BACKGROUND: The Texas Board of Professional Engineers (Board) regularly receives inquiries regarding §1001.058 and §1001.061 of the Texas Engineering Practice Act (TEPA) and the applicability or nature of the exemption. By authority of Subchapter M of TEPA, the Board hereby issues this policy advisory to educate the public of Texas regarding these exemptions and the practice of engineering.

§1001.058. Employee of Certain Utilities or Affiliates

(a) A regular full-time employee of a privately owned public utility or cooperative utility or of the utility's affiliate is exempt from the licensure requirements of this chapter if the employee:

- (1) performs services exclusively for the utility or affiliate; and
- (2) does not have the final authority to approve, or the ultimate responsibility for, engineering designs, plans, or specifications that are to be:
 - (A) incorporated into fixed works, systems, or facilities on the property of others; or
 - (B) made available to the public.

§1001.061. Telephone Companies

(a) An operating telephone company, an affiliate of the company, or an employee of the company or affiliate is exempt from this chapter with

respect to any plan, design, specification, or service that relates strictly to the science and art of telephony.

(b) This exemption includes the use of a job title or personnel classification by a person included under Subsection (a) if the person does not use:

- (1) the title or classification in connection with an offer to the public to perform engineering services; and
- (2) a name, title, or word that tends to convey the impression that a person not licensed under this chapter is offering to the public to perform engineering services.

ANALYSIS: The §1001.058 utility exemption applies to the regular, full time employees of the utility or its affiliates as defined in §1001.058(a). It is an exemption from licensure of the employees that are not responsible nor have the final authority for the engineering designs, plans and specifications that are to be incorporated into fixed works, facilities or systems that are on the property of others or made available to the public. Those individuals that are responsible or have the final authority for the engineering designs, plans, and specifications that are to be incorporated into fixed works, facilities, or systems that are on the property of others or made available to the public must be licensed as Texas professional engineers.

This exemption does not apply to entities (companies, firms or individuals) that are providing engineering services to a utility or affiliate as defined in §1001.058(a). All sections of the TEPA apply to these individuals and firms, including professional engineering licensure, firm registration, and sealing requirements. Engineering services provided to a utility or affiliate, as defined in §1001.058(a), for projects located in Texas must be provided by a Texas licensed professional engineer directly or in responsible charge. All requirements regarding firm registration (22 TAC Chapter 135) and sealing and signing (22 TAC §§137.31, 137.33, 137.35 and 137.37) apply.

This exemption also is not a blanket exemption for an entire industry, area of practice, or type of engineering work. The §1001.058 utility exemption applies only to licensure requirements for individuals who meet the specific criteria of the TEPA, and is not applicable to all engineering work done for a utility, all utility work in general, or simply anything done for a particular utility.

Section 1001.061, relating to Telephone Companies, is also an exemption from licensure for the employees performing engineering related "*strictly to the science and art of telephony*" ONLY. Unlike §1001.058, this section also applies to firms involved in engineering work related to telephony. In this case, "telephony" is related to the engineering design of the telephone cables, switches, relays, and other components in the telephone system. These activities can be performed by unlicensed employees of the telephone company. However, the engineering necessary to install these systems is not part of the exemption. Texas licensed professional engineers must prepare the plans and specifications for the engineering aspects of the construction of the telephone systems including, but not limited to, trenching plans, backfill, compaction, pavement design, traffic plans, culverts, drainage design and tower design.

FREQUENTLY ASKED QUESTIONS

1) (A) A utility/telephone company is installing piping/cable that will pass through private property (not owned by the utility). Do the plans need the seal of a Texas licensed engineer?

(B) A utility/telephone company is installing piping/cable in a city's right of way (ROW). Do the plans need the seal of a Texas licensed engineer?

Yes, a licensed Professional Engineer is required for both scenarios.

For the utility project, the law states that there must be a Texas licensed engineer in responsible charge of the work performed on the property of others. The city street and/or ROW are not the property of the utility and they are available to the public.

For the telephone project, the telephone company exemption allows the telephone company to perform the engineering associated strictly with the telephone equipment with their own unlicensed employees. The engineering associated with any construction including, but not limited to, the excavation plan, fill and compaction specification, pavement and reinforcing design, drainage, trench safety, and traffic plan must be designed by a Texas licensed professional engineer.

2) A city in Texas wants to impose engineering requirements on a utility or telephone project that go above and beyond the requirements of the TEPA. Can they do that?

Yes, cities and other governmental entities in Texas may impose extra engineering requirements on projects in their jurisdiction including utility and telephone projects. The minimum requirements for engineering projects as stated in the TEPA may not be waived or reduced, however.

3) Would the employee of a utility owned by a political subdivision of the state of Texas be exempt from licensure?

No. Section 1001.058 specifically references "privately owned" and a subdivision of the state is "publically" owned and public works engineering projects are only exempted below the limits listed in §1001.053.

TRD-201500639
Lance Kinney, P.E.
Executive Director
Texas Board of Professional Engineers
Filed: February 25, 2015

◆ ◆ ◆
Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on February 17, 2015, to amend a state-issued certificate of franchise authority, pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Centrovision, Inc. for Amendment to its State-Issued Certificate of Franchise Authority (Salado), Project Number 44457.

The requested amendment is to expand the service area footprint to include the municipal boundaries of the City of Salado, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Project Number 44457.

TRD-201500516
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 19, 2015

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on February 17, 2015, to amend a state-issued certificate of franchise authority, pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Centrovision, Inc. for Amendment to its State-Issued Certificate of Franchise Authority (Belton), Project Number 44458.

The requested amendment is to expand the service area footprint to include the municipal boundaries of the City of Belton, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Project Number 44458.

TRD-201500517
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 19, 2015

◆ ◆ ◆
Announcement of Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on February 23, 2015, for a state-issued certificate of franchise authority (SICFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Hillary Communications, LLC for a State-Issued Certificate of Franchise Authority, Project Number 44481.

The requested SICFA service area consists of Wichita County, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Project Number 44481.

TRD-201500650
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 25, 2015

◆ ◆ ◆
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 February 17, 2015, for a service provider certificate of operating authority (SPCOA), pursuant of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of GlassPort, LLC for a Service Provider Certificate of Operating Authority, Docket Number 44453. Applicant intends to provide data, facilities-based, and resale telecommunications services.

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 March 13, 2015. Hearing and speech impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 44453.

TRD-201500522
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 20, 2015



Notice of Application to Cancel Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on February 23, 2015, to discontinue service and cancel a certificate of convenience and necessity within Ector County, Texas.

Docket Style and Number: Application of West Odessa Water Supply Corporation to Discontinue Service and Cancel its Certificate of Convenience and Necessity in Ector County, Docket Number 44479.

West Odessa Water Supply Corporation filed an application to discontinue service and cancel its water Certificate of Convenience and Necessity (CCN) No. 13058 in Ector County, Texas.

Persons wishing to comment on the action sought or intervene 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, as soon as possible as an intervention deadline will be established. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 44479.

TRD-201500649
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 25, 2015



Notice of Petition for Amendment to Water Certificate of Convenience and Necessity by Expedited Release

Notice is given to the public of the filing with the Public Utility Commission of Texas on February 18, 2015, of a petition under Texas Water Code §13.254(a-5) to amend a certificate of convenience and necessity by expedited release in Travis County, Texas.

Docket Style and Number: Petition of L.W. Ranch, L.P. to Amend Aqua Water Supply Corporation's Certificate of Convenience and Necessity in Travis County by Expedited Release, Docket No. 44465.

The Application: On February 18, 2015, L.W. Ranch, L.P. filed with the Public Utility Commission of Texas an application for expedited release from Aqua Water Supply Corporation's water Certificate of Convenience and Necessity Number 10294, pursuant to Texas Water Code §13.254(a-5) and P.U.C. Subst. R. §24.113(r).

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas no later than April 6, 2015, 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 telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 44465.

TRD-201500521
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 20, 2015



Notice of Petition for True-Up of 2012 Federal Universal Service Fund Impacts to Texas Universal Service Fund

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on February 13, 2015, for true-up of 2012 Federal Universal Service Fund (FUSF) Impacts to Texas Universal Service Fund (TUSF).

Docket Style and Number: Application of ETEX Telephone Cooperative, Inc. for True-Up of 2012 Federal Universal Service Fund Impacts to the Texas Universal Service Fund, Docket Number 44450.

The Application: ETEX Telephone Cooperative, Inc. (ETEX) filed a true-up report in accordance with Findings of Fact Numbers 11-15 of the final Order in Docket Number 41598. In Docket Number 41598 the Public Utility Commission of Texas approved ETEX's application to recover funds from the TUSF and ordered a true-up of the FUSF revenue changes. This application addresses ETEX's final and actual FUSF impact for 2012.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 44450.

TRD-201500515
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 19, 2015



Regional Water Planning Group B

Notice to Public

Notice is hereby given that the Red River Authority of Texas will submit by 12:00 p.m., March 3, 2015, a grant application for financial assistance to the Texas Water Development Board (TWDB) on behalf of the Regional Water Planning Group B, to carry out planning activities to develop the *2021 Region B Regional Water Plan*, as part of the state's Fifth Cycle (2017 - 2021) of Regional Water Planning.

The Regional Water Planning Group B (Region B) includes the following Texas counties: Archer, Baylor, Clay, Cottle, Foard, Hardeman, King, Montague, Wichita, Wilbarger, and the portion of Young County that encompasses the City of Olney.

Copies of the grant application may be obtained from Red River Authority of Texas when it becomes available or online at www.rra.texas.gov. Written comments from the public regarding the grant application must be submitted to the Red River Authority of

Texas and the TWDB no later than 5:00 p.m., Tuesday, March 31, 2015. Comments can be submitted to the Red River Authority of Texas and the TWDB, as follows:

Mr. Curtis W. Campbell

Administrative Agent for Region B
Red River Authority of Texas
P.O. Box 240
Wichita Falls, Texas, 76307-0240

Mr. Kevin Patteson

Executive Administrator
Texas Water Development Board
P.O. Box 13231
Austin, Texas 78711-3231

For additional information, please contact Mr. Curtis W. Campbell, Red River Authority of Texas, c/o Region B, P.O. Box 240, Wichita Falls, Texas 76307-0240, (940) 723-8697, curtis.campbell@rra.texas.gov or Mr. David Carter, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711, (512) 463-7847.

TRD-201500622
Curtis W. Campbell
General Manager/Executive Director
Regional Water Planning Group B
Filed: February 23, 2015



Supreme Court of Texas

In the Supreme Court of Texas

Misc. Docket No. 15-9039

APPROVAL OF AMENDMENTS TO RULE 1 OF THE RULES GOVERNING ADMISSION TO THE BAR OF TEXAS

ORDERED that:

1. Rule 1 of the Rules Governing Admission to the Bar of Texas is amended as follows, effective immediately.
2. The Clerk is directed to:
 - a. file a copy of this order with the Secretary of State;
 - b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
 - c. send a copy of this order to each elected member of the Legislature; and
 - d. submit a copy of the order for publication in the *Texas Register*.

Dated: February 19, 2015.

Nathan L. Hecht, Chief Justice

Paul W. Green, Justice

Phil Johnson, Justice

Don R. Willett, Justice

Eva M. Guzman, Justice

Debra H. Lehrmann, Justice

Jeffrey S. Boyd, Justice

John P. Devine, Justice

Jeffrey V. Brown, Justice

Rule 1

Definitions and General Provisions

(a) Frequently used terms are defined as follows:

...

(7) "Chemical dependency" means substance use disorder abuse or dependency as defined by the American Psychiatric Association in the Diagnostic and Statistical Manual DSM-5 IV-TR and any subsequent revisions thereof.

...

TRD-201500559
Martha Newton
Rules Attorney
Supreme Court of Texas
Filed: February 20, 2015



In the Supreme Court of Texas

Misc. Docket No. 15-9040

ORDER ADOPTING AMENDMENTS TO THE INTERNAL PROCEDURAL RULES OF THE BOARD OF DISCIPLINARY APPEALS

ORDERED that:

1. The Internal Procedural Rules of the Board of Disciplinary Appeals are amended as follows, effective immediately.
2. The Clerk is directed to:
 - a. file a copy of this order with the Secretary of State;
 - b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
 - c. send a copy of this order to each elected member of the Legislature; and
 - d. submit a copy of the order for publication in the *Texas Register*.

Dated: February 19, 2015.

Nathan L. Hecht, Chief Justice

Paul W. Green, Justice

Phil Johnson, Justice

Don R. Willett, Justice

Eva M. Guzman, Justice

Debra H. Lehrmann, Justice

Jeffrey S. Boyd, Justice

John P. Devine, Justice

Jeffrey V. Brown, Justice

Board of Disciplinary Appeals

Appointed By The

Supreme Court of Texas

Internal Procedural Rules

SECTION 1: GENERAL PROVISIONS

Rule 1.01 Definitions

- (a) "BODA" is the Board of Disciplinary Appeals.
- (b) "Chair" is the member elected by BODA to serve as chair or, in the Chair's absence, the member elected by BODA to serve as vice-chair.
- (c) "Classification" is the determination by the CDC under TRDP 2.10 or by BODA under TRDP 7.08(C) whether a grievance constitutes a "complaint" or an "inquiry."
- (d) "BODA Clerk" is the executive director of BODA or other person appointed by BODA to assume all duties normally performed by the clerk of a court.
- (e) "CDC" is the Chief Disciplinary Counsel for the State Bar of Texas and his or her assistants.
- (f) "Commission" is the Commission for Lawyer Discipline, a permanent committee of the State Bar of Texas.
- (g) "Executive Director" is the executive director of BODA.
- (h) "Panel" is any three-member grouping of BODA under TRDP 7.05.
- (i) "Party" is a Complainant, a Respondent, or the Commission.
- (j) "TDRPC" is the Texas Disciplinary Rules of Professional Conduct.
- (k) "TRAP" is the Texas Rules of Appellate Procedure.
- (l) "TRCP" is the Texas Rules of Civil Procedure.
- (m) "TRDP" is the Texas Rules of Disciplinary Procedure.
- (n) "TRE" is the Texas Rules of Evidence.

Rule 1.02 General Powers

Under TRDP 7.08, BODA has and may exercise all the powers of either a trial court or an appellate court, as the case may be, in hearing and determining disciplinary proceedings. But TRDP 15.01 applies to the enforcement of a judgment of BODA.

Rule 1.03 Additional Rules in Disciplinary Matters

Except as varied by these rules and to the extent applicable, the TRCP, TRAP, and TRE apply to all disciplinary matters before BODA, except

for appeals from classification decisions, which are governed by TRDP 2.10 and by Section 3 of these rules.

Rule 1.04 Appointment of Panels

(a) BODA may consider any matter or motion by panel, except as specified in (b). The Chair may delegate to the Executive Director the duty to appoint a panel for any BODA action. Decisions are made by a majority vote of the panel; however, any panel member may refer a matter for consideration by BODA sitting en banc. Nothing in these rules gives a party the right to be heard by BODA sitting en banc.

(b) Any disciplinary matter naming a BODA member as Respondent must be considered by BODA sitting en banc. A disciplinary matter naming a BODA staff member as Respondent need not be heard en banc.

Rule 1.05 Filing of Pleadings, Motions, and Other Papers

(a) **Electronic Filing.** All documents must be filed electronically. Unrepresented persons or those without the means to file electronically may electronically file documents, but it is not required.

(1) **Email Address.** The email address of an attorney or an unrepresented party who electronically files a document must be included on the document.

(2) **Timely Filing.** Documents are filed electronically by emailing the document to the BODA Clerk at the email address designated by BODA for that purpose. A document filed by email will be considered filed the day that the email is sent. The date sent is the date shown for the message in the inbox of the email account designated for receiving filings. If a document is sent after 5:00 p.m. or on a weekend or holiday officially observed by the State of Texas, it is considered filed the next business day.

(3) It is the responsibility of the party filing a document by email to obtain the correct email address for BODA and to confirm that the document was received by BODA in legible form. Any document that is illegible or that cannot be opened as part of an email attachment will not be considered filed. If a document is untimely due to a technical failure or a system outage, the filing party may seek appropriate relief from BODA.

(4) Exceptions.

(i) An appeal to BODA of a decision by the CDC to classify a grievance as an inquiry is not required to be filed electronically.

(ii) The following documents must not be filed electronically:

- documents that are filed under seal or subject to a pending motion to seal; and

- documents to which access is otherwise restricted by court order.

(iii) For good cause, BODA may permit a party to file other documents in paper form in a particular case.

(5) **Format.** An electronically filed document must:

(i) be in text-searchable portable document format (PDF);

(ii) be directly converted to PDF rather than scanned, if possible; and

(iii) not be locked.

(b) A paper will not be deemed filed if it is sent to an individual BODA member or to another address other than the address designated by BODA under Rule 1.05(a)(2).

(c) **Signing.** Each brief, motion, or other paper filed must be signed by at least one attorney for the party or by the party pro se and must give the State Bar of Texas card number, mailing address, telephone

number, email address, and fax number, if any, of each attorney whose name is signed or of the party (if applicable). A document is considered signed if the document includes:

(1) an "/s/" and name typed in the space where the signature would otherwise appear, unless the document is notarized or sworn; or

(2) an electronic image or scanned image of the signature.

(d) **Paper Copies.** Unless required by BODA, a party need not file a paper copy of an electronically filed document.

(e) **Service.** Copies of all documents filed by any party other than the record filed by the evidentiary panel clerk or the court reporter must, at or before the time of filing, be served on all other parties as required and authorized by the TRAP.

Rule 1.06 Service of Petition

In any disciplinary proceeding before BODA initiated by service of a petition on the Respondent, the petition may be served by personal service; by certified mail with return receipt requested; or, if permitted by BODA, in any other manner that is authorized by the TRCP and reasonably calculated under all the circumstances to apprise the Respondent of the proceeding and to give him or her reasonable time to appear and answer. To establish service by certified mail, the return receipt must contain the Respondent's signature.

Rule 1.07 Hearing Setting and Notice

(a) **Original Petitions.** In any kind of case initiated by the CDC's filing a petition or motion with BODA, the CDC may contact the BODA Clerk for the next regularly available hearing date before filing the original petition. If a hearing is set before the petition is filed, the petition must state the date, time, and place of the hearing. Except in the case of a petition to revoke probation under TRDP 2.23, the hearing date must be at least 30 days from the date that the petition is served on the Respondent.

(b) **Expedited Settings.** If a party desires a hearing on a matter on a date earlier than the next regularly available BODA hearing date, the party may request an expedited setting in a written motion setting out the reasons for the request. Unless the parties agree otherwise, and except in the case of a petition to revoke probation under TRDP 2.23, the expedited hearing setting must be at least 30 days from the date of service of the petition, motion, or other pleading. BODA has the sole discretion to grant or deny a request for an expedited hearing date.

(c) **Setting Notices.** BODA must notify the parties of any hearing date that is not noticed in an original petition or motion.

(d) **Announcement Docket.** Attorneys and parties appearing before BODA must confirm their presence and present any questions regarding procedure to the BODA Clerk in the courtroom immediately prior to the time docket call is scheduled to begin. Each party with a matter on the docket must appear at the docket call to give an announcement of readiness, to give a time estimate for the hearing, and to present any preliminary motions or matters. Immediately following the docket call, the Chair will set and announce the order of cases to be heard.

Rule 1.08 Time to Answer

The Respondent may file an answer at any time, except where expressly provided otherwise by these rules or the TRDP, or when an answer date has been set by prior order of BODA. BODA may, but is not required to, consider an answer filed the day of the hearing.

Rule 1.09 Pretrial Procedure

(a) **Motions.**

(1) **Generally.** To request an order or other relief, a party must file a motion supported by sufficient cause with proof of service on all other parties. The motion must state with particularity the grounds on which it is based and set forth the relief sought. All supporting briefs, affidavits, or other documents must be served and filed with the motion. A party may file a response to a motion at any time before BODA rules on the motion or by any deadline set by BODA. Unless otherwise required by these rules or the TRDP, the form of a motion must comply with the TRCP or the TRAP.

(2) **For Extension of Time.** All motions for extension of time in any matter before BODA must be in writing, comply with (a)(1), and specify the following:

(i) if applicable, the date of notice of decision of the evidentiary panel, together with the number and style of the case;

(ii) if an appeal has been perfected, the date when the appeal was perfected;

(iii) the original deadline for filing the item in question;

(iv) the length of time requested for the extension;

(v) the number of extensions of time that have been granted previously regarding the item in question; and

(vi) the facts relied on to reasonably explain the need for an extension.

(b) **Pretrial Scheduling Conference.** Any party may request a pretrial scheduling conference, or BODA on its own motion may require a pretrial scheduling conference.

(c) **Trial Briefs.** In any disciplinary proceeding before BODA, except with leave, all trial briefs and memoranda must be filed with the BODA Clerk no later than ten days before the day of the hearing.

(d) **Hearing Exhibits, Witness Lists, and Exhibits Tendered for Argument.** A party may file a witness list, exhibit, or any other document to be used at a hearing or oral argument before the hearing or argument. A party must bring to the hearing an original and 12 copies of any document that was not filed at least one business day before the hearing. The original and copies must be:

(1) marked;

(2) indexed with the title or description of the item offered as an exhibit; and

(3) if voluminous, bound to lie flat when open and tabbed in accordance with the index.

All documents must be marked and provided to the opposing party before the hearing or argument begins.

Rule 1.10 Decisions

(a) **Notice of Decisions.** The BODA Clerk must give notice of all decisions and opinions to the parties or their attorneys of record.

(b) **Publication of Decisions.** BODA must report judgments or orders of public discipline:

(1) as required by the TRDP; and

(2) on its website for a period of at least ten years following the date of the disciplinary judgment or order.

(c) **Abstracts of Classification Appeals.** BODA may, in its discretion, prepare an abstract of a classification appeal for a public reporting service.

Rule 1.11 Board of Disciplinary Appeals Opinions

(a) BODA may render judgment in any disciplinary matter with or without written opinion. In accordance with TRDP 6.06, all written opinions of BODA are open to the public and must be made available to the public reporting services, print or electronic, for publishing. A majority of the members who participate in considering the disciplinary matter must determine if an opinion will be written. The names of the participating members must be noted on all written opinions of BODA.

(b) Only a BODA member who participated in the decision of a disciplinary matter may file or join in a written opinion concurring in or dissenting from the judgment of BODA. For purposes of this rule, in hearings in which evidence is taken, no member may participate in the decision unless that member was present at the hearing. In all other proceedings, no member may participate unless that member has reviewed the record. Any member of BODA may file a written opinion in connection with the denial of a hearing or rehearing en banc.

(c) A BODA determination in an appeal from a grievance classification decision under TRDP 2.10 is not a judgment for purposes of this rule and may be issued without a written opinion.

Rule 1.12 BODA Work Product and Drafts

A document or record of any nature--regardless of its form, characteristics, or means of transmission--that is created or produced in connection with or related to BODA's adjudicative decision-making process is not subject to disclosure or discovery. This includes documents prepared by any BODA member, BODA staff, or any other person acting on behalf of or at the direction of BODA.

Rule 1.13 Record Retention

Records of appeals from classification decisions must be retained by the BODA Clerk for a period of at least three years from the date of disposition. Records of other disciplinary matters must be retained for a period of at least five years from the date of final judgment, or for at least one year after the date a suspension or disbarment ends, whichever is later. For purposes of this rule, a record is any document, paper, letter, map, book, tape, photograph, film, recording, or other material filed with BODA, regardless of its form, characteristics, or means of transmission.

Rule 1.14 Costs of Reproduction of Records

The BODA Clerk may charge a reasonable amount for the reproduction of nonconfidential records filed with BODA. The fee must be paid in advance to the BODA Clerk.

Rule 1.15 Publication of These Rules

These rules will be published as part of the TDRPC and TRDP.

SECTION 2: ETHICAL CONSIDERATIONS

Rule 2.01 Representing or Counseling Parties in Disciplinary Matters and Legal Malpractice Cases

(a) A current member of BODA must not represent a party or testify voluntarily in a disciplinary action or proceeding. Any BODA member who is subpoenaed or otherwise compelled to appear at a disciplinary action or proceeding, including at a deposition, must promptly notify the BODA Chair.

(b) A current BODA member must not serve as an expert witness on the TDRPC.

(c) A BODA member may represent a party in a legal malpractice case, provided that he or she is later recused in accordance with these rules from any proceeding before BODA arising out of the same facts.

Rule 2.02 Confidentiality

(a) BODA deliberations are confidential, must not be disclosed by BODA members or staff, and are not subject to disclosure or discovery.

(b) Classification appeals, appeals from evidentiary judgments of private reprimand, appeals from an evidentiary judgment dismissing a case, interlocutory appeals or any interim proceedings from an ongoing evidentiary case, and disability cases are confidential under the TRDP. BODA must maintain all records associated with these cases as confidential, subject to disclosure only as provided in the TRDP and these rules.

(c) If a member of BODA is subpoenaed or otherwise compelled by law to testify in any proceeding, the member must not disclose a matter that was discussed in conference in connection with a disciplinary case unless the member is required to do so by a court of competent jurisdiction.

Rule 2.03 Disqualification and Recusal of BODA Members

(a) BODA members are subject to disqualification and recusal as provided in TRCP 18b.

(b) BODA members may, in addition to recusals under (a), voluntarily recuse themselves from any discussion and voting for any reason. The reasons that a BODA member is recused from a case are not subject to discovery.

(c) These rules do not disqualify a lawyer who is a member of, or associated with, the law firm of a BODA member from serving on a grievance committee or representing a party in a disciplinary proceeding or legal malpractice case. But a BODA member must recuse him- or herself from any matter in which a lawyer who is a member of, or associated with, the BODA member's firm is a party or represents a party.

SECTION 3: CLASSIFICATION APPEALS

Rule 3.01 Notice of Right to Appeal

(a) If a grievance filed by the Complainant under TRDP 2.10 is classified as an inquiry, the CDC must notify the Complainant of his or her right to appeal as set out in TRDP 2.10 or another applicable rule.

(b) To facilitate the potential filing of an appeal of a grievance classified as an inquiry, the CDC must send the Complainant an appeal notice form, approved by BODA, with the classification disposition. The form must include the docket number of the matter; the deadline for appealing; and information for mailing, faxing, or emailing the appeal notice form to BODA. The appeal notice form must be available in English and Spanish.

Rule 3.02 Record on Appeal

BODA must only consider documents that were filed with the CDC prior to the classification decision. When a notice of appeal from a classification decision has been filed, the CDC must forward to BODA a copy of the grievance and all supporting documentation. If the appeal challenges the classification of an amended grievance, the CDC must also send BODA a copy of the initial grievance, unless it has been destroyed.

SECTION 4: APPEALS FROM EVIDENTIARY PANEL HEARINGS

Rule 4.01 Perfecting Appeal

(a) **Appellate Timetable.** The date that the evidentiary judgment is signed starts the appellate timetable under this section. To make TRDP 2.21 consistent with this requirement, the date that the judgment is signed is the "date of notice" under Rule 2.21.

(b) **Notification of the Evidentiary Judgment.** The clerk of the evidentiary panel must notify the parties of the judgment as set out in TRDP 2.21.

(1) The evidentiary panel clerk must notify the Commission and the Respondent in writing of the judgment. The notice must contain a clear statement that any appeal of the judgment must be filed with BODA within 30 days of the date that the judgment was signed. The notice must include a copy of the judgment rendered.

(2) The evidentiary panel clerk must notify the Complainant that a judgment has been rendered and provide a copy of the judgment, unless the evidentiary panel dismissed the case or imposed a private reprimand. In the case of a dismissal or private reprimand, the evidentiary panel clerk must notify the Complainant of the decision and that the contents of the judgment are confidential. Under TRDP 2.16, no additional information regarding the contents of a judgment of dismissal or private reprimand may be disclosed to the Complainant.

(c) **Filing Notice of Appeal.** An appeal is perfected when a written notice of appeal is filed with BODA. If a notice of appeal and any other accompanying documents are mistakenly filed with the evidentiary panel clerk, the notice is deemed to have been filed the same day with BODA, and the evidentiary panel clerk must immediately send the BODA Clerk a copy of the notice and any accompanying documents.

(d) **Time to File.** In accordance with TRDP 2.24, the notice of appeal must be filed within 30 days after the date the judgment is signed. In the event a motion for new trial or motion to modify the judgment is timely filed with the evidentiary panel, the notice of appeal must be filed with BODA within 90 days from the date the judgment is signed.

(e) **Extension of Time.** A motion for an extension of time to file the notice of appeal must be filed no later than 15 days after the last day allowed for filing the notice of appeal. The motion must comply with Rule 1.09.

Rule 4.02 Record on Appeal

(a) **Contents.** The record on appeal consists of the evidentiary panel clerk's record and, where necessary to the appeal, a reporter's record of the evidentiary panel hearing.

(b) **Stipulation as to Record.** The parties may designate parts of the clerk's record and the reporter's record to be included in the record on appeal by written stipulation filed with the clerk of the evidentiary panel.

(c) Responsibility for Filing Record.

(1) Clerk's Record.

(i) After receiving notice that an appeal has been filed, the clerk of the evidentiary panel is responsible for preparing, certifying, and timely filing the clerk's record.

(ii) Unless the parties stipulate otherwise, the clerk's record on appeal must contain the items listed in TRAP 34.5(a) and any other paper on file with the evidentiary panel, including the election letter, all pleadings on which the hearing was held, the docket sheet, the evidentiary panel's charge, any findings of fact and conclusions of law, all other pleadings, the judgment or other orders appealed from, the notice of decision sent to each party, any postsubmission pleadings and briefs, and the notice of appeal.

(iii) If the clerk of the evidentiary panel is unable for any reason to prepare and transmit the clerk's record by the due date, he or she must promptly notify BODA and the parties, explain why the clerk's record cannot be timely filed, and give the date by which he or she expects the clerk's record to be filed.

(2) Reporter's Record.

(i) The court reporter for the evidentiary panel is responsible for timely filing the reporter's record if:

- a notice of appeal has been filed;
- a party has requested that all or part of the reporter's record be prepared; and
- the party requesting all or part of the reporter's record has paid the reporter's fee or has made satisfactory arrangements with the reporter.

(ii) If the court reporter is unable for any reason to prepare and transmit the reporter's record by the due date, he or she must promptly notify BODA and the parties, explain the reasons why the reporter's record cannot be timely filed, and give the date by which he or she expects the reporter's record to be filed.

(d) Preparation of Clerk's Record.

(1) To prepare the clerk's record, the evidentiary panel clerk must:

- (i) gather the documents designated by the parties' written stipulation or, if no stipulation was filed, the documents required under (c)(1)(ii);
- (ii) start each document on a new page;
- (iii) include the date of filing on each document;
- (iv) arrange the documents in chronological order, either by the date of filing or the date of occurrence;
- (v) number the pages of the clerk's record in the manner required by (d)(2);
- (vi) prepare and include, after the front cover of the clerk's record, a detailed table of contents that complies with (d)(3); and
- (vii) certify the clerk's record.

(2) The clerk must start the page numbering on the front cover of the first volume of the clerk's record and continue to number all pages consecutively--including the front and back covers, tables of contents, certification page, and separator pages, if any--until the final page of the clerk's record, without regard for the number of volumes in the clerk's record, and place each page number at the bottom of each page.

(3) The table of contents must:

- (i) identify each document in the entire record (including sealed documents); the date each document was filed; and, except for sealed documents, the page on which each document begins;
- (ii) be double-spaced;
- (iii) conform to the order in which documents appear in the clerk's record, rather than in alphabetical order;
- (iv) contain bookmarks linking each description in the table of contents (except for descriptions of sealed documents) to the page on which the document begins; and
- (v) if the record consists of multiple volumes, indicate the page on which each volume begins.

(e) **Electronic Filing of the Clerk's Record.** The evidentiary panel clerk must file the record electronically. When filing a clerk's record in electronic form, the evidentiary panel clerk must:

- (1) file each computer file in text-searchable Portable Document Format (PDF);
- (2) create electronic bookmarks to mark the first page of each document in the clerk's record;

(3) limit the size of each computer file to 100 MB or less, if possible; and

(4) directly convert, rather than scan, the record to PDF, if possible.

(f) Preparation of the Reporter's Record.

(1) The appellant, at or before the time prescribed for perfecting the appeal, must make a written request for the reporter's record to the court reporter for the evidentiary panel. The request must designate the portion of the evidence and other proceedings to be included. A copy of the request must be filed with the evidentiary panel and BODA and must be served on the appellee. The reporter's record must be certified by the court reporter for the evidentiary panel.

(2) The court reporter or recorder must prepare and file the reporter's record in accordance with TRAP 34.6 and 35 and the Uniform Format Manual for Texas Reporters' Records.

(3) The court reporter or recorder must file the reporter's record in an electronic format by emailing the document to the email address designated by BODA for that purpose.

(4) The court reporter or recorder must include either a scanned image of any required signature or "/s/" and name typed in the space where the signature would otherwise appear.

(5) A court reporter or recorder must not lock any document that is part of the record.

(6) In exhibit volumes, the court reporter or recorder must create bookmarks to mark the first page of each exhibit document.

(g) **Other Requests.** At any time before the clerk's record is prepared, or within ten days after service of a copy of appellant's request for the reporter's record, any party may file a written designation requesting that additional exhibits and portions of testimony be included in the record. The request must be filed with the evidentiary panel and BODA and must be served on the other party.

(h) **Inaccuracies or Defects.** If the clerk's record is found to be defective or inaccurate, the BODA Clerk must inform the clerk of the evidentiary panel of the defect or inaccuracy and instruct the clerk to make the correction. Any inaccuracies in the reporter's record may be corrected by agreement of the parties without the court reporter's recertification. Any dispute regarding the reporter's record that the parties are unable to resolve by agreement must be resolved by the evidentiary panel.

(i) **Appeal from Private Reprimand.** Under TRDP 2.16, in an appeal from a judgment of private reprimand, BODA must mark the record as confidential, remove the attorney's name from the case style, and take any other steps necessary to preserve the confidentiality of the private reprimand.

Rule 4.03 Time to File Record

(a) **Timetable.** The clerk's record and reporter's record must be filed within 60 days after the date the judgment is signed. If a motion for new trial or motion to modify the judgment is filed with the evidentiary panel, the clerk's record and the reporter's record must be filed within 120 days from the date the original judgment is signed, unless a modified judgment is signed, in which case the clerk's record and the reporter's record must be filed within 60 days of the signing of the modified judgment. Failure to file either the clerk's record or the reporter's record on time does not affect BODA's jurisdiction, but may result in BODA's exercising its discretion to dismiss the appeal, affirm the judgment appealed from, disregard materials filed late, or apply presumptions against the appellant.

(b) **If No Record Filed.**

(1) If the clerk's record or reporter's record has not been timely filed, the BODA Clerk must send notice to the party responsible for filing it, stating that the record is late and requesting that the record be filed within 30 days. The BODA Clerk must send a copy of this notice to all the parties and the clerk of the evidentiary panel.

(2) If no reporter's record is filed due to appellant's fault, and if the clerk's record has been filed, BODA may, after first giving the appellant notice and a reasonable opportunity to cure, consider and decide those issues or points that do not require a reporter's record for a decision. BODA may do this if no reporter's record has been filed because:

(i) the appellant failed to request a reporter's record; or

(ii) the appellant failed to pay or make arrangements to pay the reporter's fee to prepare the reporter's record, and the appellant is not entitled to proceed without payment of costs.

(c) **Extension of Time to File the Reporter's Record.** When an extension of time is requested for filing the reporter's record, the facts relied on to reasonably explain the need for an extension must be supported by an affidavit of the court reporter. The affidavit must include the court reporter's estimate of the earliest date when the reporter's record will be available for filing.

(d) **Supplemental Record.** If anything material to either party is omitted from the clerk's record or reporter's record, BODA may, on written motion of a party or on its own motion, direct a supplemental record to be certified and transmitted by the clerk for the evidentiary panel or the court reporter for the evidentiary panel.

Rule 4.04 Copies of the Record

The record may not be withdrawn from the custody of the BODA Clerk. Any party may obtain a copy of the record or any designated part thereof by making a written request to the BODA Clerk and paying any charges for reproduction in advance.

Rule 4.05 Requisites of Briefs

(a) **Appellant's Filing Date.** Appellant's brief must be filed within 30 days after the clerk's record or the reporter's record is filed, whichever is later.

(b) **Appellee's Filing Date.** Appellee's brief must be filed within 30 days after the appellant's brief is filed.

(c) **Contents.** Briefs must contain:

(1) a complete list of the names and addresses of all parties to the final decision and their counsel;

(2) a table of contents indicating the subject matter of each issue or point, or group of issues or points, with page references where the discussion of each point relied on may be found;

(3) an index of authorities arranged alphabetically and indicating the pages where the authorities are cited;

(4) a statement of the case containing a brief general statement of the nature of the cause or offense and the result;

(5) a statement, without argument, of the basis of BODA's jurisdiction;

(6) a statement of the issues presented for review or points of error on which the appeal is predicated;

(7) a statement of facts that is without argument, is supported by record references, and details the facts relating to the issues or points relied on in the appeal;

(8) the argument and authorities;

(9) conclusion and prayer for relief;

(10) a certificate of service; and

(11) an appendix of record excerpts pertinent to the issues presented for review.

(d) **Length of Briefs; Contents Included and Excluded.** In calculating the length of a document, every word and every part of the document, including headings, footnotes, and quotations, must be counted except the following: caption, identity of the parties and counsel, statement regarding oral argument, table of contents, index of authorities, statement of the case, statement of issues presented, statement of the jurisdiction, signature, proof of service, certificate of compliance, and appendix. Briefs must not exceed 15,000 words if computer-generated, and 50 pages if not, except on leave of BODA. A reply brief must not exceed 7,500 words if computer-generated, and 25 pages if not, except on leave of BODA. A computer-generated document must include a certificate by counsel or the unrepresented party stating the number of words in the document. The person who signs the certification may rely on the word count of the computer program used to prepare the document.

(e) **Amendment or Supplementation.** BODA has discretion to grant leave to amend or supplement briefs.

(f) **Failure of the Appellant to File a Brief.** If the appellant fails to timely file a brief, BODA may:

(1) dismiss the appeal for want of prosecution, unless the appellant reasonably explains the failure, and the appellee is not significantly injured by the appellant's failure to timely file a brief;

(2) decline to dismiss the appeal and make further orders within its discretion as it considers proper; or

(3) if an appellee's brief is filed, regard that brief as correctly presenting the case and affirm the evidentiary panel's judgment on that brief without examining the record.

Rule 4.06 Oral Argument

(a) **Request.** A party desiring oral argument must note the request on the front of the party's brief. A party's failure to timely request oral argument waives the party's right to argue. A party who has requested argument may later withdraw the request. But even if a party has waived oral argument, BODA may direct the party to appear and argue. If oral argument is granted, the clerk will notify the parties of the time and place for submission.

(b) **Right to Oral Argument.** A party who has filed a brief and who has timely requested oral argument may argue the case to BODA unless BODA, after examining the briefs, decides that oral argument is unnecessary for any of the following reasons:

(1) the appeal is frivolous;

(2) the dispositive issue or issues have been authoritatively decided;

(3) the facts and legal arguments are adequately presented in the briefs and record; or

(4) the decisional process would not be significantly aided by oral argument.

(c) **Time Allowed.** Each party will have 20 minutes to argue. BODA may, on the request of a party or on its own, extend or shorten the time allowed for oral argument. The appellant may reserve a portion of his or her allotted time for rebuttal.

Rule 4.07 Decision and Judgment

(a) **Decision.** BODA may do any of the following:

(1) affirm in whole or in part the decision of the evidentiary panel;

(2) modify the panel's findings and affirm the findings as modified;

(3) reverse in whole or in part the panel's findings and render the decision that the panel should have rendered; or

(4) reverse the panel's findings and remand the cause for further proceedings to be conducted by:

(i) the panel that entered the findings; or

(ii) a statewide grievance committee panel appointed by BODA and composed of members selected from the state bar districts other than the district from which the appeal was taken.

(b) **Mandate.** In every appeal, the BODA Clerk must issue a mandate in accordance with BODA's judgment and send it to the evidentiary panel and to all the parties.

Rule 4.08 Appointment of Statewide Grievance Committee

If BODA remands a cause for further proceedings before a statewide grievance committee, the BODA Chair will appoint the statewide grievance committee in accordance with TRDP 2.27. The committee must consist of six members: four attorney members and two public members randomly selected from the current pool of grievance committee members. Two alternates, consisting of one attorney and one public member, must also be selected. BODA will appoint the initial chair who will serve until the members of the statewide grievance committee elect a chair of the committee at the first meeting. The BODA Clerk will notify the Respondent and the CDC that a committee has been appointed.

Rule 4.09 Involuntary Dismissal

Under the following circumstances and on any party's motion or on its own initiative after giving at least ten days' notice to all parties, BODA may dismiss the appeal or affirm the appealed judgment or order. Dismissal or affirmance may occur if the appeal is subject to dismissal:

(a) for want of jurisdiction;

(b) for want of prosecution; or

(c) because the appellant has failed to comply with a requirement of these rules, a court order, or a notice from the clerk requiring a response or other action within a specified time.

SECTION 5: PETITIONS TO REVOKE PROBATION

Rule 5.01 Initiation and Service

(a) Before filing a motion to revoke the probation of an attorney who has been sanctioned, the CDC must contact the BODA Clerk to confirm whether the next regularly available hearing date will comply with the 30-day requirement of TRDP. The Chair may designate a three-member panel to hear the motion, if necessary, to meet the 30-day requirement of TRDP 2.23.

(b) Upon filing the motion, the CDC must serve the Respondent with the motion and any supporting documents in accordance with TRDP 2.23, the TRCP, and these rules. The CDC must notify BODA of the date that service is obtained on the Respondent.

Rule 5.02 Hearing

Within 30 days of service of the motion on the Respondent, BODA must docket and set the matter for a hearing and notify the parties of the time and place of the hearing. On a showing of good cause by a party or on its own motion, BODA may continue the case to a future hearing date as circumstances require.

SECTION 6: COMPULSORY DISCIPLINE

Rule 6.01 Initiation of Proceeding

Under TRDP 8.03, the CDC must file a petition for compulsory discipline with BODA and serve the Respondent in accordance with the TRDP and Rule 1.06 of these rules.

Rule 6.02 Interlocutory Suspension

(a) **Interlocutory Suspension.** In any compulsory proceeding under TRDP Part VIII in which BODA determines that the Respondent has been convicted of an Intentional Crime and that the criminal conviction is on direct appeal, BODA may suspend the Respondent's license to practice law by interlocutory order. In any compulsory case in which BODA has imposed an interlocutory order of suspension, BODA retains jurisdiction to render final judgment after the direct appeal of the criminal conviction is final. For purposes of rendering final judgment in a compulsory discipline case, the direct appeal of the criminal conviction is final when the appellate court issues its mandate.

(b) **Criminal Conviction Affirmed.** If the criminal conviction made the basis of a compulsory interlocutory suspension is affirmed and becomes final, the CDC must file a motion for final judgment that complies with TRDP 8.05.

(1) If the criminal sentence is fully probated or is an order of deferred adjudication, the motion for final judgment must contain notice of a hearing date. The motion will be set on BODA's next available hearing date.

(2) If the criminal sentence is not fully probated:

(i) BODA may proceed to decide the motion without a hearing if the attorney does not file a verified denial within ten days of service of the motion; or

(ii) BODA may set the motion for a hearing on the next available hearing date if the attorney timely files a verified denial.

(c) **Criminal Conviction Reversed.** If an appellate court issues a mandate reversing the criminal conviction while a Respondent is subject to an interlocutory suspension, the Respondent may file a motion to terminate the interlocutory suspension. The motion to terminate the interlocutory suspension must have certified copies of the decision and mandate of the reversing court attached. If the CDC does not file an opposition to the termination within ten days of being served with the motion, BODA may proceed to decide the motion without a hearing or set the matter for a hearing on its own motion. If the CDC timely opposes the motion, BODA must set the motion for a hearing on its next available hearing date. An order terminating an interlocutory order of suspension does not automatically reinstate a Respondent's license.

SECTION 7: RECIPROCAL DISCIPLINE

Rule 7.01 Initiation of Proceeding

The Commission for Lawyer Discipline may initiate an action for reciprocal discipline by filing a petition with BODA under TRDP Part IX and these rules. The petition must request that the Respondent be disciplined in Texas and have attached to it any information concerning the disciplinary matter from the other jurisdiction, including a certified copy of the order or judgment rendered against the Respondent.

Rule 7.02 Order to Show Cause

When a petition is filed, the Chair immediately issues a show cause order and a hearing notice and forwards them to the CDC, who must serve the order and notice on the Respondent. The CDC must notify BODA of the date that service is obtained.

Rule 7.03 Attorney's Response

If the Respondent does not file an answer within 30 days of being served with the order and notice but thereafter appears at the hearing, BODA

may, at the discretion of the Chair, receive testimony from the Respondent relating to the merits of the petition.

SECTION 8: DISTRICT DISABILITY COMMITTEE HEARINGS

Rule 8.01 Appointment of District Disability Committee

(a) If the evidentiary panel of the grievance committee finds under TRDP 2.17(P)(2), or the CDC reasonably believes under TRDP 2.14(C), that a Respondent is suffering from a disability, the rules in this section will apply to the de novo proceeding before the District Disability Committee held under TRDP Part XII.

(b) Upon receiving an evidentiary panel's finding or the CDC's referral that an attorney is believed to be suffering from a disability, the BODA Chair must appoint a District Disability Committee in compliance with TRDP 12.02 and designate a chair. BODA will reimburse District Disability Committee members for reasonable expenses directly related to service on the District Disability Committee. The BODA Clerk must notify the CDC and the Respondent that a committee has been appointed and notify the Respondent where to locate the procedural rules governing disability proceedings.

(c) A Respondent who has been notified that a disability referral will be or has been made to BODA may, at any time, waive in writing the appointment of the District Disability Committee or the hearing before the District Disability Committee and enter into an agreed judgment of indefinite disability suspension, provided that the Respondent is competent to waive the hearing. If the Respondent is not represented, the waiver must include a statement affirming that the Respondent has been advised of the right to appointed counsel and waives that right as well.

(d) All pleadings, motions, briefs, or other matters to be filed with the District Disability Committee must be filed with the BODA Clerk.

(e) Should any member of the District Disability Committee become unable to serve, the BODA Chair may appoint a substitute member.

Rule 8.02 Petition and Answer

(a) **Petition.** Upon being notified that the District Disability Committee has been appointed by BODA, the CDC must, within 20 days, file with the BODA Clerk and serve on the Respondent a copy of a petition for indefinite disability suspension. Service may be made in person or by certified mail, return receipt requested. If service is by certified mail, the return receipt with the Respondent's signature must be filed with the BODA Clerk.

(b) **Answer.** The Respondent must, within 30 days after service of the petition for indefinite disability suspension, file an answer with the BODA Clerk and serve a copy of the answer on the CDC.

(c) **Hearing Setting.** The BODA Clerk must set the final hearing as instructed by the chair of the District Disability Committee and send notice of the hearing to the parties.

Rule 8.03 Discovery

(a) **Limited Discovery.** The District Disability Committee may permit limited discovery. The party seeking discovery must file with the BODA Clerk a written request that makes a clear showing of good cause and substantial need and a proposed order. If the District Disability Committee authorizes discovery in a case, it must issue a written order. The order may impose limitations or deadlines on the discovery.

(b) **Physical or Mental Examinations.** On written motion by the Commission or on its own motion, the District Disability Committee may order the Respondent to submit to a physical or mental examination by a qualified healthcare or mental healthcare professional. Nothing in this rule limits the Respondent's right to an examination by a

professional of his or her choice in addition to any exam ordered by the District Disability Committee.

(1) **Motion.** The Respondent must be given reasonable notice of the examination by written order specifying the name, address, and telephone number of the person conducting the examination.

(2) **Report.** The examining professional must file with the BODA Clerk a detailed, written report that includes the results of all tests performed and the professional's findings, diagnoses, and conclusions. The professional must send a copy of the report to the CDC and the Respondent.

(c) **Objections.** A party must make any objection to a request for discovery within 15 days of receiving the motion by filing a written objection with the BODA Clerk. BODA may decide any objection or contest to a discovery motion.

Rule 8.04 Ability to Compel Attendance

The Respondent and the CDC may confront and cross-examine witnesses at the hearing. Compulsory process to compel the attendance of witnesses by subpoena, enforceable by an order of a district court of proper jurisdiction, is available to the Respondent and the CDC as provided in TRCP 176.

Rule 8.05 Respondent's Right to Counsel

(a) The notice to the Respondent that a District Disability Committee has been appointed and the petition for indefinite disability suspension must state that the Respondent may request appointment of counsel by BODA to represent him or her at the disability hearing. BODA will reimburse appointed counsel for reasonable expenses directly related to representation of the Respondent.

(b) To receive appointed counsel under TRDP 12.02, the Respondent must file a written request with the BODA Clerk within 30 days of the date that Respondent is served with the petition for indefinite disability suspension. A late request must demonstrate good cause for the Respondent's failure to file a timely request.

Rule 8.06 Hearing

The party seeking to establish the disability must prove by a preponderance of the evidence that the Respondent is suffering from a disability as defined in the TRDP. The chair of the District Disability Committee must admit all relevant evidence that is necessary for a fair and complete hearing. The TRE are advisory but not binding on the chair.

Rule 8.07 Notice of Decision

The District Disability Committee must certify its finding regarding disability to BODA, which will issue the final judgment in the matter.

Rule 8.08 Confidentiality

All proceedings before the District Disability Committee and BODA, if necessary, are closed to the public. All matters before the District Disability Committee are confidential and are not subject to disclosure or discovery, except as allowed by the TRDP or as may be required in the event of an appeal to the Supreme Court of Texas.

SECTION 9: DISABILITY REINSTATEMENTS

Rule 9.01 Petition for Reinstatement

(a) An attorney under an indefinite disability suspension may, at any time after he or she has been suspended, file a verified petition with BODA to have the suspension terminated and to be reinstated to the practice of law. The petitioner must serve a copy of the petition on the CDC in the manner required by TRDP 12.06. The TRCP apply to a reinstatement proceeding unless they conflict with these rules.

(b) The petition must include the information required by TRDP 12.06. If the judgment of disability suspension contained terms or conditions relating to misconduct by the petitioner prior to the suspension, the petition must affirmatively demonstrate that those terms have been complied with or explain why they have not been satisfied. The petitioner has a duty to amend and keep current all information in the petition until the final hearing on the merits. Failure to do so may result in dismissal without notice.

(c) Disability reinstatement proceedings before BODA are not confidential; however, BODA may make all or any part of the record of the proceeding confidential.

Rule 9.02 Discovery

The discovery period is 60 days from the date that the petition for reinstatement is filed. The BODA Clerk will set the petition for a hearing on the first date available after the close of the discovery period and must notify the parties of the time and place of the hearing. BODA may continue the hearing for good cause shown.

Rule 9.03 Physical or Mental Examinations

(a) On written motion by the Commission or on its own, BODA may order the petitioner seeking reinstatement to submit to a physical or mental examination by a qualified healthcare or mental healthcare professional. The petitioner must be served with a copy of the motion and given at least seven days to respond. BODA may hold a hearing before ruling on the motion but is not required to do so.

(b) The petitioner must be given reasonable notice of the examination by written order specifying the name, address, and telephone number of the person conducting the examination.

(c) The examining professional must file a detailed, written report that includes the results of all tests performed and the professional's findings, diagnoses, and conclusions. The professional must send a copy of the report to the parties.

(d) If the petitioner fails to submit to an examination as ordered, BODA may dismiss the petition without notice.

(e) Nothing in this rule limits the petitioner's right to an examination by a professional of his or her choice in addition to any exam ordered by BODA.

Rule 9.04 Judgment

If, after hearing all the evidence, BODA determines that the petitioner is not eligible for reinstatement, BODA may, in its discretion, either enter an order denying the petition or direct that the petition be held in abeyance for a reasonable period of time until the petitioner provides additional proof as directed by BODA. The judgment may include other orders necessary to protect the public and the petitioner's potential clients.

SECTION 10: APPEALS FROM BODA TO THE SUPREME COURT OF TEXAS

Rule 10.01 Appeals to the Supreme Court

(a) A final decision by BODA, except a determination that a statement constitutes an inquiry or a complaint under TRDP 2.10, may be appealed to the Supreme Court of Texas. The clerk of the Supreme Court of Texas must docket an appeal from a decision by BODA in the same manner as a petition for review without fee.

(b) The appealing party must file the notice of appeal directly with the clerk of the Supreme Court of Texas within 14 days of receiving notice of a final determination by BODA. The record must be filed within 60 days after BODA's determination. The appealing party's brief is due 30 days after the record is filed, and the responding party's brief is due

30 days thereafter. The BODA Clerk must send the parties a notice of BODA's final decision that includes the information in this paragraph.

(c) An appeal to the Supreme Court is governed by TRDP 7.11 and the TRAP.

TRD-201500560
Martha Newton
Rules Attorney
Supreme Court of Texas
Filed: February 20, 2015



Texas Department of Transportation

Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following website:

www.txdot.gov/inside-txdot/get-involved/about/hearings-meetings.html.

Or visit www.txdot.gov, How Do I Find Hearings and Meetings, choose Hearings and Meetings, and then choose Schedule.

Or contact Texas Department of Transportation, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4500 or 1-800-68-PI-LOT.

TRD-201500629
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: February 24, 2015



Request for Proposal - Professional Services

The Texas Department of Transportation (department) announces a Request for Proposal (RFP) for professional services pursuant to Government Code, Chapter 2254, Subchapter A. The term of the contract will be for one year from the project start date as stated in the contract. The department will administer the contract. The RFP will be released on March 6, 2015.

Purpose: The Texas Department of Transportation is requesting proposals from qualified Certified Public Accounting firms to audit its financial statements for the fiscal year ending August 31, 2015, with four (4) optional one year renewals contingent on satisfactory performance and subsequent delegations by State Auditor's Office evaluated on an annual basis. These audits are to be performed in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States. In connection with these standards, the audit firm will perform such procedures as required to comply with the *Texas Comptroller of Public Accounts' Reporting Requirements for Annual Financial Reports of State Agencies and Universities*.

Eligible Applicants: Eligible applicants shall be qualified Certified Public Accounting (CPA) firms.

Program Goal: Shall issue a report on the fair presentation of the financial statements of the department, Texas Mobility Fund, and the Central Texas Turnpike System in conformity with generally accepted accounting principles. Audit firm shall communicate any reportable conditions found during the audit.

Review and Award Criteria: Each application will first be screened for completeness and timeliness. Proposals that are deemed incomplete or arrive after the deadline will not be reviewed. A team of reviewers from the department will evaluate the proposals as to the auditing firm's competence, knowledge, and qualifications and as to the reasonableness of the proposed fee for the services. The criteria and review process are further described in the RFP.

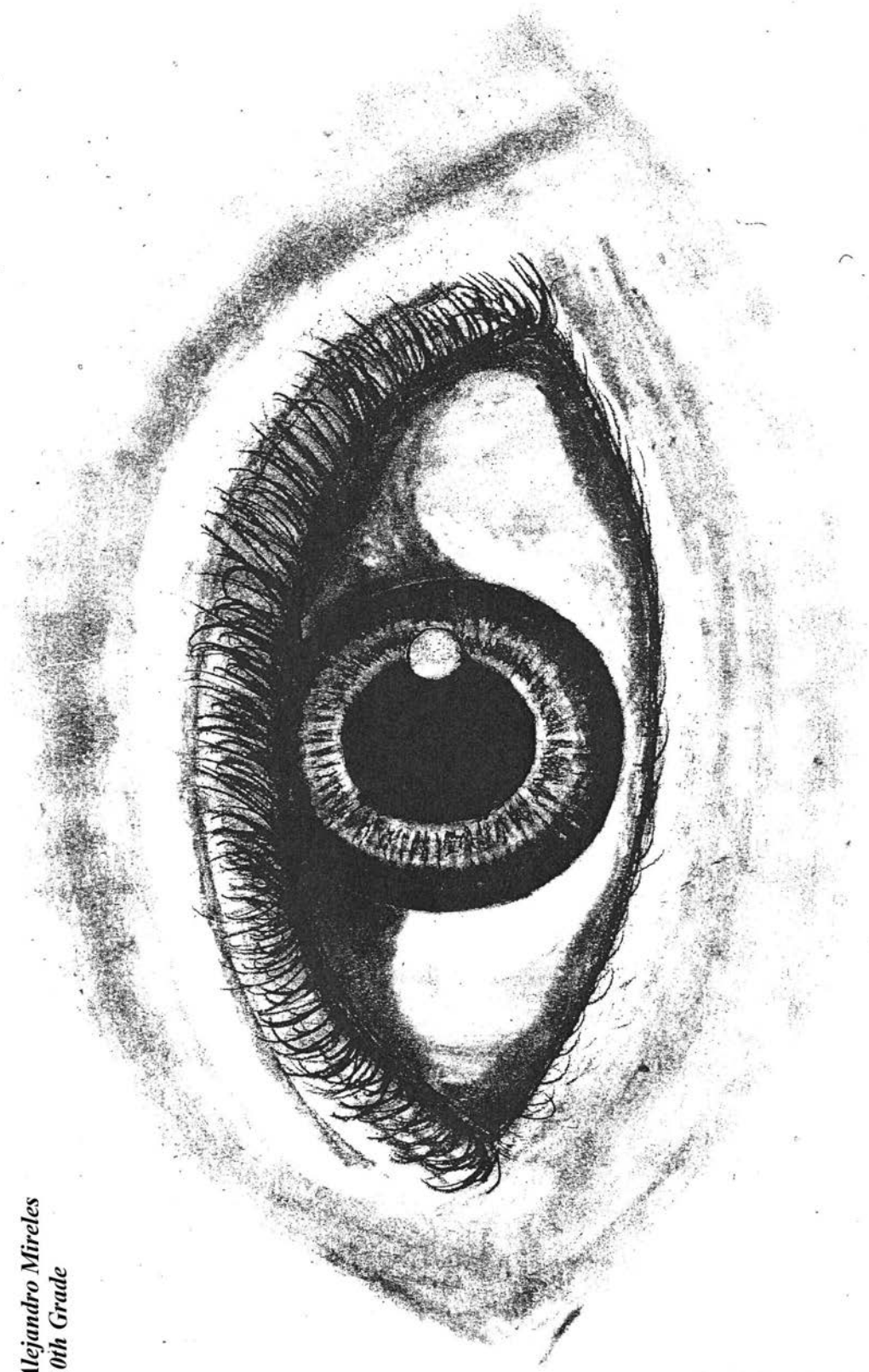
Deadlines: The department must receive proposals prepared according to instructions in the RFP package on or before March 20, 2015, at 3:00 p.m.

To Obtain a Copy of the RFP: Requests for a copy of the RFP should be submitted to Arthur Levine, Finance Division, Texas Department of Transportation, 150 East Riverside Drive, Austin, Texas 78704. Email: Arthur.Levine@txdot.gov, telephone number (512) 486-5612 and fax (512) 486-5390. Copies will also be available on the Electronic State Business Daily (ESBD) at (<http://esbd.cpa.state.tx.us/>).

TRD-201500630
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: February 24, 2015



*Alejandro Mireles
10th Grade*



How to Use the Texas Register

Information Available: The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 40 (2015) is cited as follows: 40 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "40 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 40 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION

Part 4. Office of the Secretary of State

Chapter 91. Texas Register

1 TAC §91.1.....950 (P)

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***Note:** Back issues of the *Texas Register*, published before September 9, 2005, must be ordered through the Texas Register Section of the Office of the Secretary of State at (512) 463-5561.

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