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Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register's* Internet site:
<http://www.sos.state.tx.us/open/index.shtml>

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: register@sos.state.tx.us

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.

<http://texasattorneygeneral.gov/og/open-government>

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE ATTORNEY GENERAL

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

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

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

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

Opinions

Opinion No. KP-0131

The Honorable Dennis Bonnen

Chair, Committee on Ways & Means

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Authority of a municipality to use hotel occupancy tax revenue to fund a feasibility study and the construction, operation, and maintenance of a performing arts center (RQ-0122-KP)

SUMMARY

Under section 351.101 of the Tax Code, a municipality may expend its municipal hotel occupancy tax revenue in the direct promotion of

tourism and the convention and hotel industry, provided that the expenditure is for one of the specified uses listed in the statute. It is for a municipal governing body to determine in the first instance whether an expenditure of hotel occupancy tax revenue is proper under section 351.101.

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

TRD-201700433

Amanda Crawford

General Counsel

Office of the Attorney General

Filed: January 31, 2017





EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034).

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER B. DISEASE DETECTION AND RESPONSE

DIVISION 1. CHRONIC WASTING DISEASE (CWD)

31 TAC §65.81, §65.82

Pursuant to Parks and Wildlife Code, §12.027, and Government Code, §2001.034, the executive director of the Texas Parks and Wildlife Department (the department) adopts, on an emergency basis, amendments to §65.81 and §65.82, concerning Disease Detection and Response. The rules are contained in Division 1 of Subchapter B. The emergency adoption will eliminate current Surveillance Zone 3 (SZ 3) and establish new Containment Zone 3 (CZ 3) in Medina, Bandera, and Uvalde counties in response to the recent detection of chronic wasting disease (CWD) in a free-ranging white-tailed deer in Medina County.

The department's executive director has determined that the nature of CWD and its recent detection in a free-ranging white-tailed deer in Medina County pose an immediate danger to white-tailed deer, which is a species authorized to be regulated by the department, and that the adoption of the amendment on an emergency basis with fewer than 30 days' notice is necessary to address this immediate danger.

The emergency rules will initially be in effect for no longer than 120 days, but may be extended for an additional 60 days. It is the intent of the department to also publish proposed rules pursuant to the Administrative Procedure Act's notice and comment rulemaking process.

CWD is a fatal neurodegenerative disorder that affects some cervid species, including white-tailed deer, mule deer, elk, red deer, sika, and their hybrids (susceptible species). It is classified as a TSE (transmissible spongiform encephalopathy), a family of diseases that includes scrapie (found in sheep), bovine spongiform encephalopathy (BSE, found in cattle and commonly known as "Mad Cow Disease"), and variant Creutzfeldt-Jakob Disease (vCJD) in humans.

Although CWD remains under study, it is known to be invariably fatal to certain species of cervids, and is transmitted both directly (through animal-to-animal contact) and indirectly (through environmental contamination). (There is no scientific evidence to indicate that CWD is transmissible to humans.) Moreover, a high

prevalence of the disease in wild populations correlates with deer population declines and there is evidence that hunters tend to avoid areas of high CWD prevalence. If CWD is not contained and controlled, the implications of the disease for Texas and its multi-billion dollar ranching, hunting, wildlife management, and real estate economies could potentially be significant.

The department has engaged in several rulemakings over the years to address the threat posed by CWD. In 2005, the department closed the Texas border to the entry of out-of-state captive white-tailed and mule deer and increased regulatory requirements regarding disease monitoring and record keeping. (The closing of the Texas border to entry of out-of-state captive white-tailed and mule deer was updated, effective in January 2010, to address other disease threats to white-tailed and mule deer (35 TexReg 252).)

On July 10, 2012, the department confirmed that two mule deer sampled in the Texas portion of the Hueco Mountains tested positive for CWD. In response, the department adopted new rules in 2013 (37 TexReg 10231) to implement a CWD containment strategy in far West Texas. The rules established a system of concentric zones within which the movement of live deer under department permits (Deer Breeder Permits, Triple T Permits, and Deer Management Permits) is restricted, and required deer harvested in specific geographical areas to be presented at check stations to be tested for CWD. In 2015, those rules were modified (41 TexReg 7501) in response to additional CWD discoveries in the Texas Panhandle and Medina County, creating additional SZs and CZs.

In June of 2015 the department received confirmation that a two-year-old white-tailed deer held in a deer breeding facility in Medina County ("index facility") had tested positive for CWD, which was followed by positive test results for white-tailed deer in three additional deer breeding facilities. Subsequent testing confirmed the presence of CWD in additional white-tailed deer at the index facility. The source of the CWD at the index facility has not been determined. In response, the department first adopted emergency rules (40 TexReg 5566) to respond immediately to the threat, then developed interim rules (41 TexReg 815) intended to function through the 2015 - 2016 hunting season until permanent rules could be implemented. Working closely with the Texas Animal Health Commission (TAHC), the regulated community, and key stakeholders, and with the assistance of the Center for Public Policy Dispute Resolution of the University of Texas School of Law, the department developed comprehensive CWD management rules (Subchapter B, Division 2, adopted in 2016 (41 TexReg 5726)). The comprehensive CWD management rules address the movement and consequences of movement of live deer under various department-issued permits (Deer Breeder Permits, Triple T Permits, and Deer Management Permits). Concurrently, the department engaged in rulemaking affecting Subchapter B, Division 1 (41 TexReg 7501) to create additional SZs and CZs, including SZ 3, which affects portions

of Bandera, Medina, and Uvalde counties. The rules imposed restrictions on the movement to, from, and within SZs and CZs of live deer under various permits issued by the department, but exempted SZ 3 from the applicability of §65.88, concerning Deer Carcass Movement Restrictions, which imposes certain restrictions on the movement of dead deer and parts of dead deer from SZs (mandatory check station and documentation requirements). The department was approached by concerned county officials and landowners in Medina County who committed to organizing a volunteer hunter and landowner effort to provide the department with a sufficient number of valid "not detected" CWD test results, which would allow the department to make an epidemiologically sound determination about the prevalence (if any) of CWD within SZ 3.

On January 24, 2017, the department received confirmation that a 1.5-year-old male white-tailed deer harvested by a hunter within SZ 3 in Medina County during the 2016 - 2017 hunting season had tested positive for CWD. The deer was free-ranging and was harvested on a low-fenced property.

Prior to the recent detection in a free-ranging white-tailed deer, the CWD discovery in this part of the state occurred in deer breeding facilities, which are required by law to be designed and built to both prevent the free movement of deer and contact with free-ranging deer, which facilitates the control and management of CWD. In addition, the breeding facilities where CWD was previously discovered are operating under TAHC herd plans, which restrict deer movement and require CWD testing at a level equal to or greater than that required in a CZ.

Based on the epidemiological science of CWD and in consultation with TAHC, the department has determined that prompt action to contain CWD in this area is necessary and that it is prudent to designate current SZ 3 as CZ 3 and to do so by emergency rule with fewer than 30 days' notice. This action will restrict movement of deer and deer carcasses.

Within a CZ, no person shall conduct, authorize or cause any activity involving the movement of a susceptible species under a permit issued pursuant to Parks and Wildlife Code, Chapter 43, Subchapter C, E, L, R, or R-1. Such prohibited activity, includes, but is not limited to transportation, introduction, removal, authorizing the transportation, introduction or removal of, or causing the transportation, introduction or removal of a live susceptible species into, out of, or within a CZ. The rules also prohibit the possession of susceptible species within new deer breeding facilities within a CZ, prohibit the recapture of escaped breeder deer unless authorized under a hold order or herd plan issued by TAHC, and prohibit the transfer of breeder deer to or from a TC 2 or TC 3 deer breeding facility located within a CZ; however, a TC 1 deer breeding facility located in a CZ may release breeder deer to immediately adjoining acreage if the release site and the breeding facility share the same ownership, but may not transfer deer to or from any other location. Additionally, the CZ designation imposes specific carcass movement restrictions on deer and parts of deer harvested within a CZ. The department also intends to establish mandatory check stations within CZ 3.

The department will undertake to inform the public with respect to the emergency rules and permanent rules to follow.

The emergency action is necessary to protect the state's white-tailed deer populations, as well as associated industries.

The rules are adopted on an emergency basis under Parks and Wildlife Code, §12.027, which authorizes the department's executive director to adopt emergency rules if there is an imme-

diately danger to a species authorized to be regulated by the department, and under Government Code §2001.034, which authorizes a state agency to adopt such emergency rules without prior notice or hearing.

§65.81. Containment Zones; Restrictions.

The areas described in paragraph (1) of this section are CZs.

(1) Containment Zones.

(A) Containment Zone 1: That portion of the state within the boundaries of a line beginning in Culberson County where U.S. Highway (U.S.) 62-180 enters from the State of New Mexico; thence southwest along U.S. 62-180 to F.M. 1111 in Hudspeth County; thence south on F.M. 1111 to I.H. 10 thence west along I.H. 10 to S.H. 20; thence northwest along S.H. 20 to Farm-to Market Road (F.M.) 1088; thence south along F.M. 1088 to the Rio Grande; thence northwest along the Rio Grande to the Texas-New Mexico border.

(B) Containment Zone 2: That portion of the state within the boundaries of a line beginning where I.H. 40 enters from the State of New Mexico in Deaf Smith County; thence east along I.H. 40 to U.S. 385 in Oldham County; thence north along U.S. 385 to the Oklahoma state line.

(C) Containment Zone 3. That portion of the state lying within a line beginning at U. S. 90 in Hondo in Medina County; thence west along U.S. Highway 90 to F.M. 187 in Uvalde County; thence north along F.M. 187 to F. M. 470 in Bandera County; thence east along F.M. 470 to Tarpley in Bandera County; thence south along F.M. 462 to U.S. 90 in Hondo.

(D) [(C)] Existing CZs may be modified and additional CZs may be designated as necessary by the executive director as provided in §65.84 of this title (relating to Powers and Duties of the Executive Director).

(2) Restrictions.

(A) Except as provided in this section or §65.87 of this title (relating to Exception), no person within a CZ shall conduct, authorize or cause any activity involving the movement of a susceptible species under a permit issued pursuant to Parks and Wildlife Code, Chapter 43, Subchapter C, E, L, R, or R-1. Such prohibited activity, includes, but is not limited to transportation, introduction, removal, authorizing the transportation, introduction or removal of, or causing the transportation, introduction or removal of a live susceptible species into, out of, or within a CZ.

(B) If the department receives an application for a deer breeder permit for a new facility that is to be located within an area designated as a CZ, the department will issue the permit but will not authorize the possession of susceptible species within the facility so long as the CZ designation exists.

(C) Deer that escape from a deer breeding facility within a CZ may not be recaptured unless specifically authorized under a hold order or herd plan issued by the Texas Animal Health Commission.

(D) A TC 1 deer breeding facility located in a CZ may release breeder deer to immediately adjoining acreage if the release site and the breeding facility share the same ownership, but may not transfer deer to or from any other location. Breeder deer may not be transferred to or from a TC 2 or TC 3 deer breeding facility located within a CZ.

§65.82. Surveillance Zones; Restrictions.

The areas described in paragraph (1) of this section are SZs.

(1) Surveillance Zones.

(A) Surveillance Zone 1: That portion of the state lying within a line beginning where U.S. 285 enters from the State of New Mexico in Reeves County; thence southeast along U.S. 285 to R.M. 652; thence west along R.M. 652 to Rustler Springs Rd./FM 3541 in Culberson County; thence south along Rustler Springs Rd./F.M. 3541 to F.M. 2185; thence south along F.M. 2185 to Nevel Road; thence west along Nevel Road to County Road 501; thence south along County Road 501 to Weatherby Road; thence south along Weatherby Road to F.M. 2185; thence southwest along to F.M. 2185 to S.H. 54; thence south on S.H. 54 to U.S. 90; thence south along U.S. 90 to the Culberson County line; thence southwest along the Culberson County line to the Rio Grande River in Hudspeth County; thence north along the Rio Grande to F.M. 1088; thence northeast along F.M. 1088 to S.H. 20; thence southeast along S.H. 20 to I.H. 10; thence southeast along I.H. 10 to F.M. 1111; thence north on F.M. 1111 to U.S. 62/180; thence east and north along U.S. 62/180 to the New Mexico state line in Culberson County.

(B) Surveillance Zone 2. That portion of the state lying within a line beginning at the New Mexico state line where U.S. 60 enters Texas; thence northeast along U.S. 60 to U.S. 87 in Randall County; thence north along U.S. 87 to I.H. 27; thence north along U.S. 87/I.H. 27 to U.S. 287 in Moore County; thence north along US 287 to the Oklahoma state line.

~~{(C) Surveillance Zone 3. That portion of the state lying within a line beginning at U. S. 90 in Hondo in Medina County; thence west along U.S. Highway 90 to F.M. 187 in Uvalde County; thence north along F.M. 187 to F. M. 470 in Bandera County; thence east along F.M. 470 to Tarpley in Bandera County; thence south along F.M. 462 to U.S. 90 in Hondo.}~~

(C) ~~{(D)}~~ Existing SZs may be modified and additional SZs may be designated as necessary by the executive director as provided in §65.84 of this title (relating to Powers and Duties of the Executive Director).

(2) Restrictions.

(A) Except as provided in §65.87 of this title (relating to Exception) and subparagraph (B) of this paragraph, no person within a SZ may conduct, authorize or cause any activity involving the movement of a susceptible species, into, out of, or within a SZ under a permit issued pursuant to Parks and Wildlife Code, Chapter 43, Subchapter C, E, L, R, or R-1. Such prohibited activity, includes, but is not limited to transportation, introduction, removal, authorizing the transportation, introduction or removal, or causing the transportation, introduction or removal of a live susceptible species into, out of, or within a SZ.

(B) Breeder Deer.

(i) Except as provided in Division 2 of this subchapter, a breeding facility that is within a SZ and designated as a:

(I) TC 1 breeding facility may:

(-a-) transfer to or receive breeder deer from any other deer breeding facility in this state; and

(-b-) transfer breeder deer in this state for purposes of liberation, including to release sites within the SZ.

(II) TC 2 breeding facility:

(-a-) may receive deer from any facility in the state that is authorized to transfer deer;

(-b-) may transfer deer to a breeding facility or release site that is within the same SZ; and

(-c-) is prohibited from transferring deer to any facility outside of the SZ.

(ii) Deer that escape from a breeding facility within a SZ may not be recaptured unless specifically authorized under a hold order or herd plan issued by the Texas Animal Health Commission.

(C) Permits to Transplant Game Animals and Game Birds (Triple T permit). The department may authorize the release of susceptible species in a SZ under the provisions of a Triple T permit issued by the department under the authority of Parks and Wildlife Code, Chapter 43, Subchapter E and the provisions of Subchapter C of this chapter, but the department will not authorize the trapping of deer within a SZ for purposes of a Triple T permit.

(D) Deer Management Permit (DMP). The department may issue a DMP for a facility in a SZ; however, any breeder deer introduced to a DMP facility must be released and may not be transferred to any deer breeding facility.

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

Filed with the Office of the Secretary of State on January 26, 2017.

TRD-201700385

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Effective date: January 26, 2017

Expiration date: May 25, 2017

For further information, please call: (512) 389-4775





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 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 35. ENFORCEMENT SUBCHAPTER C. MINORS

16 TAC §35.21

The Texas Alcoholic Beverage Commission proposes amendments to §35.21, relating to Assist Defined.

Section 35.21 is an interpretive rule clarifying the use of the word "assist" in Alcoholic Beverage Code §61.71(a)(12) and §106.09(a). Those subsections provide that a person may not employ a person under 18 years old to sell, serve, prepare, handle or dispense alcoholic beverages, or to assist in doing so. The rule provides that merely being employed to work where alcoholic beverages are sold does not by itself mean that the minor is assisting in the prohibited activities, if the minor does not have a direct and immediate connection with any particular sale of alcoholic beverages.

The proposed amendments are mostly grammatical and stylistic. The list of prohibited activities is modified to track the language of the relevant Alcoholic Beverage Code ("Code") subsections.

The commission has reviewed the section pursuant to Government Code §2001.039 and has determined that the need for the rule continues to exist but that changes to the current rule are appropriate.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no fiscal impact on local government attributable to the amendments. There should be no fiscal impact on state government.

The proposed amendments will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because the rule will more clearly reflect the Code provisions it interprets.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by facsimile transmission to (512) 206-3280, or by email to rules@tabc.texas.gov. Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on Thursday, February 23, 2017, at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed amendments are authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

The proposed amendments affect Alcoholic Beverage Code §§5.31, 61.71, and 106.09, and Government Code §2001.039.

§35.21. Assist Defined.

The word "assist" as used in Alcoholic Beverage Code §106.09(a) and §61.71(a)(12) [~~of the Alcoholic Beverage Code~~] shall not be construed to mean that a person under 18 years of age assists in selling, servicing, preparing, handling, [~~transporting,~~] or dispensing alcoholic beverages merely by being employed to work on or about a [~~the~~] premises where alcoholic beverages are sold or served, as long as the person under 18 years of age [~~he~~] does not have a direct and immediate connection with any particular sale or service [~~delivery~~] of such beverages.

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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Martin Wilson

Assistant General Counsel

Texas Alcoholic Beverage Commission

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For further information, please call: (512) 206-3489



CHAPTER 45. MARKETING PRACTICES SUBCHAPTER C. STANDARDS OF IDENTITY FOR MALT BEVERAGES

16 TAC §45.80

The Texas Alcoholic Beverage Commission proposes amendments to §45.80, relating to Net Contents.

Section 45.80 prescribes how the net contents of a malt beverage must be stated on the label.

Currently, subsection (a) applies to ale and malt liquor, while subsection (b) applies to beer. The requirements differ. The rule also requires that all fractions be expressed in their lowest de-

nominations, and allows the net contents to be blown, branded or burned on the bottle instead of being stated on the label.

The proposed amendments delete current subsection (b) and apply the same standards to beer as are currently applied to ale and malt liquor in subsection (a). A new paragraph (5) is added to subsection (a) to account for containers larger than one gallon. Grammatical changes are also made.

The commission has reviewed the section pursuant to Government Code §2001.039 and has determined that the need for the rule continues to exist but that changes to the current rule are appropriate.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no fiscal impact on local government attributable to the amendments. There should be no fiscal impact on state government.

The proposed amendments will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because the same standards will apply to all malt beverages.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by facsimile transmission to (512) 206-3280, or by email to rules@tabc.texas.gov. Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on Thursday, February 23, 2017, at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed amendments are authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

The proposed amendments affect Alcoholic Beverage Code §5.31 and Government Code §2001.039.

§45.80. *Net Contents.*

(a) Net contents of malt beverages [~~liquors~~] shall be stated as follows:

(1) if less than one pint, the net contents shall be stated in fluid ounces or fractions of a pint;

(2) if one pint, one quart or one gallon, the net contents shall be so stated;

(3) if more than one pint, but less than one quart, the net contents shall be stated in fractions of a quart, or in fluid ounces, or in pints and fluid ounces;

(4) if more than one quart, but less than one gallon, the net contents shall be stated in fractions of a gallon, or in fluid ounces, or in quarts, pints and fluid ounces; and

(5) if more than one gallon, the net contents shall be stated in gallons and fractions thereof, or in barrels, fractions of barrels, or barrels and fractions thereof.

(b) [Net contents of beer shall be stated as follows:]

(1) ~~one barrel;~~

(2) ~~1/2 barrel;~~

(3) ~~1/4 barrel;~~

(4) ~~1/8 barrel;~~

(5) ~~32 fluid ounces;~~

(6) ~~24 fluid ounces;~~

(7) ~~16 fluid ounces;~~

(8) ~~12 fluid ounces;~~

(9) ~~8 fluid ounces; and~~

(10) ~~7 fluid ounces.~~

~~[(e)—]~~ All fractions shall be expressed in their lowest denominations.

(c) [~~(d)~~] The net contents need not be stated on any label if the net contents are displayed by having the same blown, branded, or burned in the container in letters or figures in such manner as to be plainly legible under ordinary circumstances and such statement is not obscured in any manner in whole or in part.

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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Martin Wilson

Assistant General Counsel

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SUBCHAPTER D. ADVERTISING AND PROMOTION--ALL BEVERAGES

16 TAC §45.107

The Texas Alcoholic Beverage Commission proposes amendments to §45.107, relating to Alcoholic Beverages Utilized for Cooking Purposes at On-Premise Locations.

Section 45.107 establishes the conditions under which wine and beer retailer's permittees and mixed beverage permit holders can possess and use certain alcoholic beverages on their premises for cooking purposes.

Subsection (a) of the current rule implements Alcoholic Beverage Code §25.09(b), which authorizes the Commission to adopt a rule allowing a wine and beer retailer's permittee to possess and use alcoholic beverages in excess of 17 percent by volume on the licensed premises for cooking purposes. The Commission does not propose making any changes to subsection (a).

Subsection (b) of the current rule implements Alcoholic Beverage Code §28.06(e), which authorizes the Commission to adopt a rule allowing a mixed beverage permittee to possess and use alcoholic beverages that are not covered by an invoice on the permitted premises for cooking purposes. The Commission

does not propose making any substantive changes to subsection (b), but does propose making grammatical and structural changes.

The commission has reviewed the section pursuant to Government Code §2001.039 and has determined that the need for the rule continues to exist but that changes to the current rule are appropriate.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no fiscal impact on local government attributable to the amendments. There should be no fiscal impact on state government.

The proposed amendments will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because the rule will be clearer.

Comments on the proposed amendments may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by facsimile transmission to (512) 206-3280, or by email to rules@tabc.texas.gov. Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on Thursday, February 23, 2017, at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed amendments are authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, by Alcoholic Beverage Code §25.09(b), which authorizes the Commission to adopt a rule allowing a wine and beer retailer's permittee to possess and use alcoholic beverages in excess of 17 percent by volume on the licensed premises for cooking purposes, and by Alcoholic Beverage Code §28.06(e), which authorizes the Commission to adopt a rule allowing a mixed beverage permittee to possess and use alcoholic beverages that are not covered by an invoice on the permitted premises for cooking purposes.

The proposed amendments affect Alcoholic Beverage Code §§5.31, 25.09, and 28.06, and Government Code §2001.039.

§45.107. *Alcoholic Beverages Utilized for Cooking Purposes at On-Premise Locations.*

(a) Wine and Beer On-Premises Retailers.

(1) This subsection is promulgated pursuant to Alcoholic Beverage Code §25.09.

(2) Any alcoholic beverage that is in excess of 17 percent alcohol by volume and is used by wine and beer on-premises retailers for cooking purposes must be individually labeled as "For Cooking Use Only".

(3) All alcoholic beverages in excess of 17 percent alcohol by volume used by wine and beer on-premises retailers for cooking purposes must be stored separately from alcoholic beverages that are legal for sale on the premises by such retailers.

(4) No alcoholic beverage in excess of 17 percent alcohol by volume that is designated by wine and beer on-premises retailers for

cooking purposes may be sold, served or consumed in liquid form by staff or customers of the retailer.

(5) All receipts for the purchase by wine and beer on-premises retailers of alcoholic beverages in excess of 17 percent alcohol by volume must be retained on the premises until the bottle is empty and disposed of.

(b) Mixed Beverage Permittees.

(1) This subsection is promulgated pursuant to Alcoholic Beverage Code §28.06.

(2) Alcoholic beverages used for cooking purposes may be purchased by a mixed beverage permittee from[; tax stamped by and invoiced by] a local distributor's permittee, [Local Distributor's Permittee] or may be purchased at retail from a licensed retailer. All receipts for the purchase of alcoholic beverages used for cooking purposes and purchased by a mixed beverage permittee at retail without a tax stamp must be retained on the premises until the bottle is empty and disposed of. [Alcoholic beverages purchased at retail without a tax stamp may not be served or sold in liquid form.]

(3) An alcoholic beverage used for cooking purposes and purchased by a mixed beverage permittee [for cooking purposes] at retail without a tax stamp must be individually labeled as "For Cooking Use Only".

(4) All alcoholic beverages used for cooking purposes and purchased by a mixed beverage permittee [for cooking purposes] at retail without a tax stamp must be stored separately from alcoholic beverages purchased from[; tax stamped by and invoiced by] a local distributor's permittee [Local Distributor's Permittee].

(5) No alcoholic beverage used for cooking purposes and [Alcoholic beverages] purchased by a mixed beverage permittee [for cooking purposes] at retail without a tax stamp may [not] be sold, served or consumed in liquid form by staff or customers of the permittee.

{(6) All receipts for the purchase of alcoholic beverages purchased for cooking purposes at retail without a tax stamp must be retained on the premises until the bottle is empty and disposed of.}

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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Martin Wilson

Assistant General Counsel

Texas Alcoholic Beverage Commission

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For further information, please call: (512) 206-3489



TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 17. RESOURCE PLANNING SUBCHAPTER B. BOARD APPROVAL

19 TAC §17.12

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §17.12, concerning delegation of approval for Energy Savings Performance Contracts. Prior to the passage of Senate Bill (SB) 215 (83rd Texas Legislature, Regular Session), the Coordinating Board was required to review and approve certain capital projects. SB 215 eliminated some of these requirements, but the requirement to review and approve Energy Savings Performance Contracts was unchanged. Texas Education Code (TEC) §51.927 still requires the THECB to approve these performance contracts. In July 2014, the Coordinating Board convened a negotiated rulemaking committee for capital projects and the committee made sweeping changes to the Texas Administrative Code (TAC), one of which was removing TAC Title 19, Part 1, Chapter 17, Subchapter B, §17.12 (regarding delegation of authority for approval). In order to increase efficiency and reduce administrative burden while satisfying the conditions of TEC §51.927, the Coordinating Board is proposing a rule change that provides for a delegation of approval for Energy Savings Performance Contracts. Specifically, this change will establish a methodology that stratifies projects based on two factors: project cost and term of the contract. Energy Savings Performance Contracts that are lower in cost and shorter in term may be approved by the Assistant Commissioner for Strategic Planning and Funding; medium cost and medium-term projects shall be approved by the Board's Committee on Affordability, Accountability and Planning; and the full Board remains the final approval authority for high cost and long-term contracts. Any project that is not approved by a delegated party is immediately referred to the next higher level approval authority.

Dr. Julie Eklund, Assistant Commissioner for Strategic Planning and Funding, Texas Higher Education Coordinating Board, has determined that for each year of the first five years the section is in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering this change to the rules.

Dr. Julie Eklund, Assistant Commissioner for Strategic Planning and Funding, Texas Higher Education Coordinating Board, has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be more efficient and effective administration of the energy savings performance contracts approval process. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed, but the proposal has the potential to help contain the costs of higher education. There is no impact on local employment.

Comments on the proposal may be submitted to Dr. Julie Eklund, Assistant Commissioner for Strategic Planning and Funding, Texas Higher Education Coordinating Board, by mail at 1200 East Anderson Lane, Austin, TX, 78752 or by email to julie.eklund@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new section is proposed under the Texas Education Code, §51.927.

The new section affects the following Texas Education Code, §51.927.

§17.12. Delegation of Approval Authority.

(a) Assistant Commissioner. The Board authorizes the Assistant Commissioner for Strategic Planning and Funding to approve the following types of energy savings performance contracts, upon certifi-

cation of authority by the proposing institution's governing board that the project meets all of the specified Board standards and statutory requirements:

(1) Less than \$20 million but more than \$10 million in cost and with a contract term of ten or fewer years; and

(2) \$10 million or less in cost with a contract term greater than 10 years but less than 15 years

(b) Committee on Affordability, Accountability and Planning. The Board authorizes the Committee to approve the following types of energy savings performance contracts, upon certification of authority by the proposing institution's governing board that the project meets all of the specified Board standards and statutory requirements:

(1) Greater than \$20 million in cost with a contract term of 15 or fewer years; and

(2) Greater than \$10 million but less than or equal to \$20 million in cost with a contract term of greater than ten years but less than 20 years.

(3) \$10 million or less in cost with a contract term of greater than 15 years.

(c) Board. The following types of energy savings performance contracts shall be considered for approval by the Board. Contracts with a project cost of greater than \$20 million and a contract term greater than 15 years.

(d) Any project that is not approved by a delegated party is immediately referred to the next higher level approval authority.

(e) The Assistant Commissioner may refer projects to the Committee for review.

(f) Decisions of the Assistant Commissioner may be appealed to the Committee. Decisions of the Committee may be appealed to 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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TRD-201700406

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6104



CHAPTER 22. GRANT AND SCHOLARSHIP PROGRAMS

SUBCHAPTER B. PROVISIONS FOR THE TUITION EQUALIZATION GRANT PROGRAM

19 TAC §22.22, §22.24

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §22.22 and §22.24, concerning the Provisions for the Tuition Equalization Grant (TEG) Program. Specifically, changes to §22.22 adds the definition for "Religious ministry" to the rule. Subsequent definitions are renumbered

accordingly. The amendment is made to clarify that the term "Religious ministry" applies to organized and structured roles and does not apply to informal roles performed by lay persons. Amendments to §22.24(a)(5) adds language which clarify that degree plans specifically intended to lead a student to religious ministry, as defined in §22.22, are excluded from TEG eligibility. This is in recognition of the sectarian purpose clause of the Texas Constitution (Article I, Section 7), mentioned in §61.229(b) of TEG statute.

Charles W. Puls, Ed.D., Deputy Assistant Commissioner, Student Financial Aid Programs, has determined that for each year of the first five years the section is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Puls has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering this section will be a clearer understanding of the requirements of the program. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Charles W. Puls, Ed.D., Deputy Assistant Commissioner, Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711, 512-427-6365, charles.puls@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under Texas Education Code §61.229, which authorizes the Coordinating Board to adopt rules to implement the Tuition Equalization Grant (TEG) Program.

The amendments affect Chapter 22, Subchapter B of the TAC, §22.22, and §22.24.

§22.22. Definitions.

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

(1) - (27) (No change.)

(28) "Religious ministry--Roles serving as clergy, religious leaders or similar positions within any sect or religious society, as demonstrated through ordination, licensure to preach, or other mechanisms particular to a given sect or society that are used to identify clergy, religious leaders or such similar positions."

(29) [(28)] Residency Core Questions--A set of questions developed by the Coordinating Board to be used to determine a student's eligibility for classification as a resident of Texas, available for downloading through the Coordinating Board's website and incorporated into the ApplyTexas application for admission.

(30) [(29)] Resident of Texas--A resident of the State of Texas as determined in accordance with Chapter 21, Subchapter B of this title (relating to Determination of Resident Status). Nonresident students who are eligible to pay resident tuition rates are not residents of Texas.

(31) [(30)] Subsequent award--A TEG grant received in any academic year other than the year in which an individual received his or her first TEG award.

(32) [(31)] TEG need--The basic amount of TEG funds that an eligible student could receive, subject to the limit in Texas Education Code §61.227(c).

(33) [(32)] Total TEG need--The total amount of TEG funds that eligible students at an approved institution could receive if the program were fully funded.

(34) [(33)] Tuition differential--The difference between the tuition paid at the private or independent institution attended and the tuition the student would have paid to attend a comparable public institution.

(35) [(34)] Undergraduate student--An individual who has not yet received a baccalaureate degree.

§22.24. Provisions that Apply Only to 2006 Revised TEG Program Students.

(a) Eligible Students. To receive an award through the TEG Program, a 2006 Revised TEG Program student must:

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

(5) be enrolled in an approved institution in an individual degree plan leading to a first associate's degree, first baccalaureate degree, first master's degree, first professional degree, or first doctoral degree, but not in a degree plan that is intended to lead to religious ministry [leads to ordination, licensure to preach or a career in church work];

(6) - (9) (No change.)

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

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

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Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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PART 2. TEXAS EDUCATION AGENCY

CHAPTER 30. ADMINISTRATION SUBCHAPTER BB. COMMISSIONER OF EDUCATION: PURCHASING AND CONTRACTS

19 TAC §30.2003

The Texas Education Agency (TEA) proposes new §30.2003, concerning auditing and monitoring performance for all contracts, including assessment instruments. The proposed new section would implement the requirements of the Texas Government Code, §2261.253, as added by Senate Bill (SB) 20, 84th Texas Legislature, 2015, and the Texas Education Code (TEC), §39.0381, as added by SB 743, 84th Texas Legislature, 2015.

SB 20, 84th Texas Legislature, 2015, added Texas Government Code, §2261.253, which requires each state agency by rule to establish a procedure to identify each contract that requires enhanced contract or performance monitoring and submit the information to the officer who governs the agency. The statute also

specifies that the agency's procurement director must notify the officer who governs the agency of any serious issue or risk that is identified as requiring enhanced monitoring.

SB 743, 84th Texas Legislature, 2015, added TEC, §39.0381, which requires the TEA by rule to develop a comprehensive methodology for auditing and monitoring performance under contracts for services to develop or administer assessment instruments to verify compliance with contractual obligations. Further, the TEA must ensure that all new and renewed assessment contracts include a provision that the agency or a designee of the agency may conduct periodic contract compliance reviews, without advance notice, to monitor vendor performance.

Proposed new 19 TAC §30.2003 would implement the requirements of statute by establishing provisions for auditing and monitoring performance on all contracts awarded by the TEA, including contracts for assessment instruments. The proposed new section would specify that the TEA will conduct random reviews of contracts and that TEA staff must be granted access to certain tools related to monitoring the agency's assessment program. The proposed new section would also outline the training that will be provided to TEA staff for contract and performance monitoring. Finally, the proposed new section would address provisions for enhanced contract and performance monitoring, including the responsibilities of TEA staff.

The proposed new section would require contractors to submit supporting documentation with invoices and regular programmatic reports. In addition, for contracts identified as needing enhanced monitoring, TEA requires the contractor to provide specific programmatic information on a scheduled basis.

The proposed new section would have no locally maintained paperwork requirements.

FISCAL NOTE. Shirley Beaulieu, associate commissioner for finance / chief financial officer, has determined that for the first five-year period the new section is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the new section. There is no effect on local economy for the first five years that the proposed new section is in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

PUBLIC BENEFIT/COST NOTE. Ms. Beaulieu has determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the new section will be providing additional monitoring tools to be used by the TEA to assess the progress of contracts awarded with public funds and ensuring that contractors meet performance measures and comply with contract and service delivery requirements. There is no anticipated economic cost to persons who are required to comply with the proposed new section.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND MICROBUSINESSES. There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins February 10, 2017, and ends March 13, 2017. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. Comments may also be submitted electronically to

rules@tea.texas.gov. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on February 10, 2017.

STATUTORY AUTHORITY. The new section is proposed under the Texas Government Code, §2261.253, which requires each state agency by rule to establish a procedure to identify each contract that requires enhanced contract or performance monitoring; and the Texas Education Code (TEC), §39.0381, which requires the Texas Education Agency by rule to develop a comprehensive methodology for auditing and monitoring performance under contracts for services to develop or administer assessment instruments required by TEC, §39.023, to verify compliance with contractual obligations.

CROSS REFERENCE TO STATUTE. The new section implements the Texas Government Code, §2261.253, and Texas Education Code, §39.0381.

§30.2003. Auditing and Monitoring Performance for All Contracts, Including Assessment Instruments.

(a) Auditing contracts.

(1) Texas Education Agency (TEA) staff will randomly perform desk reviews or billing reviews throughout the term of any contract awarded by the TEA.

(2) TEA staff shall be granted access to any online tools installed or in use for monitoring and reporting service levels related to the contracted work for the agency's assessment program. If monitoring tools do not exist, TEA shall place monitoring tools on the production servers and components supporting those systems related to the deliverables for the assessment program.

(b) Contract and performance monitoring. The TEA will provide contract management training to agency staff that includes:

(1) developing written contracting policies and procedures;

(2) developing contract monitoring plans and tools;

(3) communicating expectations through a detailed statement of work, performance measures, and post-award meetings;

(4) requiring supporting documentation with each invoice;

(5) communicating that payments linked to satisfactory performance are allowable, reasonable, and necessary to achieve the program objectives;

(6) requesting regular programmatic reports;

(7) requesting access to records;

(8) including a Liquidated Damages clause; and

(9) including a Right to Audit clause that complies with Texas Education Code, §39.0381, in the contract terms and conditions.

(c) Enhanced contract and performance monitoring. The following provisions apply to all contracts awarded by TEA to ensure contractors' compliance with contract and service delivery requirements.

(1) TEA staff must complete monitoring plans for high-dollar and high-risk contracts as determined by the TEA procurement director.

(2) Individual program areas within TEA will conduct day-to-day monitoring activities regarding financial and performance requirements.

(3) Higher-risk contracts are monitored more frequently and more comprehensively than lower-risk contracts as determined by the project Risk Assessment form.

(4) A contract may be identified as needing enhanced monitoring through factors such as the Risk Assessment form, needing corrective action, other factors that become known to the agency, or as determined by the TEA procurement director. For contracts identified as needing enhanced monitoring, TEA requires the contractor to provide specific programmatic information on a scheduled basis to determine if performance measures are being met.

(5) Enhanced monitoring may include site visits, meeting notes, and any other documentation requirements deemed necessary by the TEA to assess progress of the contractor toward meeting the identified goals and outcomes established in response to contract deficiencies.

(6) The TEA procurement director shall notify TEA executive staff of contracts that have been identified as needing enhanced monitoring.

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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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



CHAPTER 102. EDUCATIONAL PROGRAMS SUBCHAPTER II. COMMISSIONER'S RULES CONCERNING TEXAS HIGH PERFORMANCE SCHOOLS CONSORTIUM

19 TAC §102.1201

The Texas Education Agency proposes an amendment to §102.1201, concerning the Texas High Performance Schools Consortium. The proposed amendment would reflect changes in law made by House Bill (HB) 18, 84th Texas Legislature, 2015.

Senate Bill 1557, 82nd Texas Legislature, 2011, created the Texas High Performance Schools Consortium to inform the governor, legislature, and commissioner of education concerning methods for transforming Texas public schools through the development of innovative, next-generation learning standards, assessment, and accountability systems.

The 84th Texas Legislature, 2015, passed HB 18, adding standards and systems relating to career and college readiness as a topic the consortium is required to report. Additionally, HB 18 added the State Board of Education (SBOE) as a recipient of the report and required the school districts and open-enrollment charter schools participating in the consortium to have sole responsibility for report submission. HB 18 also clarified language relating to the accountability requirements for an open-enrollment charter school to be eligible for the consortium. Finally,

HB 18 increased the number of consortium districts and charter schools the commissioner is permitted to select for participation in the consortium from 20 to 30 and the total number of students enrolled in public schools that can be from consortium participants from 5% to 10%.

The proposed amendment to 19 TAC §102.1201 would make the following changes to align with statute. The proposed amendment would add standards and systems relating to career and college readiness as a topic the consortium is required to report and would add the SBOE as a recipient of the report. The proposed amendment would specify that to be eligible to participate in the consortium, an open-enrollment charter school must receive a distinction designation rather than an exemplary accountability rating. The proposed amendment would increase the number of districts and charter schools that may participate in the consortium from 20 to 30 and increase the total number of students enrolled in public schools that can be from consortium participants from 5% to 10%. Finally, the proposed amendment would add the requirement that the consortium submit reports not later than December 1 of each even-numbered year to the governor, legislature, SBOE, and commissioner.

In addition, the following changes would be made to remove outdated information and clarify provisions related to continued participation in the consortium. The proposed amendment would remove a reference to the 2013-2014 school year and change a reference from the 2009-2010 school year to the most recent available information. The proposed amendment would clarify that a school district that has been selected to participate in the consortium is not required to reapply for participation and that a district may discontinue participation by indicating the desire to discontinue in writing to the commissioner. The proposed amendment would specify that the commissioner may replace a consortium participant at the commissioner's discretion. Finally, the proposed amendment would change the title of a subsection for clarity and make technical edits for consistency.

HB 18, 84th Texas Legislature, 2015, moved reporting responsibility from the commissioner to the members of the consortium and specified that the consortium must report to the governor, legislature, SBOE, and commissioner not later than December 1 of each even-numbered year. The proposed amendment would not change the application and selection process currently implemented.

The proposed amendment would have no locally maintained paperwork requirements.

FISCAL NOTE. Monica Martinez, associate commissioner for standards and support services, has determined that for the first five-year period the proposed amendment is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendment. There is no effect on local economy for the first five years that the proposed amendment is in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

PUBLIC BENEFIT/COST NOTE. Ms. Martinez has determined that for each year of the first five years the proposed amendment is in effect the public benefit anticipated as a result of enforcing the proposed amendment will be increasing the number of schools that are permitted to participate in the consortium and possibly increasing the number of potential methods for transforming Texas public schools that are presented for considera-

tion. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND MICROBUSINESSES. There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins February 10, 2017, and ends March 13, 2017. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. Comments may also be submitted electronically to rules@tea.texas.gov. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on February 10, 2017.

STATUTORY AUTHORITY. The amendment is proposed under the Texas Education Code, §7.0561, which requires the commissioner of education to create the Texas High Performance Schools Consortium for the purpose of informing the governor, legislature, State Board of Education, and commissioner of education about ways to transform public schools to improve student learning through the development of innovative, next-generation learning standards and assessment and accountability systems, including standards and systems relating to career and college readiness.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §7.0561.

§102.1201. *Texas High Performance Schools Consortium.*

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

(1) Consortium--A group of school districts selected to participate in the Texas High Performance Schools Consortium as established under the Texas Education Code (TEC), §7.0561, for the purpose of informing the governor, legislature, State Board of Education, and commissioner of education concerning methods for transforming public schools in Texas by improving student learning through the development of innovative, next-generation learning standards and assessment and accountability systems, including standards and systems relating to career and college readiness.

(2) Consortium principles--The following four principles shall be addressed by the consortium as mandated by the TEC, §7.0561:

(A) digital learning--engagement of students in digital learning, including, but not limited to, engagement through the use of electronic textbooks and instructional materials adopted under the TEC, Chapter 31, Subchapters B and B-1, and courses offered through the state virtual school network under the TEC, Subchapter 30A;

(B) learning standards--emphasis on learning standards that focus on high-priority learning standards identified in coordination with school districts and open-enrollment charter schools participating in the consortium;

(C) multiple assessments--use of multiple assessments of learning capable of being used to inform students, parents, school districts, and open-enrollment charter schools on an ongoing basis con-

cerning the extent to which learning is occurring and the actions consortium participants are taking to improve learning; and

(D) local control--reliance on local control that enables communities and parents to be involved in the important decisions regarding the education of their children.

(3) Curricular goal--A measurable learning outcome expected as a result of student participation in instruction covering a specific portion of the curriculum.

(4) High-priority learning standards--Learning standards that are manageable in number and of high importance in student learning such as those that have been identified by the Texas Education Agency (TEA) as "readiness standards." Additional high-priority learning standards will be identified [~~no earlier than the 2013-2014 school year~~] in coordination with school districts and open-enrollment charter schools participating in the consortium.

(5) Learning standards--Standards that a student must master to be successful in a competitive, postsecondary environment, including standards approved by the State Board of Education as part of the Texas Essential Knowledge and Skills.

(6) School district--For the purposes of this section, the definition of school district includes an open-enrollment charter school unless otherwise specified.

(b) Eligibility. To be eligible to apply for participation in the consortium, the following criteria must be met, as applicable.

(1) A school district and its participating campus(es) must not have been awarded the lowest performance rating as its most recent state academic accountability rating under §97.1001 of this title (relating to Accountability Rating System).

(2) Either a school district or its participating campus(es) must have received either national, statewide, or regional public acknowledgment [] from an organization relying on expertise in the field of education [] for district-wide or campus-wide excellence in academic performance or innovative practices in one of the areas described by the consortium principles in subsection (a)(2) of this section.

(3) In accordance with the TEC, §7.0561(c), an open-enrollment charter school must have been awarded a distinction designation with [an exemplary rating as] its most recent state academic accountability rating under §97.1001 of this title.

(4) A school district and an open-enrollment charter school must be in compliance with the TEA audit requirements determined under §109.41 of this title (relating to Financial Accountability System Resource Guide).

(5) A school district and an open-enrollment charter school must [shall] also meet other criteria determined by the commissioner and specified in the request for application (RFA).

(c) Initial application and participation [Application].

(1) An eligible school district must apply through the RFA process to be considered as a participant in the consortium.

(2) An eligible school district must submit an application fee not to exceed \$500 to cover the costs of the application review process.

(3) In the application, a school district must:

(A) identify the individual who will serve as the school district's coordinator for consortium activities and point of contact for participation in the consortium;

(B) designate which campus or campuses will participate in the consortium;

(C) provide a detailed action plan to support improved instruction of and learning by students that includes the following features:

(i) a description of how the school district and its campuses currently are addressing or plan to address the four consortium principles specified in subsection (a)(2) of this section;

(ii) a detailed description of the curricular goals to be addressed in the action plan;

(iii) a description of how resources will be acquired to support teachers in improving student learning;

(iv) an analysis of evidence that demonstrates the accuracy of any assessment(s) used or planned to be used in the school district to measure the quality of learning, including the methodology and metrics employed; and

(v) a description of any waiver(s) for a prohibition, requirement, or restriction for which the school district wishes to apply;

(D) provide evidence that school district stakeholders, including parents, teachers, students, and community members, have participated in the development and/or review and approval of the action plan;

(E) provide evidence that the application and action plan have been considered and approved by the school district's board of trustees;

(F) include assurances that the school district and its board of trustees will conform to the policies and procedures governing the operation of the consortium, as established by the commissioner, addressing such issues as attendance, reporting, financial support, and mentoring; and

(G) meet any additional requirements specified in the RFA.

(4) A school district that has been selected to participate in the consortium is not required to reapply for participation. A school district may discontinue participation by indicating in writing to the commissioner its desire to discontinue participation.

(5) The commissioner may replace a consortium participant at the commissioner's discretion.

(d) Criteria and methodology for selecting participants in the consortium.

(1) Applications will be selected based on quality of the application and the extent to which the district's participation ensures representation in the following categories in compliance with the TEC, §7.0561(c).

(A) Type. Using the most recent available definitions of type as set forth in the TEA's District Type Data [~~for 2009-10~~], the commissioner shall select at least one district in each of the following categories:

(i) urban, as represented by categories titled Major Urban and Other Central City;

(ii) suburban, as represented by categories titled Major Suburban and Other Central City Suburban;

(iii) non-metropolitan, as represented by categories titled Independent Town, Non-Metropolitan: Fast-Growing, Non-Metropolitan: Stable; and

(iv) rural, as represented by the category titled Rural.

(B) Size. Using student enrollment figures reported to the TEA for the previous school year, the commissioner shall select at least one district in each of the following categories:

(i) large district: district with a student population of 10,000 or more students;

(ii) mid-size district: district with a student population between 1,000 and 9,999; and

(iii) small district: district with a student population of 999 or fewer.

(C) Student demographics. Using the most recent available data in the TEA's Texas Student Data System Public Education Information Management System, the commissioner shall select districts whose student demographics, when aggregated with other consortium participants, will result in a diverse student population that is representative of the state's overall public school student population in the following categories:

(i) ethnicity and race;

(ii) economically disadvantaged;

(iii) English language learners;

(iv) students identified to receive special education services; and

(v) students identified as gifted and talented.

(2) In selecting school districts, the commissioner shall ensure, in accordance with the TEC, §7.0561(d), that the aggregate number of students enrolled in campuses participating in the consortium does not exceed 10% [~~5.0%~~] of the total number of students enrolled in Texas public schools based on student enrollment figures reported to the TEA for the previous school year. In order to ensure compliance with this statutory requirement:

(A) a school district may designate in its application the entire district or only one or more campus(es) to participate in the consortium; and

(B) the commissioner may require a school district to reduce the number of campuses designated in ~~its [the school district's]~~ application as a condition for participation in the consortium.

(3) The commissioner may select no more than 30 [~~20~~] school districts to participate in the consortium.

(e) Notification. The TEA will notify each applicant in writing of its selection or non-selection for participation in the consortium.

(f) Financing of consortium.

(1) For the purpose of implementing this section, the commissioner or a school district participating in the consortium may accept gifts, grants, or donations from any source, including a private entity or governmental entity.

(2) To recover TEA costs, the commissioner may charge a participation fee of at least \$2,500 annually and not to exceed \$10,000 annually to each school district selected to participate in the consortium. The commissioner may adjust the fee proportionate to the number of campuses the district has designated to participate in the consortium. Each school district's participation fee shall be reduced by the application fee amount paid in accordance with subsection (c)(2) of this section.

(g) Reporting by consortium. The school districts participating in the consortium must submit reports concerning the performance

and progress of the consortium not later than December 1 of each even-numbered year to the:

- (1) governor;
- (2) legislature;
- (3) State Board of Education; and
- (4) commissioner of education.

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 January 30, 2017.

TRD-201700409

Christina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: March 12, 2017

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



TITLE 22. EXAMINING BOARDS

PART 30. TEXAS STATE BOARD OF EXAMINERS OF PROFESSIONAL COUNSELORS

CHAPTER 681. PROFESSIONAL COUNSELORS

The Texas State Board of Examiners of Professional Counselors (board), proposes amendments to §§681.41, 681.114, and 681.125; the repeal of §681.127; and new §681.253, concerning the licensure and regulation of professional counselors.

BACKGROUND AND PURPOSE

To implement Senate Bill (SB) 807 and SB 1307, 84th Legislature, Regular Session, 2015, which amended Texas Occupations Code, Chapter 55, relating to occupational license application; examination fees and licensing and renewal of certain military service members, military veterans, and military spouses, the board proposes to repeal §681.127, concerning active military renewal and inactive status, and amend §681.114, such that the section provides for initial licensing and license renewal procedures specific to military service members, military veterans, and military spouses as well as includes provisions concerning inactive status for military service members. In addition, §681.125 includes a provision for licensees impacted or displaced by national emergency or war that was previously in §681.127.

To implement House Bill (HB) 1449, 84th Legislature, Regular Session, 2015, as it relates to child custody and adoption evaluations in certain suits affecting the parent-child relationship, by stipulating minimum qualifications for licensees who hold doctoral degrees to serve as a child custody evaluator and prohibiting a holder of a Licensed Professional Counselor Intern (LPC Intern) from conducting a child custody or adoption evaluation under amended Texas Family Code, Chapter 107, unless the individual is otherwise qualified by law to conduct the evaluation,

or is appointed by a court to conduct it under Texas Family Code, §107.106 or §107.155, as applicable, the board proposes to repeal §681.41(cc), and to propose new §681.253.

SECTION-BY-SECTION SUMMARY

This summary considers only those sections which were substantially changed in language, meaning, or intent.

Subchapter C. Code of Ethics

The board proposes to repeal §681.41(cc), which was previously adopted and became effective on July 14, 2016, to implement HB 1449, 84th Legislature, Regular Session, 2015, as it relates to child custody and adoption evaluations.

Subchapter H. Licensing

The board proposes to amend §681.114, implementing SB 807 and SB 1307, 84th Legislature, Regular Session, 2015, which amended Texas Occupations Code, Chapter 55, relating to occupational license application and examination fees and to licensing and renewal of certain military service members, military veterans, and military spouses. In addition, §681.114 is amended to include provisions previously located under §681.127 concerning inactive status for military service members. However, the amendments do not implement SB 807 and SB 1307 concerning the examination fee waiver, because the professional counselor licensure examination fees and jurisprudence examination fees are not paid to the state, but to the third party administrator(s) of the examination(s).

Subchapter I. Regular License Renewal; Inactive and Retirement Status

The board proposes to amend §681.125, and includes a provision for a licensee impacted or displaced due to a national emergency or war to request inactive status. This provision was in the previous §681.127, which the board is now proposing to repeal.

The board proposes to repeal §681.127, so all provisions concerning initial licensing and license renewal procedures specific to military service members, military veterans, and military spouses as well as provisions concerning inactive status for military service members are easily found under §681.114.

Subchapter N. Parenting Coordination and Parenting Facilitation. The board proposes to rename this subchapter as "Subchapter N. Parenting Coordination and Facilitation and Child Custody and Adoption Evaluations."

The board introduces new §681.253 to implement HB 1449 of the 84th Legislature, Regular Session, 2015, as it relates to Licensed Professional Counselors and child custody and adoption evaluations. HB 1449 amended the Texas Family Code, Chapter 107, relating to child custody and adoption evaluations conducted and provided in certain suits affecting the parent-child relationship. New §681.253 provides minimum qualifications for child custody/adoption evaluator for a licensee who holds a doctoral degree. New §681.253 directs all other licensees to comply with minimum qualifications stipulated under Texas Family Code, Chapter 107 for child custody evaluators; §107.154 states minimum qualifications for adoption evaluators. New §681.253 prohibits LPC Interns from conducting child custody/adoption evaluations unless the individual is otherwise qualified by law to conduct the evaluation. Texas Family Code, §107.106 or §107.155 provides an exception to the required qualifications in a county with a population of less than 500,000, such that the court may appoint an otherwise qualified individual, if a court finds that an individual who meets the minimum qualifications of §107.104 or

§107.154 is not available in the county to conduct the evaluation in a timely manner. New §681.253 also specifies certain standards of conduct for licensees performing child custody evaluations or adoption evaluations.

FISCAL NOTE

Cristina De Luna, Executive Director, has determined that for each year of the first five years that the proposed new section and amendments will be in effect, there will be no anticipated cost or saving, nor effect on revenue, to local government as a result of the proposed rule changes. There will be an anticipated fiscal cost to state government as a result of lost revenue from waiving certain initial application fees for military service members, military veterans, and military spouses, and renewal late fees for certain military service members. Since examination fees for the board are not paid to the state, the statutory waiver provision for such fees does not affect revenue for the board. Fees under current laws and rules for the board to which the waiver provisions would apply for qualified applicants and license holders are as follows:

As set forth in 22 TAC §681.14, \$190 for application and license issue fee; \$125 for late renewal fee within 90 days of expiration date; and \$150 late renewal fee for 91 days up to not more than one year of expiration date.

In addition, a \$5 Office of Patient Protection (OPP) fee under Texas Occupations Code, §101.307 applies to initial licensure applications. A \$5 Texas.gov fee under Texas Government Code, §2054.252 applies to initial licensure applications.

In Fiscal Year 2016, the board received a total of 47 applications from individuals identifying themselves as eligible for an initial license fee waiver; this averages out to 3.9 applications per month. Staff used an average of five applications per month for the following estimates. Given that the late fee waiver previously existed in statute, with the recent legislative amendments only broadening to some extent the scope of eligibility for active military service members, the impact of the waiver provisions can be expected to be greater in relation to new applicants who may be eligible for the initial license application fee waiver.

Thus, an estimated loss of revenue per eligible applicant from fee waivers can be expected to be approximately \$200, including the OPP and Texas.gov surcharges, with only minimal impact from the new legislative amendments mandating waivers of late renewal fees for active-duty military service members.

Based upon the slightly inflated rate of five eligible applicants per month; assuming some increase in the number of applications after the rules take effect and as they become better known; and allowing for occasional requests for late fee waivers, the department estimated rates of waiver requests at seven per month for the first year, nine per month for the second year, and so on, to assume approximately 15 per month by the fifth year. The board further approximated the application fee plus the applicable surcharges, totaling a \$200 initial application rate as the base rate. These figures would result in an estimated \$16,800 loss in revenue for year one; \$21,600 loss in revenue for year two; \$26,400 loss in revenue for year three; \$31,200 loss in revenue for year four; and \$36,000 loss in revenue for year five of the rules being in effect, for a total estimated loss of revenue for the board of approximately \$132,000. However, the board does not anticipate an impact to its ability to meet the costs of administering the program through existing revenue under the current fee structure, even with this loss of revenue due to the new fee waivers.

MICRO-BUSINESSES AND SMALL BUSINESSES IMPACT ANALYSIS

Ms. De Luna has also determined that there will be no adverse economic effect on small businesses or micro-businesses. This determination was made because the proposed amendments and new rules do not impose any new requirements on businesses, and any new requirements in the new rule are minimal and will not require small businesses and micro-businesses to significantly alter their business practices.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are anticipated savings for those military service members, military veterans, and military spouses who are eligible applicants for a waiver of certain fees. There is no anticipated negative impact on local employment.

REGULATORY ANALYSIS

The board has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean "a rule, the specific intent to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. The proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The board has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC BENEFIT

In addition, Ms. De Luna has determined that for each year of the first five years the sections are in effect, the public will benefit from the adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to continue to ensure public health and safety through the licensing and regulation of professional counselors, and to increase the availability of licensed professional counselors by facilitating the licensing of applicants with relevant military experience and of qualified military spouses.

PUBLIC COMMENT

Comments on the proposal may be submitted to Cristina De Luna, Executive Director, Texas State Board of Examiners of Professional Counselors, Professional Licensing and Certification Unit, Division for Regulatory Services, Department of State Health Services, Mail Code 1982, P.O. Box 149347, Austin, Texas 78714-9347, (512) 834-6658, or by email to lpc@dshs.state.tx.us. When submitting comments by email, please include "Comments on Proposed Rules" in the subject line. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

SUBCHAPTER C. CODE OF ETHICS

22 TAC §681.41

STATUTORY AUTHORITY

The amendment is proposed under Texas Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of its duties.

The amendment affects Texas Occupations Code, Chapter 503.

§681.41. *General Ethical Requirements.*

(a) - (bb) (No change.)

~~[(ee) Child Custody Evaluation, Adoption Evaluation, and Evaluations in Contested Adoptions.]~~

~~[(1) Licensees shall comply with Texas Family Code, Chapter 107, Subchapters D, E, and F concerning Child Custody Evaluation, Adoption Evaluation, and Evaluations in Contested Adoptions.]~~

~~[(2) Any complaint relating to the outcome of a child custody evaluation or adoption evaluation conducted by a licensee must be reported to the court that ordered the evaluation. The board only reviews complaints regarding forensic evaluations addressing violation of specific board rules.]~~

~~[(3) A Licensed Professional Counselor Intern shall not conduct child custody evaluations or adoption evaluations unless qualified by another professional license to provide such services.]~~

~~[(4) Disclosure of confidential information in violation of Texas Family Code, §107.111 or §107.163 is grounds for disciplinary action, up to and including revocation of license, 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.

Filed with the Office of the Secretary of State on January 30, 2017.

TRD-201700410

Glynda Corley

Chair

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: March 12, 2017

For further information, please call: (512) 776-6972



SUBCHAPTER H. LICENSING

22 TAC §681.114

STATUTORY AUTHORITY

The amendment is proposed under Texas Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of its duties.

The amendments affects Texas Occupations Code, Chapter 503.

§681.114. *Licensing of Military Service Members, Military Veterans, and Military Spouses.*

(a) This section sets out initial licensing and license renewal procedures specific to ~~[for]~~ military service members, military veterans, and military spouses pursuant to Texas ~~[required under]~~ Occupations Code, Chapter 55 (relating to Licensing of Military Service Members, Military Veterans, and Military Spouses) as well as provisions concerning Inactive Status for Military Service Members. For purposes of this section:

(1) "Active duty" means current full-time military service in the armed forces of the United States or active duty military service as a member of the Texas military forces, as defined by Government Code, §437.001 or similar military service of another state.

(2) "Armed forces of the United States" means the army, navy, air force, coast guard, or marine corps of the United States or a reserve unit of one of those branches of the armed forces.

(3) "Designated representative" is a person authorized in writing by the military service member to act on behalf of the military service member. A copy of the written authorization must be provided to the board with the request for inactive status.

(4) "License" means a license, certificate, registration, permit, or other form of authorization required by law or a state agency rule that must be obtained by an individual to engage in a particular business.

(5) ~~[(4)]~~ "Military service member" means a person who is on active duty. ~~[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.]~~

(6) ~~[(2)]~~ "Military spouse" means a person who is married to a military service member ~~[who is currently on active duty].~~

(7) ~~[(3)]~~ "Military veteran" means a person who has served on active duty and who was discharged or released from 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.]~~

(b) An applicant shall provide documentation acceptable to the board of the applicant's status as a military service member, military veteran, or military spouse. Acceptable documentation includes, but is not limited to, copies of official documents such as military service orders, marriage licenses, and military discharge records. The application of a person who fails to provide documentation of his or her status shall not be processed under ~~[the requirements of]~~ this section.

(c) Upon request, an applicant shall provide ~~[acceptable]~~ proof specified by, or otherwise acceptable to, the board of current licensure issued by another jurisdiction. Upon request, the applicant shall provide proof that the licensing requirements of that jurisdiction are substantially equivalent to the licensing requirements of this state.

(d) The board's authority to require an applicant to undergo a criminal history background check, and the timeframes associated with that process, are not affected by the provisions ~~[requirements]~~ of this section.

(e) For an application for a license submitted by a verified military service member or military veteran, the applicant shall receive credit towards any licensing requirements ~~[or apprenticeship requirements]~~, except an examination requirement, for verified military service, training, or education that the board determines is relevant to the licensing requirements. ~~[occupation,]~~ unless he or she holds a restricted license issued by another jurisdiction or ~~[if he or she]~~ has a ~~[an unacceptable]~~ criminal history for which adverse licensure action is authorized by law. ~~[as described by the Act and this chapter.]~~

(f) An applicant who is a military service member, military veteran, or military spouse holding ~~[who holds]~~ a current, unrestricted license issued by another jurisdiction that has substantially equivalent ~~[licensing]~~ requirements to the requirements for licensure in this state shall complete and submit an application form and a supplemental application form for military service member, veteran, or military spouse ~~[fee].~~ As soon as practicable after a complete application under this

subsection is filed, the [The] board will process and [shall] issue a license to an [a qualified] applicant who holds such a license, satisfies the application and supplemental application requirements, and meets the requisite substantial equivalency requirements of the other state, if the applicant has no unresolved allegations or criminal background relevant to the license, and there are no other facts or circumstances providing grounds for denial of the license. The license will have the same term as the applicable license type issued under the Act and this subchapter. Renewal [as soon as practicable and the renewal] of the license shall be in accordance with subsection (i) of this section.

(g) An applicant who is a military service member, military veteran, or military spouse who held a license under the Act and this subchapter within the five years preceding the application date, and without restriction, shall complete and submit an application form and a supplemental application form for military service member, veteran, or military spouse. As soon as practicable after a complete application under this subsection is filed, the board will process and issue a license under the Act and this subchapter to an applicant who held such a license and who satisfies the application and supplemental application requirements, if the applicant has no unresolved allegations or criminal background relevant to the license, and there are no other facts or circumstances providing grounds for denial of the license. The license will have the same term as a license for the same license type otherwise issued under the Act or this subchapter. Renewal of the license shall be in accordance with subsection (i) of this section.

(h) [(g)] In accordance with Texas Occupations Code, §55.004(b) [§55.004(e)], the board or its designee [executive director] may waive any prerequisite to obtaining a license after reviewing the [applicant's] credentials of an applicant who is eligible to apply under subsection (f) or (g) of this section [and determining that the applicant holds a license issued by another jurisdiction that has licensing requirements substantially equivalent to those of this state].

[(h) A military spouse who within the five years preceding the application date held the license in this state that expired while the applicant lived in another state for at least six months is qualified for licensure based on the previously held license, if there are no unresolved complaints against the applicant and if there is no other bar to licensure, such as criminal background or non-compliance with a board order.]

(i) If the board issues an initial license pursuant to subsection (f) or (g) [to an applicant who is a military spouse in accordance with subsection (f)] of this section to an applicant who is a military service member, military veteran, or military spouse, the board will [shall] assess whether the applicant has met all licensing requirements of this state [by virtue of the current license issued by another jurisdiction]. The board will [shall] provide this assessment in writing, which may be by electronic means, to the applicant at the time the license is issued. If the applicant has not met all licensing requirements of this state, the applicant must provide proof of completion at the time of the first application for license renewal. A license under this subchapter will [shall] not be renewed, will [shall] be allowed to expire, and will [shall] become ineffective if the applicant does not provide proof of completion at the time of the first application for licensure renewal.

(j) Notwithstanding any other law, the board will waive the registration application fees paid to the state for an applicant described in paragraph (1) or (2) of this subsection. An applicant shall provide any proof requested by the board that the applicant is:

(1) A military service member or military veteran whose military service, training, or education substantially meets all applicable requirements for the license; or

(2) A military service member, military veteran, or military spouse who holds a current license issued by another jurisdiction

that has licensing requirements that are substantially equivalent to the requirements for the license in this state.

(k) For license renewal, the board will exempt an individual who holds a license issued by the board from any increased fee or other penalty imposed for failing to renew the license in a timely manner if the individual establishes to the satisfaction of the board that the individual failed to renew the license in a timely manner because the individual was serving as a military service member.

(l) A military service member who holds a license is entitled to two years of additional time beyond the expiration date of the license to complete:

(1) any continuing education requirements; and

(2) any other requirement related to the renewal of the military service member's license.

(m) A military service member or his or her designated representative may submit a request for inactive status in writing to the board.

(1) A written request for inactive status must be received by the board prior to expiration of the license or within one year from the expiration date and shall include

(A) a copy of the official transfer orders of the military service member or other official military documentation; and

(B) a current address and telephone number for the military service member or the military service member's designated representative.

(2) The payment of the inactive status fee is waived for a military service member under this subsection.

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

Filed with the Office of the Secretary of State on January 30, 2017.

TRD-201700411

Glynda Corley

Chair

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: March 12, 2017

For further information, please call: (512) 776-6972



SUBCHAPTER I. REGULAR LICENSE RENEWAL; INACTIVE AND RETIREMENT STATUS

22 TAC §681.125

STATUTORY AUTHORITY

The amendment is proposed under Texas Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of its duties.

The amendment affects Texas Occupations Code, Chapter 503.

§681.125 *Inactive Status.*

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

(j) A licensee who is impacted or displaced due to a national emergency or war may submit a request for inactive status in writing to the board.

(1) A written request for inactive status must be received by the board prior to expiration of the license or within one year from the expiration date and shall include:

(A) an explanation of how the licensee is impacted or displaced; and

(B) a current address and telephone number for the impacted or displaced licensee.

(2) The payment of the inactive status fee is waived for a licensee who is impacted or displaced due to a national emergency or war.

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 January 30, 2017.

TRD-201700412

Glynda Corley
Chair

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: March 12, 2017

For further information, please call: (512) 776-6972



22 TAC §681.127

STATUTORY AUTHORITY

The repeal is proposed under Texas Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of its duties.

The repeal affects Texas Occupations Code, Chapter 503.

§681.127. Active Military.

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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Glynda Corley
Chair

Texas State Board of Examiners of Professional Counselors

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For further information, please call: (512) 776-6972



SUBCHAPTER N. PARENTING COORDINATION AND FACILITATION AND CHILD CUSTODY AND ADOPTION EVALUATIONS

22 TAC §681.253

STATUTORY AUTHORITY

The new section is proposed under Texas Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of its duties.

The new section affects Texas Occupations Code, Chapter 503.

§681.253. Child Custody Evaluation, Adoption Evaluation, and Evaluations in Contested Adoptions.

(a) Licensees shall comply with Texas Family Code, Chapter 107, Subchapters D, E, and F concerning Child Custody Evaluation, Adoption Evaluation, and Evaluations in Contested Adoptions.

(b) A licensee who has completed a doctoral degree and at least 10 court-ordered child custody evaluations under the supervision of an individual qualified by Texas Family Code, Chapter 107 to perform child custody evaluations is qualified to conduct child custody evaluations under Texas Family Code, Chapter 107. All other licensees must comply with qualifications stipulated in Texas Family Code, Chapter 107.

(c) Any complaint relating to the outcome of a child custody evaluation or adoption evaluation conducted by a licensee must be reported to the court that ordered the evaluation. The board only reviews complaints regarding forensic evaluations addressing violation of specific board rules.

(d) Disclosure of confidential information in violation of Texas Family Code, §107.111 or §107.163 is grounds for disciplinary action, up to and including revocation of license, by the board.

(e) A licensee who provides services concerning a matter which the licensee knows or should know will be utilized in a legal proceeding, such as a divorce, child custody determination, disability claim, or criminal prosecution, must comply with all applicable board rules regardless of whether the licensee is acting as a factual witness or an expert.

(f) A licensee may not provide therapy and any other type of service, including but not limited to a child custody evaluation or parenting facilitation, in the same case, whether such services are delivered sequentially or simultaneously.

(g) Licensees may not offer an expert opinion or recommendation relating to the conservatorship of or possession of or access to a child unless the licensee has conducted a child custody evaluation relating to the child under Texas Family Code, Subchapter D, Chapter 107.

(h) Licensees providing child custody evaluations or adoption evaluations shall, prior to beginning the evaluation, in writing inform the parties of:

(1) The limitations on confidentiality in the evaluation process; and

(2) The basis of fees and costs and the method of payment, including any fees associated with postponement, cancelation and/or nonappearance, and the parties' pro rata share of the fees and costs as determined by the court order or written agreement of the parties.

(i) A Licensed Professional Counselor Intern (LPC Intern) shall not conduct child custody evaluations or adoption evaluations unless qualified by another professional license to provide such services.

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 January 30, 2017.

TRD-201700414

Glynda Corley
Chair

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: March 12, 2017

For further information, please call: (512) 776-6972



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 96. BLOODBORNE PATHOGEN CONTROL

25 TAC §§96.101, 96.201 - 96.203, 96.401

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§96.101, 96.201 - 96.203, and 96.401 concerning bloodborne pathogen control.

BACKGROUND AND PURPOSE

These rules are being changed to update the list of conditions that are bloodborne pathogens, update the reporting period for a contaminated sharps injury to correlate with other Texas requirements, update website links and references, and update the language for clarity and consistency.

The amendments comply with guidance from the Centers for Disease Control and Prevention regarding surveillance for reportable conditions and allow the department to conduct more relevant and efficient disease surveillance.

The amendments comply with Health and Safety Code, Chapter 81, which requires the department to identify each communicable disease or health condition which is reportable under the chapter.

The rules are also being revised in compliance with Government Code, §2001.039, which requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 96.101, 96.201 - 96.203, 96.301 - 96.304, 96.401, 96.402 and 96.501 have been reviewed, and the department has determined that reasons for adopting the sections exist because rules on this subject are needed to administer the program effectively. Sections 96.301 - 96.304, 96.402 and 96.501 have been reviewed and no amendments are needed. There will be amendments to §§96.101, 96.201 - 96.203, and 96.401 in this rulemaking.

SECTION-BY-SECTION SUMMARY

The proposed amendments to §96.101(10) change "A specific eye" to "Eye" for clarity, and revise the spelling of "non-intact."

The proposed amendments to §96.101(12), (13), and (15) rearrange the acronyms for hepatitis B, hepatitis C, and human immunodeficiency virus in the definitions to be consistent with the rest of the subchapter.

The proposed amendment to §96.101(18) adds the acronym "OPIMs," a commonly used abbreviation for "other potentially infectious materials."

The proposed amendments to §96.101(18)(C) add "hepatitis C" to the list of bloodborne pathogens.

The proposed amendments to §96.101(19) add the acronym "PPE," commonly used abbreviation for "personal protective equipment."

The proposed amendment to §96.101(21) adds the phrase "but is not limited to," to emphasize that the list of objects listed in paragraph (21)(A) - (G) are not an exhaustive list of what could be considered a sharp object.

The proposed amendments to §96.101(23) add "hepatitis C" to the list of bloodborne pathogens and update the resource for universal and standard precautions practices in healthcare settings to the Guideline for Isolation Precautions: Preventing Transmission of Infectious Agents in Healthcare Settings.

The proposed amendments to §96.201(a)(2), (b), and (c), §96.203, and §96.401(e) and (f) update language for clarity, consistency, and to avoid redundancy.

The proposed amendment to §96.202(a) adds the phrase "a model plan to achieve" for added clarity on how to use the Exposure Control Plan and updates the website link for the Exposure Control Plan in §96.202(b).

The proposed amendments to §96.401(d) update the reporting period of each contaminated sharps injury from "not later than ten working days after the end of the calendar month in which it occurred" to "no later than 30 days after it occurred" to correlate with the current reporting period of the Texas Notifiable Conditions. The Texas Notifiable Conditions are found in §97.3 of this title (relating to What Condition to Report and What Isolates to Report or Submit) and found on the department's website: <https://www.dshs.texas.gov/idcu/investigation/conditions>.

FISCAL NOTE

Ms. Janna Zumbrun, Associate Commissioner, Disease Control and Prevention Services, has determined that for each year of the first five years that the sections are in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Zumbrun has also determined that there will be no adverse economic costs to small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Zumbrun also has determined that for each year of the first five years the sections are in effect, the public will benefit from their adoption. These rules impact the people of Texas by decreasing the risk of illness through early detection and control or prevention of infectious diseases in the community.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted to Nadia Bekka, Emerging and Acute Infectious Disease Branch, Infectious Disease Control Unit, Infectious Disease Prevention Section, Division for Disease Control and Prevention Services, Department of State Health Services, Mail Code 1960, P.O. Box 149347, Austin, Texas 78714-9347 or by email to Nadia.Bekka@dshs.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The amendments are authorized by Health and Safety Code, §81.004, which authorizes rules necessary for the effective administration of the Communicable Disease Prevention and Control Act; §81.050, which requires a rule to prescribe criteria that constitute exposure to reportable diseases; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter §1001.

The amendments affect Health and Safety Code, Chapters 81 and 1001.

§96.101. Definitions.

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

(1) - (9) (No change.)

(10) Exposure incident--Eye [A specific eye], mouth, other mucous membrane, non-intact [~~nonintact~~] skin, or parenteral contact with blood or other potentially infectious materials that results from the performance of an employee's duties.

(11) (No change.)

(12) [~~HBV~~] Hepatitis B virus (HBV)--[-:]A virus that may be contracted through exposure to blood and/or body fluids and can re-

sult in chronic liver disease, [~~infections and~~] cirrhosis, and hepatocellular (liver) cancer.

(13) [~~HCV~~] Hepatitis C virus (HCV)--[-:]A virus that may be contracted through exposure to blood and/or body fluids and may result in chronic liver disease, cirrhosis, and hepatocellular (liver) cancer.

(14) (No change.)

(15) [~~HIV~~] Human immunodeficiency virus (HIV)--[-:]~~The~~ HIV [~~virus~~] may be contracted through blood and/or body fluids and can result in Acquired Immune Deficiency Syndrome (AIDS), a condition in which the body is unable to fight infections.

(16) - (17) (No change.)

(18) Other potentially infectious materials (OPIMs); include:

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

(C) HIV, HBV, or HCV-containing [~~HIV-containing~~] cell or tissue cultures, organ cultures, [~~and HIV- or HBV-containing~~] culture medium or other solutions; and blood, organs, or other tissues from experimental animals infected with HIV, [~~or~~] HBV or HCV.

(19) Personal protective equipment (PPE)--Specialized clothing or equipment worn by an employee for protection against a hazard. General work clothes (e.g. [~~eg~~], uniforms, pants, shirts, or blouses) not intended to function as protection against a hazard are not considered to be personal protective equipment.

(20) (No change.)

(21) Sharp--An object used or encountered in a health care setting that can be reasonably anticipated to penetrate the skin or any other part of the body and to result in an exposure incident and includes but is not limited to:

(A) - (G) (No change.)

(22) (No change.)

(23) Universal precautions/standard precautions--Approaches to infection control as defined in Title 29 Code of Federal Regulation §1910.1030, Occupational Safety and Health Administration (OSHA); Bloodborne Pathogens Standard and the Healthcare [~~Morbidity and Hospital~~] Infection Control Practices Advisory Committee's 2007 Guideline for Isolation Precautions: Preventing Transmission of Infectious Agents in Healthcare Settings [~~Committee~~, Guideline for isolation precautions in hospitals published in *Infection Control Hospital Epidemiology*, 1996;17:53-80, and *American Journal of Infection Control*, 1996;24:24-52]. According to the concept of universal precautions, all human blood and certain human body fluids are treated as if known to be infectious for HIV, HBV, HCV, and other bloodborne pathogens.

§96.201. Applicability.

(a) These minimum standards apply to a governmental unit that employs employees who:

(1) (No change.)

(2) otherwise have a risk of exposure to blood or other potentially infectious material [~~potentially~~] containing bloodborne pathogens in connection with exposure to sharps.

(b) These governmental units would include, but not limited to, hospital district hospitals, city hospitals, county hospitals, city/county hospitals, hospital authority hospitals, local health departments, Department of State Health Services regions and hospitals, other state hospitals and state supported living centers, community mental health and intellectual disability centers, Texas Juvenile

Justice Department, [state schools, community mental health mental retardation centers, Texas Youth Commission,] Texas Department of Criminal Justice, locally [høeal-] or state-funded university student infirmaries, public school district clinics, emergency medical services, locally [høeal-] or state-funded long term care facilities, and blood banks.

(c) Employees who are directly compensated by a governmental unit are subject to all provisions of this chapter. Employees who are subject through their private employer to the Occupational Safety and Health Administration (OSHA)[~~]~~ Bloodborne Pathogens Standard and uncompensated employees are subject only to the log and reporting provisions of §96.401 [~~§§96.401~~] of this title (relating to Sharps Injury Log), and §96.402 [96.402] of this title (relating to Confidentiality Statement) unless otherwise required by contract.

§96.202. *Exposure Control Plan.*

(a) The exposure control plan (plan) developed by the Department of State Health Services (department), is adopted as a model plan to achieve the minimum standard to implement Health and Safety Code, §81.304. The plan is designed to minimize exposure of employees as described in §96.201 of this title (relating to Applicability) and includes policies relating to occupational exposure to bloodborne pathogens, training and educational requirements for employees, measures to increase vaccination of employees, and increased use of personnel protective equipment by employees.

(b) Copies of the plan are available on the Internet at http://www.dshs.state.tx.us/IDCU/health/infection_control/bloodborne_pathogens/Resources.doc [~~http://www.dshs.state.tx.us/ideu/health/bloodborne_pathogens/reporting/~~] or from the department's [Department of State Health Services] regional offices.

§96.203. *Minimum Standards.*

(a) This exposure control plan (plan) is provided by the Department of State Health Services (department) to be analogous with Title 29 Code of Federal Regulation §1910.1030, Occupational Safety and Health Administration (OSHA)[~~]~~ Bloodborne Pathogens Standard as specified in Health and Safety Code, §81.304.

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

§96.401. *Sharps Injury Log.*

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

(d) Information contained in subsection (c)(1) - (17) of this section concerning each contaminated sharps injury shall be reported no [not] later than 30 days [ten working days] after [the end of the calendar month in which] it occurred.

(e) A chief administrative officer for each facility within a governmental unit or the designee shall report the contaminated sharps injury to the local health authority where the facility is located. The local health authority, acting as an agent for the Department of State Health Services (department), shall receive and review the report for completeness, and submit the report to the department. If no local health authority is appointed for the jurisdiction where the facility is located, the report shall be made to the regional director of the department's [Department of State Health Services (department)] regional office in which the facility is located.

(f) A contaminated sharps injury shall be reported on the department's Contaminated Sharps Injury Reporting Form or through an electronic means established by the department. Copies of the Contaminated Sharps Injury Reporting Form can be obtained on the Internet at http://www.dshs.state.tx.us/idcu/health/bloodborne_pathogens/reporting/ or from the department's [Department of State Health Services] regional offices.

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 January 27, 2017.

TRD-201700398

Lisa Hernandez

General Counsel

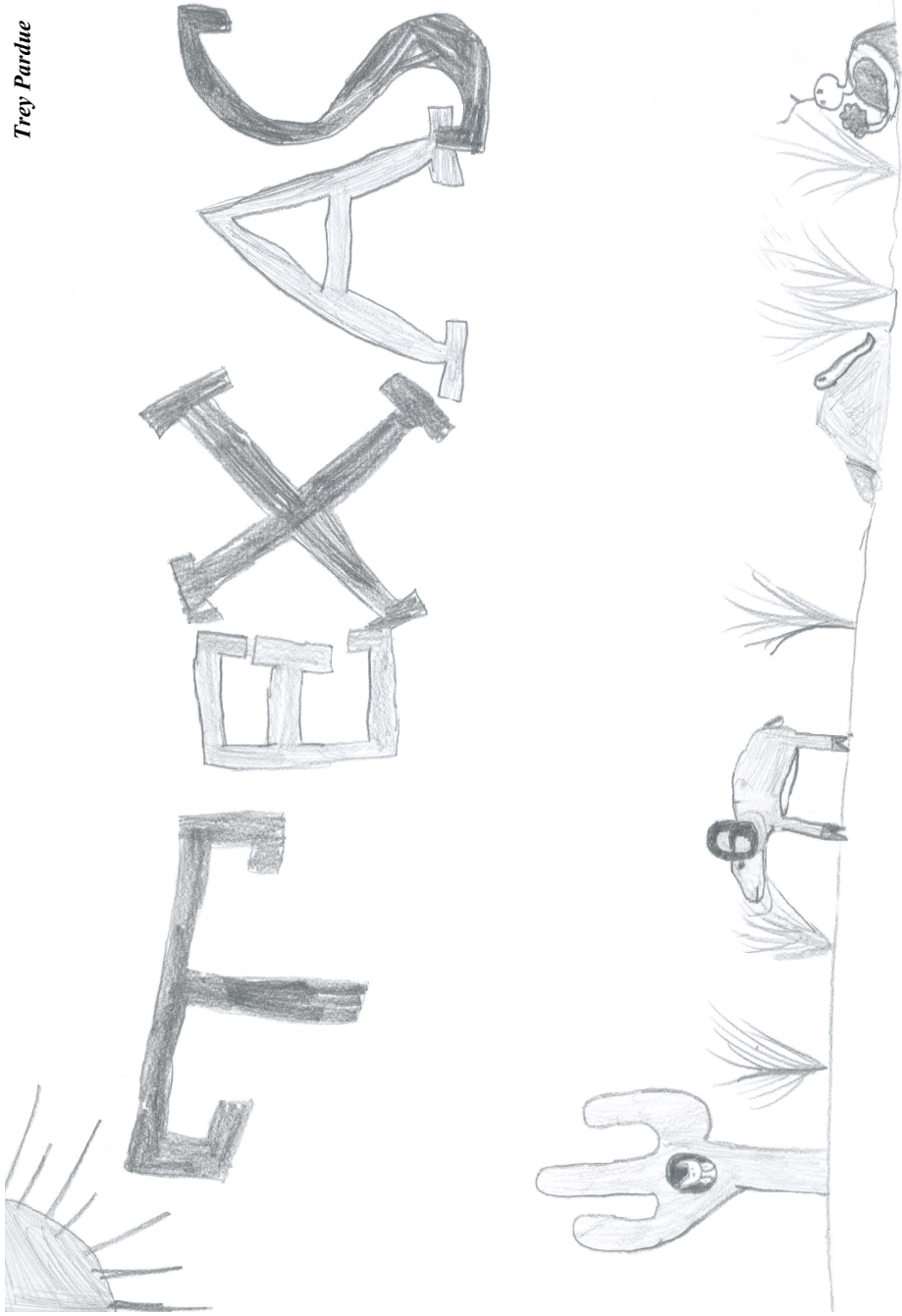
Department of State Health Services

Earliest possible date of adoption: March 12, 2017

For further information, please call: (512) 776-6972



Trey Pardue



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 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER B. DISEASE DETECTION AND RESPONSE

DIVISION 1. CHRONIC WASTING DISEASE (CWD)

31 TAC §65.86

Proposed amended §65.86, published in the July 22, 2016, issue of the *Texas Register* (41 TexReg 5396), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on January 24, 2017.

TRD-20170355



Allison Scott
8th 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 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 45. MARKETING PRACTICES SUBCHAPTER C. STANDARDS OF IDENTITY FOR MALT BEVERAGES

16 TAC §45.85

The Texas Alcoholic Beverage Commission proposes amendments to §45.85, relating to Approval of Labels, without changes to the proposed text as published in the December 2, 2016, issue of the *Texas Register* (41 TexReg 9401).

Section 45.85 addresses applications for approval of malt beverage labels.

Subsection (b) is amended to include holders of brewpub licenses among those permit and license holders who can apply for approval of malt beverage labels.

Former subsection (e), which established a \$25 application fee for each size requested on the application, is deleted and subsection (c) is amended to incorporate those provisions relating to the application fee.

Subsection (d) is amended to specify that a sample of the beverage or a product analysis conducted by an independent laboratory must be submitted with an application for a label revision if the analysis on file with the commission is older than five years.

New subsection (e) is added to address permissible label revisions. Creation of this new category of label approval applications will permit the agency to implement new internal procedures for these types of revisions. By removing them from the queue of general label approval applications, they may subject to faster review. In turn, this should allow the reduced queue of general label approval applications to also be processed more quickly.

Paragraphs (1) - (9) of new subsection (e) describe the types of label approvals that are classified as permissible. By indicating on the application form that the application is for a one of these types of permissible revisions (or by using a separate application form), the application will be identified as eligible for the expedited review process.

Subsection (f) is amended to state additional statutory references.

The commission reviewed the section pursuant to Government Code §2001.039 and has determined that the need for a rule addressing malt beverage label approval continues to exist but that these changes to the prior rule are appropriate.

No comments were received.

The amendments are adopted pursuant to Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the 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 January 25, 2017.

TRD-201700376

Martin Wilson

Assistant General Counsel

Texas Alcoholic Beverage Commission

Effective date: February 14, 2017

Proposal publication date: December 2, 2016

For further information, please call: (512) 206-3489



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

SUBCHAPTER DD. COMMISSIONER'S RULES CONCERNING HIGH SCHOOL EQUIVALENCY PROGRAMS

19 TAC §§89.1403, 89.1409, 89.1417

The Texas Education Agency (TEA) adopts amendments to §§89.1403, 89.1409, and 89.1417, concerning the High School Equivalency Program (HSEP). The amendments are adopted without changes to the proposed text as published in the November 25, 2016, issue of the *Texas Register* (41 TexReg 9217) and will not be republished. The adopted amendments modify rules for HSEPs to update references; simplify language for meeting required state assessment instruments for admission into the program; and amend conditions of program operation to reflect the change to multiple testing vendors, align with statute, and remove obsolete language.

REASONED JUSTIFICATION. The Texas Education Code (TEC), §29.087, authorizes the operation of HSEPs and outlines program requirements, including application to operate a program, and student eligibility. TEC, §29.087(n), authorizes the commissioner to adopt rules for the implementation and

administration of HSEPs. The rules in 19 TAC Chapter 89, Subchapter DD, implement the provisions of the TEC, §29.087.

The adopted amendments modify HSEP student eligibility language to update references to statute and a state agency name. The amendments also update the language for state assessment requirements. Lastly, the amendments make necessary changes to conditions of program operation to reflect the change to multiple high school equivalency test vendors, align with a statutory change from instructional days to minutes, and remove obsolete language.

Section 89.1403, Student Eligibility, was updated to reference the applicable section of the Family Code rather than the Code of Criminal Procedure for court-ordered students. In addition, Texas Youth Commission was updated to Texas Juvenile Justice Department.

The following changes were made in §89.1409, Assessment. Subsection (a) was amended to use the general term *state assessment instruments* rather than stating each required assessment for a particular school year or naming specific assessment instruments. Subsection (a)(3) was deleted because it is redundant. Subsection (b) was updated to reference the applicable section of the Family Code rather than the Code of Criminal Procedure for court-ordered students, and Texas Youth Commission was updated to Texas Juvenile Justice Department. In subsection (c), vendor-specific language was deleted since Texas now allows multiple testing vendors.

Section 89.1417, Conditions of Program Operation, was amended in subsection (a) to delete the requirement that HSEPs submit an annual progress report to the TEA. The requirement was specific to a certain testing vendor and is no longer required since Texas now allows multiple testing vendors. Subsections (b), (c), and (e) are obsolete and were deleted. Subsection (d), relettered as subsection (b), was amended to align with House Bill 2610, 84th Texas Legislature, 2015, which changed instructional days to minutes.

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began November 25, 2016, and ended December 27, 2016. No public comments were received.

STATUTORY AUTHORITY. The amendments are adopted under the Texas Education Code (TEC), §29.087, which authorizes the commissioner to allow schools to operate high school equivalency programs that meet certain conditions and parameters established by the statute and commissioner rule.

CROSS REFERENCE TO STATUTE. The amendments implement the Texas Education Code, §29.087.

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 January 25, 2017.

TRD-201700374

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: February 14, 2017

Proposal publication date: November 25, 2016

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

TITLE 22. EXAMINING BOARDS

PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

CHAPTER 341. LICENSE RENEWAL

22 TAC §341.3, §341.6

The Texas Board of Physical Therapy Examiners adopts amendments to §341.3, Qualifying Continuing Competence Activities, and §341.6, License Restoration, with changes to the proposed text as published in the December 9, 2016, issue of the *Texas Register* (41 TexReg 9692) to correct grammatical errors.

The amendments to 22 TAC §341.3 and §341.6 eliminate the Practice Review Tool (PRT) as a qualifying continuing competence (CC) activity in §341.3(5)(E) and as a method of demonstrating competency for restoration in §341.6(d)(1)(E) as the Federation of State Boards of Physical Therapy (Federation) retired both the General PRT and the Orthopedic PRT on November 30, 2016. Additionally, the Federation's self-assessment tool oPTion has been proposed as a qualifying CC activity in §341.3(5)(E) with an assigned value of three (3) continuing competence units (CCUs).

No comments were received regarding the proposed changes.

The amendments are adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

§341.3. *Qualifying Continuing Competence Activities.*

Licensees may select from a variety of activities to fulfill the requirements for continuing competence. These activities include the following:

(1) Continuing education (CE).

(A) Program content structure must be approved by the board-approved organization, or be offered by a provider accredited by that organization. Programs must meet the following criteria:

(i) Program content must be easily recognizable as pertinent to the physical therapy profession and in the areas of ethics, professional responsibility, clinical application, clinical management, behavioral science, science, or risk management.

(ii) The content must be identified by instructional level, i.e., basic, intermediate, advanced. Program objectives must be clearly written to identify the knowledge and skills the participants should acquire and be consistent with the stated instructional level.

(iii) The instructional methods related to the objectives must be identified and be consistent with the stated objectives.

(iv) Programs must be presented by a licensed health care provider, or by a person with appropriate credentials and/or specialized training in the field.

(v) Program providers are prohibited from self-promotion of programs, products, and/or services during the presentation of the program.

(vi) The participants must evaluate the program. A summary of these evaluations must be made available to the board-approved organization upon request.

(vii) Records of each licensee who participates in the program must be maintained for four years by the CE sponsor/provider and must be made available to the board-approved organization upon request.

(B) CE programs subject to this subsection include the following:

(i) Live programs.

(I) One contact hour equals 1 continuing competence unit (CCU).

(II) Documentation must include the name and license number of the licensee; the title, sponsor/provider, date(s), and location of the course; the number of CCUs awarded, the signature of an authorized signer, and the accredited provider or program approval number.

(III) If selected for audit, the licensee must submit the specified documentation.

(ii) Self-study programs - Structured, self-paced programs or courses offered through electronic media (for example, via the internet or on DVD) or on paper (for example, a booklet) completed without direct supervision or attendance in a class.

(I) One contact hour equals 1 CCU.

(II) Documentation must include the name and license number of the licensee; the title, sponsor/provider, date(s), and instructional format of the course; the number of CCUs awarded, the signature of an authorized signer, and the accredited provider or program approval number.

(III) If selected for audit, the licensee must submit the specified documentation.

(iii) Regular inservice-type programs over a one-year period where individual sessions are granted 2 CCUs or less.

(I) One contact hour equals 1 CCU.

(II) Documentation must include the name and license number of the licensee; the title, sponsor/provider, date(s), and location of the inservice; the signature of an authorized signer, and the accredited provider or program approval number with the maximum CCUs granted and the CCU value of each session or group of sessions specified and justified.

(III) Additionally, proof of attendance to any or all inservice sessions must be provided so that individual CCUs earned can be calculated by the program sponsor/provider for submission to the board-approved organization.

(IV) If selected for audit, the licensee must submit the specified documentation.

(iv) Large conferences with concurrent programming.

(I) One contact hour equals 1 CCU.

(II) Documentation must include the licensee's name and license number; title, sponsor/provider, date(s); and location of the conference; the number of CCUs awarded, the signature of an authorized signer, and the accredited provider or course approval number.

(III) If selected for audit, the licensee must submit the specified documentation and proof of attendance.

(2) College or university courses.

(A) Courses at regionally accredited US colleges or universities easily recognizable as pertinent to the physical therapy profession and in the areas of ethics, professional responsibility, clinical application, clinical management, behavioral science, science, or risk management.

(i) The course must be at the appropriate educational level for the PT or the PTA.

(ii) All college courses in this subsection are subject to the following:

(I) One satisfactorily completed credit hour (grade of C or equivalent, or higher) equals 10 CCUs.

(II) Documentation required for consideration is the course syllabus for each course and an official transcript.

(III) If selected for audit, the licensee must submit the approval letter from the board-approved organization.

(B) Courses submitted to meet the ethics/professional responsibility requirement must be approved as stated in §341.2 of this chapter (relating to Continuing Competence Requirements).

(C) College or university sponsored CE programs (no grade, no official transcript) must comply with paragraph (1)(A) of this subsection.

(D) College or university courses that are part of a post-professional physical therapy degree program, or are part of a CAPTE-accredited program bridging from PTA to PT, are automatically approved and are assigned a standard approval number by the board-approved organization. If selected for audit, the licensee must submit an official transcript.

(3) Scholarship.

(A) Publications. Publication(s) pertinent to physical therapy and in the areas of ethics, professional responsibility, clinical practice, clinical management, behavioral science, science, or risk management written for the professional or lay audience. The author(s) are prohibited from self-promotion of programs, products, and/or services in the publication.

(i) The publication must be published within the 24 months prior to the license expiration date.

(ii) CCU values for types of original publications are as follows:

(I) A newspaper article (excluding editorials and opinion pieces) may be valued up to 3 CCUs.

(II) A regional/national magazine article (excluding editorials and opinion pieces) may be valued up to 10 CCUs.

(III) A case study in a peer reviewed publication, monograph, or book chapter(s) is valued at 20 CCUs.

(IV) A research article in a peer reviewed publication, or an entire book is valued at 30 CCUs.

(iii) Documentation required for consideration is:

(I) For newspaper articles, a copy of the article and the newspaper banner, indicating the publication date;

(II) For magazine articles and publications in peer reviewed journals, a copy of the article and the Table of Contents page of the publication showing the author's name and the name and date of the publication.

(III) For monographs or single book chapters, a copy of the first page of the monograph or chapter, and the Table of Contents page of the publication showing the author's name and the name and date of the publication.

(IV) For an entire book or multiple chapters in a book, the author must submit the following: title page, copyright page, entire table of contents, preface or forward if present, and one book chapter authored by the licensee.

(iv) If selected for audit, the licensee must submit the approval letter from the board-approved organization.

(B) Manuscript review. Reviews of manuscripts for peer-reviewed publications pertinent to physical therapy and in the areas of ethics, professional responsibility, clinical practice, clinical management, behavioral science, science, or risk management. The Board will maintain and make available a list of peer-reviewed publications that are automatically approved for manuscript review and assigned a standard approval number by the board-approved organization.

(i) The review must be completed within the 24 months prior to the license expiration date.

(ii) One manuscript review is valued at 3 CCUs.

(iii) For each renewal:

(I) PTs may submit no more than 3 manuscript reviews (9 CCUs).

(II) PTAs may submit no more than 2 manuscript reviews (6 CCUs).

(iv) If selected for audit, the licensee must submit a copy of the letter or certificate from the publisher confirming completion of manuscript review.

(v) A peer-reviewed publication not on the list of recognized publications for manuscript review but pertinent to the physical therapy profession may be submitted to the board-approved organization for consideration. Documentation required for consideration includes the following:

(I) The name of the peer-reviewed journal;

(II) The name of the manuscript; and

(III) A description of the journal's relevance to the physical therapy profession.

(C) Grant proposal submission. Submission of grant proposals by principal investigators or co-principal investigators for research that is pertinent to physical therapy and in the areas of ethics, professional responsibility, clinical practice, clinical management, behavioral science, science, or risk management.

(i) The grant proposal must be submitted to the funding entity within the 24 months prior to the license expiration date.

(ii) One grant proposal is valued at 10 CCUs.

(iii) Licensees may submit a maximum of 1 grant proposal (10 CCUs).

(iv) Documentation required for consideration is a copy of the grant and letter submitted to the grant-provider.

(v) If selected for audit, the licensee must submit the approval letter from the board-approved organization.

(D) Grant review for research pertinent to healthcare. The Board will maintain and make available a list of grant-issuing en-

ties that are automatically approved for grant review and assigned a standard approval number by the board-approved organization.

(i) The review must be completed within the 24 months prior to the license expiration date.

(ii) One grant review is valued at 3 CCUs.

(iii) Licensees may submit a maximum of 2 grant reviews (6 CCUs).

(iv) If selected for audit, the licensee must submit a letter or certificate confirming grant review from the grant provider.

(v) A grant-issuing entity not on the list of recognized entities for grant review but pertinent to the physical therapy profession may be submitted to the board-approved organization for consideration. Documentation required for consideration includes the following:

(I) The name of the grant-issuing entity;

(II) The name of the grant; and

(III) A description of the grant's relevance to the physical therapy profession.

(4) Teaching and Presentation Activities.

(A) First-time development or coordination of course(s) in a CAPTE-accredited PT or PTA program, or a post-professional physical therapy degree program, or a CAPTE accredited program bridging from PTA to PT. This activity type is automatically approved and is assigned a standard approval number by the board-approved organization.

(i) The course must be offered for the first time within the 24 months prior to the license expiration date.

(ii) One student contact hour equals 4 CCUs.

(iii) Licensees are limited to the following number of CCUs:

(I) PTs may submit a maximum of 10 CCUs for this activity.

(II) PTAs may submit a maximum of 8 CCUs for this activity.

(iv) If selected for audit, the licensee must submit a copy of the course syllabus indicating the licensee as course coordinator or primary instructor.

(B) First-time development or coordination of course(s) in a regionally accredited U.S. college or university program for other health professions.

(i) The course must be offered for the first time within the 24 months prior to the license expiration date.

(ii) One student contact hour equals 4 CCUs.

(iii) Licensees are limited to the following number of CCUs:

(I) PTs may submit a maximum of 10 CCUs for this activity.

(II) PTAs may submit a maximum of 8 CCUs for this activity.

(iv) Documentation required for consideration is a copy of the course syllabus indicating the licensee as course coordinator or primary instructor.

(v) If selected for audit, the licensee must submit the approval letter from the board-approved organization.

(C) Presentation or instruction as a guest lecturer in a CAPTE-accredited PT or PTA program, or a post-professional physical therapy degree program, or a CAPTE-accredited program bridging from PTA to PT. This activity type is automatically approved and is assigned a standard approval number by the board-approved organization.

(i) One student contact hour equals 2 CCUs.

(ii) Licensees are limited to the following number of CCUs:

(I) PTs may submit a maximum of 10 CCUs for this activity.

(II) PTAs may submit a maximum of 8 CCUs for this activity.

(iii) If selected for audit, the licensee must submit a copy of the course syllabus indicating the licensee as course presenter or instructor.

(D) Presentation or instruction as a guest lecturer in a regionally accredited U.S. college or university program for other health professions.

(i) One student contact hour equals 2 CCUs.

(ii) Licensees are limited to the following number of CCUs:

(I) PTs may submit a maximum of 10 CCUs for this activity.

(II) PTAs may submit a maximum of 8 CCUs for this activity.

(iii) Documentation required for consideration is a copy of the course syllabus indicating the licensee as course coordinator or primary instructor.

(iv) If selected for audit, the licensee must submit a copy of the course syllabus indicating the licensee as course presenter or instructor.

(E) First-time development, presentation or co-presentation at state, national or international workshops, seminars, or professional conferences, or at a board-approved continuing education course.

(i) The course must be offered for the first time within the 24 months prior to the license expiration date.

(ii) One contact hour equals 4 CCUs.

(iii) Licensees are limited to the following number of CCUs:

(I) PTs may submit no more than 10 CCUs for this activity.

(II) PTAs may submit no more than 8 CCUs for this activity.

(iv) Documentation required for consideration includes one of the following: a copy of a brochure for the presentation indicating the licensee as a presenter; or, a copy of the cover from the program and page(s) indicating the licensee as a presenter.

(v) If selected for audit, the licensee must submit the approval letter from the board-approved organization.

(F) Service as a clinical instructor for full-time, entry-level PT or PTA students enrolled in accredited education. This activity type is automatically approved and is assigned a standard approval number by the board-approved organization.

(i) The instructorship must be completed within the 24 months prior to the license expiration date. (ii) Valuation of clinical instruction is as follows:

(I) Supervision of full-time PT or PTA students for 5 - 11 weeks is valued at 5 CCUs.

(II) Supervision of full-time PT or PTA students for 12 weeks or longer is valued at 10 CCUs.

(iii) Licensees are limited to the following number of CCUs:

(I) PTs may submit a maximum of 10 CCUs for this activity.

(II) PTAs may submit a maximum of 8 CCUs for this activity.

(iv) If selected for audit, the licensee must submit a letter or certificate from the coordinator of clinical education confirming clinical supervision and the number of weeks supervised from the education program.

(5) Advanced Training, Certification, and Recognition.

(A) Specialty Examinations. The Board will maintain and make available a list of recognized specialty examinations. Successful completion of a recognized specialty examination (initial or recertification) is automatically approved and assigned a standard approval number by the board-approved organization.

(i) The specialty examination must be successfully completed within the 24 months prior to the license expiration date.

(ii) Each recognized specialty examination is valued at 30 CCUs.

(iii) If selected for audit, the licensee must submit a copy of the letter from the certifying body notifying the licensee of completion of the specialty from the credentialing body, and a copy of the certificate of specialization.

(iv) A specialty examination not on the list of recognized examinations but pertinent to the physical therapy profession may be submitted to the board approved organization for consideration. Documentation required for consideration includes the following:

(I) Identification and description of the sponsoring organization and its authority to grant a specialization to PTs or PTAs;

(II) A complete description of the requirements for specialization;

(III) A copy of the letter notifying the licensee of completion of the specialty from the certifying body, and a copy of the certificate of specialization.

(B) APTA Certification for Advanced Proficiency for the PTA. This activity type is automatically approved and is assigned a standard approval number by the board-approved organization.

(i) The certification must be successfully completed within the 24 months prior to the license expiration date.

(ii) Completion of specialty certification is valued at 20 CCUs.

(iii) If selected for audit, the licensee must submit a copy of the letter notifying the licensee of completion of the advanced proficiency, and a copy of the certificate of proficiency.

(C) Residency or fellowship relevant to physical therapy. The Board will maintain and make available a list of recognized residencies and fellowships. This activity type is automatically approved and is assigned a standard approval number by the board-approved organization.

(i) The residency or fellowship must be successfully completed within the 24 months prior to the license expiration date.

(ii) Completion of the residency or fellowship is valued at 30 CCUs.

(iii) If selected for audit, the licensee must submit a copy of the letter notifying the licensee of completion of the fellowship, and a copy of the fellowship certificate.

(D) Supervision or mentorship of a resident or fellow in an American Board of Physical Therapy Residency and Fellowship Education (ABPTRFE) credentialed residency or fellowship program. This activity type is automatically approved and is assigned a standard approval number by the board-approved organization.

(i) Clinical supervision of a resident for a minimum of 1500 hours or a fellow for a minimum of 1000 hours is valued at 10 CCUs. The Board will consider partial credit for those mentors who provide mentorship for only a portion of the residency or fellowship.

(ii) Licensees may submit a maximum of 20 CCUs for this activity.

(iii) If selected for audit, the licensee must submit a copy of a letter from the credentialed residency or fellowship program confirming participation as a clinical mentor, with the length of time served as a clinical mentor.

(E) The self-assessment tool oPTion of the Federation of State Boards of Physical Therapy (FSBPT). This activity type is automatically approved and is assigned a standard approval number by the board-approved organization.

(i) Completion of oPTion is valued at 3 CCUs.

(ii) If selected for audit, the licensee must submit a copy of the FSBPT certificate of completion.

(6) Professional Membership and Service. Licensees may submit activities in this category for up to one half of their CC requirement (PT - 15 CCUs, PTAs - 10 CCUs) at time of renewal. Licensees must demonstrate membership or participation in service activities for a minimum of one year during the renewal period to receive credit. Credit is not prorated for portions of years.

(A) Membership in the APTA. This activity type is automatically approved and is assigned a standard approval number by the board-approved organization.

(i) One year of membership is valued at 1 CCU.

(ii) If selected for audit, the licensee must submit a copy of the current membership card.

(B) Service on a board, committee, or taskforce for the Texas Board of Physical Therapy Examiners, the American Physical Therapy Association (APTA) (or an APTA component), or the Federation of State Boards of Physical Therapy (FSBPT). This activity type is automatically approved and is assigned a standard approval number by the board-approved organization.

(i) One year of service is valued at 3 CCUs.

(ii) Licensees are limited to the following number of CCUs per renewal:

(I) PTs may submit a maximum of 9 CCUs for this activity.

(II) PTAs may submit a maximum of 6 CCUs for this activity.

(iii) If selected for audit, the licensee must submit a copy of a letter on official organization letterhead or certificate confirming completion of service.

(C) Service as a TPTA Continuing Competence Approval Program reviewer. This activity type is automatically approved and is assigned a standard approval number by the board-approved organization.

(i) One year of service is valued at 3 CCUs.

(ii) Licensees are limited to the following number of CCUs per renewal:

(I) PTs may submit a maximum of 6 CCUs for this activity.

(II) PTAs may submit a maximum of 6 CCUs for this activity.

(iii) If selected for audit, the licensee must submit a copy of a letter or certificate confirming completion of service on official organization letterhead.

(D) Service as an item writer for the national PT or PTA exam or an American Board of Physical Therapy Specialties (ABPTS) exam. This activity type is automatically approved and is assigned a standard approval number by the board approved organization.

(i) One year of service is valued at 5 CCUs.

(ii) Licensees are limited to the following number of CCUs per renewal:

(I) PTs may submit a maximum of 10 CCUs for this activity.

(II) PTAs may submit a maximum of 10 CCUs for this activity.

(iii) If selected for audit, the licensee must submit a copy of a letter or certificate confirming completion of service on official organization letterhead.

§341.6. License Restoration.

(a) The board may reinstate a license that has been expired one year or more through the process of restoration if certain requirements are met.

(b) Duration. The original expiration date of a restored license will be adjusted so that the license will expire every two years at the end of the birth month of the licensee.

(c) Persons who are currently licensed in good standing in another state, district, or territory of the U.S. The requirements for restoration are:

(1) a completed restoration application form;

(2) a passing score on the jurisprudence examination;

(3) verification of Licensure from all states in which the applicant holds or has held a license; and

(4) the restoration fee.

(d) Persons who are not currently licensed in another state or territory of the U.S.

(1) A licensee whose Texas license is expired for one to five years. The requirements for restoration are:

- (A) a completed restoration application form;
- (B) a passing score on the jurisprudence examination;
- (C) the restoration fee;
- (D) verification of Licensure from all states in which the applicant has held a license; and

(E) demonstration of competency. Competency may be demonstrated in one of the following ways:

(i) reexamination with a passing score on the national physical therapy exam;

(ii) completion of an advanced degree in physical therapy within the last five years;

(iii) supervised clinical practice (SCP) completed over a continuous 12 month period and board approved continuing competence activities. For PTs, the requirement is 480 hours of SCP and 30 CCUs. For PTAs, the requirement is 320 hours of SCP and 20 CCUs.

(2) A licensee whose Texas license is expired for five years or more may not restore the license but may obtain a new license by taking the national examination again and getting a new license by relicensure. The requirements for relicensure are:

- (A) a completed application form;
- (B) a passing score on the jurisprudence examination;
- (C) the application fee; and
- (D) a passing score on the national exam, reported directly to the board by the Federation of State Boards of Physical Therapy.

(e) Military Service Members, Military Veterans, and Military spouses. The board will expedite the restoration of a license to a military service member, a military veteran or a spouse of a member of the U.S. armed forces on active duty. The applicant must provide official documentation of active duty status, military veteran status, or the active duty status of the spouse.

(f) Renewal of a restored license. To renew a license that has been restored, a licensee must comply with all requirements in §341.1 of this title (relating to Requirements for Renewal).

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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John P. Maline

Executive Director

Texas Board of Physical Therapy Examiners

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For further information, please call: (512) 305-6900



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 412. LOCAL MENTAL HEALTH AUTHORITY RESPONSIBILITIES

The Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (department), adopts amendments to §412.108, §412.303, and §412.322, concerning local mental health authority (LMHA) responsibilities. The amendment to §412.303 is adopted with changes to the proposed text as published in the August 12, 2016, issue of the *Texas Register* (41 TexReg 5960). The amendments to §412.108 and §412.322 are adopted without changes, and therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The amendments clarify processes related to billing for community mental health services; expand the provider base authorized to determine medical necessity to include physician assistants with specialized psychiatric/mental health training; provide a reference to the criteria set forth in the subchapter for local mental health authorities (LMHAs) to use in developing an alternative credentialing process for Qualified Mental Health Professionals - Community Services (QMHP-CS); and update specific references to the *Diagnostic and Statistical Manual* (DSM) with a generic reference to eliminate the need to revise rules should the manual change in the future.

SECTION BY SECTION

In §412.108 concerning billing procedures, subsection (a) describes the process for determining the monthly account for each person; subsection (b) directs that the LMHA access all available funding sources before using department funds to pay for a person's services; subsection (c) directs the LMHA to bill the person's third-party coverage for the monthly account amount for covered services; subsection (d) sets the processes for billing the person (or parents) the monthly account amount when there is no third-party coverage, when there is Medicare third-party coverage, or when there is non-Medicare third-party coverage; and subsection (e) describes the information that must be included in monthly billing statements that are sent to individuals who have been determined as having an ability to pay for the services the individuals receive. The requirements and processes for payments, collections, and non-payment, including when a financial hardship exists are located in §412.109.

Section 412.108(d)(3) concerns non-Medicare third-party coverage and reflects separate billing scenarios depending on whether a person's cost sharing exceeds or is less than the person's maximum monthly fee (MMF). Subparagraph (A) requires that if all cost sharing exceeds the MMF, the person is billed all applicable co-payments, co-insurance, and deductibles for services listed in the monthly account as covered by the non-Medicare third-party coverage. Subparagraph (B) requires that if a person's cost sharing does not exceed the person's MMF, then the amounts described in new subsection (d)(3)(B)(i)(I) and (II) are added to equal the total amount applied toward the person's MMF. These fees when added together determine whether the account amount exceeds or is less than the person's MMF.

In §412.303(19), the definition of "DSM, *Diagnostic Statistical Manual of Mental Disorders*" published by the American Psychiatric Association was clarified by adding the phrase "that is approved for use by the department" in the proposed text. In adoption, the phrase "that is approved for use by the department" is being removed.

In §412.303(35), the definition of the term "LPHA or licensed practitioner of the healing arts" is clarified by adding the acronyms for the respective clinical/clinical profession titles in subparagraphs (B), (C), and (G). In paragraph (D), the word "licensed" is deleted because the term "licensed psychologist" is not used as part of a psychologist's clinical title as is the case when using the term "licensed clinical social worker." The definition of each clinical/medical title sets forth the requirement that the professional be licensed according to the Occupations Code, Chapter 204. A new paragraph (F) was added to include "physician assistant (PA)" and the subsequent paragraph was re-lettered.

In §412.303(45), the following requirement that the PA "has specialized psychiatric/mental health training" was added in addition to being licensed in accordance with the Occupations Code, Chapter 204.

In §412.303(48), the definition of the term "QMHP--CS or qualified mental health professional--community services," paragraph (C) was revised to refer to the criteria in §412.316(c) and (d) that the LMHA or MCO must use to determine an alternative credentialing process for QMHPs.

The amendments to §412.322(b) and (g) were amended by deleting the language "all five axes of the current" because the current edition DSM V, no longer uses axes in the formulation of mental health diagnoses.

COMMENTS

The department, on behalf of HHSC, did not receive public comments regarding the proposed rules during the comment period.

Amended §412.303 is adopted with changes to the proposed text as published in the August 12, 2016, issue of the *Texas Register*. HHSC is deleting the proposed text in §412.303(19), "that is approved for use by the department," for clarity in using the current version of the DSM. HHSC is adopting §412.303(35) with a change to be consistent with the Texas Board of Nursing certification title of "advanced practice registered nurse" by adding the acronym "APRN." HHSC is also making a minor editorial change to the definition of "registered nurse" by adding the acronym "RN" in §412.303(48)(B).

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

SUBCHAPTER C. CHARGES FOR COMMUNITY SERVICES

25 TAC §412.108

STATUTORY AUTHORITY

The amendment is authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation

and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

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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Lisa Hernandez

General Counsel

Department of State Health Services

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For further information, please call: (512) 776-6972

SUBCHAPTER G. MENTAL HEALTH COMMUNITY SERVICES STANDARDS DIVISION 1. GENERAL PROVISIONS

25 TAC §412.303

STATUTORY AUTHORITY

The amendment is authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

§412.303. Definitions.

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

- (1) Access--The ability to obtain mental health community services based upon components such as availability and acceptability of services to the individual, or the individual's Legally Authorized Representative (LAR) on the individual's behalf, transportation, distance, hours of operation, language, and the cultural competency of staff members. Barriers to access may be structural, financial, or specific to the individual.
- (2) Adolescent--An individual who is at least 13 years of age, but younger than 18 years of age.
- (3) Adult--An individual who is 18 years of age or older.
- (4) Advanced practice nurse--A staff member who is a registered nurse approved by the Texas Board of Nursing as a clinical nurse specialist in psychiatric/mental health or nurse practitioner in psychiatric/mental health, in accordance with Texas Occupations Code, Chapter 301.
- (5) Advocacy--Support for an individual or family member in expressing and resolving issues or concerns regarding access to or quality and appropriateness of services.
- (6) Appeal--A mechanism for an independent review of an adverse determination.
- (7) Assessment--A systematic process for measuring an individual's service needs.

(8) Child--An individual who is at least three years of age, but younger than 13 years of age.

(9) Competency--Demonstrated knowledge and skilled performance of a particular activity.

(10) Continuity of services--Services that ensure uninterrupted services are provided to an individual during a transition between service types (e.g., inpatient services, outpatient services) or providers, in accordance with applicable rules (e.g., Chapter 412, Subchapter D of this title (relating to Mental Health Services - Admission, Continuity, and Discharge)). These activities include:

(A) assisting with admissions and discharges;

(B) facilitating access to appropriate services and supports in the community, including identifying and connecting the individual with community resources;

(C) participating in the individual's treatment plan development and reviews;

(D) promoting implementation of the individual's treatment plan or continuing care plan; and

(E) facilitating coordination and follow-up between the individual and the individual's family, as well as with available community resources.

(11) COPSD or co-occurring psychiatric and substance use disorders--The co-occurring diagnoses of psychiatric disorders and substance use disorders.

(12) Credentialing--A process to review and approve a staff member's educational status, experience, and licensure status (as applicable) to ensure that the staff member meets the departmental requirements for service provision. The process includes primary source verification of credentials, establishing and applying specific criteria and prerequisites to determine the staff member's initial and ongoing competency and assessing and validating the staff member's qualification to deliver care. Re-credentialing is the periodic process of reevaluating the staff's competency and qualifications.

(13) Crisis--A situation in which:

(A) the individual presents an immediate danger to self or others; or

(B) the individual's mental or physical health is at risk of serious deterioration; or

(C) an individual believes that he or she presents an immediate danger to self or others or that his or her mental or physical health is at risk of serious deterioration.

(14) Crisis services--Mental health community services or other necessary interventions provided to an individual in crisis.

(15) CSSP or community services specialist--A staff member who, as of August 31, 2004:

(A) received:

(i) a high school diploma; or

(ii) a high school equivalency certificate issued in accordance with the law of the issuing state;

(B) had three continuous years of documented full-time experience in the provision of mental health rehabilitative services or case management services; and

(C) demonstrated competency in the provision and documentation of mental health rehabilitative or case management services

in accordance with Chapter 419, Subchapter L of this title (relating to Mental Health Rehabilitative Services) and Chapter 412, Subchapter I of this title (relating to Mental Health Case Management Services).

(16) Cultural competency--Demonstrated knowledge and skill by a staff member to effectively respond to an individual's needs through knowledge of communication, actions, customs, beliefs, and values, within the individual's racial, ethnic, religious beliefs, disability, and social groups.

(17) Department--Department of State Health Services (DSHS).

(18) Department-approved algorithm--An evidence-based process for providing psychiatric care to adults with severe and persistent mental illnesses and children and adolescents with serious emotional disturbance, consisting of consensus-derived guidelines for medication treatment, training and support for physicians, standardized documentation, and patient and family education.

(19) DSM--The current edition of the *Diagnostic Statistical Manual of Mental Disorders* published by the American Psychiatric Association.

(20) Emergency care services--Mental health community services or other necessary interventions directed to address the immediate needs of an individual in crisis in order to assure the safety of the individual and others who may be placed at risk by the individual's behaviors, including, but not limited to, psychiatric evaluations, administration of medications, hospitalization, stabilization or resolution of the crisis.

(21) Face-to-face--A contact with an individual that occurs in person. Face-to-face does not include contacts made through the use of video conferencing or telecommunication technologies, including telemedicine.

(22) Family member--Any person who an individual identifies as being a member of their family.

(23) Family partner--An experienced, trained primary caregiver (i.e., parent of an individual with a mental illness or serious emotional disturbance) who provides peer mentoring, education, and support to the caregivers of a child who is receiving mental health community services.

(24) HIPAA--The Health Insurance Portability and Accountability Act, 42 U.S.C. §1320d et seq.

(25) Identifying information--The name, address, date of birth, social security number, or any information by which the identity of an individual can be determined either directly or by reference to other publicly available information. The term includes medical records, graphs, and charts that contain an individual's information; statements made by the individual either orally or in writing while receiving mental health community services; videotapes, audiotapes, photographs, and other recorded media; and any acknowledgment that an individual is receiving or has received services from a state facility, LMHA, MCO, or provider.

(26) Indicator--A defined, measurable variable used to monitor the quality or appropriateness of an important aspect of an individual's care or service or an organization's performance of related functions, processes, or outcomes. Indicators can measure activities, events, occurrences, or outcomes for which data can be collected to allow comparison with a threshold, a benchmark, or prior performance.

(27) Individual--A person who is seeking or receiving mental health community services from or through a provider.

(28) LAR or legally authorized representative--A person authorized by law to act on behalf of an individual with regard to a matter described in this subchapter, including, but not limited to, a parent, guardian, or managing conservator.

(29) LCDCC or licensed chemical dependency counselor--A counselor licensed by the department pursuant to the Texas Occupations Code, Chapter 504.

(30) LCSW or licensed clinical social worker--A staff member who is licensed as a clinical social worker by the Texas State Board of Social Worker Examiners in accordance with the Texas Occupations Code, Chapter 505.

(31) LMFT or licensed marriage and family therapist--A staff member who is licensed as a licensed marriage and family therapist by the Texas State Board of Examiners of Marriage and Family Therapists in accordance with Texas Occupations Code, Chapter 502.

(32) LMHA or local mental health authority--An entity designated as the local mental authority by the department in accordance with the Texas Health and Safety Code, §533.035(a).

(33) LOC or level of care--A designation given to the department's standardized packages of mental health community services, based on the uniform assessment and the utilization management guidelines, which recommend the type, amount, and duration of mental health community services to be provided to an individual.

(34) LPC or licensed professional counselor--A staff member who is licensed as a licensed professional counselor by the Texas State Board of Examiners of Professional Counselors in accordance with Texas Occupations Code, Chapter 503.

(35) LPHA or licensed practitioner of the healing arts--A staff member who is:

- (A) a physician;
- (B) a licensed professional counselor (LPC);
- (C) a licensed clinical social worker (LCSW);
- (D) a psychologist;
- (E) an advanced practice nurse (APRN);
- (F) a physician assistant (PA); or
- (G) a licensed marriage and family therapist (LMFT).

(36) LVN or licensed vocational nurse--A staff member who is licensed as a licensed vocational nurse by the Texas Board of Nursing in accordance with Texas Occupations Code, Chapter 301.

(37) Management information system--An information system designed to supply an LMHA or MCO with information needed to plan, organize, staff, direct, and control their operations and clinical decision-making.

(38) MCO or managed care organization--An entity that has a current Texas Department of Insurance certificate of authority to operate as a Health Maintenance Organization (HMO) in the Texas Insurance Code, Chapter 843, or as an approved nonprofit health corporation in the Texas Insurance Code, Chapter 844, and that provides mental health community services pursuant to a contract with the department.

(39) Medical necessity--The need for a service that:

(A) is reasonable and necessary for the diagnosis or treatment of a mental health disorder or a co-occurring psychiatric and substance use disorder (COPSD) in order to improve or maintain an individual's level of functioning;

(B) is provided in accordance with professionally accepted clinical guidelines and standards of practice in behavioral health care;

(C) is furnished in the most clinically appropriate, available setting in which the service can be safely provided;

(D) is provided at a level that is safe and appropriate for the individual's needs and facilitates the individual's recovery; and

(E) could not be omitted without adversely affecting the individual's mental or physical health or the quality of care rendered.

(40) Medical record--The systematic, organized account, compiled by health care providers, of information relevant to the services provided to an individual. This includes an individual's history, present illness, findings on examination, treatment and discharge plans, details of direct and indirect care and services, and notes on progress.

(41) Mental health community services--All services medically necessary to treat, care for, supervise, and rehabilitate individuals who have a mental illness or emotional disorder or a COPSD. These services include services for the prevention of and recovery from such disorders, but do not include inpatient services provided in a state facility.

(42) Mental illness--An illness, disease, or condition (other than a sole diagnosis of epilepsy, dementia, substance use disorder, mental retardation, or pervasive developmental disorder) that:

(A) substantially impairs an individual's thought, perception of reality, emotional process, development, or judgment; or

(B) grossly impairs an individual's behavior as demonstrated by recent disturbed behavior.

(43) Peer provider--A staff member who:

(A) has received:

(i) a high school diploma; or

(ii) a high school equivalency certificate issued in accordance with the law of the issuing state;

(B) has at least one cumulative year of receiving mental health community services; and

(C) is under the direct clinical supervision of an LPHA.

(44) Physician--A staff member who is:

(A) licensed as a physician by the Texas Medical Board in accordance with Texas Occupations Code, Chapter 155; or

(B) authorized to perform medical acts under an institutional permit at a Texas postgraduate training program approved by the Accreditation Council for Graduate Medical Education, the American Osteopathic Association, or the Texas Medical Board.

(45) Physician assistant--A staff member who has specialized psychiatric/mental health training and who is licensed as a physician assistant by the Texas State Board of Physician Assistant Examiners in accordance with Texas Occupations Code, Chapter 204.

(46) Provider--Any person or legal entity that contracts with the department, an LMHA, or an MCO to provide mental health community services to individuals, including that part of an LMHA or MCO directly providing mental health community services to individuals. The term includes providers of mental health case management services and providers of mental health rehabilitative services.

(47) Psychologist--A staff member who is licensed as a psychologist by the Texas State Board of Examiners of Psychologists in accordance with Texas Occupations Code, Chapter 501.

(48) QMHP-CS or qualified mental health professional-community services--A staff member who is credentialed as a QMHP-CS who has demonstrated and documented competency in the work to be performed and:

(A) has a bachelor's degree from an accredited college or university with a minimum number of hours that is equivalent to a major (as determined by the LMHA or MCO in accordance with §412.316(d) of this title (relating to Competency and Credentialing)) in psychology, social work, medicine, nursing, rehabilitation, counseling, sociology, human growth and development, physician assistant, gerontology, special education, educational psychology, early childhood education, or early childhood intervention;

(B) is a registered nurse (RN); or

(C) completes an alternative credentialing process as determined by the LMHA or MCO in accordance with §412.316(c) and (d) of this title relating to (Competency and Credentialing).

(49) Recovery--The process by which a person becomes able or regains the ability to live, work, learn, and participate fully in his or her community.

(50) Referral--The process of identifying appropriate services and providing the information and assistance needed to access them.

(51) RN or registered nurse--A staff member who is licensed as a registered nurse by the Texas Board of Nursing in accordance with Texas Occupations Code, Chapter 301.

(52) Restraint--The same meaning as defined in Chapter 415, Subchapter F of this title (relating to Interventions in Mental Health Programs).

(53) Routine care services--Mental health community services provided to an individual who is not in crisis.

(54) Safety monitoring--Ongoing observation of an individual to ensure the individual's safety. An appropriate staff person must be continuously present in the individual's immediate vicinity, provide ongoing monitoring of the individual's mental and physical status, and ensure rapid response to indications of a need for assistance or intervention. Safety monitoring includes maintaining continuous visual contact with frequent face-to-face contacts as needed.

(55) Screening Activities performed by a Qualified Mental Health Professional--Community Services (QMHP-CS) to gather triage information to determine the need for in-depth assessment. The QMHP-CS collects this information through face-to-face or telephone interviews with the individual or collateral. This service includes screenings to determine if the individual's need is emergent, urgent, or routine (which is conducted prior to the face-to-face assessment to determine the need for emergency services).

(56) Seclusion--The same meaning as defined in Chapter 415, Subchapter F of this title.

(57) Staff member--Anyone who works or provides services for an LMHA, MCO, or provider as an employee, contractor, intern, or volunteer.

(58) Support services--Mental health community services delivered to an individual, LAR, or family member(s) to assist the individual in functioning in the individual's chosen living, learning, working, and socializing environments.

(59) Telemedicine--The use of health care information exchanged from one site to another via electronic communications for the health and education of the individual or provider, and for the purpose of improving patient care, treatment, and services. This definition applies only for purposes of this subchapter and does not affect, modify, or relate in any way to other rules defining the term or regulating the service, or to any statutory definitions or requirements.

(60) Uniform assessment--An assessment tool developed by the department that includes, but is not limited to, the Adult Texas Recommended Assessment Guidelines (TRAG), the Children and Adolescent Texas Recommended Assessment Guidelines, and the department-approved algorithms.

(61) Urgent care services--Mental health community services or other necessary interventions provided to persons in crisis who do not need emergency care services, but who are potentially at risk of serious deterioration.

(62) Utilization management exception--The authorization of additional amounts of services based on medical necessity when the individual has reached the maximum service units of their currently authorized level of care (LOC).

(63) Utilization management guidelines--Guidelines developed by the department that establish the type, amount, and duration of mental health community services for each LOC.

(64) Volunteer--A person who receives no remuneration for the provision of time, individual attention, or assistance to individuals receiving mental health community services from entities or providers governed by this subchapter. Volunteers may include:

(A) community members;

(B) family members of individuals served when not acting in their capacity as a family member;

(C) employees when not acting in their capacity as employees; and

(D) individuals served when acting on behalf of another individual.

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 January 30, 2017.

TRD-201700416

Lisa Hernandez

General Counsel

Department of State Health Services

Effective date: February 19, 2017

Proposal publication date: August 12, 2016

For further information, please call: (512) 776-6972



DIVISION 3. STANDARDS OF CARE

25 TAC §412.322

STATUTORY AUTHORITY

The amendment is authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation

and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

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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Lisa Hernandez

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 51. EXECUTIVE

The Texas Parks and Wildlife Commission in a duly noticed meeting on November 3, 2016 adopted amendments to §§51.204, 51.208, 51.213, 51.304, 51.350, and 51.750 without changes to the proposed text as published in the September 30, 2016, issue of the *Texas Register* (41 TexReg 7678). The amendments are a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires a state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.

The amendment to §51.204, concerning Notice of Claim of Breach of Contract, replaces the reference to a "unit's chief administrative officer" in subsection (b) with the term "division director," which more accurately describes the department's organizational structure. Similarly, the amendment replaces the reference to "unit" in subsection (c) with "department" to more accurately describe the addressee of the required notice.

The amendment to §51.208, concerning Timetable, replaces the references to "unit" in subsections (a) and (c) with "department" to more accurately describe the addressee the process and capitalize the initial word of subsection (c) to maintain grammatical parallelism.

The amendment to §51.213, concerning Request for Contested Case Hearing, replaces the references to "unit" in subsections (a) with "department" to more accurately describe the addressee the process, and would replace the term "chief administrative officer" with "executive director" to more accurately refer to the department's organizational structure.

The amendment to §51.304, concerning Duties of the Department, alters subsection (a) by adding language to paragraph (2) to clarify that the department may disclose certain information to governmental entities, including law enforcement entities, to carry out a government purpose and adding new paragraph (5) to clarify that records made or kept by the department un-

der Parks and Wildlife Code, §31.039 and §31.0391 (concerning vessel ownership) are considered public records. The amendment also eliminates subsection (b), which provides for the verification of certain customer information upon request. The department has determined that the proposed amendments are necessary to protect information about customers as allowed by Parks and Wildlife Code, §11.030.

The amendment to §51.350, concerning Vendor Dispute Resolution, replaces the reference to "Director of Purchasing, Contracting, and Distribution Services" with "Purchasing and Contracting Director" to more accurately reflect the department's organizational structure.

The amendment to §51.750 regarding Promotional Drawings modifies subsection (a)(1) to clarify that the \$5,000 limit on the value of prizes does not include items donated to the department.

The department received no comments opposing adoption of the rules as proposed.

The department received one comment supporting adoption of the rules as proposed.

No groups or associations commented on the rules as proposed.

SUBCHAPTER J. CONTRACT DISPUTE RESOLUTION

31 TAC §§51.204, 51.208, 51.213

The amendments are adopted under the authority of Government Code, §2260.052(c), which requires each unit of state government with rulemaking authority to develop rules to govern the negotiation and mediation of contract claims against the state, and Parks and Wildlife Code, §11.0171, which requires the commission to adopt by rule policies and procedures for soliciting and awarding contracts.

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 January 27, 2017.

TRD-201700393

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Effective date: February 16, 2017

Proposal publication date: September 30, 2016

For further information, please call: (512) 389-4775



SUBCHAPTER K. DISCLOSURE OF CUSTOMER INFORMATION

31 TAC §51.304

The amendment is adopted under Parks and Wildlife Code, §11.030, which requires the commission to adopt policies by rule relating to the release of the customer information; the use of the customer information by the department; and the sale of a mailing list consisting of the names and addresses of persons who purchase customer products, licenses, or services.

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

Texas Parks and Wildlife Department

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For further information, please call: (512) 389-4775



SUBCHAPTER L. VENDOR DISPUTE RESOLUTION

31 TAC §51.350

The amendment is adopted under Government Code, §2155.076, which requires the department as a state agency to adopt rules for resolving vendor protests relating to purchasing issues.

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

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Texas Parks and Wildlife Department

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SUBCHAPTER Q. PROMOTIONAL DRAWINGS

31 TAC §51.750

The amendment 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

Texas Parks and Wildlife Department

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Proposal publication date: September 30, 2016

For further information, please call: (512) 389-4775



CHAPTER 52. STOCKING POLICY

31 TAC §52.104, §52.401

The Texas Parks and Wildlife Commission, in a duly noticed meeting on November 3, 2016, adopted amendments to §52.104 and §52.401 without changes to the proposed text as published in the September 30, 2016, issue of the *Texas Register* (41 TexReg 7680). The amendments are a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires a state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.

The amendment to §52.104, concerning Policy of the Department, alters current subsection (b) by eliminating the initial capitalization of the term "annual operational plan." The capitalization suggests that there is a specific document titled "Annual Operational Plan." Eliminating the capitalization more accurately describes the plan.

The amendment to §52.401, concerning Fish Stocking in Private Waters, alters current subsection (b)(4) to clarify that an agreement regarding the stocking of fish in private waters must be signed by the department's executive director. Since fish may be stocked in private waters only as part of a department project associated with investigation, propagation, distribution, scientific, educational, or other valid management purposes, it is appropriate for the executive director to be the signatory on such agreements to ensure that such purposes are being served. Similarly, the amendment further clarifies that the stocking of any private waters not be associated with pay-to-fish operations.

The department received no comments opposing adoption of the rules as proposed.

The department received one comment supporting adoption of the rules as proposed.

No groups or associations commented on the rules as proposed.

The amendments are adopted under the Parks and Wildlife Code, §§1.012, 12.001, 12.013 - 12.015, and 66.015, which provide the Parks and Wildlife Commission with the authority to promulgate regulations governing the stocking of wildlife in the state.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 27, 2017.

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Ann Bright

General Counsel

Texas Parks and Wildlife Department

Effective date: February 16, 2017

Proposal publication date: September 30, 2016

For further information, please call: (512) 389-4775



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER F. MOTOR VEHICLE SALES TAX

34 TAC §3.83

The Comptroller of Public Accounts adopts new §3.83, concerning sales and use of motor vehicles purchased or leased by public agencies; and sales and use of motor vehicles purchased by commercial transportation companies, without changes to the proposed text as published in the December 23, 2016, issue of the *Texas Register* (41 TexReg 10087). This section implements Senate Bill 724 (SB 724), 84th Legislature, 2015. Effective June 17, 2015, this legislation amended Tax Code, §152.082 (Sale of Motor Vehicle to or Use of Motor Vehicle by Public Agency) to allow commercial transportation companies who provide transportation services under a contract with the board of county school trustees, school district board of trustees, or the governing body of an open-enrollment charter school, to purchase a motor vehicle tax-free when the motor vehicle is operated with exempt license plates. This section also memorializes long-standing comptroller policies not previously addressed by this section.

Subsection (a) contains definitions of key terms. Paragraph (1) defines "Application for Texas Title and/or Registration."

Paragraph (2) defines "lease." The definition is based on Tax Code, §152.001(6) (Definitions).

Paragraph (3) defines the term "motor vehicle" and provides specific examples. This definition is based, in part, on Tax Code, §152.001(3) and (4) (Definitions), and the definition of the term given in §3.80 of this title (relating to Motor Vehicles Transferred as a Gift or for No Consideration).

Paragraph (4) defines "public agency" in accordance with Tax Code, §152.001(7), and provides specific examples of entities considered public agencies that have previously not been addressed for purposes of this section. These examples are taken, in part, from §3.322(c) of this title (relating to Exempt Organizations) and attorney general (AG) opinions. See, for example, STAR Accession Nos. 7112A2002A10 (AG Opinion No. M-1033 1971) (community centers for mental health and mental retardation services are political subdivisions when created by a city, a hospital district, or a school district); 8303498A (AG Opinion JM-12 1983) (community centers for mental health and mental retardation centers may be operated by counties, cities, hospital districts, school districts, or any combination); 4912A2003C06 (AG Opinion V-955 1949) (navigation districts and flood districts are public agencies); and 8504L0653C09 (April 4, 1985) (Federal Intermediate Credit Bank, Federal Credit Union, Federal Reserve Banks, and Federal Home Loan Mortgage, Inc. are public agencies for the purposes of motor vehicle tax).

Subsection (b) addresses the sale or use of a motor vehicle purchased by a public agency or an entity exempted by another statute. Paragraph (1) identifies the requirements that must be met in order for a public agency to qualify for the exemption from motor vehicle tax under Tax Code, §152.082. Subparagraph (A) addresses motor vehicles operated with an exempt license plate issued pursuant to Transportation Code, §502.451 (Exempt Vehicles). Subparagraph (B) addresses motor vehicles that are exempted from inscription requirements by Transportation Code, §721.003 (Exemption from Inscription Requirement for Certain State-Owned Motor Vehicles) or §721.005 (Exemption from Inscription Requirement for Certain Municipal and County-Owned Motor Vehicles), and may be operated without an exempt license plate. Subparagraph (C) addresses motor vehicles operated with regularly designed license plates issued pursuant to Transportation Code, §502.451(f) (Exempt Vehicles), because the vehicles are dedicated to law enforcement activities. Subparagraph (D) addresses motor vehicles purchased by the federal government, which are exempt from Texas tax regardless of the type of license plate displayed. Subparagraph (E) addresses motor vehicles purchased by an entity exempt from taxation by other Texas statutes or federal statutes. Examples of entities exempted by other Texas statutes include, but are not limited to, the Cotton Growers' Boll Weevil Eradication Foundation created under Agriculture Code, Chapter 74 and an electric cooperative created under Utilities Code, Chapter 161.

Paragraph (2) provides that when a motor vehicle is purchased to be leased to a public agency, and operated with an exempt license plate issued under Transportation Code, §502.451, it is exempt from the motor vehicle tax pursuant to Tax Code, §152.083 (Lease of Motor Vehicle to Public Agency). Tax is due if the vehicle is not operated with exempt license plates. See STAR Accession No. 9602L1397G14 (February 22, 1996), ("Sections 152.082 and 152.083 of the Texas Tax Code exempts the lease or purchase of a motor vehicle by a public agency from tax if they carry an exempt license plate...").

Paragraph (3) provides the requirements for a seller and purchaser claiming an exemption pursuant to Tax Code, §152.083. It also provides the requirements for a seller and purchaser to file a joint statement with the tax assessor-collector of the county pursuant to Tax Code, §152.062.

Paragraph (4) provides that motor vehicle tax is due if a motor vehicle ceases to be leased to a public agency and is not held for

sale. Paragraph (4) further describes how the tax is calculated and how to pay the tax, as provided by Tax Code §152.083.

Subsection (c) implements SB 724, allowing a commercial transportation company to purchase motor vehicles tax-free when it provides transportation services under contract with certain public agencies.

Paragraph (1) addresses motor vehicles purchased for use by a commercial transportation company under contract with the board of county school trustees, the school district board of trustees, or governing body of an open-enrollment charter school, and operated with an exempt license plate issued under Transportation Code, §502.451.

Paragraph (2) provides the requirements for a commercial transportation company to claim a tax exemption under this section.

Paragraph (3) provides that the tax exemption does not apply to motor vehicles purchased for lease to a commercial transportation company, regardless of whether the commercial transportation company provides transportation services under a contract with certain public agencies. This is based on the plain language of the statute. SB 724 only amended the provisions of sales or use of a motor vehicle by a public agency in Tax Code, §152.082, and not Tax Code, §152.083, which addresses the lease of motor vehicles to a public agency.

No comments were received regarding adoption of the new section.

This new section is adopted under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

This section implements Tax Code, Chapter 152 (Taxes on Sale, Rental, and Use of Motor Vehicles), including, but not limited to, §152.082 (Sale of Motor Vehicle to or Use of Motor Vehicle by Public Agency) and §152.083 (Lease of Motor Vehicle to Public Agency).

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 January 25, 2017.

TRD-201700380

Lita Gonzalez

General Counsel

Comptroller of Public Accounts

Effective date: February 14, 2017

Proposal publication date: December 23, 2016

For further information, please call: (512) 475-0387



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 18. NURSING FACILITY ADMINISTRATORS

SUBCHAPTER D. REFERRALS, COMPLAINT PROCEDURES, AND SANCTIONS

40 TAC §§18.52 - 18.54

The Texas Health and Human Service Commission (HHSC) adopts, on behalf of the Department of Aging and Disability Services (DADS), amendments to §§18.52 - 18.54, in Chapter 18, Nursing Facility Administrators without changes to the proposed text as published in the October 28, 2016, issue of the *Texas Register* (41 TexReg 8540).

BACKGROUND AND JUSTIFICATION

The amendments clarify that DADS gives a nursing facility administrator an opportunity to request an informal review before DADS initiates proceedings to revoke or suspend the administrator's license or deny renewal of such a license. The amendments also change the timeframe for a nursing facility administrator to request a formal hearing from 15 days to 20 days after receiving a notice from DADS to be consistent with the timeframe for hearings for administrative penalties in Texas Health and Safety Code (THSC) §242.067(f). The amendments add a reference to Title 40, Chapter 91 regarding governance of a formal hearing and add crimes of moral turpitude to the list of violations that lead to sanctions to be consistent with THSC §242.313.

COMMENTS

DADS received no comments regarding adoption of the amendments.

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Health and Safety Code, §242.302, which authorizes the HHSC executive commissioner to adopt rules relating to the licensure of nursing facility administrators.

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 January 26, 2017.

TRD-201700392

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Effective date: February 15, 2017

Proposal publication date: October 28, 2016

For further information, please call: (210) 619-8292



TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 9. CONTRACT AND GRANT
MANAGEMENT
SUBCHAPTER C. CONTRACTING FOR
ARCHITECTURAL, ENGINEERING, AND
SURVEYING SERVICES

43 TAC §§9.31, 9.33, 9.34

The Texas Department of Transportation (department) adopts amendments to §9.31, Definitions, §9.33, Precertification, and §9.34, Comprehensive Process, concerning Contracting for Architectural, Engineering, and Surveying Services. The amendments to §§9.31, 9.33, and 9.34 are adopted without changes to the proposed text as published in the November 11, 2016, issue of the *Texas Register* (41 TexReg 8995) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

Updates to the rules related to administrative qualifications are necessary to clarify when a resubmittal is allowed and to align requirements of the state-funded procurement process with the federal procurement process. The amendments also streamline the process by modifying standard work categories used for precertification.

Amendments to §9.31, Definitions, provide a definition for "engineering and design related services" that corresponds with the federal definition of the term. This definition works in conjunction with changes to §9.34(b), Administrative Qualifications, to align the federal and state procurement processes with respect to which types of providers must be administratively qualified.

Amendments to §9.33, Precertification, change the level of authority necessary to add, revise, or delete a standard work category from the Texas Transportation Commission (commission) to the department. This change streamlines the process by allowing the department to better define and maintain work categories, and the minimum qualifications of an individual to perform work under those categories, without the need to bring the changes before the commission.

Amendments to §9.34, Comprehensive Process, provide several substantive changes.

Amendments to §9.34(b)(1) narrow the applicability of the administrative qualification process requirement to only those providers performing engineering and design related services. This change aligns the federal and state procurement processes with respect to whether or not a provider must be administratively qualified and allows subproviders to perform ancillary services that are not engineering and design related without being administratively qualified. This change increases the efficiency of the engineer and design related procurement process, eliminates confusion between the federal and state processes, and eliminates multiple forms while maintaining compliance with both federal and state law.

Amendments to §9.34(b)(2)(C) expand the scope of compensation analysis that must be submitted by a provider to include employees as well as executives or to be a cognizant letter of concurrence issued by a state transportation agency. This change will bring this section into conformity with the American Association of State Highway and Transportation Officials' Uniform Audit and Accounting Guide.

Section 9.34(b)(3)(B) allows the department, after reviewing a provider's administrative qualifications submittal, to request additional information or a corrected submittal. Currently, if a provider fails to return the requested information or corrected submittal within a 30-day window comprised of two separate 15-day periods, the department will reject the original submittal. This provision has been interpreted as imposing a 1-year bar against resubmittal of administrative qualification information if a provider fails to return the requested information or corrected submittal within the 30-day window. Amendments to §9.34(b)(3) change the two 15-day periods to one 30-day period and clarify that if the department rejects a provider's submittal, the provider may resubmit its administrative qualification information no earlier than 90 days after rejection.

Amendments to §9.34(b)(3) add a good faith effort provision in new subparagraph (D) which provides that the department will make a good faith effort to process administrative qualification submittals within 60 days following submittal. By providing a target window for the department's processing of administrative qualification submittals, this provision addresses the issue of providers submitting administrative qualification information on or very near to the date the provider must be administratively qualified to compete for a particular contract.

Section 9.34(f) requires the department to disqualify a provider if a named task leader leaves the provider's employment prior to selection. This requirement can result in a provider being disqualified when a minor task leader leaves the provider through no fault of the provider. Amendments to §9.34(f) allow a prime provider, in those cases, to propose a replacement task leader who meets the requirements of the solicitation and is a current employee of the provider or a subprovider. If the proposed replacement is acceptable to the department, the prime provider may continue in the procurement process. However, if the proposed replacement is not acceptable to the department, the department may still disqualify the prime provider. Amendments to §9.34(f) also clarify for solicitations under the streamline process for which the department determines that interviews are not required, the prime provider may propose to replace the prime provider project manager at any time before the provider is selected for the contract.

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Government Code, Chapter 2254, Subchapter A and Transportation Code, §223.041.

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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PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 215. MOTOR VEHICLE DISTRIBUTION

The Texas Department of Motor Vehicles (department) adopts amendments to Chapter 215, Motor Vehicle Distribution, Subchapter A, General Provisions, §§215.1 and 215.2; Subchapter B, Adjudicative Practice and Procedure, §§215.21 - 215.24, 215.27, 215.29, 215.30, 215.32, 215.34 - 215.49, 215.55, 215.56, and 215.58; Subchapter C, Licenses, Generally, §§215.81 - 215.85 and 215.87 - 215.89; Subchapter D, Franchised Dealers, Manufacturers, Distributors, and Converters, §§215.101, 215.103 - 215.106, and 215.108 - 215.119; Subchapter E, General Distinguishing Numbers, §§215.131 - 215.133, 215.135, 215.137 - 215.141, and 215.144 - 215.159; Subchapter F, Vehicle Lessors and Vehicle Lease Facilitators, §§215.171 and 215.173 - 215.181; Subchapter G, Warranty Performance Obligations, §§215.201 - 215.210; Subchapter H, Advertising, §§215.241 - 215.261 and 215.263 - 215.271; Subchapter I, Practice and Procedure for Hearings Conducted by the State Office of Administrative Hearings, §§215.301 - 215.303, 215.305 - 215.308, 215.310, 215.311, and 215.314 - 215.317; and Subchapter J, Administrative Sanctions, §§215.500 - 215.503. The department also adopts the repeal of Subchapter A, §§215.3 - 215.6; Subchapter B, §§215.25, 215.26, 215.28, 215.31, 215.33, 215.50 - 215.54 and 215.57; Subchapter C, §215.86; Subchapter D, §215.107; Subchapter E, §§215.136, 215.142, and 215.143; Subchapter F, §215.172; Subchapter H, §215.262; and Subchapter I, §§215.309, 215.312 and 215.313. Sections 215.1, 215.2, 215.21 - 215.24, 215.27, 215.29, 215.30, 215.32, 215.34 - 215.49, 215.55, 215.56, 215.58, 215.81, 215.82, 215.84, 215.85, 215.87, 215.88, 215.101, 215.103 - 215.106, 215.108 - 215.113, 215.115 - 215.119, 215.131, 215.132, 215.135, 215.137 - 215.139, 215.141, 215.145 - 215.151, 215.154 - 215.156, 215.158, 215.159, 215.171, 215.173, 215.174, 215.176, 215.178 - 215.181, 215.201 - 217.207, 215.209, 215.210, 215.241 - 215.243, 215.247, 215.248, 215.251 - 215.260, 215.263 - 215.269, 215.271, 215.301 - 215.303, 215.305 - 215.308, 215.310, 215.311, 215.314 - 215.317, and 215.500 - 215.503 are adopted without changes and will not be republished. Sections 215.83, 215.89, 215.114, 215.133, 215.140, 215.144, 215.152, 215.153, 215.157, 215.175, 215.177, 215.208, 215.244 - 215.246, 215.249, 215.250, 215.261, and 215.270 are adopted with changes to the proposed text as published in the September 9, 2016, issue of the *Texas Register* (41 TexReg 7011), and will be republished.

Additionally, the department adopts new §215.160, Duty to Identify Motor Vehicles Offered for Sale as Rebuilt, which outlines the requirements for sale of a repaired, rebuilt or reconstructed vehicle, with changes to the proposed text as published in the

September 9, 2016, issue of the *Texas Register* (41 TexReg 7011) and will be republished.

EXPLANATION OF ADOPTED AMENDMENTS, NEW SECTION, AND REPEALS

The department conducted a review of its rules under Chapter 215 in compliance with Government Code, §2001.039. Notice of the department's intention to review was published in the June 19, 2015, issue of the *Texas Register* (40 TexReg 4012).

As a result of the review, the department has determined that the reasons for initially adopting Subchapters A - J continue to exist but that certain amendments and repeals, as detailed in the following paragraphs, are necessary.

Amendments to Subchapter A, §215.1 and §215.2 are adopted to replace terminology with defined terms, delete definitions already defined by statute, revise existing terminology for consistency with other department rules, correct referenced citations, and to delete language that duplicates statute. The title of §215.1 is amended for consistency with other department rules. Additional amendments to §215.2 add and define the term "GDN." The department has determined that the reasons for initially adopting §§215.3 - 215.6 no longer exist and are repealed. Section 215.3 is being repealed because it duplicates language already in statute. Sections 215.4 - 215.6, relating to opinions, are being repealed because those sections are contrary to Government Code, §2001.003(6) which defines a rule as "a state agency statement of general applicability that (i) implements, interprets, or prescribes law or policy, or (ii) describes the procedure or practice requirements of a state agency."

Amendments to Subchapter B, §§215.21 - 215.24, 215.27, 215.29, 215.30, 215.32, 215.34 - 215.49, 215.55, 215.56, and 215.58 are adopted to clarify the purpose of the subchapter, replace terminology with defined terms, correct referenced citations, revise existing terminology for consistency with other department rules, and to delete language contained in statute. An amendment to §215.22 adds that a violation of that section will be reported to the general counsel of the department in addition to the hearing officer. An additional amendment to §215.34 establishes the last known address of a license applicant, license holder, or other person for purposes of giving notice as the mailing address provided to the department when the license holder applies, renews, or notifies the department of a change of address. The department further adopts an amendment to §215.37 to clarify that the costs of transcribing and preparing a record in a contested case hearing will be assessed to the party requesting the record. An additional amendment to §215.58 authorizes the director of the division to issue final orders in contested cases that are resolved by summary judgment or summary disposition. Additional amendments are adopted throughout Subchapter B to simplify and clarify language by removing any unnecessary statutory repetition. In addition, amendments rename the titles of certain sections for consistency and accuracy. The department has further determined that §§215.25, 215.26, 215.28, 215.31, 215.33, 215.50 - 215.54, and 215.57 duplicate language already contained in statute and are no longer necessary. Therefore, those sections are being repealed.

Amendments to Subchapter C, §§215.81 - 215.85 and 215.87 - 215.89 replace terminology with defined terms, revise existing terminology for consistency with other department rules, correct misspelling and referenced citations, and delete language contained in statute. Additional amendments throughout Sub-

chapter C replace "division" with "department" for clarification and consistency with current department practice. An amendment to §215.83 implements legislative changes regarding "active duty." In addition, §215.83 is amended to include the procedures for processing license applications that are currently set out under existing §215.86 because those procedures are more appropriately located under §215.83. Additional amendments to §215.83 subdivide the rule to improve formatting and readability. Because the department is incorporating, with amendments, the rule language under §215.86 with §215.83, §215.86 is being repealed. Additional amendments throughout Subchapter C rename certain section titles for consistency and accuracy with the language contained in those rules.

Amendments to Subchapter D, §§215.101, 215.103 - 215.106, and 215.108 - 215.119 delete language contained in statute, replace terminology with defined terms, and revise existing terminology for consistency with other department rules and current department practice. An amendment to §215.105 clarifies that the provisions of that section apply only to purchases and transfers involving physical relocation. Amendments to §215.112 clarify that the provisions of that section are limited only to motor home shows that require department approval. Additional amendments throughout Subchapter D replace "division" with "department" for clarification and consistency with current department practice. Amendments throughout Subchapter D subdivide and restructure the rules for formatting and improved readability. The department has further determined that §215.107 duplicates language contained in statute and therefore, is being repealed.

Amendments to Subchapter E, §§215.131 - 215.133, 215.135, 215.137 - 215.141, and 215.144 - 215.159 replace terminology with defined terms, delete definitions already defined by statute or add clarifying language to existing definitions, revise existing terminology for consistency with other department rules, correct referenced citations, and delete language contained in statute. An additional amendment to §215.132 adds and defines the term "VIN." An additional amendment to §215.133 includes the acceptance of concealed handgun license (license to carry a handgun) for identification purposes. An amendment to §215.135 specifies that a dealer may not commence business at any location until the department issues a license authorizing that location. Amendments to §215.137 change the title to "Surety Bond" for consistency with statute and to clarify requirements. Amendments were made to §215.138 to clarify use of metal dealer's license plates. Additional amendments to §215.139 subdivide the rule for improved readability and replace existing textual language with graphics under amended subsections (c), (e) and (f)(1). Additional amendments throughout §215.140 clarify that different requirements apply to retail dealers and wholesale motor vehicle dealers. Additional amendments to §215.141 clarify sanctions and add an additional sanctionable offense, effective January 1, 2017, for failure to disclose repaired, rebuilt, or reconstructed motor vehicles. An additional amendment to §215.144 clarifies that license holders are not required to maintain copies of motor vehicle titles submitted electronically. Additional amendments to §215.145 clarify the requirements for dealer status changes. An additional amendment was made to §215.147 to include acceptance of concealed handgun license (license to carry a handgun) for identification. Additional amendments renumber the appendices under §215.153, consistent with the amendments renumbering that section. The department further repeals §§215.136, 215.142, and 215.143 because those sections are

adequately addressed by statute and are no longer necessary. Additionally new §215.160, which outlines the requirements for sale of a repaired, rebuilt or reconstructed vehicle, is adopted.

An amendment to Subchapter F renames the title of that subchapter for consistency with statutorily defined terms. Additional amendments throughout §§215.171 and 215.173 - 215.181 delete definitions already defined by statute or add clarifying language to existing definitions, revise existing terminology for consistency with other department rules, correct referenced citations, and delete language contained in statute. Additional amendments throughout Subchapter F renumber and subdivide certain sections for improved readability. Because the department has deleted the definitions under §215.172, the reasons for adopting that section no longer exist and §215.172 is being repealed.

Amendments to Subchapter G, §§215.201 - 215.210 replace terminology with defined terms, revise existing terminology for consistency with other department rules, correct the referenced citations, and delete language that is already contained in statute. In addition, an amendment to §215.201 renames the title of that section for consistency with other department rules.

Amendments to Subchapter H, §§215.241 - 215.261 and 215.263 - 215.271 revise existing terminology for consistency with other department rules. Additional amendments replace terminology with defined terms and correct referenced citations. The department amends §215.241 to replace "Board" with "department" for consistency with current department practice, and replaces "code" with "Occupations Code, Chapter 2301" for clarification. Amendments to §215.244 add and define the terms "Distributor Suggested Retail Price (DSRP)," "limited rebate," "Manufacturer's Suggested Retail Price (MSRP)," and "savings claim or discount," and clarify definitions for "Monroney label" and "rebate or cash back." Additional amendments to §215.246 clarify accuracy of internet advertisements. Amendments to §215.248 include internet and online advertisements. Amendments to §215.249 provide clarification of Manufacturer's Suggested Retail Price (MSRP) and Distributor's Suggested Retail Price (DSRP). Additional amendments to §215.250 incorporate the provisions under existing §215.262 relating to savings claims and discount offers with §215.250 because those provisions are more appropriately located under that section. Additionally, where §215.250 states a "motor vehicle," the reference is being made to a specific vehicle, not a type, class, or group of vehicles. Section 215.250 graphics are amended and additional graphics are added for subsections (k) and (l). Because additional terms are added to §215.250, the numbering is changing throughout. The department is adopting §215.250 with changes from the proposed text and not adopting proposed new subsection (m) with its corresponding graphic. Because the department determined that the savings claims and discount offer provisions under §215.262 are more appropriately located under §215.250, §215.262 is being repealed. In addition, amendments to §215.253 add additional clarifying language regarding allowable use of trade-in amounts in advertisements.

Amendments to Subchapter I, §§215.301 - 215.303, 215.305 - 215.308, 215.310, 215.311, and 215.314 - 215.317 replace terminology with defined terms and correct referenced citations for consistency. Additional amendments throughout that subchapter replace "matter" with "contested case" and "Board" with "department." An amendment to §215.307 establishes a license holder's last known address for purposes of giving notice as the "mailing address provided to the department when the license

holder applies or renews its license," or notifies the department of a change of address. An additional amendment to §215.314 authorizes the director of the division to issue a cease and desist order prior to the commencement of a proceeding by the State Office of Administrative Hearings (SOAH). The cease and desist order may be issued without notice and opportunity for hearing if the provisions under Occupations Code, §2301.802(b) are met. An Administrative Law Judge shall hold a hearing to determine whether the interlocutory cease and desist order should remain in effect during the pendency of the proceeding. Additional amendments to §215.317 clarify that a motion for rehearing and a reply to a motion for rehearing of an order issued by the board delegate must be decided by the board delegate. The department has also determined that §§215.309, 215.312, and 215.313 duplicate language contained in statute and those sections are being repealed.

Amendments to Subchapter J, §§215.500 - 215.503 replace terminology with statutorily defined terms and correct referenced citations. Additional amendments subdivide certain sections of that subchapter for improved formatting. An amendment to §215.500 clarifies that an administrative sanction may include denial of an application for a license. An additional amendment to that section establishes the last known address of a license holder for purposes of giving notice as the "mailing address provided to the department when the license holder applies or renews its license," or notifies the department of a change of address. An amendment to §215.503 provides that the department will not refund a fee to a person that is subject to an unpaid civil penalty imposed by a final order.

Additional nonsubstantive amendments throughout Chapter 215 correct punctuation, grammar, and capitalization.

COMMENTS

Comments were received from:

Texas Automobile Dealers Association ("TADA")

Texas Independent Automobile Dealers Association ("TIADA")

Gulf States Toyota, Inc. ("GST")

Lloyd E. Ferguson ("Ferguson")

Based on these comments, a meeting was held with Stakeholders to address their concerns and a consensus was reached.

The comments and responses include:

§215.114, Sale of a Vehicle by a Manufacturer or Distributor at a Wholesale Motor Vehicle Auction.

COMMENT: TADA comments that a typographical error appears in the following sentence: "A GDN is sued..." and TADA suggests that the language is intended to read: "A GDN issued..."

RESPONSE: The department agrees with this comment and the language was corrected.

§215.144 (k) Records.

COMMENT: TIADA requests that language be added to (k): "Original hard copy titles are not required to be kept at the licensed location, but must be made available to the agency upon reasonable request."

RESPONSE: The department agrees and made the requested change to §215.144(k).

§215.160, Duty to Identify Motor Vehicles Offered for Sale as Rebuilt.

COMMENT: TADA requests that language be included stating that if the seller *knows* that a motor vehicle offered for sale has been a salvage motor vehicle as defined by Transportation Code, §501.091(15) and a regular title is subsequently issued under Transportation Code, §501.100, a dealer shall provide a written disclosure that the vehicle has been repaired, rebuilt, or reconstructed, and issued a title.

RESPONSE: The department agrees and made changes to this section to add a "knowing" requirement.

§215.244, Definitions.

COMMENT: Stakeholders recommend adding new subsection (9) to define the Distributor Suggested Retail Price (DSRP) as the total price shown on the Monroney Label as specified by sub-paragraph (D) of paragraph (14) of this section. Stakeholders also recommend adding new subsection (13) Manufacturer's Suggested Retail Price (MSRP), also as the total price shown on the Monroney Label as specified by sub-paragraph (D) of paragraph (14) of this section. GST comments that it is in agreement with the department's proposed changes to add subsection (14) which provides for a "Monroney Label." GST recommends that language "including, but not limited to" be added to (17), the definition for "savings claim or discount," to ensure that other forms of incentives such as low APR financing, subvention cash, and special lease offers are also included.

RESPONSE: The department agrees with the Stakeholders and GST and has added the requested language.

§215.249, Manufacturer's Suggested Retail Price.

COMMENT: The Stakeholders recommend to retitle this section to read "Manufacturer's/Distributors Suggested Retail Price," and to add "/Distributor's" in each section or subsection in which "Manufacturer's Suggested Retail Price" is included, and where applicable.

RESPONSE: The department agrees with the Stakeholders and has retitled the section and added the requested language.

§215.250(a) - (d), Price Advertising; Savings Claims; Discounts.

COMMENT: GST has concerns regarding the removal of the word "Dealer" from the heading of this section and requests that the "Dealer" be placed back into the heading for the purpose of clarifying the subsections of §215.250.

RESPONSE: The department agrees with GST and will make the requested addition to the section heading.

§215.250(f)

COMMENT: GST and Ferguson expressed concerns that the proposed changes to subsection (f) would prohibit the use of "up to," "as much as," and "from" savings claims and discount offers by manufacturers and distributors.

RESPONSE: GST, Ferguson, and the department agreed that the department will add "by a dealer" after the word "used" and before "in connection."

§215.250(g)

COMMENT: GST expresses concern that the proposed change to this subsection would likely apply to manufacturers and distributors, and it would seriously impede the ability of most manufacturers and distributors to advertise certain offers in Texas.

RESPONSE: In addressing GST's concern, the department will add the phrase "by a dealer" after the phrase "when advertised."

Additionally, the department has clarified in the Adoption Preamble that in cases where these sections state a "motor vehicle" the reference is being made to a specific vehicle, not to a type, class, or group of vehicles.

§215.250(h)(1)

COMMENT: GST and Ferguson recommend that (h)(1) be modified to read: "If a savings claim or discount offer includes only a dealer discount, that incentive must be disclosed as a deduction from the total suggested retail price (MSRP/DSRP). The following are acceptable formats for advertising a dealer discount with and without a sales price."

RESPONSE: After a meeting with stakeholders, the department and stakeholders agreed to modify (h)(1) to read: "If a savings claim or discount offer includes only a dealer discount, that incentive must be disclosed as a deduction from the MSRP/DSRP, as applicable. The following are acceptable formats for advertising a dealer discount with and without a sales price." Every use of MSRP/DSRP after that (subsequent subsection in Section 215.250) would carry that same meaning.

§215.250(l)

COMMENT: GST commented that the term "savings claim" be changed to a "dealer discount" so as to prevent dealers from manipulating the non-factory option pricing.

RESPONSE: The department agrees with GST and will make the requested change.

§215.250(m)

COMMENT: GST strongly opposes the proposed language in that "it seeks to specifically call out and highlight distributor installed options and equipment as part of the dealer advertising."

RESPONSE: The department agrees and the proposed language will not be adopted.

SUBCHAPTER A. GENERAL PROVISIONS

43 TAC §215.1, §215.2

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 the duties of the department; Occupations Code, §2301.155, which requires the board of the Texas Department of Motor Vehicles to adopt rules necessary or convenient to administer Occupations Code, Chapter 2301; and more specifically, Occupations Code, §2301.266, which authorizes the board to adopt rules applicable to the issuance of duplicate licenses; and Occupations Code, §2301.602, which requires the board to adopt rules to enforce Chapter 2301, Subchapter M; Transportation Code, §503.002 which authorizes the board to adopt rules to administer Transportation Code, Chapter 503; and more specifically, Transportation Code, §503.009, which authorizes the board to adopt rules for procedures concerning contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §503.0626 and §503.0631, which require the board to adopt rules necessary to implement and manage the department's temporary tag databases.

CROSS REFERENCE TO STATUTE

Government Code, §2001.039; Occupations Code, Chapter 2301; and Transportation Code, Chapter 503.

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 §§215.3 - 215.6

STATUTORY AUTHORITY

The repeals are adopted under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Occupations Code, §2301.155, which requires the board of the Texas Department of Motor Vehicles to adopt rules necessary or convenient to administer Occupations Code, Chapter 2301; and more specifically, Occupations Code, §2301.266, which authorizes the board to adopt rules applicable to the issuance of duplicate licenses; and Occupations Code, §2301.602, which requires the board to adopt rules to enforce Chapter 2301, Subchapter M; Transportation Code, §503.002 which authorizes the board to adopt rules to administer Transportation Code, Chapter 503; and more specifically, Transportation Code, §503.009, which authorizes the board to adopt rules for procedures concerning contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §503.0626 and §503.0631, which require the board to adopt rules necessary to implement and manage the department's temporary tag databases.

CROSS REFERENCE TO STATUTE

Government Code, §2001.039; Occupations Code, Chapter 2301; and Transportation Code, Chapter 503.

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SUBCHAPTER B. ADJUDICATIVE PRACTICE AND PROCEDURE

43 TAC §§215.21 - 215.24, 215.27, 215.29, 215.30, 215.32, 215.34 - 215.49, 215.55, 215.56, 215.58

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 the duties of the department; Occupations Code, §2301.155, which requires the board of the Texas Department of Motor Vehicles to adopt rules necessary or convenient to administer Occupations Code, Chapter 2301; and more specifically, Occupations Code, §2301.266, which authorizes the board to adopt rules applicable to the issuance of duplicate licenses; and Occupations Code, §2301.602, which requires the board to adopt rules to enforce Chapter 2301, Subchapter M; Transportation Code, §503.002 which authorizes the board to adopt rules to administer Transportation Code, Chapter 503; and more specifically, Transportation Code, §503.009, which authorizes the board to adopt rules for procedures concerning contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §503.0626 and §503.0631, which require the board to adopt rules necessary to implement and manage the department's temporary tag databases.

CROSS REFERENCE TO STATUTE

Government Code, §2001.039; Occupations Code, Chapter 2301; and Transportation Code, Chapter 503.

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43 TAC §§215.25, 215.26, 215.28, 215.31, 215.33, 215.50 - 215.54, 215.57

STATUTORY AUTHORITY

The repeals are adopted under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Occupations Code, §2301.155, which requires the board of the Texas Department of Motor Vehicles to adopt rules necessary or convenient to administer Occupations Code, Chapter 2301; and more specifically, Occupations Code, §2301.266, which authorizes the board to adopt rules applicable to the issuance of duplicate licenses; and Occupations Code, §2301.602, which requires the board to adopt rules to

enforce Chapter 2301, Subchapter M; Transportation Code, §503.002 which authorizes the board to adopt rules to administer Transportation Code, Chapter 503; and more specifically, Transportation Code, §503.009, which authorizes the board to adopt rules for procedures concerning contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §503.0626 and §503.0631, which require the board to adopt rules necessary to implement and manage the department's temporary tag databases.

CROSS REFERENCE TO STATUTE

Government Code, §2001.039; Occupations Code, Chapter 2301; and Transportation Code, Chapter 503.

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SUBCHAPTER C. LICENSES, GENERALLY

43 TAC §§215.81 - 215.85, 215.87 - 215.89

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 the duties of the department; Occupations Code, §2301.155, which requires the board of the Texas Department of Motor Vehicles to adopt rules necessary or convenient to administer Occupations Code, Chapter 2301; and more specifically, Occupations Code, §2301.266, which authorizes the board to adopt rules applicable to the issuance of duplicate licenses; and Occupations Code, §2301.602, which requires the board to adopt rules to enforce Chapter 2301, Subchapter M; Transportation Code, §503.002 which authorizes the board to adopt rules to administer Transportation Code, Chapter 503; and more specifically, Transportation Code, §503.009, which authorizes the board to adopt rules for procedures concerning contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §503.0626 and §503.0631, which require the board to adopt rules necessary to implement and manage the department's temporary tag databases.

CROSS REFERENCE TO STATUTE

Government Code, §2001.039; Occupations Code, Chapter 2301; and Transportation Code, Chapter 503.

§215.83. *License Applications, Amendments, or Renewals.*

(a) An application for a new license, license amendment, or license renewal filed with the department must be:

- (1) on a form approved by the department;
- (2) completed by the applicant, license holder, or authorized representative who is an employee, a licensed attorney, or a certified public accountant;
- (3) accompanied by the required fee, paid by check, credit card, or by electronic funds transfer, drawn from an account held by the applicant or license holder, or drawn from a trust account of the applicant's attorney or certified public accountant; and
- (4) accompanied by proof of a surety bond, if required.

(b) An authorized representative of the applicant or license holder who files an application with the department may be required to provide written proof of authority to act on behalf of the applicant or license holder.

(c) The department will not provide information regarding the status of an application, application deficiencies, or new license numbers to a person other than a person listed in subsection (a)(2) of this section, unless that person files a written request under Government Code, Chapter 552.

(d) Prior to the expiration of a license, a license holder or authorized representative must file with the department a sufficient license renewal application. Failure to receive notice of license expiration from the department does not relieve the license holder from the responsibility to timely file a sufficient license renewal application. A license renewal application is timely filed if:

- (1) the department receives a sufficient license renewal application on or before the date the license expires; or
- (2) a legible postmark on the envelope transmitting the sufficient license renewal application clearly indicates that the license holder or authorized representative mailed the license renewal application on or before the date the license expires.

(e) An application for a new license or license amendment filed with the department must be sufficient. An application is sufficient if the application:

- (1) includes all information and documentation required by the department; and
- (2) is filed in accordance with subsection (a) of this section.

(f) A license renewal application received by the department is sufficient if:

- (1) the renewal application form is completed by the license holder or authorized representative of the license holder who is an employee, an unpaid agent, a licensed attorney, or certified public accountant;
- (2) accompanied by the required license renewal application fee payment; and
- (3) accompanied by proof of a surety bond, if required.

(g) If an applicant, license holder, or authorized representative does not provide the information or documentation required by the department, the department will issue a written notice of deficiency. The information or documentation requested in the written notice of deficiency must be received by the department within 20 calendar days of the date of the notice of deficiency, unless the department issues a written extension of time. If an applicant, license holder, or authorized representative fails to respond or fully comply with all deficiencies listed in the written notice of deficiency within the time prescribed by this subsection, the application will be deemed withdrawn and will be administratively closed.

(h) The department will evaluate a sufficient application for a new license, license amendment, or license renewal in accordance with applicable rules and statutes to determine whether to approve or deny the application. If the department determines that there are grounds for denial of the application, the department may pursue denial of the application in accordance with Subchapter J of this chapter (relating to Administrative Sanctions).

(i) The department will process an application for a new license, license amendment, or license renewal filed by a military service member, military spouse, or military veteran in accordance with Occupations Code, Chapter 55. A license holder who fails to timely file a sufficient application for a license renewal because that license holder was on active duty is exempt from any increased fee or penalty imposed by the department for failing to renew the license in a timely manner.

(j) A license holder who timely files a sufficient license renewal application in accordance with subsection (d) of this section may continue to operate under the expired license until the license renewal application is determined.

(k) A license holder who fails to timely file a sufficient license renewal application in accordance with subsection (d) of this section is not authorized to continue licensed activities after the date the license expires. A license holder may dispute a decision that a license renewal application was not timely or sufficient by submitting evidence to the department demonstrating that the license renewal application was timely and sufficient. Such evidence must be received by the department within 10 calendar days of the date the department issues notice that a timely or sufficient license renewal application was not received by the department.

(l) The department shall accept a late license renewal application up to 90 days after the date the license expires. In accordance with subsection (k) of this section, the license holder is not authorized to continue licensed activities after the date the license expires until the department approves the late license renewal application. If the department grants a license renewal under this section, the licensing period begins on the date the department issues the renewed license. The license holder may resume licensed activities upon receipt of the department's written verification or upon receipt of the renewed license.

(m) If the department has not received a late license renewal application within 90 days after the date the license expires, the department will close the license. A person must apply for and receive a new license before that person is authorized to resume activities requiring a license.

(n) A metal dealer's license plate issued in accordance with Transportation Code, Chapter 503, Subchapter C expires on the date the associated license expires or when a license renewal application is determined, whichever is later.

§215.89. *Fitness.*

(a) In determining a person's fitness for a license issued or to be issued by the department under Transportation Code, Chapter 503 or Occupations Code, Chapter 2301, the board or department will consider:

- (1) the requirements of Occupations Code, Chapter 53;
- (2) the provisions of Occupations Code, §2301.651;
- (3) any specific statutory licensing criteria or requirements;
- (4) mitigating factors; and
- (5) other evidence of a person's fitness, as allowed by law, including the standards identified in subsection (b) of this section.

(b) The board or department may determine that a person is unfit to perform the duties and discharge the responsibilities of a license holder and may, following notice and an opportunity for hearing, deny a person's license application or revoke or suspend a license if the person:

(1) fails to meet or maintain the qualifications and requirements of licensure;

(2) is convicted by any local, state, or federal authority of an offense listed in §215.88(j) of this title (relating to Criminal Offense and Action on License) or is convicted in any jurisdiction of an offense containing elements that are substantially similar to the elements in the offenses in §215.88(j);

(3) omits information or provides false, misleading, or incomplete information regarding a criminal conviction on an initial application, renewal application, or application attachment for a license or other authorization issued by the department or by any local, state, or federal regulatory authority;

(4) is found to have violated an administrative or regulatory requirement based on action taken on a license, permit, or other authorization, including disciplinary action, revocation, suspension, denial, corrective action, cease and desist order, or assessment of a civil penalty, administrative fine, fee, or similar assessment, by the board, department, or any local, state, or federal regulatory authority;

(5) is insolvent or fails to obtain or maintain financial resources sufficient to meet the financial obligations of the license holder;

(6) is a corporation that fails to maintain its charter, certificate, registration, or other authority to conduct business in Texas;

(7) is assessed a civil penalty, administrative fine, fee, or similar assessment by the board, department, or a local, state, or federal regulatory authority for violation of a requirement governing or impacting the distribution or sale of a vehicle or a motor vehicle and fails to comply with the terms of a final order or fails to pay the penalty pursuant to the terms of a final order;

(8) was or is a person defined by §215.88(c) or identified in §215.88(d), or a manager or affiliate of a sole proprietorship, partnership, corporation, association, trust, estate, or other legal entity whose actions or omissions could be considered unfit, who is ineligible for licensure, or whose current or previous license, permit, or other authorization issued by any local, state, or federal regulatory authority has been subject to disciplinary action including suspension, revocation, denial, corrective action, cease and desist order, or assessment of a civil penalty, administrative fine, fee, or similar assessment;

(9) has an ownership interest with a person whose actions or omissions could be considered unfit, who is ineligible for licensure, or whose current or previous license, permit, or other authorization issued by any local, state, or federal regulatory authority has been subject to disciplinary action, including suspension, revocation, denial, corrective action, cease and desist order, or assessment of a civil penalty, administrative fine, fee, or similar assessment, by the board, department, or any local, state, or federal regulatory authority;

(10) is a business entity that is operated, managed, or otherwise controlled by a relative or family member and that person could be considered unfit, is ineligible for licensure, or whose current or previous license, permit, or other authorization issued by any local, state, or federal regulatory authority has been subject to disciplinary action, including suspension, revocation, denial, corrective action, cease and desist order, or assessment of a civil penalty, administrative fine, fee, or similar assessment;

(11) is found in an order issued through a contested case hearing to be unfit or acting in a manner detrimental to the system of

distribution or sale of motor vehicles in Texas, the economy of the state, the public interest, or the welfare of Texas citizens.

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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General Counsel

Texas Department of Motor Vehicles

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43 TAC §215.86

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 the duties of the department; Occupations Code, §2301.155, which requires the board of the Texas Department of Motor Vehicles to adopt rules necessary or convenient to administer Occupations Code, Chapter 2301; and more specifically, Occupations Code, §2301.266, which authorizes the board to adopt rules applicable to the issuance of duplicate licenses; and Occupations Code, §2301.602, which requires the board to adopt rules to enforce Chapter 2301, Subchapter M; Transportation Code, §503.002 which authorizes the board to adopt rules to administer Transportation Code, Chapter 503; and more specifically, Transportation Code, §503.009, which authorizes the board to adopt rules for procedures concerning contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §503.0626 and §503.0631, which require the board to adopt rules necessary to implement and manage the department's temporary tag databases.

CROSS REFERENCE TO STATUTE

Government Code, §2001.039; Occupations Code, Chapter 2301; and Transportation Code, Chapter 503.

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 D. FRANCHISED DEALERS, MANUFACTURERS, DISTRIBUTORS, AND CONVERTERS

43 TAC §§215.101, 215.103 - 215.106, 215.108 - 215.119

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 the duties of the department; Occupations Code, §2301.155, which requires the board of the Texas Department of Motor Vehicles to adopt rules necessary or convenient to administer Occupations Code, Chapter 2301; and more specifically, Occupations Code, §2301.266, which authorizes the board to adopt rules applicable to the issuance of duplicate licenses; and Occupations Code, §2301.602, which requires the board to adopt rules to enforce Chapter 2301, Subchapter M; Transportation Code, §503.002 which authorizes the board to adopt rules to administer Transportation Code, Chapter 503; and more specifically, Transportation Code, §503.009, which authorizes the board to adopt rules for procedures concerning contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §503.0626 and §503.0631, which require the board to adopt rules necessary to implement and manage the department's temporary tag databases.

CROSS REFERENCE TO STATUTE

Government Code, §2001.039; Occupations Code, Chapter 2301; and Transportation Code, Chapter 503.

§215.114. *Sale of a Vehicle by a Manufacturer or Distributor at a Wholesale Motor Vehicle Auction.*

A manufacturer or distributor licensed under Occupations Code, Chapter 2301 or a wholly owned subsidiary of a manufacturer or distributor, may sell motor vehicles it owns to dealers through a licensed Texas wholesale motor vehicle auction. A GDN issued to a licensed manufacturer, distributor, or wholly owned subsidiary of a manufacturer or distributor shall be canceled, unless otherwise allowed under Occupations Code, Chapter 2301.

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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43 TAC §215.107

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 the duties of the department; Occupations Code, §2301.155, which requires the board of the Texas Department of Motor Vehicles to adopt rules necessary or convenient to administer Occupations Code, Chapter 2301; and more specifically, Occupations Code, §2301.266, which authorizes the board to adopt rules applicable to the issuance of duplicate licenses; and Occupations Code, §2301.602, which requires the board to adopt rules to enforce Chapter 2301, Subchapter M; Transportation Code, §503.002 which authorizes the board to adopt rules to administer Transportation Code, Chapter 503; and more specifically, Transportation Code, §503.009, which authorizes the board to adopt rules for procedures concerning contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §503.0626 and §503.0631, which require the board to adopt rules necessary to implement and manage the department's temporary tag databases.

CROSS REFERENCE TO STATUTE

Government Code, §2001.039; Occupations Code, Chapter 2301; and Transportation Code, Chapter 503.

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SUBCHAPTER E. GENERAL DISTINGUISHING NUMBERS

43 TAC §§215.131 - 215.133, 215.135, 215.137 - 215.141, 215.144 - 215.160

STATUTORY AUTHORITY

The amendments and new section are adopted under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Occupations Code, §2301.155, which requires the board of the Texas Department of Motor Vehicles to adopt rules necessary or convenient to administer Occupations Code, Chapter 2301; and more specifically, Occupations Code, §2301.266, which authorizes the board to adopt rules applicable to the issuance of duplicate licenses; and Occupations Code, §2301.602, which requires the board to adopt rules to enforce Chapter 2301, Subchapter M; Transportation Code, §503.002 which authorizes the board to adopt rules to administer Transportation Code, Chapter 503; and more specifically, Transportation Code, §503.009, which authorizes the board to adopt rules for procedures concerning contested

cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §503.0626 and §503.0631, which require the board to adopt rules necessary to implement and manage the department's temporary tag databases.

CROSS REFERENCE TO STATUTE

Government Code, §2001.039; Occupations Code, Chapter 2301; and Transportation Code, Chapter 503.

§215.133. *General Distinguishing Number.*

(a) No person may engage in business as a dealer unless that person has a currently valid general distinguishing number assigned by the department for each location from which the person engages in business. If a dealer consigns more than five vehicles in a calendar year for sale from a location other than the location for which the dealer holds a general distinguishing number, the dealer must also hold a general distinguishing number for the consignment location.

(b) The provisions of subsection (a) of this section do not apply to:

(1) a person who sells or offers for sale fewer than five vehicles of the same type as herein described in a calendar year and such vehicles are owned by him and registered and titled in his name;

(2) a person who sells or offers to sell a vehicle acquired for personal or business use if the person does not sell or offer to sell to a retail buyer and the transaction is not held for the purpose of avoiding the provisions of Transportation Code, §503.001 et seq., and this subchapter;

(3) an agency of the United States, this state, or local government;

(4) a financial institution or other secured party selling a vehicle in which it holds a security interest, in the manner provided by law for the forced sale of that vehicle;

(5) a receiver, trustee, administrator, executor, guardian, or other person appointed by or acting pursuant to the order of a court;

(6) an insurance company selling a vehicle acquired from the owner as the result of paying an insurance claim;

(7) a person selling an antique passenger car or truck that is at least 25 years old or a collector selling a special interest motor vehicle as defined in Transportation Code, §683.077, if the special interest vehicle is at least 12 years old;

(8) a licensed auctioneer who, as a bid caller, sells or offers to sell property to the highest bidder at a bona fide auction if neither legal nor equitable title passes to the auctioneer and if the auction is not held for the purpose of avoiding another provision of Transportation Code, §503.001 et seq., and this subchapter; and provided that if an auction is conducted of vehicles owned, legally or equitably, by a person who holds a general distinguishing number, the auction may be conducted only at a location for which a general distinguishing number has been issued to that person or at a location approved by the department as provided in §215.135 of this subchapter (relating to More than One Location); and

(9) a person who is a domiciliary of another state and who holds a valid dealer license and bond, if applicable, issued by an agency of that state, when the person buys a vehicle from, sells a vehicle to, or exchanges vehicles with a person who:

(A) holds a current valid general distinguishing number issued by the department, if the transaction is not intended to avoid the terms of Transportation Code, §503.001 et seq.; or

(B) is a domiciliary of another state if the person holds a valid dealer license and bond, if applicable, issued by that state, and if the transaction is not intended to avoid the terms of Transportation Code, §503.001 et seq.

(c) Application for a general distinguishing number shall be on a form prescribed by the department properly completed by the applicant showing all information requested thereon and shall be submitted to the department accompanied by the following:

(1) proof of a \$25,000 surety bond as provided in §215.137 of this title (relating to Surety Bond);

(2) the fee for the general distinguishing number as prescribed by law for each type of license requested;

(3) the fee as prescribed by law for each metal dealer plate requested as prescribed by law;

(4) a copy of each assumed name certificate on file with the Office of the Secretary of State or county clerk; and

(5) a photocopy of at least one of the following documents for the owner, president, or managing partner of the dealership:

(A) current driver's license;

(B) current Department of Public Safety identification;

(C) current concealed handgun license or license to carry a handgun issued by the Texas Department of Public Safety under Government Code, Chapter 411, Subchapter H;

(D) current passport; or

(E) current United States armed forces identification.

(d) A person who applies for a general distinguishing number and will operate as a dealer under a name other than the name of that person shall use the name under which that person is authorized to do business, as filed with the Office of the Secretary of State or county clerk, and the assumed name of such legal entity shall be recorded on the application using the letters "DBA."

(e) If the general distinguishing number is issued to a corporation, the dealer's name and assumed name used by the dealer, as on file with the Office of the Secretary of State, shall be recorded on the application.

(f) A wholesale dealer license holder may buy, sell, or exchange vehicles with licensed dealers. A wholesale dealer license holder may not sell or exchange vehicles at retail.

(g) An independent mobility motor vehicle dealer shall retain and produce for inspection all records relating to the license requirements under Occupations Code, §2301.002(17-a) and all information and records required under Transportation Code, §503.0295.

(h) An application for a general distinguishing number may be denied if an applicant for such license has committed any act that could result in license cancellation or revocation under Transportation Code, §503.001 et seq.; Occupations Code, §2301.001 et seq.; or any rule or regulation of the department.

(i) Upon request by the department, the applicant shall submit documents demonstrating that the applicant owns the real property on which the business is situated or has a written lease for the property that has a term of not less than the term of the license.

§215.140. *Established and Permanent Place of Business.*

A dealer must meet the following requirements at each licensed location and maintain the requirements during the term of the license.

(1) Business hours for retail dealers.

(A) A retail dealer's office shall be open at least four days per week for at least four consecutive hours per day.

(B) The retail dealer's business hours for each day of the week must be posted at the main entrance of the retail dealer's office that is accessible to the public. The owner or a bona fide employee of the retail dealer shall be at the retail dealer's licensed location during the posted business hours for the purposes of buying, selling, exchanging, or leasing vehicles. If the owner or a bona fide employee is not available to conduct business during the retail dealer's posted business hours due to special circumstances or emergencies, a separate sign must be posted indicating the date and time the retail dealer will resume operations. Regardless of the retail dealer's business hours, the retail dealer's telephone must be answered from 8:00 a.m. to 5:00 p.m. weekdays by a bona fide employee, answering service, or answering machine.

(2) Business hours for wholesale motor vehicle dealers. A dealer that holds only a wholesale motor vehicle dealer's license must post its business hours at the main entrance of the wholesale motor vehicle dealer's office. A wholesale motor vehicle dealer shall be at the wholesale motor vehicle dealer's licensed location at least two weekdays per week for at least two consecutive hours per day. Regardless of the wholesale motor vehicle dealer's business hours, the wholesale motor vehicle dealer's telephone must be answered from 8:00 a.m. to 5:00 p.m. weekdays by a bona fide employee, answering service, or answering machine.

(3) Business sign requirements for retail dealers. A retail dealer must display a conspicuous, permanent sign with letters at least six inches in height showing the retail dealer's business name or assumed name substantially similar to the name reflected on the retail dealer's license under which the retail dealer conducts business. The sign must be permanently mounted at the address listed on the application for the retail dealer's license. A retail dealer may use a temporary sign or banner if that retail dealer can show proof that a sign that meets the requirements of this paragraph has been ordered.

(4) Business sign requirements for wholesale motor vehicle dealers. A wholesale motor vehicle dealer must display a conspicuous, permanent sign with letters at least six inches in height showing the wholesale motor vehicle dealer's business name or assumed name substantially similar to the name reflected on the wholesale motor vehicle dealer's license under which the wholesale motor vehicle dealer conducts business. The sign must be permanently mounted on the business property and shall be on the main door to the wholesale motor vehicle dealer's office or on the outside of the building that houses the wholesale motor vehicle dealer's office. If the wholesale motor vehicle dealer's office is located in an office building with one or more other businesses and an outside sign is not permitted by the landlord, a business sign permanently mounted on or beside the main door to the wholesale motor vehicle dealer's office with letters at least two inches in height is acceptable. A wholesale motor vehicle dealer may use a temporary sign or banner if the wholesale motor vehicle dealer can show proof that a sign that meets the requirements of this paragraph has been ordered.

(5) Office structure for a retail dealer and a wholesale motor vehicle dealer.

(A) A dealer's office must be located in a building with connecting exterior walls on all sides.

(B) A dealer's office must comply with all applicable local zoning ordinances and deed restrictions.

(C) A dealer's office may not be located within a residence, apartment, hotel, motel, or rooming house.

(D) The physical address of the dealer's office must be recognized by the U.S. Postal Service or capable of receiving U.S. mail. The department will not mail a license or a metal dealer's license plate to an out of state address.

(E) A portable-type office structure may qualify as an office only if the structure meets the requirements of this section and is not a readily moveable trailer or other vehicle.

(6) Required office equipment for a retail dealer and a wholesale motor vehicle dealer. At a minimum, a dealer's office must be equipped with:

(A) a desk;

(B) two chairs;

(C) internet access; and

(D) a working telephone number listed in the business name or assumed name under which the dealer conducts business.

(7) Number of retail dealers in one office. Not more than four retail dealers may be located in the same business structure.

(8) Number of wholesale motor vehicle dealers in one office. Not more than eight wholesale motor vehicle dealers may be located in the same business structure.

(9) Office sharing prohibition for retail dealers and wholesale motor vehicle dealers. Unless otherwise authorized by the Transportation Code, a retail dealer and a wholesale motor vehicle dealer licensed after September 1, 1999, may not be located in the same business structure.

(10) Dealer housed with other business.

(A) If a person conducts business as a dealer in conjunction with another business owned by the same person and under the same name as the other business, the same telephone number may be used for both businesses. If the name of the dealer differs from the name of the other business, a separate telephone listing and a separate sign for each business is required.

(B) A person may conduct business as a dealer in conjunction with another business not owned by that person only if the dealer owns the property on which business is conducted or has a separate lease agreement from the owner of that property that meets the requirements of this section. The same telephone number may not be used by both businesses. The dealer must have separate business signs, telephone listings, and office equipment required under this section.

(11) Display area requirements.

(A) A wholesale motor vehicle dealer is not required to have display space at the wholesale motor vehicle dealer's business premises.

(B) A retail dealer must have an area designated as display space for the retail dealer's inventory. A retail dealer's designated display area must comply with the following requirements.

(i) The display area must be located at the retail dealer's business address or contiguous with the retail dealer's address. A noncontiguous storage lot is permissible only if there is no public access and no sales activity occurs at the storage lot. A sign stating the retail dealer's name, telephone number, and the fact the property is a storage lot is permissible.

(ii) The display area must be of sufficient size to display at least five vehicles of the type for which the GDN is issued. Those spaces must be reserved exclusively for the retail dealer's inventory and may not be shared or intermingled with another business or a

public parking area, a driveway to the office, or another dealer's display area.

(iii) The display area may not be on a public easement, right-of-way, or driveway unless the governing body having jurisdiction of the easement, right-of-way, or driveway expressly consents in writing to use as a display area. If the easement, right-of-way, or driveway is a part of the state highway system, use as a display area may only be authorized by a lease agreement.

(iv) If the retail dealer shares a display or parking area with another business, including another dealer, the dealer's vehicle inventory must be separated from the other business's display or parking area by a material object or barrier that cannot be readily removed.

(v) The display area must be adequately illuminated if the retail dealer is open at night so that a vehicle for sale can be properly inspected by a potential buyer.

(vi) The display area may be located inside a building.

(12) Dealers holding a license issued under Occupations Code, Chapter 2302. If a dealer also holds a license issued under Occupations Code, Chapter 2302, each salvage motor vehicle that is offered for sale on the premises of the dealer's display area must be clearly and conspicuously marked with a sign informing a potential buyer that the vehicle is a salvage motor vehicle. This requirement does not apply to a licensed salvage pool operator.

(13) Lease requirements. If the premises from which a dealer conducts business, including any display area, is not owned by the dealer, the dealer must maintain a lease that is continuous during the period of time for which the dealer's license will be issued. The lease agreement must be on a properly executed form containing at a minimum:

(A) the name of the landlord as the lessor of the premises and the name of the dealer as the tenant or lessee of the premises;

(B) the period of time for which the lease is valid;

(C) the street address or legal description of the property, provided that if only a legal description of the property is included, the applicant must attach a statement that the property description in the lease agreement is the street address identified on the application; and

(D) the signature of the landlord as the lessor and the signature of the dealer as the tenant or lessee.

(14) Dealer must display license. A dealer must display the dealer's license issued by the department at all times in a manner that makes the license easily readable by the public and in a conspicuous place at each place of business for which the dealer's license is issued. If the dealer's license applies to more than one location, a copy of the original license may be displayed in each supplemental location.

§215.144. Records.

(a) Purchases and sales records. A dealer must maintain a complete record of all vehicle purchases and sales for a minimum period of 48 months and make the record available for inspection and copying by a representative of the department during business hours.

(b) Independent mobility motor vehicle dealers. An independent mobility motor vehicle dealer must keep a complete written record of each vehicle purchase, vehicle sale, and any adaptive work performed on each vehicle for a minimum period of 36 months after the date the adaptive work is performed on the vehicle.

(c) Location of records. A dealer's record reflecting purchases and sales for the preceding 13 months must be maintained at the dealer's licensed location. Original titles are not required to be kept at the licensed location, but must be made available to the agency upon reasonable request. A dealer's record for prior time periods may be kept off-site.

(d) Request for records. Within 15 days of receipt of a request sent by mail or electronic document transfer from a representative of the department, a dealer must deliver a copy of the specified records to the address listed in the request. If a dealer has a concern about the origin of a records request, the dealer may verify that request with the division prior to submitting its records.

(e) Content of records. A dealer's complete record for each vehicle purchase or vehicle sale must contain:

(1) the date of the purchase;

(2) the date of the sale;

(3) the VIN;

(4) the name and address of the person selling the vehicle to the dealer;

(5) the name and address of the person purchasing the vehicle from the dealer;

(6) the name and address of the consignor if the vehicle is offered for sale by consignment;

(7) except for a purchase or sale where the Tax Code does not require payment of motor vehicle sales tax, a copy of the receipt, titled "Tax Collector's Receipt for Texas Title Application/Registration/Motor Vehicle Tax";

(8) a copy of all documents, forms, and agreements applicable to a particular sale, including a copy of:

(A) the title application;

(B) the work-up sheet;

(C) the front and back of manufacturer's certificate of origin or manufacturer's statement of origin, unless the title is obtained through the electronic title system;

(D) the front and back of the title, unless the title is obtained through the electronic title system;

(E) the factory invoice;

(F) the sales contract;

(G) the retail installment agreement;

(H) the buyer's order;

(I) the bill of sale;

(J) any waiver;

(K) any other agreement between the seller and purchaser; and

(L) Form VTR-136, relating to County of Title Issuance, completed and signed by the buyer;

(9) the original manufacturer's certificate of origin, original manufacturer's statement of origin, or original title for motor vehicles offered for sale by a dealer, and a properly stamped original manufacturer's certificate of origin, original manufacturer's statement of origin, or original title for motor vehicles sold by a dealer if the title transaction is entered into the electronic system by the dealer;

(10) the dealer's monthly Motor Vehicle Seller Financed Sales Returns, if any; and

(11) if the vehicle sold is a motor home or a towable recreational vehicle subject to inspection under Transportation Code, Chapter 548, a copy of the written notice provided to the buyer at the time of the sale, notifying the buyer that the vehicle is subject to inspection requirements.

(f) Title assignments.

(1) For each vehicle a dealer acquires or offers for sale, the dealer must properly take assignment in the dealer's name of any:

- (A) title;
- (B) manufacturer's statement of origin;
- (C) manufacturer's certificate of origin; or
- (D) other evidence of ownership.

(2) A dealer must apply in the name of the purchaser of a vehicle for the registration of the vehicle with the appropriate county tax assessor-collector as selected by the purchaser.

(3) To comply with Transportation Code, §501.0234(f), a registration is considered filed within a reasonable time if the registration is filed within:

- (A) 20 working days of the date of sale of the vehicle for a vehicle registered in Texas; or
- (B) 45 days of the date of sale of the vehicle for a dealer-financed transaction involving a vehicle that is registered in Texas.

(4) The dealer is required to provide to the purchaser the receipt for the registration application.

(5) The dealer is required to maintain a copy of the receipt for the registration application in the dealer's sales file.

(g) Out of state sales. For a sales transaction involving a vehicle to be transferred out of state, the dealer must:

- (1) within 20 working days of the date of sale, either file the application for certificate of title on behalf of the purchaser or deliver the properly assigned evidence of ownership to the purchaser; and
- (2) maintain in the dealer's record at the dealer's licensed location a photocopy of the completed sales tax exemption form for out of state sales approved by the Texas Comptroller of Public Accounts.

(h) Consignment sales. A dealer offering a vehicle for sale by consignment shall have a written consignment agreement or a power of attorney for the vehicle, and shall, after the sale of the vehicle, take assignment of the vehicle in the dealer's name and, pursuant to subsection (f), apply in the name of the purchaser for transfer of title and registration, if the vehicle is to be registered, with the appropriate county tax assessor-collector as selected by the purchaser. The dealer must, for a minimum of 48 months, maintain a record of each vehicle offered for sale by consignment, including the VIN and the name of the owner of the vehicle offered for sale by consignment.

(i) Public motor vehicle auctions.

(1) A GDN holder that acts as a public motor vehicle auction must comply with subsection (h) of this section.

(2) A public motor vehicle auction:

(A) is not required to take assignment of title of a vehicle it offers for sale;

(B) must take assignment of title of a vehicle from a consignor prior to making application for title on behalf of the buyer; and

(C) must make application for title on behalf of the purchaser and remit motor vehicle sales tax within 20 working days of the sale of the vehicle.

(3) A GDN holder may not sell another GDN holder's vehicle at a public motor vehicle auction.

(j) Wholesale motor vehicle auction records. A wholesale motor vehicle auction license holder must maintain, for a minimum of 48 months, a complete record of each vehicle purchase and sale occurring through the wholesale motor vehicle auction. The wholesale motor vehicle auction license holder shall make the record available for inspection and copying by a representative of the department during business hours.

(1) A wholesale motor vehicle auction license holder must maintain at the licensed location a record reflecting each purchase and sale for at least the preceding 24 months. Records for prior time periods may be kept off-site.

(2) Within 15 days of receipt of a request sent by mail or by electronic document transfer from a representative of the department, a wholesale motor vehicle auction license holder must deliver a copy of the specified records to the address listed in the request.

(3) A wholesale motor vehicle auction license holder's complete record of each vehicle purchase and sale shall, at a minimum, contain:

- (A) the date of sale;
- (B) the VIN;
- (C) the name and address of the person selling the vehicle;
- (D) the name and address of the person purchasing the vehicle;
- (E) the dealer license number of both the selling dealer and the purchasing dealer, unless either is exempt from holding a license;
- (F) all information necessary to comply with the Truth in Mileage Act;
- (G) auction access documents, including the written authorization and revocation of authorization for an agent or employee, in accordance with §215.148 of this title (relating to Dealer Agents);
- (H) invoices, bills of sale, checks, drafts, or other documents that identify the vehicle, the parties, or the purchase price;
- (I) any information regarding the prior status of the vehicle such as the Reacquired Vehicle Disclosure Statement or other lemon law disclosures; and
- (J) a copy of any written authorization allowing an agent of a dealer to enter the auction.

(k) Electronic records. A license holder may maintain a record in an electronic format if the license holder can print the record at the licensed location upon request by a representative of the department. A license holder does not have to maintain a copy of a vehicle title if the title is submitted through the electronic title system. Original hard copy titles are not required to be kept at the licensed location, but must be made available to the department upon request.

§215.152. *Obtaining Numbers for Issuance of Temporary Tags.*

(a) A dealer or a converter is required to have internet access to connect to the temporary tag databases maintained by the department.

(b) Except as provided by §215.157 of this title (relating to Advance Numbers, Preprinted Internet-down Temporary Tags), before a temporary tag may be issued and displayed on a vehicle, a dealer or converter must:

- (1) enter in the temporary tag database information about the vehicle, dealer, converter, or buyer, as appropriate; and
- (2) obtain a specific number for the temporary tag.

§215.153. Specifications for All Temporary Tags.

(a) Information printed or completed on a temporary tag must be in black ink on a white background. Other than for a motorcycle, a completed buyer's, dealer's, converter's, or preprinted Internet-down temporary tag shall be six inches high and at least eleven inches wide. For a motorcycle, the completed buyer's, dealer's, converter's, or preprinted Internet-down temporary tag shall be four inches high and at least seven inches wide.

(b) A temporary tag must be:

- (1) composed of plastic or other durable, weather-resistant material; or
- (2) sealed in a two mil clear poly bag that encloses the entire temporary tag.

(c) A dealer or converter may manually copy the information from the temporary tag database to a preprinted temporary tag template. A temporary tag completed in this manner must:

- (1) display the information drawn in letters and numerals with a permanent, thick, black marking pen; and
- (2) comply with the specifications of the applicable temporary tag identified by the following appendices:

(A) Appendix A-1 - Dealer's Temporary Tag - Assigned to Specific Vehicle;
Figure: 43 TAC §215.153(c)(2)(A)

(B) Appendix A-2 - Dealer's Temporary Tag - Assigned to Agent;
Figure: 43 TAC §215.153(c)(2)(B)

(C) Appendix B-1 - Buyer's Temporary Tag;
Figure: 43 TAC §215.153(c)(2)(C)

(D) Appendix B-2 - Preprinted Internet-down Temporary Tag; and
Figure: 43 TAC §215.153(c)(2)(D)

(E) Appendix C-1 - Converter's Temporary Tag.
Figure: 43 TAC §215.153(c)(2)(E)

§215.157. Advance Numbers, Preprinted Internet-down Temporary Tags.

(a) In accordance with Transportation Code, §503.0631(d), a dealer may obtain an advance supply of preprinted Internet-down temporary tags with specific numbers and buyer's temporary tag receipts to issue in lieu of buyer's temporary tags if the dealer is unable to access the internet.

(b) If a dealer is unable to access the internet at the time of a sale, the dealer must complete the preprinted Internet-down temporary buyer's tag and buyer's temporary tag receipt by providing details of the sale, signing the buyer's temporary tag receipt, and retaining a copy. The dealer must enter the required information regarding the sale in the

temporary tag database not later than the close of the next business day that the dealer has access to the internet. The buyer's temporary tag receipt must include a statement that the dealer has internet access but, at the time of the sale, the dealer was unable to access the internet or the temporary tag database.

§215.160. Duty to Identify Motor Vehicles Offered for Sale as Rebuilt.

(a) For each motor vehicle a dealer displays or offers for retail sale and which the dealer knows has been a salvage motor vehicle as defined by Transportation Code, §501.091(15) and a regular title subsequently issued under Transportation Code, §501.100, a dealer shall disclose in writing that the motor vehicle has been repaired, rebuilt, or reconstructed and issued a title under Transportation Code, §501.100. The written disclosure must:

- (1) be visible from outside of the motor vehicle; and
- (2) contain lettering that is reasonable in size, stating as follows: *"This motor vehicle has been repaired, rebuilt or, reconstructed after formerly being titled as a salvage motor vehicle."*

(b) Upon the sale of a motor vehicle which has been a salvage motor vehicle as defined by Transportation Code, §501.091(15) and a regular title subsequently issued under Transportation Code, §501.100, a dealer shall obtain the purchaser's signature on the vehicle disclosure form or on an acknowledgement written in eleven point or larger font that states as follows: *"I, (name of purchaser), acknowledge that at the time of purchase, I am aware that this vehicle has been repaired, rebuilt, or reconstructed and was formerly titled as a salvage motor vehicle."*

(c) The purchaser's acknowledgement as required in subsection (b) of this section may be incorporated in a Buyer's Order, a Purchase Order, or other disclosure document. This disclosure does not require a separate signature.

(d) An original signed acknowledgement required by subsection (b) of this section or a signed vehicle disclosure form shall be given to the purchaser and a copy of the signed acknowledgement or vehicle disclosure form shall be retained by the dealer in the records of motor vehicles sales required by §215.144 of this title (relating to Records). If the acknowledgement is incorporated in a Buyer's Order, a Purchase Order, or other disclosure document, a copy of that document must be given to the purchaser and a copy retained in the dealer's records in accordance with §215.144.

(e) This section does not apply to a wholesale motor vehicle auction.

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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43 TAC §§215.136, 215.142, 215.143

STATUTORY AUTHORITY

The repeals are adopted under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Occupations Code, §2301.155, which requires the board of the Texas Department of Motor Vehicles to adopt rules necessary or convenient to administer Occupations Code, Chapter 2301; and more specifically, Occupations Code, §2301.266, which authorizes the board to adopt rules applicable to the issuance of duplicate licenses; and Occupations Code, §2301.602, which requires the board to adopt rules to enforce Chapter 2301, Subchapter M; Transportation Code, §503.002 which authorizes the board to adopt rules to administer Transportation Code, Chapter 503; and more specifically, Transportation Code, §503.009, which authorizes the board to adopt rules for procedures concerning contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §503.0626 and §503.0631, which require the board to adopt rules necessary to implement and manage the department's temporary tag databases.

CROSS REFERENCE TO STATUTE

Government Code, §2001.039; Occupations Code, Chapter 2301; and Transportation Code, Chapter 503.

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SUBCHAPTER F. LESSORS AND LEASE FACILITATORS

43 TAC §§215.171, 215.173 - 215.181

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 the duties of the department; Occupations Code, §2301.155, which requires the board of the Texas Department of Motor Vehicles to adopt rules necessary or convenient to administer Occupations Code, Chapter 2301; and more specifically, Occupations Code, §2301.266, which authorizes the board to adopt rules applicable to the issuance of duplicate licenses; and Occupations Code, §2301.602, which requires the board to adopt rules to enforce Chapter 2301, Subchapter M; Transportation Code, §503.002 which authorizes the board to adopt rules to administer Transportation Code, Chapter 503; and more specifically,

Transportation Code, §503.009, which authorizes the board to adopt rules for procedures concerning contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §503.0626 and §503.0631, which require the board to adopt rules necessary to implement and manage the department's temporary tag databases.

CROSS REFERENCE TO STATUTE

Government Code, §2001.039; Occupations Code, Chapter 2301; and Transportation Code, Chapter 503.

§215.175. *Sanctions.*

(a) The board or department may:

(1) deny a vehicle lessor or vehicle lease facilitator application;

(2) revoke or suspend a vehicle lessor or vehicle lease facilitator license; or

(3) assess a civil penalty or take other action on a vehicle lessor or vehicle lease facilitator applicant or license holder, or a person engaged in business for which a vehicle lessor or vehicle lease facilitator license is required.

(b) The board or department may take action described in subsection (a) of this section if a vehicle lessor or vehicle lease facilitator applicant or license holder, or a person engaged in business for which a vehicle lessor or vehicle lease facilitator license is required:

(1) fails to maintain an established and permanent place of business required by §215.177 of this title (relating to Established and Permanent Place of Business);

(2) fails to maintain records required under this subchapter;

(3) refuses or fails to comply with a request by a representative of the department to examine during the vehicle lessor's or vehicle lease facilitator's posted business hours at the vehicle lessor's or vehicle lease facilitator's licensed location:

(A) a vehicle leasing record required to be maintained by §215.178 of this title (relating to Records Required for Vehicle Lessors and Vehicle Lease Facilitators);

(B) ownership papers for a vehicle owned, leased, or under that vehicle lessor's or vehicle lease facilitator's control; or

(C) evidence of ownership or a current premises lease agreement for the property upon which the business is located;

(4) refuses or fails to timely comply with a request for records made by a representative of the department;

(5) fails to notify the department in writing within 10 days of a change of the vehicle lessor or vehicle lease facilitator license holder's:

(A) mailing address;

(B) physical address;

(C) telephone number; or

(D) email address;

(6) fails to notify the department in writing within 10 days of a change of the vehicle lessor or vehicle lease facilitator license holder's name or ownership;

(7) fails to comply with the fee restrictions or other requirements under Occupations Code, §2301.357 or §§2301.551 - 2301.556;

(8) fails to maintain advertisement records or otherwise fails to comply with the advertising requirements of:

(A) §215.178; or

(B) Subchapter H of this chapter (relating to Advertising);

(9) violates any law relating to the sale, lease, distribution, financing, or insuring of motor vehicles;

(10) is convicted of an offense that, in accordance with Occupations Code, Chapter 53 and with §215.88 of this title (relating to Criminal Offense and Action on License), directly relates to the duties or responsibilities of the licensed occupation;

(11) is determined by the board or department, in accordance with §215.89 of this title (relating to Fitness), to be unfit to hold a vehicle lessor or vehicle lease facilitator license;

(12) uses or allows use of a vehicle lessor or vehicle lease facilitator license in violation of any law or for the purpose of avoiding any provision of Occupations Code, Chapter 2301; or

(13) willfully omits material information or makes a material misrepresentation in any application or other documentation filed with the department.

(c) The board or department may take action on a vehicle lessor's license or assess civil penalties for the vehicle lessor's failure to notify the department in writing within 10 days of any change, addition, or deletion to the list of vehicle lease facilitators with whom the vehicle lessor conducts business, including any change to a vehicle lease facilitator's mailing address, physical address, telephone number, or email address.

(d) The board or department may take action on a vehicle lease facilitator's license or assess civil penalties for the vehicle lease facilitator's failure to notify the department in writing within 10 days of any change, addition, or deletion to the list of vehicle lessors for whom the vehicle lease facilitator conducts business, including any change to a vehicle lessor's mailing address, physical address, telephone number, or email address.

(e) The board or department may take action on a vehicle lessor's or vehicle lease facilitator's license if the vehicle lessor or vehicle lease facilitator accepts a fee from a dealer, directly or indirectly, for referring a customer who purchases or considers purchasing a motor vehicle.

§215.177. Established and Permanent Place of Business.

(a) A vehicle lessor or vehicle lease facilitator operating within the State of Texas must meet the following requirements at each location where vehicles are leased or offered for lease.

(1) Physical location requirements.

(A) A vehicle lessor or vehicle lease facilitator operating within the State of Texas must be open to the public. The vehicle lessor's or vehicle lease facilitator's business hours for each day of the week must be posted at the main entrance of the office. The owner or an employee of the vehicle lessor or vehicle lease facilitator must be at the location during the posted business hours for the purpose of leasing vehicles. In the event the owner or an employee is not available to conduct business during the posted business hours, a separate sign must be posted indicating the date and time such owner or employee will resume vehicle leasing operations.

(B) A vehicle lessor's or vehicle leasing facilitator's office structure must be of sufficient size to accommodate the following required equipment:

(i) a desk and chairs from which the vehicle lessor or vehicle lease facilitator transacts business; and

(ii) a working telephone number listed in the business name or assumed name under which the vehicle lessor or vehicle lease facilitator conducts business.

(C) A vehicle lessor or vehicle lease facilitator that files an application for a new license or a vehicle lessor that files an application for a satellite location must comply with the following requirements:

(i) The office must be located in a building with connecting exterior walls on all sides.

(ii) The office must comply with all applicable local zoning ordinances and deed restrictions.

(iii) The office may not be located within a residence, apartment, hotel, motel, or rooming house.

(iv) The physical address of the office must be recognized by the U.S. Postal Service and capable of receiving U.S. mail.

(D) A portable-type office structure may qualify as an office only if the structure meets the requirements of this section and is not a readily moveable trailer or other vehicle.

(E) One or more licensed vehicle lessors or vehicle lease facilitators, or a combination of one or more licensed vehicle lessors and vehicle lease facilitators may occupy the same business structure and conduct vehicle leasing operations in accordance with the license held by the vehicle lessor or licensed vehicle lease facilitator. Each person engaged in business as a vehicle lessor or vehicle lease facilitator must have:

(i) a separate desk from which that vehicle lessor or vehicle lease facilitator transacts business;

(ii) a separate working telephone number listed in the vehicle lessor or vehicle lease facilitator's business name or assumed name;

(iii) a separate right of occupancy that meets the requirements of this section; and

(iv) a vehicle lessor or vehicle lease facilitator license issued by the department in the name of the vehicle lessor or vehicle lease facilitator.

(F) A vehicle lease facilitator's established and permanent place of business must be physically located within the State of Texas.

(2) Sign requirements. A vehicle lessor or vehicle lease facilitator shall display a conspicuous and permanent sign at the licensed location showing the name under which the vehicle lessor or vehicle lease facilitator conducts business. Outdoor signs must contain letters that are at least six inches in height.

(3) Premises lease requirements. If the premises from which a licensed vehicle lessor or vehicle lease facilitator conducts business is not owned by the license holder, the license holder must maintain for the licensed location a valid premises lease that is continuous during the period of time for which the vehicle lessor's or vehicle lease facilitator's license will be issued. The premises lease agreement must be on a properly executed form containing at a minimum:

(A) the name of the landlord of the premises and the name of the vehicle lease facilitator as the tenant of the premises;

(B) the street address or legal description of the property, provided that if only a legal description of the property is included,

the applicant must attach a statement that the property description in the lease agreement is the street address identified on the application; and

(C) the period of time for which the premises lease is valid.

(b) A vehicle lessor that does not deal directly with the public to execute vehicle leases and whose licensed location is in another state must meet the following requirements at each location.

(1) Physical location requirements.

(A) The vehicle lessor's office structure must be of sufficient size to accommodate the following required equipment:

(i) a desk and chairs from which the vehicle lessor transacts business; and

(ii) a working telephone number listed in the business name or assumed name under which the vehicle lessor conducts business.

(B) A vehicle lessor that files an application for a new license or a satellite location with a primary licensed location in another state must conform to the following requirements:

(i) The office must be located in a building with connecting exterior walls on all sides.

(ii) The office must comply with all applicable local zoning ordinances and deed restrictions.

(iii) The office may not be located within a residence, apartment, hotel, motel, or rooming house.

(iv) The physical address of the office must be recognized by the U.S. Postal Service and capable of receiving U.S. mail.

(C) A portable-type office structure may qualify as an office only if the structure meets the requirements of this section and is not a readily moveable trailer or other vehicle.

(D) More than one licensed vehicle lessor may occupy the same business structure and conduct vehicle leasing operations under different names in accordance with the license held by each vehicle lessor. Each person engaged in business as a vehicle lessor must have:

(i) a separate desk from which that vehicle lessor transacts business;

(ii) a separate working telephone number listed in the vehicle lessor's business name or assumed name;

(iii) a separate right of occupancy that meets the requirements of this section; and

(iv) a vehicle lessor license issued by the department in the name of the vehicle lessor.

(2) Sign requirements. An out of state vehicle lessor shall display a conspicuous and permanent sign at the licensed location showing the name under which the vehicle lessor conducts business. Outdoor signs must contain letters at least six inches in height.

(3) Premises lease requirements. If the out of state premises from which a licensed vehicle lessor conducts business is not owned by the license holder, the license holder must maintain a valid premises lease for the property of the licensed location. The premises lease must be continuous during the period of time for which the license will be issued. The premises lease agreement must be on a properly executed form containing at a minimum:

(A) the name of the landlord of the premises and the name of the licensed lessor identified as the tenant of the premises;

(B) the street address or legal description of the property, provided that if only a legal description of the property is included, the applicant must attach a statement that the property description in the lease agreement is the street address identified on the application; and

(C) the period of time for which the premises lease is valid.

(c) A vehicle lessor or vehicle lease facilitator shall be independent of financial institutions and dealerships in location and in business activities, unless that vehicle lessor or vehicle lease facilitator is an:

(1) employee or legal subsidiary of the financial institution or dealership; or

(2) entity wholly owned by the financial institution or dealership.

(d) For purposes of this section, an employee is a person who meets the requirements of §215.173(b) of this title (relating to License).

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43 TAC §215.172

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 the duties of the department; Occupations Code, §2301.155, which requires the board of the Texas Department of Motor Vehicles to adopt rules necessary or convenient to administer Occupations Code, Chapter 2301; and more specifically, Occupations Code, §2301.266, which authorizes the board to adopt rules applicable to the issuance of duplicate licenses; and Occupations Code, §2301.602, which requires the board to adopt rules to enforce Chapter 2301, Subchapter M; Transportation Code, §503.002 which authorizes the board to adopt rules to administer Transportation Code, Chapter 503; and more specifically, Transportation Code, §503.009, which authorizes the board to adopt rules for procedures concerning contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §503.0626 and §503.0631, which require the board to adopt rules necessary to implement and manage the department's temporary tag databases.

CROSS REFERENCE TO STATUTE

Government Code, §2001.039; Occupations Code, Chapter 2301; and Transportation Code, Chapter 503.

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SUBCHAPTER G. WARRANTY PERFORMANCE OBLIGATIONS

43 TAC §§215.201 - 215.210

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 the duties of the department; Occupations Code, §2301.155, which requires the board of the Texas Department of Motor Vehicles to adopt rules necessary or convenient to administer Occupations Code, Chapter 2301; and more specifically, Occupations Code, §2301.266, which authorizes the board to adopt rules applicable to the issuance of duplicate licenses; and Occupations Code, §2301.602, which requires the board to adopt rules to enforce Chapter 2301, Subchapter M; Transportation Code, §503.002 which authorizes the board to adopt rules to administer Transportation Code, Chapter 503; and more specifically, Transportation Code, §503.009, which authorizes the board to adopt rules for procedures concerning contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §503.0626 and §503.0631, which require the board to adopt rules necessary to implement and manage the department's temporary tag databases.

CROSS REFERENCE TO STATUTE

Government Code, §2001.039; Occupations Code, Chapter 2301; and Transportation Code, Chapter 503.

§215.208. *Lemon Law Relief Decisions.*

(a) Unless otherwise indicated, this section applies to decisions that relate to lemon law complaints. Decisions shall give effect to the presumptions provided in Occupations Code, §2301.605, where applicable.

(1) If it is found that the manufacturer, distributor, or converter is not able to conform the motor vehicle to an applicable express warranty by repairing or correcting a defect in the complainant's motor vehicle, creating a serious safety hazard or substantially impairing the use or market value of the motor vehicle after a reasonable number of attempts, and that the affirmative defenses provided under Occupations Code, §2301.606 are not applicable, the final order authority shall issue a final order to the manufacturer, distributor, or converter to:

(A) replace the motor vehicle with a comparable motor vehicle, less a reasonable allowance for the owner's use of the vehicle; or

(B) accept the return of the motor vehicle from the owner and refund the full purchase price of the motor vehicle to the owner, less a reasonable allowance for the owner's use of the motor vehicle.

(2) In any decision in favor of the complainant, the final order authority will, to the extent possible, accommodate the complainant's request with respect to replacement or repurchase of the motor vehicle.

(b) This subsection applies only to the repurchase of motor vehicles.

(1) When a refund of the purchase price of a motor vehicle is ordered, the purchase price shall be the total purchase price of the motor vehicle, excluding the amount of any interest, finance charge, or insurance premiums. The award to the motor vehicle owner shall include reimbursement of the amount of the lemon law complaint filing fee paid by, or on behalf of, the motor vehicle owner. The refund shall be made payable to the motor vehicle owner and to any lienholder, respective to their ownership interest.

(2) There is a rebuttable presumption that a motor vehicle has a useful life of 120,000 miles. Except in cases where the preponderance of the evidence shows that the motor vehicle has a longer or shorter expected useful life than 120,000 miles, the reasonable allowance for the owner's use of the motor vehicle shall be that amount obtained by adding subparagraphs (A) and (B) of this paragraph.

(A) The product obtained by multiplying the purchase price, as defined in paragraph (1) of this subsection, of the motor vehicle by a fraction having as its denominator 120,000 and having as its numerator the number of miles that the motor vehicle traveled from the time of delivery to the owner to the first report of the defect or condition forming the basis of the repurchase order; and

(B) 50% of the product obtained by multiplying the purchase price by a fraction having as its denominator 120,000 and having as its numerator the number of miles that the motor vehicle traveled after the first report of the defect or condition forming the basis of the repurchase order. The number of miles during the period covered in this paragraph shall be determined from the date of the first report of the defect or condition forming the basis of the repurchase order through the date of the hearing.

(3) There is a rebuttable presumption that the useful life of a towable recreational vehicle is 3,650 days or 10 years. Except in cases where a preponderance of the evidence shows that the vehicle has a longer or shorter expected useful life than 3,650 days or 10 years, the reasonable allowance for the owner's use of the towable recreational vehicle shall be that amount obtained by adding subparagraphs (A) and (B) of this paragraph.

(A) The product obtained by multiplying the purchase price, as defined in paragraph (1) of this subsection, of the towable recreational vehicle by a fraction having as its denominator 3,650 days or 10 years, except the denominator shall be 1,825 days or five years, if the towable recreational vehicle is occupied on a full time basis, and having as its numerator the number of days from the time of delivery to the owner to the first report of the defect or condition forming the basis of the repurchase order.

(B) 50% of the product obtained by multiplying the purchase price by a fraction having as its denominator 3,650 days or 10 years, except the denominator shall be 1,825 days or five years, if the

towable recreational vehicle is occupied on a full time basis, and having as its numerator the number of days of ownership after the first report of the defect or condition forming the basis of the repurchase order. The number of days during the period covered in this paragraph shall be determined from the date of the first report of the defect or condition forming the basis of the repurchase order through the date of the hearing.

(C) Any day or part of a day that the vehicle is out of service for repair will be deducted from the numerator in determining the reasonable allowance for use of a towable recreational vehicle in this paragraph.

(c) This subsection applies only to leased motor vehicle relief.

(1) Except in cases involving unusual and extenuating circumstances supported by a preponderance of the evidence, when a refund of the purchase price of a leased motor vehicle is ordered, the purchase price shall be allocated and paid to the lessee and the vehicle lessor, respectively, in accordance with subparagraphs (A) and (B) of this paragraph.

(A) The lessee shall receive the total of:

(i) all lease payments previously paid by the lessee to the vehicle lessor under the terms of the lease; and

(ii) all sums previously paid by the lessee to the vehicle lessor in connection with entering into the lease agreement, including, but not limited to any capitalized cost reduction, down payment, trade-in, or similar cost, plus sales tax, license, registration fees, and other documentary fees, if applicable.

(B) The vehicle lessor shall receive the total of:

(i) the actual price paid by the vehicle lessor for the motor vehicle, including tax, title, license, and documentary fees, if paid by the vehicle lessor and evidenced in a bill of sale, bank draft demand, tax collector's receipt, or similar instrument; and

(ii) an additional 5.0% of the purchase price plus any amount or fee paid by vehicle lessor to secure the lease or interest in the lease.

(C) A credit reflecting all of the payments made by the lessee shall be deducted from the actual purchase price that the manufacturer, converter, or distributor is required to pay the vehicle lessor, as specified in subparagraph (B)(i) and (ii) of this paragraph.

(2) When the final order authority orders a manufacturer, converter, or distributor to refund the purchase price in a leased vehicle transaction, the motor vehicle shall be returned to the manufacturer, converter, or distributor with clear title upon payment of the sums indicated in paragraph (1)(A) and (B) of this subsection. The vehicle lessor shall transfer title of the motor vehicle to the manufacturer, converter, or distributor, as necessary to effectuate the lessee's rights. The lease shall be terminated without penalty to the lessee.

(3) Refunds shall be made to the lessee, vehicle lessor, and to any lienholder, respective to their ownership interest. The refund to the lessee under paragraph (1)(A) of this subsection shall be reduced by a reasonable allowance for the lessee's use of the motor vehicle. A reasonable allowance for use shall be computed in accordance with subsection (b)(2) or (3) of this section, using the amount in paragraph (1)(B)(i) of this subsection as the applicable purchase price.

(d) This subsection applies only to replacement of motor vehicles.

(1) Upon issuance of an order from the final order authority to a manufacturer, converter, or distributor to replace a motor vehicle, the manufacturer, converter, or distributor shall:

(A) promptly authorize the exchange of the complainant's motor vehicle with the complainant's choice of any comparable motor vehicle; and

(B) instruct the dealer to contract the sale of the selected comparable motor vehicle with the complainant under the following terms.

(i) The sales price of the comparable motor vehicle shall be the vehicle's Manufacturer's Suggested Retail Price (MSRP/DSRP, as applicable);

(ii) The trade-in value of the complainant's motor vehicle shall be the MSRP/DRSP, as applicable, at the time of the original transaction, less a reasonable allowance for the complainant's use of the complainant's motor vehicle.

(iii) The use allowance for replacement relief shall be calculated in accordance with subsection (b)(2) and (3) of this section.

(2) Upon any replacement of a complainant's motor vehicle, the complainant shall be responsible for payment or financing of the usage allowance of the complainant's vehicle, any outstanding liens on the complainant's vehicle, and applicable taxes and fees associated with the new sale, excluding documentary fees.

(A) If the comparable motor vehicle has a higher MSRP/DSRP, as applicable, than the complainant's vehicle, the complainant shall be responsible at the time of sale to pay or finance the difference in the two vehicles' MSRPs/DSRPs, as applicable, to the manufacturer, converter or distributor.

(B) If the comparable motor vehicle has a lower MSRP/DSRP, as applicable, than the complainant's vehicle, the complainant will be credited the difference in the MSRP/DSRP, as applicable, between the two motor vehicles. The difference credited shall not exceed the amount of the calculated usage allowance for the complainant's vehicle.

(3) The complainant is responsible for obtaining financing, if necessary, to complete the transaction.

(4) The replacement transaction, as described in paragraphs (2) and (3) of this subsection, shall be completed as specified in the final order. If the replacement transaction cannot be completed within the ordered time period, the manufacturer shall repurchase the complainant's motor vehicle in accordance with the repurchase provisions of this section. If repurchase relief occurs, a party may request calculation of the repurchase price by the final order authority.

(e) If the final order authority finds that a complainant's motor vehicle does not qualify for replacement or repurchase, an order may be entered in any proceeding, where appropriate, requiring repair work to be performed or other action taken to obtain compliance with the manufacturer's, converter's, or distributor's warranty obligations.

(f) If the motor vehicle is substantially damaged or if there is an adverse change in the motor vehicle's condition beyond ordinary wear and tear, from the date of the hearing to the date of repurchase, and the parties are unable to agree on an amount allowed for such damage or condition, either party may request reconsideration by the final order authority of the repurchase price contained in the final order.

(g) In any award in favor of a complainant, the final order authority may require the dealer involved to reimburse the complainant, manufacturer, converter, or distributor for the cost of any items or op-

tions added to the motor vehicle if one or more of those items or options contributed to the defect that is the basis for the order, repurchase, or replacement. This subsection shall not be interpreted to require a manufacturer, converter, or distributor to repurchase a motor vehicle due to a defect or condition that was solely caused by a dealer add-on item or option.

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 January 24, 2017.

TRD-201700343

David D. Duncan

General Counsel

Texas Department of Motor Vehicles

Effective date: February 13, 2017

Proposal publication date: September 9, 2016

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



SUBCHAPTER H. ADVERTISING

43 TAC §§215.241 - 215.261, 215.263 - 215.271

STATUTORY AUTHORITY

The amendments, new section, and repeals are adopted under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Occupations Code, §2301.155, which requires the board of the Texas Department of Motor Vehicles to adopt rules necessary or convenient to administer Occupations Code, Chapter 2301; and more specifically, Occupations Code, §2301.266, which authorizes the board to adopt rules applicable to the issuance of duplicate licenses; and Occupations Code, §2301.602, which requires the board to adopt rules to enforce Chapter 2301, Subchapter M; Transportation Code, §503.002 which authorizes the board to adopt rules to administer Transportation Code, Chapter 503; and more specifically, Transportation Code, §503.009, which authorizes the board to adopt rules for procedures concerning contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §503.0626 and §503.0631, which require the board to adopt rules necessary to implement and manage the department's temporary tag databases.

CROSS REFERENCE TO STATUTE

Government Code, §2001.039; Occupations Code, Chapter 2301; and Transportation Code, Chapter 503.

§215.244. Definitions.

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

(1) Advertisement--

(A) An oral, written, graphic, or pictorial statement or representation made in the course of soliciting business, including, but not limited to a statement or representation:

- (i) made in a newspaper, magazine, or other publication;
- (ii) contained in a notice, sign, poster, display, circular, pamphlet, or letter;
- (iii) aired on the radio;
- (iv) broadcast on the internet or television; or
- (v) streamed via an online service.

(B) Advertisement does not include direct communication between a person or person's representative and a prospective purchaser.

(2) Advertising provision--

(A) A provision of Occupations Code, Chapter 2301, relating to the regulation of advertising; or

(B) A rule relating to the regulation of advertising, adopted pursuant to the authority of Occupations Code, Chapter 2301.

(3) Bait advertisement--An alluring but insincere offer to sell or lease a product of which the primary purpose is to obtain a lead to a person interested in buying or leasing merchandise of the type advertised and to switch a consumer from buying or leasing the advertised product in order to sell or lease some other product at a higher price or on a basis more advantageous to the dealer.

(4) Balloon payment--Any scheduled payment made as required by a consumer credit transaction that is more than twice as large as the average of all prior scheduled payments except the down payment.

(5) Clear and conspicuous--The statement, representation, or term being disclosed is of such size, color, contrast, and audibility and is presented so as to be readily noticed and understood. All language and terms, including abbreviations, shall be used in accordance with their common or ordinary usage and meaning.

(6) Dealership addendum--A form that is displayed on a window of a motor vehicle when the dealership installs special features, equipment, parts, or accessories, or charges for services not already compensated by the manufacturer or distributor for work required to prepare a motor vehicle for delivery to a buyer.

(A) The purpose of the addendum is to disclose:

- (i) that it is supplemental;
- (ii) any added feature, service, equipment, part, or accessory, including the retail price, charged and added by the dealership;
- (iii) any additional charge to the selling price such as additional dealership markup; and
- (iv) the total dealer selling price.

(B) The dealership addendum form shall not be deceptively similar in appearance to the Monroney label, as defined by paragraph (14) of this section.

(7) Demonstrator--A new motor vehicle that is currently in the inventory of the automobile dealership and used primarily for test drives by customers and for other purposes designated by the dealership.

(8) Disclosure--Required information that is clear, conspicuous, and accurate.

(9) Distributor Suggested Retail Price (DSRP)--means the total price shown on the Monroney Label as specified by sub-paragraph (D) of paragraph (14) of this section.

(10) Factory executive/official motor vehicle--A new motor vehicle that has been used exclusively by an executive or official of the dealer's franchising manufacturer, distributor, or their subsidiaries.

(11) License holder--Any person required to obtain a license from the department.

(12) Limited rebate--A rebate that is not available to every consumer purchasing or leasing a motor vehicle because qualification for receipt of the rebate is conditioned or restricted in some manner. A rebate conditioned or restricted to purchasers who are residents of the contiguous United States is not a limited rebate.

(13) Manufacturer's Suggested Retail Price (MSRP)--means the total price shown on the Monroney Label as specified by sub-paragraph (D) of paragraph (14) of this section.

(14) Monroney Label--The label required by the Automobile Information Disclosure Act, 15 U.S.C. §§1231 - 1233, to be affixed to the windshield or side window of certain new motor vehicles delivered to the dealer and that contains information about the motor vehicle, including, but not limited to:

(A) the retail price of the motor vehicle suggested by the manufacturer or distributor, as applicable;

(B) the retail delivered price suggested by the manufacturer or distributor, as applicable, for each accessory or item of optional equipment, physically attached to the motor vehicle at the time of its delivery to a dealer, which is not included within the price of the motor vehicle as stated in subparagraph (A) of this paragraph;

(C) the amount charged, if any, to a dealer for the transportation of the motor vehicle to the location at which it is delivered to the dealer; and

(D) the total of the amounts specified pursuant to subparagraphs (A), (B), and (C) of this paragraph.

(15) Online service--A network that connects computer users.

(16) Rebate or cash back--A sum of money applied to the purchase or lease of a motor vehicle or refunded after full payment has been rendered for the benefit of the purchaser.

(17) Savings claim or discount--An offer to sell or lease a motor vehicle at a reduced price, including, but not limited to, a manufacturer's or distributor's customer rebate, a dealer discount, or a limited rebate.

(18) Subsequent violation--Conduct that is the same or substantially the same as conduct the department has previously alleged in an earlier communication to be a violation of an advertising provision.

§215.245. Availability of Motor Vehicles.

(a) A dealer may advertise a specific new motor vehicle or line-make of vehicles for sale if the specific motor vehicle or line-make is in the possession of the dealer at the time the advertisement is placed.

(b) If the specific motor vehicle or line-make is not in the possession of the dealer at the time the advertisement is placed, the dealer must clearly and conspicuously disclose that fact in the advertisement and state that the motor vehicle may be obtained from the manufacturer, distributor, or some other source. The advertisement must set forth the number of motor vehicles available at the advertised price, if a price is advertised, at the time the advertisement is placed or the dealer can

show that it has the number of motor vehicles available to meet the reasonable expectable public demand based on prior experience.

(c) If an advertised price pertains to only one specific motor vehicle, then the advertisement must also disclose the motor vehicle's stock number or VIN.

(d) This section does not prohibit general advertising of motor vehicles by a manufacturer, dealer advertising association, or distributor, nor does it prohibit the inclusion of the names and addresses of the dealers selling such motor vehicles in the particular area.

(e) A motor vehicle dealer may advertise a specific used motor vehicle for sale if:

(1) the specific used motor vehicle is in the possession of the dealer at the time the advertisement is placed; and

(2) the title certificate to the used motor vehicle has been assigned to the dealer.

§215.246. Accuracy.

Advertisements shall be accurate, clear, and conspicuous. Advertisements shall not be false, deceptive, or misleading. For an internet advertisement, a disclosure may be considered accurate, clear, and conspicuous if:

(1) the viewer highlights, hovers a mouse or cursor over, or otherwise selects certain text or images on a screen that results in an immediate and legible visible disclosure; or

(2) only one click on select text or image(s) is required to view the disclosure; and

(3) the internet advertisement clearly and conspicuously indicates where to hover or click for the disclosure and is in close proximity to the information being disclosed.

§215.249. Manufacturer's/Distributor's Suggested Retail Price.

(a) Except as provided by subsection (b) of this section, the suggested retail price of a new motor vehicle advertised by a manufacturer or distributor shall include all costs and charges for the motor vehicle advertised.

(b) The following costs and charges may be excluded if an advertisement described in subsection (a) of this section clearly and conspicuously states the costs and charges are excluded:

(1) destination and dealer preparation charges;

(2) registration, certificate of title, license fees, or an additional registration fee, if any;

(3) taxes; and

(4) other fees or charges that are allowed or prescribed by law.

(c) Except as provided by this subsection, if the price of a motor vehicle is stated in an advertisement placed with local media in the State of Texas by a manufacturer or distributor and the names of the local dealers for the motor vehicles advertised are included in that advertisement, then the price must include all costs and charges for the motor vehicle advertised, including destination and dealer preparation charges. The only costs and charges that may be excluded from the price are:

(1) registration, certificate of title, license fees, or an additional registration fee, if any;

(2) taxes; and

(3) other fees or charges that are allowed or prescribed by law.

§215.250. *Dealer Price Advertising; Savings Claims; Discounts.*

(a) When featuring a sales price of a new or used motor vehicle in an advertisement, the dealer must be willing to sell the motor vehicle for that featured sales price to any retail buyer. The featured sales price shall be the price before the addition or subtraction of any other negotiated items. Destination and dealer preparation charges must be included in the featured sales price.

(b) The only costs and charges that may be excluded from the featured sales price are:

- (1) registration, certificate of title, or license fees;
- (2) taxes; and
- (3) other fees or charges that are allowed or prescribed by law.

(c) A qualification may not be used when featuring a sales price for a motor vehicle such as "with trade," "with acceptable trade," "with dealer-arranged financing," "rebate assigned to dealer," or "with down payment."

(d) Advertising an "internet price," "e-price," or using similar terms that indicate or create the impression that there is a different or unique sales price for an online or internet consumer or transaction is prohibited.

(e) A savings claim or discount offer is prohibited except to advertise a new motor vehicle. No person may advertise a savings claim or discount offer on a used motor vehicle.

(f) Statements such as "up to," "as much as," and "from" shall not be used by a dealer in connection with savings claims or discount offers.

(g) The savings claim or discount offer for a new motor vehicle, when advertised by a dealer, must be the savings claim or discount available to any and all members of the buying public.

(h) If an advertisement includes a savings claim or discount offer, the amount and type of each incentive that makes up the total amount of the savings claim or discount offer must be disclosed.

(1) If a savings claim or discount offer includes only a dealer discount, that incentive must be disclosed as a deduction from the MSRP/DSRP, as applicable. The following are acceptable formats for advertising a dealer discount with and without a sales price.
Figure: 43 TAC §215.250(h)(1)

(2) If a savings claim or discount offer includes only a customer rebate, that incentive must be disclosed as a deduction from the MSRP/DSRP, as applicable. The following are acceptable formats for advertising a customer rebate with and without a sales price.
Figure: 43 TAC §215.250(h)(2)

(3) If a savings claim or discount offer includes both a customer rebate and a dealer discount, the incentives must be disclosed as deductions from the MSRP/DSRP, as applicable. The following are acceptable formats for advertising both a customer rebate and a dealer discount with and without a sales price.
Figure: 43 TAC §215.250(h)(3)

(i) If a savings claim or discount offer includes an option package discount, that discount should be disclosed above, or prior to, the MSRP/DSRP, as applicable, with a total sales price of the motor vehicle before option discounts. Any additional savings or discounts should then be disclosed below the MSRP/DSRP, as applicable. The following are acceptable formats for advertising an option package discount with and without a sales price.
Figure: 43 TAC §215.250(i)

(j) Except as provided herein, the calculation of the featured sales price or featured savings claim or discount may not include a limited rebate. A limited rebate may be advertised by providing the amount of the limited rebate and explaining the conditions or restrictions on qualification for the limited rebate in a statement below the featured sales price or featured savings claim or discount.
Figure: 43 TAC §215.250(j)

(k) In an internet advertisement with multiple limited rebates available on an advertised new motor vehicle, a dealer may display each limited rebate separately allowing a potential buyer to "click" on the limited rebate to view the sales price after deducting the applicable limited rebate or applicable multiple rebates.
Figure: 43 TAC §215.250(k)

(l) If a dealer has added an option that was not obtained from the manufacturer or distributor of the motor vehicle, a dealer discount may not be advertised for that vehicle. If a dealer has added an option obtained from the manufacturer or distributor and disclosed that option and its suggested retail price on a dealership addendum, the dealer may advertise a dealer discount for that motor vehicle if the option is listed, and the difference is shown between the dealer's sales price and the MSRP/DSRP, as applicable, of the vehicle including the option obtained from the manufacturer or distributor.
Figure: 43 TAC §215.250(l)

§215.261. *Manufacturer/Distributor Sales and Wholesale Prices.*

A motor vehicle shall not be advertised for sale in any manner that creates the impression that it is being offered for sale by the manufacturer or distributor of the motor vehicle. An advertisement shall not:

(1) contain terms such as "factory sale," "fleet prices," "wholesale prices," "factory approved," "factory sponsored," "manufacturer sale," or "distributor sale";

(2) use a manufacturer's/distributor's name or abbreviation in any manner calculated or likely to create an impression that the motor vehicle is being offered for sale by the manufacturer or distributor; or

(3) use any other similar terms which indicate sales other than retail sales from the dealer.

§215.270. *Enforcement.*

(a) The department may file a Notice of Department Decision against a license holder alleging a violation of an advertising provision pursuant to Occupations Code, §2301.203, provided the department can show:

(1) that the license holder who allegedly violated an advertising provision has received from the department a notice of an opportunity to cure the violation by certified mail, return receipt requested, in compliance with subsection (b) of this section; and

(2) that the license holder committed a subsequent violation of the same advertising provision.

(b) An effective notice issued under subsection (a)(1) of this section must:

(1) state that the department has reason to believe that the license holder violated an advertising provision and must identify the provision;

(2) set forth the facts upon which the department bases its allegation of a violation; and

(3) state that if the license holder commits a subsequent violation of the same advertising provision, the department will formally file a Notice of Department Decision.

(c) As a part of the cure procedure, the department may require a license holder who allegedly violated an advertising provision to publish a retraction notice to effect an adequate cure of the alleged violation. A retraction notice must:

(1) appear in a newspaper of general circulation in the area in which the alleged violation occurred;

(2) appear in the portion of the newspaper devoted to motor vehicle advertising, if any;

(3) identify the date and the medium of publication, print, electronic, or other, in which the advertising alleged to be a violation appeared; and

(4) identify the alleged violation of the advertising provision and contain a statement of correction.

(d) A cure is made solely for the purpose of settling an allegation and is not an admission of a violation of these rules; Occupations Code, Chapter 2301; or other law.

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 January 24, 2017.

TRD-201700344

David D. Duncan

General Counsel

Texas Department of Motor Vehicles

Effective date: February 13, 2017

Proposal publication date: November 9, 2016

For further information, please call: (512) 465-4208



43 TAC §215.262

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 the duties of the department; Occupations Code, §2301.155, which requires the board of the Texas Department of Motor Vehicles to adopt rules necessary or convenient to administer Occupations Code, Chapter 2301; and more specifically, Occupations Code, §2301.266, which authorizes the board to adopt rules applicable to the issuance of duplicate licenses; and Occupations Code, §2301.602, which requires the board to adopt rules to enforce Chapter 2301, Subchapter M; Transportation Code, §503.002 which authorizes the board to adopt rules to administer Transportation Code, Chapter 503; and more specifically, Transportation Code, §503.009, which authorizes the board to adopt rules for procedures concerning contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §503.0626 and §503.0631, which require the board to adopt rules necessary to implement and manage the department's temporary tag databases.

CROSS REFERENCE TO STATUTE

Government Code, §2001.039; Occupations Code, Chapter 2301; and Transportation Code, Chapter 503.

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 January 24, 2017.

TRD-201700345

David D. Duncan

General Counsel

Texas Department of Motor Vehicles

Effective date: February 13, 2017

Proposal publication date: November 9, 2016

For further information, please call: (512) 465-4208



SUBCHAPTER I. PRACTICE AND PROCEDURE FOR HEARINGS CONDUCTED BY THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

**43 TAC §§215.301 - 215.303, 215.305 - 215.308, 215.310,
215.311, 215.314 - 215.317**

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 the duties of the department; Occupations Code, §2301.155, which requires the board of the Texas Department of Motor Vehicles to adopt rules necessary or convenient to administer Occupations Code, Chapter 2301; and more specifically, Occupations Code, §2301.266, which authorizes the board to adopt rules applicable to the issuance of duplicate licenses; and Occupations Code, §2301.602, which requires the board to adopt rules to enforce Chapter 2301, Subchapter M; Transportation Code, §503.002 which authorizes the board to adopt rules to administer Transportation Code, Chapter 503; and more specifically, Transportation Code, §503.009, which authorizes the board to adopt rules for procedures concerning contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §503.0626 and §503.0631, which require the board to adopt rules necessary to implement and manage the department's temporary tag databases.

CROSS REFERENCE TO STATUTE

Government Code, §2001.039; Occupations Code, Chapter 2301; and Transportation Code, Chapter 503.

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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TRD-201700346

David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Effective date: February 13, 2017
Proposal publication date: September 9, 2016
For further information, please call: (512) 465-5665



43 TAC §§215.309, 215.312, 215.313

STATUTORY AUTHORITY

The repeals are adopted under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Occupations Code, §2301.155, which requires the board of the Texas Department of Motor Vehicles to adopt rules necessary or convenient to administer Occupations Code, Chapter 2301; and more specifically, Occupations Code, §2301.266, which authorizes the board to adopt rules applicable to the issuance of duplicate licenses; and Occupations Code, §2301.602, which requires the board to adopt rules to enforce Chapter 2301, Subchapter M; Transportation Code, §503.002 which authorizes the board to adopt rules to administer Transportation Code, Chapter 503; and more specifically, Transportation Code, §503.009, which authorizes the board to adopt rules for procedures concerning contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §503.0626 and §503.0631, which require the board to adopt rules necessary to implement and manage the department's temporary tag databases.

CROSS REFERENCE TO STATUTE

Government Code, §2001.039; Occupations Code, Chapter 2301; and Transportation Code, Chapter 503.

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 January 24, 2017.

TRD-201700347
David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Effective date: February 13, 2017
Proposal publication date: September 9, 2016
For further information, please call: (512) 465-5665

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SUBCHAPTER J. ADMINISTRATIVE SANCTIONS

43 TAC §§215.500 - 215.503

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 the duties of the department; Occupations Code, §2301.155, which requires the board of the Texas Department of Motor Vehicles to adopt rules necessary or convenient to administer Occupations Code, Chapter 2301; and more specifically, Occupations Code, §2301.266, which authorizes the board to adopt rules applicable to the issuance of duplicate licenses; and Occupations Code, §2301.602, which requires the board to adopt rules to enforce Chapter 2301, Subchapter M; Transportation Code, §503.002 which authorizes the board to adopt rules to administer Transportation Code, Chapter 503; and more specifically, Transportation Code, §503.009, which authorizes the board to adopt rules for procedures concerning contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §503.0626 and §503.0631, which require the board to adopt rules necessary to implement and manage the department's temporary tag databases.

CROSS REFERENCE TO STATUTE

Government Code, §2001.039; Occupations Code, Chapter 2301; and Transportation Code, Chapter 503.

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 January 24, 2017.

TRD-201700348
David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Effective date: February 13, 2017
Proposal publication date: September 9, 2016
For further information, please call: (512) 465-5665



Abram Hernandez
6th Grade



REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Adopted Rule Reviews

Commission on State Emergency Communications

Title 1, Part 12

The Commission on State Emergency Communications (CSEC) has concluded its review of its Chapter 252 rules and readopts without amendment each rule in the Chapter, specifically §§252.1 - 252.9.

CSEC's notice of intent to review the Chapter 252 rules was published in the October 14, 2016, issue of the *Texas Register* (41 TexReg 8207). The review assessed and determined that the original reasons and justification for adopting each rule continue to exist and remain valid.

No comments were received regarding CSEC's notice of review. This notice concludes CSEC's review of its Chapter 252 rules.

TRD-201700383

Patrick Tyler

General Counsel

Commission on State Emergency Communications

Filed: January 25, 2017



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 215, Motor Vehicle

Distribution, pursuant to Government Code, §2001.039. Notice of the department's intention to review was published in the June 19, 2015, issue of the *Texas Register* (40 TexReg 4012).

As a result of the review, the department determined that the reasons for initially adopting some rules contained in Chapter 215 no longer exist and those repeals are published in the Adopted Rules section of this issue of the *Texas Register*. Additionally, the reasons for initially adopting the remaining rules in Chapter 215 continue to exist, but amendments to certain rules are necessary and are published in the Adopted Rules section of this issue of the *Texas Register*.

On July 20, 2015, the department received a comment from Texas Automobile Dealers Association recognizing the enormity of the work involved in the Chapter 215 rule review and commends staff on its thoroughness.

This concludes the review of Chapter 215, Motor Vehicle Distribution.

TRD-201700436

David D. Duncan

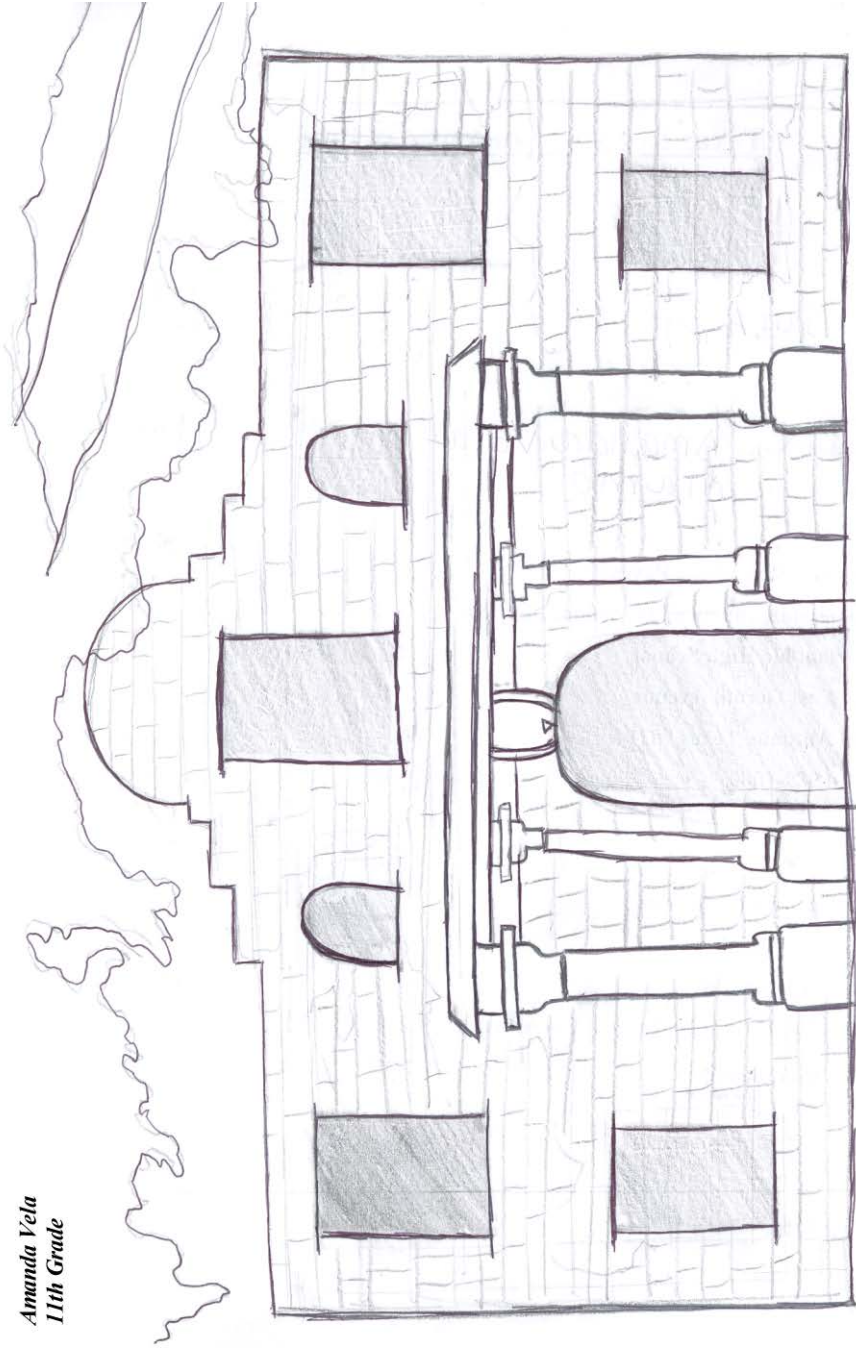
General Counsel

Texas Department of Motor Vehicles

Filed: January 31, 2017



*Amanda Vela
11th Grade*



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 §215.153(c)(2)(A)

APPENDIX A-1

TEXAS DEALER									
VEHICLE OWNED BY JOHN DOE AUTO SALES									
<small>THIS VEHICLE TEMPORARILY REGISTERED WITH STATE UNDER TAG #</small>									
EXPIRES				-			-		
				VIN _____					

DEALER'S TEMPORARY TAG - ASSIGNED TO SPECIFIC VEHICLE

Figure: 43 TAC §215.153(c)(2)(B)

APPENDIX A-2

<p>● TEXAS DEALER ●</p> <p>VEHICLE OWNED BY JOHN DOE AUTO SALES</p> <p>THIS VEHICLE TEMPORARILY REGISTERED WITH STATE UNDER TAG #</p> <table border="1"><tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr></table> <p>EXPIRES <table border="1"><tr><td> </td><td> </td><td>-</td><td> </td><td>-</td><td> </td><td> </td><td> </td></tr></table></p> <p>Authorized Agent Tag</p> <p>● ●</p>																-		-			
		-		-																	

DEALER'S TEMPORARY TAG - ASSIGNED TO AGENT

Figure: 43 TAC §215.153(c)(2)(C)

APPENDIX B-1

TEXAS BUYER										
THIS VEHICLE TEMPORARILY REGISTERED WITH STATE UNDER TAG #										
EXPIRES						-			-	
VIN _____				SELLER: ABC FANTASTIC FABULOUS AUTO SALES						

BUYER'S TEMPORARY TAG

Figure: 43 TAC §215.153(c)(2)(D)

APPENDIX B-2

TEXAS BUYER – INTERNET											
THIS VEHICLE TEMPORARILY REGISTERED WITH STATE UNDER TAG #											
4587650											
EXPIRES						-			-		
VIN _____											
SELLER: ABC FANTASTIC FABULOUS AUTO SALES											

PREPRINTED INTERNET-DOWN TEMPORARY TAG

Figure: 43 TAC §215.153(c)(2)(E)

APPENDIX C-1

TEXAS CONVERTER												
VEHICLE OWNED BY JOHN DOE CONVERSIONS												
<small>THIS VEHICLE TEMPORARILY REGISTERED WITH STATE UNDER PERMIT #</small>												
EXPIRES					-			-				
								VIN				

CONVERTER'S TEMPORARY TAG

Figure: 43 TAC §215.250(h)(1)

Dealer Discount with Sales Price:	
MSRP/DSRP, as applicable	\$20,000
Less Dealer Discount	<u>1,000</u>
Sales Price	\$19,000

Dealer Discount without Sales Price:
"\$1,000 Discount Off MSRP/DSRP"

Figure: 43 TAC §215.250(h)(2)

Customer Rebate with Sales Price:

MSRP/DSRP, as applicable	\$18,000
Less Rebate	<u>500</u>
Sales Price	\$17,500

Customer Rebate without Sales Price:

"\$500 Rebate Off MSRP/DSRP"

Figure: 43 TAC §215.250(h)(3)

Customer Rebate and Dealer Discount with Sales Price:

MSRP/DSRP, as applicable	\$20,000
Less Rebate	500
Less Dealer Discount	<u>500</u>
Sales Price	\$19,000

Customer Rebate and Dealer Discount without Sales Price:

"1,000 Savings Off MSRP/DSRP (\$500 Rebate and \$500 Dealer Discount)"

Figure: 43 TAC §215.250(i)

Option Package Discount with Sales Price:	
Total Vehicle Plus Options	\$10,995
Option Package Discount	1,000
MSRP/DSRP, as applicable	9,995
Less Rebate	500
Less Dealer Discount	<u>500</u>
Sales Price	\$8,995

Option Package Discount without Sales Price:
"Total Savings \$2,000 (\$1,000 Option Package Discount; \$500 rebate, and \$500 dealer discount off MSRP/DSRP)"

Figure: 43 TAC §215.250(j)

MSRP/DSRP, as applicable	\$20,000
Less Rebate	1,000
Less Dealer Discount	<u>1,000</u>
Sales Price	\$18,000

FIRST TIME BUYERS RECEIVE
ADDITIONAL \$500 OFF

Figure 43 TAC §215.250(k)

Additional Available Limited Rebates (Click the applicable box or boxes for Sales Price)
See Dealer for Eligibility Terms

- HISD Teachers Receive Additional \$500 Discount
- Active Duty Military Receive Additional \$500 Discount
- Dallas Metro Residents Receive Additional \$500 Discount
- Loyalty Owner Receive Additional \$500 Discount
- "X" Financing Receive Additional \$500 Discount

Sales Price with Selected Discounts \$_____

Figure: 43 TAC §215.250(l)

MSRP/DSRP, as applicable	\$20,000.00
Total Dealer Installed Factory Options	<u>\$1,000.00</u>
Total	\$21,000.00
Less Dealer Discount	<u>\$500.00</u>
Sales Price	\$20,500.00

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Fiscal Year 2017 Exemptions Granted

Government Code §552.262(a) authorizes the attorney general to adopt cost rules for governmental bodies to use in determining charges for providing public information under the Public Information Act, chapter 552 of the Government Code. The attorney general's cost rules are found at 1 TAC §§70.1 - 70.12. Government Code §552.262(c) per-

mits a governmental body to request that it be exempt from all or part of the attorney general's cost rules. Government Code §552.262(d) requires the attorney general to publish annually a list of the governmental bodies that are granted exemptions from the attorney general's cost rules and authorized to adopt modified rules for determining charges for providing public information. Therefore, the attorney general publishes the following table of exemptions granted to date for Fiscal Year 2017 (September 1, 2016 through August 31, 2017):

Fiscal Year 2017 Exemptions Granted

Governmental Body	Exempted from Rule Section	Authorized Charges
Guadalupe Appraisal District	1 TAC §70.3(h)(3)	\$3.42 per clock hour for client/server time
City of Spofford	1 TAC §70.3(h)(3)	\$8.33 per clock hour for PC/LAN time

TRD-201700428
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: January 31, 2017

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 02/06/17 - 02/12/17 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 02/06/17 - 02/12/17 is 18% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

TRD-201700430
Leslie Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: January 31, 2017

Court of Criminal Appeals

Misc. Docket Number 17-001 and Misc. Docket Number 17-9007 Final Order Adopting Amendments to Texas Rules of Appellate Procedure 9.4, 72.2, and 73.7

ORDERED that:

1. By order dated December 1, 2016, in Misc. Docket No. 16-005, the Court of Criminal Appeals adopted amendments to Rules of Appellate Procedure 9.4, 72.2, and 73.7, effective February 1, 2017. The comment period having expired, no revisions to the rules have been made. This is the final order adopting the rules as amended.

2. The Clerk is directed to:

- file a copy of this order with the Secretary of State;
- 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*;
- send a copy of this order to each elected member of the Legislature; and
- submit a copy of the order for publication in the *Texas Register*.

Dated: January 23, 2017.

Sharon Keller, Presiding Judge

Kevin P. Yeary, Judge

Michael Keasler, Judge

David Newell, Judge

Barbara Hervey, Judge

Mary Lou Keel, Judge

Elsa Alcalá, Judge

Scott Walker, Judge

Bert Richardson, Judge

9.4. Form....

(i) Length. . . .

(D) A petition and response in an original proceeding in the Supreme Court and the Court of Criminal Appeals, except for petitions and responses in an original proceeding in a case in which the death penalty has been assessed, a petition for review and response in the Supreme Court, a petition for discretionary review in the Court of Criminal Appeals, and a motion for rehearing and response in an appellate court: 4,500 words if computer-generated, and 15 pages if not.

(E) A reply to a response to a petition for review in the Supreme Court, a reply to a response to a petition in an original proceeding in the Supreme Court and the Court of Criminal Appeals, except a reply to a response in an original proceeding in a case in which the death penalty has been assessed, and a reply to a petition for discretionary review in the Court of Criminal Appeals: 2,400 words if computer-generated, and 8 pages if not.

(F) A petition and response in an original proceeding in the Court of Criminal Appeals in a case in which the death penalty has been assessed: 9,000 words if computer-generated, and 30 pages if not.

(G) A reply to a response to a petition in an original proceeding in the Court of Criminal Appeals in a case in which the death penalty has been assessed: 4,800 words if computer-generated, and 16 pages if not.

72.2. Disposition

If five judges tentatively believe that the case should be filed and set for submission, the motion for leave will be granted and the case will then be handled and disposed of in accordance with Rule 52.8. If the motion for leave is denied, no motions for rehearing or reconsideration will be entertained. But the Court may, on its own initiative, reconsider a denial of a motion for leave.

Rule 73. Postconviction Applications for Writs of Habeas Corpus....

Rule 73.7. New Evidence After Application Forwarded to Court of Criminal Appeals

If an Article 11.07 or 11.071 application has been forwarded to this Court, and a party wishes this Court to consider evidence not filed in the trial court, then the party must comply with the following procedures or the evidence will not be considered.

(a) If the Court of Criminal Appeals has received an Article 11.07 or 11.071 application from the district clerk of the county of conviction and has filed and set the application for submission, a party has two options:

(1) The party may file the evidence directly in the Court of Criminal Appeals with a motion for the Court of Criminal Appeals to consider

the evidence. In this motion, the party should describe the evidence, explain its evidentiary value, and state why compelling and extraordinary circumstances exist for the Court of Criminal Appeals to consider the evidence directly. The moving party must immediately serve copies of the motion and the evidence the party seeks to file on the other party or parties in the case. If the Court of Criminal Appeals grants this motion, the Court will consider the evidence in its review of the application. The Court of Criminal Appeals will grant such a motion only if the Court concludes the circumstances are truly exceptional.

(2) The party may file in the Court of Criminal Appeals a motion to supplement the record in the trial court. In this motion, the party should describe the evidence the party intends to file, explain its evidentiary value, and state why the evidence could not have been filed in the trial court before the Court of Criminal Appeals filed and set the application for submission. The moving party must immediately serve copies of the motion and the evidence the party seeks to file on the other party or parties in the case. If the Court of Criminal Appeals grants the motion, the party may file the evidence with the district clerk of the county of conviction, and should attach a copy of the motion to supplement and the Court of Criminal Appeals' order granting said motion. The district clerk shall immediately send a copy of the filed materials to the trial judge assigned to the habeas case and to the other party or parties in the case, and otherwise comply with the procedures set out in Rule 73.4(b) of these rules.

(b) If the Court of Criminal Appeals has received an Article 11.07 or 11.071 application from the district clerk of the county of conviction, but the Court has not yet filed and set the application for submission, the party must file in the Court of Criminal Appeals a motion to stay the proceedings pending the filing of the evidence in the trial court. In this motion, the party should describe the evidence the party intends to file and explain its evidentiary value. The moving party must immediately serve copies of the motion and the evidence the party seeks to file on the other party or parties in the case. If the Court of Criminal Appeals grants the motion, the Court will specify a designated time frame for the party to file the evidence with the district clerk of the county of conviction. The party should attach a copy of the motion to stay proceedings and the Court of Criminal Appeals' order granting said motion to the evidentiary filing. The district clerk of the county of conviction shall immediately send a copy of the filed materials to the trial judge assigned to the habeas case and to the other party or parties in the case, and otherwise comply with the procedures set out in Rule 73.4(b) of these rules.

Comment to 2017 change: Rule 73.7 is added. This rule only applies after an Article 11.07 or 11.071 application has been forwarded to the Court of Criminal Appeals. If an Article 11.07 or 11.071 application is pending in the trial court and has not been forwarded to the Court of Criminal Appeals, a party may file additional evidentiary materials with the district clerk of the county of conviction without filing any special motion in the Court of Criminal Appeals or the trial court. But the district clerk of the county of conviction still must immediately send a copy of the filed materials to the trial judge assigned to the habeas case and to the other party or parties in the case, and otherwise comply with the procedures set out in Rule 73.4(b) of these rules.

TRD-201700422

Abel Acosta

Clerk

Court of Criminal Appeals

Filed: January 30, 2017

◆ ◆ ◆
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 March 14, 2017. 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 March 14, 2017. 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: Blanco Shell, LLC dba EZ to Stop; DOCKET NUMBER: 2016-1616-PST-E; IDENTIFIER: RN102375177; LOCATION: Blanco, Blanco 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: \$2,567; ENFORCEMENT COORDINATOR: Austin Henck, (512) 239-6155; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(2) COMPANY: City of Premont; DOCKET NUMBER: 2016-1513-AIR-E; IDENTIFIER: RN102903135; LOCATION: Premont, Jim Wells County; TYPE OF FACILITY: portable trench burner; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(2), Texas Health and Safety Code, §382.085(b), and Federal Operating Permit Number O3248/General Operating Permit Number 518, Terms and Conditions (b)(4)(D), by failing to submit a permit compliance certification within 30 days after the end of the certification period; PENALTY: \$2,250; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(3) COMPANY: DOG RIDGE WATER SUPPLY CORPORATION; DOCKET NUMBER: 2016-1713-PWS-E; IDENTIFIER: RN101191153; LOCATION: Belton, Bell County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to operate the disinfection equipment to maintain a minimum disinfectant residual of 0.2 milligrams per liter (mg/L) free chlorine or 0.5 mg/L total chlorine throughout the distribution system at all times; 30 TAC §290.110(c)(4)(B), by failing

to monitor the disinfectant residual at representative locations in the distribution system at least once per day; 30 TAC §290.46(m)(1)(B), by failing to conduct an annual inspection of the 3,000 gallon pressure tank located at the Colinas Del Lago plant; and 30 TAC §290.46(e)(3)(C), by failing to use at least two operators who hold a Class C or higher license and who each work at least 16 hours per month at the public water system's treatment or distribution facilities for purchased water systems; PENALTY: \$1,260; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(4) COMPANY: HANDY SHOP INCORPORATED; DOCKET NUMBER: 2016-0953-PST-E; IDENTIFIER: RN102383783; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank system; PENALTY: \$3,563; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2520; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(5) COMPANY: Kacy Patel and Vaghela Vajubhai dba Kwik Pik Food Store 9; DOCKET NUMBER: 2016-2002-PST-E; IDENTIFIER: RN101556058; LOCATION: Grand Prairie, 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 (USTs) for releases at a frequency of at least once every month; 30 TAC §334.51(a)(6), by failing to assure that all spill and overflow prevention devices installed are maintained in good operating condition, and that such devices are inspected and serviced in accordance with the manufacturer's specifications; and 30 TAC §334.49(a)(4), by failing to provide corrosion protection to all underground metal components of an UST system which is used to convey or contain regulated substances; PENALTY: \$6,251; ENFORCEMENT COORDINATOR: Steven Stump, (512) 239-1343; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Kiewit Offshore Services, Limited; DOCKET NUMBER: 2016-1167-AIR-E; IDENTIFIER: RN102905064; LOCATION: Ingleside, San Patricio County; TYPE OF FACILITY: steel structure fabrication plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(2), Texas Health and Safety Code (THSC), §382.085(b), and Federal Operating Permit (FOP) Number O3343, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 8, by failing to submit a Permit Compliance Certification within 30 days after the end of the certification period; 30 TAC §122.143(4) and §122.145(2)(A) and (C), THSC, §382.085(b), and FOP Number O3343, GTC, by failing to submit a deviation report within 30 days after the end of the reporting period and to report all instances of deviations; 30 TAC §122.143(4) and §122.145(2)(C), THSC, §382.085(b), and FOP Number O3343, GTC, by failing to submit a deviation report within 30 days after the end of the reporting period; 30 TAC §116.115(c) and §122.143(4), THSC, §382.085(b), New Source Review (NSR) Permit Number 47227, Special Conditions (SC) Numbers 7.F(7) and 9.G(7), and FOP Number O3343, GTC and STC Number 5, by failing to record maintenance and/or repairs made to the shrouds used for surface coating and abrasive blasting operations; 30 TAC §116.115(c) and §122.143(4), THSC, §382.085(b), NSR Permit Number 47227, SC Number 9.B, and FOP Number O3343, GTC and STC Number 5, by failing to accurately record the pressure drop across the filter cloth of the dust collector system; and 30 TAC §116.115(c) and §122.143(4), THSC, §382.085(b), NSR Permit Number 47227, SC Number 7.D, and FOP Number O3343, STC Number 5, by failing to comply with the surface coating usage

rate limit; PENALTY: \$16,577; Supplemental Environmental Project offset amount of \$6,631; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(7) COMPANY: MDW Enterprises, LLC dba Brookside Grocery; DOCKET NUMBER: 2016-1643-PST-E; IDENTIFIER: RN104004239; LOCATION: Brookside Village, Brazoria County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month; 30 TAC §334.602(a), by failing to identify and designate for the UST facility at least one named individual for each class of operator - Class A, Class B, and Class C; 30 TAC §334.51(b)(2)(B)(i) and (ii) and TWC, §26.3475(c)(2), by failing to have a spill container or catchment basin that is liquid-tight; 30 TAC §334.49(b)(2) and TWC, §26.3475(d), by failing to protect from corrosion all components of an UST system which are designed to convey, contain, or store regulated substances by electrically isolating the components from the corrosive elements of the surrounding soil, backfill, groundwater, or any other water, and from other metallic components by installing the component in an open area where periodic visual inspection of all parts of the component for the presence of corrosion or released substances is practicable; 30 TAC §334.42(i) and TWC, §26.3475(c)(2), by failing to inspect all sumps, including dispenser sumps, manways, overspill containers or catchment basins associated with an UST system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid-tight and free of any liquid or debris; and 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$9,105; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: Meadowland Utility Corporation; DOCKET NUMBER: 2016-0132-MWD-E; IDENTIFIER: RN102815198; LOCATION: Alvin, Brazoria County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0013632001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; PENALTY: \$23,375; ENFORCEMENT COORDINATOR: Ross Luedtke, (512) 239-3157; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: OLDEN WATER SUPPLY CORPORATION; DOCKET NUMBER: 2016-1943-PWS-E; IDENTIFIER: RN101459303; LOCATION: Olden, Eastland County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; PENALTY: \$172; ENFORCEMENT COORDINATOR: James Baldwin, (512) 239-1337; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(10) COMPANY: Oxy Vinyls, LP; DOCKET NUMBER: 2016-1519-AIR-E; IDENTIFIER: RN100225879; LOCATION: Deer Park, Harris County; TYPE OF FACILITY: petrochemical plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), Texas Health and Safety Code, §382.085(b), Federal Operating Permit Number O3018, Special Terms and Conditions Number 15, and New Source Review Permit Number 4673B, Special Conditions Number 1, by failing to prevent unauthorized emissions; PENALTY: \$7,237;

Supplemental Environmental Project offset amount of \$2,895; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(11) COMPANY: PETROLEUM TRANSPORT, INCORPORATED; DOCKET NUMBER: 2016-1937-PST-E; IDENTIFIER: RN104565056; LOCATION: Lubbock, Lubbock County and Muleshoe, Bailey County; TYPE OF FACILITY: common carrier; RULES VIOLATED: 30 TAC §334.5(b)(1)(A) and TWC, §26.3467(d), by failing to deposit a regulated substance into a regulated underground storage tank system that was covered by a valid, current TCEQ delivery certificate; PENALTY: \$2,607; ENFORCEMENT COORDINATOR: Ken Moller, (512) 239-6111; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(12) COMPANY: Stolthaven Houston, Incorporated; DOCKET NUMBER: 2016-1332-IWD-E; IDENTIFIER: RN100210475; LOCATION: Houston, Harris County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and §319.5(b) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0003129000, Monitoring and Reporting Requirements Number 1, Outfall Number 001, by failing to collect and analyze effluent samples at the required frequency; and TWC, §26.121(a)(1), 30 TAC §305.125(1), and TPDES Permit Number WQ0003129000, Effluent Limitations and Monitoring Requirements Number 1, Outfall Numbers 001 and 003, by failing to comply with permitted effluent limitations; PENALTY: \$80,375; Supplemental Environmental Project offset amount of \$40,187; ENFORCEMENT COORDINATOR: James Boyle, (512) 239-2527; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(13) COMPANY: TRI-COUNTY POINT PROPERTY OWNERS ASSOCIATION; DOCKET NUMBER: 2016-1843-PWS-E; IDENTIFIER: RN101248391; LOCATION: Palacios, Jackson County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3) and §290.122(c)(2)(A) and (f), by failing to submit a Disinfectant Level Quarterly Operating Report (DLQOR) to the executive director (ED) each quarter by the tenth day of the month following the end of the quarter and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to submit a DLQOR; 30 TAC §290.109(c)(4)(B) and §290.122(c)(2)(A) and (f), by failing to collect a raw groundwater source *Escherichia coli* sample from each active source within 24 hours of being notified of a distribution total coliform-positive result and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to collect a raw groundwater sample; 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 ED regarding the failure to collect the required number of routine coliform samples; PENALTY: \$507; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(14) COMPANY: WADECO SPECIALTIES, LLC dba Select Technologies; DOCKET NUMBER: 2016-1957-IHW-E; IDENTIFIER: RN106765431; LOCATION: Yorktown, DeWitt County; TYPE OF FACILITY: blending site for chemical products; RULES VIOLATED: 30 TAC §335.2(b) and 40 Code of Federal Regulations §270.1(c), by failing to not cause, suffer, allow, or permit the disposal of industrial solid waste at an unauthorized facility; PENALTY: \$3,097; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.



Enforcement Orders

An agreed order was adopted regarding Rayburn Country Municipal Utility District, Docket No. 2015-1312-MWD-E on January 31, 2017, assessing \$2,025 in administrative penalties with \$405 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding 7-ELEVEN, INC., Docket No. 2015-1500-MLM-E on January 31, 2017, assessing \$7,304 in administrative penalties with \$1,460 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding G & S CONCRETE, INC., Docket No. 2015-1756-WQ-E on January 31, 2017, assessing \$1,350 in administrative penalties with \$270 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Calpine Hidalgo Energy Center, L.P., Brownsville Public Utilities Board, and Calpine Operating Services Company, Inc., Docket No. 2016-0321-IWD-E on January 31, 2017, assessing \$4,837 in administrative penalties with \$967 deferred. Information concerning any aspect of this order may be obtained by contacting Claudia Corrales, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Bandera, Docket No. 2016-0351-PWS-E on January 31, 2017, assessing \$1,400 in administrative penalties with \$280 deferred. Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding FOSTER CONSOLIDATED INVESTMENTS, L.L.C., Docket No. 2016-0367-PWS-E on January 31, 2017, assessing \$520 in administrative penalties with \$104 deferred. Information concerning any aspect of this order may be obtained by contacting Katy Montgomery, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding GRAND CASTLE WATER SUPPLY CORPORATION, Docket No. 2016-0459-PWS-E on January 31, 2017, assessing \$250 in administrative penalties with \$50 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of O'Donnell, Docket No. 2016-0629-MLM-E on January 31, 2017, assessing \$553 in administrative penalties with \$110 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement

Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Living Rock Academy, Docket No. 2016-0679-EAQ-E on January 31, 2017, assessing \$2,813 in administrative penalties with \$562 deferred. Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding HARROLD WATER SUPPLY CORPORATION, Docket No. 2016-0706-PWS-E on January 31, 2017, assessing \$620 in administrative penalties with \$124 deferred. Information concerning any aspect of this order may be obtained by contacting Claudia Corrales, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Alberto C. Loreda dba Loreda Trucking, Docket No. 2016-0720-WQ-E on January 31, 2017, assessing \$5,000 in administrative penalties with \$1,000 deferred. Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Yeti Group, LLC dba Mansell Grocery & Feed, Docket No. 2016-0767-PST-E on January 31, 2017, assessing \$3,375 in administrative penalties with \$675 deferred. Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding CHRISTUS HEALTH, Docket No. 2016-0858-PST-E on January 31, 2017, assessing \$3,750 in administrative penalties with \$750 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Aqua Utilities, Inc., Docket No. 2016-0913-PWS-E on January 31, 2017, assessing \$383 in administrative penalties with \$76 deferred. Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ALISOOR BUSINESS INC dba Big Star Food Mart, Docket No. 2016-0977-PST-E on January 31, 2017, assessing \$4,500 in administrative penalties with \$900 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding The Moore's Mill LLC, Docket No. 2016-0993-PST-E on January 31, 2017, assessing \$2,438 in administrative penalties with \$487 deferred. Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding BSRP ENTERPRISES INC dba Handi Stop, Docket No. 2016-1013-PST-E on January 31, 2017, assessing \$4,500 in administrative penalties with \$900 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545,

Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Texas Department of Criminal Justice, Docket No. 2016-1024-MWD-E on January 31, 2017, assessing \$3,675 in administrative penalties with \$735 deferred. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Ross Midland LLC dba Avion Flight Centre South Fuel Farm, Docket No. 2016-1042-PST-E on January 31, 2017, assessing \$6,750 in administrative penalties with \$1,350 deferred. Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding KING-MESA, INC., Docket No. 2016-1053-PST-E on January 31, 2017, assessing \$3,375 in administrative penalties with \$675 deferred. Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding PARAMOUNT CORPORATION dba Quik Pantry, Docket No. 2016-1058-PST-E on January 31, 2017, assessing \$3,750 in administrative penalties with \$750 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding John P. Seymour dba Special Waste Management, Docket No. 2016-1083-MSW-E on January 31, 2017, assessing \$3,603 in administrative penalties with \$720 deferred. Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Rita's Convenience Store and Restaurant, LLC, Docket No. 2016-1102-PST-E on January 31, 2017, assessing \$4,629 in administrative penalties with \$925 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Stump, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding FJ TRADE INC dba PMI 1, Docket No. 2016-1108-PST-E on January 31, 2017, assessing \$4,125 in administrative penalties with \$825 deferred. Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding IIA INVESTMENTS, INC. dba Food Mart, Docket No. 2016-1136-PST-E on January 31, 2017, assessing \$4,125 in administrative penalties with \$825 deferred. Information concerning any aspect of this order may be obtained by contacting Benjamin Sakmar, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Avenue UltraCon, Inc. dba Avenue Drive In, Docket No. 2016-1152-PST-E on January 31, 2017, assessing \$3,375 in administrative penalties with \$675 deferred. Information concerning any aspect of this order may be obtained by contact-

ing Holly Kneisley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding A DEEL'S BUSINESS INC. dba Kwick Korner Shell, Docket No. 2016-1223-PST-E on January 31, 2017, assessing \$4,500 in administrative penalties with \$900 deferred. Information concerning any aspect of this order may be obtained by contacting Ross Luedtke, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding N & D MEKHAIL ENTERPRISES, INC., Docket No. 2016-1230-PST-E on January 31, 2017, assessing \$4,500 in administrative penalties with \$900 deferred. Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding YOONIECHO'S FAMILY INC. dba Dixie Station, Docket No. 2016-1245-PST-E on January 31, 2017, assessing \$6,750 in administrative penalties with \$1,350 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ELICO STORE INC. dba ELICO STOP, Docket No. 2016-1257-PST-E on January 31, 2017, assessing \$3,878 in administrative penalties with \$775 deferred. Information concerning any aspect of this order may be obtained by contacting Benjamin Sakmar, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Dylan Roth dba The Grub Sack, Docket No. 2016-1259-PST-E on January 31, 2017, assessing \$2,438 in administrative penalties with \$487 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Stump, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Aalmin Corporation dba Maxi Food Mart, Docket No. 2016-1261-PST-E on January 31, 2017, assessing \$4,125 in administrative penalties with \$825 deferred. Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding AGRA Properties, LLC dba Jimbos Food Mart, Docket No. 2016-1262-PST-E on January 31, 2017, assessing \$3,375 in administrative penalties with \$675 deferred. Information concerning any aspect of this order may be obtained by contacting Sandra Douglas, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Lon J. Phean dba Olas Country Store, Docket No. 2016-1286-PST-E on January 31, 2017, assessing \$6,000 in administrative penalties with \$1,200 deferred. Information concerning any aspect of this order may be obtained by contacting Larry Butler, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding LIZER ENTERPRISES, INC. dba Lizer Food Mart, Docket No. 2016-1293-PST-E on January

31, 2017, assessing \$7,500 in administrative penalties with \$1,500 deferred. Information concerning any aspect of this order may be obtained by contacting Benjamin Sakmar, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Channelview Independent School District, Docket No. 2016-1294-PST-E on January 31, 2017, assessing \$7,125 in administrative penalties with \$1,425 deferred. Information concerning any aspect of this order may be obtained by contacting James Baldwin, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding San Antonio Steel Company, Ltd., Docket No. 2016-1310-PST-E on January 31, 2017, assessing \$3,504 in administrative penalties with \$700 deferred. Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Scottsville, Docket No. 2016-1312-PWS-E on January 31, 2017, assessing \$625 in administrative penalties with \$125 deferred. Information concerning any aspect of this order may be obtained by contacting James Fisher, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Maharaj Enterprise, LLC dba SA Randolph Express, Docket No. 2016-1334-PST-E on January 31, 2017, assessing \$3,000 in administrative penalties with \$600 deferred. Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding NEW MART CORPORATION dba Speedy Stop, Docket No. 2016-1337-PST-E on January 31, 2017, assessing \$3,563 in administrative penalties with \$712 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Grand Prairie, Docket No. 2016-1341-PST-E on January 31, 2017, assessing \$6,751 in administrative penalties with \$1,350 deferred. Information concerning any aspect of this order may be obtained by contacting Claudia Corrales, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding HIGHLAND LAKES, INC. dba Highland Lakes Chevron, Docket No. 2016-1347-PST-E on January 31, 2017, assessing \$5,175 in administrative penalties with \$1,035 deferred. Information concerning any aspect of this order may be obtained by contacting James Baldwin, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding OPM TEXAS INVESTMENTS, LLC dba Palmetto Food Mart, Docket No. 2016-1348-PST-E on January 31, 2017, assessing \$1,301 in administrative penalties with \$260 deferred. Information concerning any aspect of this order may be obtained by contacting Austin Henck, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SRC Ventures Inc dba Trinity Food Mart, Docket No. 2016-1350-PST-E on January 31, 2017, assessing \$813 in administrative penalties with \$162 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding John Hunter dba Hunter Texaco, Docket No. 2016-1362-PST-E on January 31, 2017, assessing \$2,438 in administrative penalties with \$487 deferred. Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding WALIA ENTERPRISES, INC dba Express 146, Docket No. 2016-1363-PST-E on January 31, 2017, assessing \$6,750 in administrative penalties with \$1,350 deferred. Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Victor Beer & Wine LLC, Docket No. 2016-1383-PST-E on January 31, 2017, assessing \$2,438 in administrative penalties with \$487 deferred. Information concerning any aspect of this order may be obtained by contacting Katy Montgomery, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding BIC C, L.L.C. dba Bic C Food Mart, Docket No. 2016-1409-PST-E on January 31, 2017, assessing \$3,375 in administrative penalties with \$675 deferred. Information concerning any aspect of this order may be obtained by contacting Melissa Castro, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding MSBK, LLC dba Exxon Deli, Docket No. 2016-1410-PST-E on January 31, 2017, assessing \$4,500 in administrative penalties with \$900 deferred. Information concerning any aspect of this order may be obtained by contacting Larry Butler, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding CROWN Cork & Seal USA, Inc., Docket No. 2016-1413-AIR-E on January 31, 2017, assessing \$4,575 in administrative penalties with \$915 deferred. Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ADVANCE PETROLEUM DISTRIBUTING COMPANY, INC. dba Automated Fueling 81, Docket No. 2016-1423-PST-E on January 31, 2017, assessing \$3,750 in administrative penalties with \$750 deferred. Information concerning any aspect of this order may be obtained by contacting Benjamin Sakmar, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ALL SEASONS CORNER, LLC, Docket No. 2016-1428-PST-E on January 31, 2017, assessing \$4,125 in administrative penalties with \$825 deferred. Information concerning any aspect of this order may be obtained by contact-

ing Anthony Rios, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding East Texas Convenience, LLC dba Villager Grocery, Docket No. 2016-1446-PST-E on January 31, 2017, assessing \$3,563 in administrative penalties with \$712 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie McCurley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding VRV CORPORATION dba Kennedale Filling Station, Docket No. 2016-1449-PST-E on January 31, 2017, assessing \$6,142 in administrative penalties with \$1,228 deferred. Information concerning any aspect of this order may be obtained by contacting Benjamin Sakmar, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Steve Hedrick dba Delta Steel DFW, Docket No. 2016-1459-PST-E on January 31, 2017, assessing \$3,516 in administrative penalties with \$703 deferred. Information concerning any aspect of this order may be obtained by contacting Anthony Rios, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Worth Doing Right, LLC dba Area A RV Park, Docket No. 2016-1473-PWS-E on January 31, 2017, assessing \$550 in administrative penalties with \$110 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Penske Truck Leasing Co., L.P., Docket No. 2016-1497-PST-E on January 31, 2017, assessing \$5,834 in administrative penalties with \$1,166 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Jim Eanes dba Midway Grocery, Docket No. 2016-1508-PST-E on January 31, 2017, assessing \$4,629 in administrative penalties with \$925 deferred. Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SAI SUMU INC dba Andys Food Store, Docket No. 2016-1510-PST-E on January 31, 2017, assessing \$4,500 in administrative penalties with \$900 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding M. LIPSITZ & CO., LTD., Docket No. 2016-1511-PST-E on January 31, 2017, assessing \$3,375 in administrative penalties with \$675 deferred. Information concerning any aspect of this order may be obtained by contacting Larry Butler, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding H P DISCOUNT LIQUOR INC dba Discount Center, Docket No. 2016-1515-PST-E on January

31, 2017, assessing \$2,556 in administrative penalties with \$511 deferred. Information concerning any aspect of this order may be obtained by contacting Claudia Corrales, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Cameron Communications, L.L.C., Docket No. 2016-1516-PST-E on January 31, 2017, assessing \$3,130 in administrative penalties with \$626 deferred. Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding CHAHAL STORES INC dba JD Convenience Store, Docket No. 2016-1524-PST-E on January 31, 2017, assessing \$3,375 in administrative penalties with \$675 deferred. Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Buddies Kwik Stop, LLC dba Buchanan Dam Food Mart, Docket No. 2016-1542-PST-E on January 31, 2017, assessing \$4,255 in administrative penalties with \$851 deferred. Information concerning any aspect of this order may be obtained by contacting Jonathan Nguyen, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Chilton Independent School District, Docket No. 2016-1562-PST-E on January 31, 2017, assessing \$3,563 in administrative penalties with \$712 deferred. Information concerning any aspect of this order may be obtained by contacting Larry Butler, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Flo-Mart, LLC, Docket No. 2016-1574-PST-E on January 31, 2017, assessing \$4,630 in administrative penalties with \$926 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie McCurley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding C&R DISTRIBUTING, LLC, Docket No. 2016-1577-PST-E on January 31, 2017, assessing \$1,607 in administrative penalties with \$321 deferred. Information concerning any aspect of this order may be obtained by contacting Anthony Rios, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Georgetown Independent School District, Docket No. 2016-1645-EAQ-E on January 31, 2017, assessing \$813 in administrative penalties with \$162 deferred. Information concerning any aspect of this order may be obtained by contacting Melissa Castro, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SEIFERT AND SON, INC. dba Edward J. Seifert Oil, Docket No. 2016-1717-PST-E on January 31, 2017, assessing \$1,231 in administrative penalties with \$246 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Roving Meadows Utilities, Inc., Docket No. 2014-0464-MWD-E on February 1, 2017, assessing \$22,812 in administrative penalties with \$19,212 deferred. Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Continental Cream Quarries, LLC, Docket No. 2014-0952-MLM-E on February 1, 2017, assessing \$55,000 in administrative penalties with \$11,000 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Ingram Readymix No. 9, L.L.C. and Ingram Readymix, Inc., Docket No. 2015-0212-WQ-E on February 1, 2017, assessing \$11,714 in administrative penalties with \$2,342 deferred. Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Coreslab Structures (Texas) Inc., Docket No. 2015-0646-WQ-E on February 1, 2017, assessing \$24,287 in administrative penalties with \$4,857 deferred. Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Thornton, Docket No. 2015-0893-MWD-E on February 1, 2017, assessing \$4,375 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting James Boyle, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Dennis G. Rabroker dba Rabroker Dirt, Docket No. 2015-1005-WQ-E on February 1, 2017, assessing \$8,451 in administrative penalties with \$1,690 deferred. Information concerning any aspect of this order may be obtained by contacting Farhaud Abbaszadeh, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Eastland, Docket No. 2015-1157-MWD-E on February 1, 2017, assessing \$12,500 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ross Luedtke, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was adopted regarding Harrison County, Docket No. 2015-1297-PST-E on February 1, 2017, assessing \$5,626 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ian Groetsch, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Rhome, Docket No. 2015-1386-MWD-E on February 1, 2017, assessing \$72,000 in administrative penalties with \$14,400 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Van Lingham, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Darryl Wheeler dba Magnolia Lake RV Park, Docket No. 2015-1440-PWS-E on February 1, 2017, assessing \$1,154 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Carol McGrath, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding F & Z Enterprises Inc. dba Phillips Food Mart 2, Docket No. 2015-1582-PST-E on February 1, 2017, assessing \$30,480 in administrative penalties with \$13,680 deferred. Information concerning any aspect of this order may be obtained by contacting James Baldwin, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Np Community Development Corp., Docket No. 2015-1755-MSW-E on February 1, 2017, assessing \$70,313 in administrative penalties with \$66,713 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Village of Vinton, Docket No. 2016-0018-WQ-E on February 1, 2017, assessing \$21,375 in administrative penalties with \$4,275 deferred. Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Francisco Mendoza dba Golden R Meat Market, Docket No. 2016-0091-PST-E on February 1, 2017, assessing \$34,775 in administrative penalties with \$6,955 deferred. Information concerning any aspect of this order may be obtained by contacting James Baldwin, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Mazen, LLC dba Truck N Travel, Docket No. 2016-0303-PST-E on February 1, 2017, assessing \$26,622 in administrative penalties with \$5,324 deferred. Information concerning any aspect of this order may be obtained by contacting Holly Kneisley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Load Trail LLC, Docket No. 2016-0426-IWD-E on February 1, 2017, assessing \$108,314 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Austin Henck, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Bridgeport, Docket No. 2016-0456-MWD-E on February 1, 2017, assessing \$46,000 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Claudia Corrales, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Prime Materials, LLC, Docket No. 2016-0458-MLM-E on February 1, 2017, assessing \$13,125 in administrative penalties with \$2,625 deferred. Information concerning any aspect of this order may be obtained by contacting Farhaud Abbaszadeh, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding River Mart, Inc., Docket No. 2016-0555-PST-E on February 1, 2017, assessing \$9,000 in administrative penalties with \$1,800 deferred. Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Blanchard Refining Company LLC, Docket No. 2016-0603-AIR-E on February 1, 2017, assessing \$13,125 in administrative penalties with \$2,625 deferred. Information concerning any aspect of this order may be obtained by contacting Raime Hayes-Falero, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Hollywood Food & Gas Inc. dba Medina Base Quick Mart, Docket No. 2016-0610-PST-E on February 1, 2017, assessing \$18,731 in administrative penalties with \$3,746 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Fort Worth, Docket No. 2016-0658-PST-E on February 1, 2017, assessing \$24,650 in administrative penalties with \$4,930 deferred. Information concerning any aspect of this order may be obtained by contacting Holly Kneisley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Rosemary Conners, Docket No. 2016-0719-EAQ-E on February 1, 2017, assessing \$12,500 in administrative penalties with \$2,500 deferred. Information concerning any aspect of this order may be obtained by contacting Larry Butler, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Hamby Water Supply Corporation, Docket No. 2016-0741-PWS-E on February 1, 2017, assessing \$172 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Basf Total Petrochemicals LLC, Docket No. 2016-0765-AIR-E on February 1, 2017, assessing \$315,000 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Intertek Usa Inc., Docket No. 2016-0771-IHW-E on February 1, 2017, assessing \$12,564 in administrative penalties with \$2,512 deferred. Information concerning any aspect of this order may be obtained by contacting Holly Kneisley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Caspian Management Group, Inc. dba Texaco Travel Plaza, Docket No. 2016-0780-PST-E on February 1, 2017, assessing \$13,225 in administrative penalties with \$2,645 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Cowboy Star Inc. dba Berkleys Food Store, Docket No. 2016-0803-PST-E on February 1, 2017, assessing \$14,094 in administrative penalties with \$2,818 deferred. In-

formation concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding R&B Mobile Park, LLC, Docket No. 2016-0849-MWD-E on February 1, 2017, assessing \$7,950 in administrative penalties with \$1,590 deferred. Information concerning any aspect of this order may be obtained by contacting James Boyle, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Wolf Hollow Services, LLC, Docket No. 2016-0854-IWD-E on February 1, 2017, assessing \$48,937 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting James Boyle, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Maheen LLC dba Rosharon Food mart, Docket No. 2016-1072-PST-E on February 1, 2017, assessing \$9,948 in administrative penalties with \$1,989 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Pflugerville, Docket No. 2016-1123-MWD-E on February 1, 2017, assessing \$29,450 in administrative penalties with \$5,890 deferred. Information concerning any aspect of this order may be obtained by contacting Sandra Douglas, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Moulton, Docket No. 2016-1241-PWS-E on February 1, 2017, assessing \$799 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting James Fisher, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Consolidated Communications Services Company, Docket No. 2016-1357-PST-E on February 1, 2017, assessing \$8,182 in administrative penalties with \$1,636 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201700445
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 1, 2017



Notice of District Petition

TCEQ Internal Control No. D-05252016-045; Shady Grove Water Supply Corporation (Petitioner) filed a petition with the TCEQ to convert Shady Grove Water Supply Corporation to Shady Grove Special Utility District of Hunt County. North Collin Special Utility District's business address will be: P.O. Box 343, 2333 Sam Rayburn Highway, Melissa, Texas 75454. The petition was filed pursuant to Chapter 65 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The nature and purpose of the petition are for the conversion of Shady Grove Water Supply Corpora-

tion and the organization, creation and establishment of Shady Grove Special Utility District of Hunt County under the provisions of Article XVI, § 59 of the Texas Constitution, and Chapter 65 of the Texas Water Code, as amended. The District shall have the purposes and powers provided in Chapter 65 of the Texas Water Code, as amended. The nature of the services presently performed by Shady Grove Water Supply Corporation are to supply water for municipal uses, domestic uses, power and commercial purposes, and other beneficial uses or controls. The nature of the services proposed to be provided by Shady Grove Special Utility District of Hunt County are to supply water for municipal uses, domestic uses, power and commercial purposes, and other beneficial uses or controls. It is anticipated that conversion will have no adverse effects on the rates and services provided to the customers. The proposed District is located in Hunt County, and will contain approximately 6,938 acres.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-201700441

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 1, 2017



Notice of Opportunity to Comment on a Default Order Of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Order (DO). The commission staff proposes a DO

when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is 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 **March 14, 2017**. The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO 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 DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 13, 2017**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorney is available to discuss the DO and/or the comment procedure at the listed phone number; however, TWC, §7.075 provides that comments on the DO shall be submitted to the commission in **writing**.

(1) COMPANY: DFW Pro Lawn Care, LLC d/b/a Pro Lawn Care; DOCKET NUMBER: 2015-1810-LII-E; TCEQ ID NUMBER: RN109228726; LOCATION: 5309 Superior Parkway, Suite 117, Fort Worth, Tarrant County; TYPE OF FACILITY: landscape irrigation business; RULE VIOLATED: 30 TAC §344.70(b), by failing to display in all forms of written and electronic advertisements for irrigation services, the irrigator's license number in the form of "LI___"; PENALTY: \$250; STAFF ATTORNEY: Amanda Patel, Litigation Division, MC 175, (512) 239-3990; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201700426

Kathleen C. Decker

Director, Ligation Division

Texas Commission on Environmental Quality

Filed: January 31, 2017



Notice of Opportunity to Comment on a Shutdown/Default Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Order (S/DO). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overflow prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after

the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overflow prevention, and/or after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations, the proposed penalty, the proposed technical requirements necessary to bring the entity back into compliance, and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is 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 **March 14, 2017**. The commission will consider any written comments received and the commission may withdraw or withhold approval of an S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO 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 S/DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 14, 2017**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorney is available to discuss the S/DO and/or the comment procedure at the listed phone number; however, comments on the S/DO shall be submitted to the commission in **writing**.

(1) COMPANY: PERVEN, LLC dba STOP N DRIVE 2; DOCKET NUMBER: 2016-1045-PST-E; TCEQ ID NUMBER: RN101433019; LOCATION: 5138 Gulfway Drive, Port Arthur, Jefferson County; TYPE OF FACILITY: UST system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and 30 TAC §334.602(a), by failing to designate, train, and certify at least one individual for each class of operator - Class A, B, and C - for the facility; PENALTY: \$7,500; STAFF ATTORNEY: Adam Taylor, Litigation Division, MC 175, (512) 239-3345; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-201700423

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: January 31, 2017



Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

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 pub-

lic an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of 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 **March 14, 2017**. 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 A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 14, 2017**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: City of Silvertown; DOCKET NUMBER: 2016-1810-PWS-E; TCEQ ID NUMBER: RN102314796; LOCATION: 409 Broadway Street, Silvertown, Briscoe County; TYPE OF FACILITY: public water system; RULES VIOLATED: Texas Health and Safety Code, §341.0315(c) and 30 TAC §290.115(f)(1), 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: \$420; STAFF ATTORNEY: Isaac Ta, Litigation Division, MC 175, (512) 239-0683; REGIONAL OFFICE: Amarillo Regional Office, 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(2) COMPANY: CLEAR LAKE REGIONAL MEDICAL CENTER, INC.; DOCKET NUMBER: 2016-0847-PST-E; TCEQ ID NUMBER: RN106153133; LOCATION: 495 West Medical Center Boulevard, Webster, Harris County; TYPE OF FACILITY: underground storage tank (UST) system and UST for an emergency generator for a hospital; RULES VIOLATED: 30 TAC §334.7(d)(3), by failing to file a notice of change of information concerning the UST system within 30 days from the date of the occurrence of the change; 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST; PENALTY: \$3,036; STAFF ATTORNEY: Eric Grady, Litigation Division, MC 175, (512) 239-0655; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) AGREED ORDER NUNC PRO TUNC; COMPANY: Coryell County; DOCKET NUMBER: 2015-0662-WQ-E; TCEQ ID NUMBER: RN105490486; LOCATION: in the unincorporated area of Coryell County that is located within the Killeen Urbanized Area near Copperas Cove, Coryell County; TYPE OF FACILITY: small municipal separate storm sewer system (MS4); RULES VIOLATED: 40 Code of Federal Regulations §122.33(b)(1) and 30 TAC §281.25(b)(4), by

failing to maintain authorization to discharge storm water associated with a MS4; PENALTY: \$4,500; Supplemental Environmental Project offset amount of \$4,500 applied to the Texas Association of Resource Conservation and Development Areas, Inc. for the Wastewater Treatment Assistance project; STAFF ATTORNEY: Ian Groetsch, Litigation Division, MC 175, (512) 239-2225; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(4) COMPANY: George Mery d/b/a ECON LIQUORS, INC.; DOCKET NUMBER: 2016-0926-PST-E; TCEQ ID NUMBER: RN101760833; LOCATION: 1110 South Presa, San Antonio, Bexar County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.606, by failing to maintain required training certification documentation on-site and to provide it upon request to the TCEQ-authorized investigator; PENALTY: \$4,500; STAFF ATTORNEY: Adam Taylor, Litigation Division, MC 175, (512) 239-3345; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(5) COMPANY: James T. Thomas, Sr.; DOCKET NUMBER: 2015-1827-PWS-E; TCEQ ID NUMBER: RN105552707; LOCATION: 22 Raisin Road near Victoria, Victoria County; TYPE OF FACILITY: public water system; RULES VIOLATED: Texas Health and Safety Code, §341.033(d) and 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(A) and (f), by failing to collect routine distribution water samples for coliform analysis and by failing to provide public notification and submit a copy of the public notification to the executive director regarding the failure to collect routine samples; and TWC, §5.702 and 30 TAC §290.51(a)(6), by failing to pay public health service fees, including late fees, for TCEQ Financial Administration Account Number 92350061; PENALTY: \$3,929; STAFF ATTORNEY: Adam Taylor, Litigation Division, MC 175, (512) 239-3345; REGIONAL OFFICE: Corpus Christi Regional Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(6) COMPANY: Jim Dollins; DOCKET NUMBER: 2016-0568-WQ-E; TCEQ ID NUMBER: RN105464119; LOCATION: 4200 J J Flewellen Road, Waco, McLennan County; TYPE OF FACILITY: aggregate production operation (APO); RULE VIOLATED: 30 TAC §342.25(d), by failing to renew its APO registration annually as regulated activities continued; PENALTY: \$15,000; STAFF ATTORNEY: Eric Grady, Litigation Division, MC 175, (512) 239-0655; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(7) COMPANY: Kulsoom Yousuf, individually; Dallas Alishah Enterprises Inc.; and Yushra Investment, Inc. d/b/a Store T-24 2; DOCKET NUMBER: 2015-1733-PST-E; TCEQ ID NUMBER: RN102254091; LOCATION: 9947 Garland Road, Dallas, Dallas County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.602(a), by failing to designate a Class A and B Operator for the UST system; TWC, §26.3475(d) and 30 TAC §334.49(a)(2), by failing to provide corrosion protection for the UST system; and 30 TAC §334.54(b)(2), by failing to maintain all piping, pumps, manways, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons; PENALTY: \$10,350; STAFF ATTORNEY: Eric Grady, Litigation Division, MC 175, (512) 239-0655; REGIONAL

OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: LANAR, INC. d/b/a Three Corners Food Store; DOCKET NUMBER: 2016-1531-PST-E; TCEQ ID NUMBER: RN101556041; LOCATION: 100 East Mansfield Highway, Kennedale, Tarrant County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$4,125; STAFF ATTORNEY: Adam Taylor, Litigation Division, MC 175, (512) 239-3345; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: RF FOOD AND GAS, INC. d/b/a EZ Stop 6; DOCKET NUMBER: 2016-0983-PST-E; TCEQ ID NUMBER: RN104421615; LOCATION: 20115 South United States Highway 281, San Antonio, Bexar County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$5,755; STAFF ATTORNEY: Eric Grady, Litigation Division, MC 175, (512) 239-0655; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-201700424

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: January 31, 2017



Notice of Public Meeting for an Air Quality Permit Proposed Permit Number: 139955

APPLICATION. Cherry Crushed Concrete, Inc., 6131 Selinsky Road, Houston, Texas 77048-2006, has applied to the Texas Commission on Environmental Quality (TCEQ) for issuance of Proposed Air Quality Permit Number 139955, which would authorize construction of a Concrete Crushing Plant located at 9200 Winfield Road, Houston, Harris County, Texas 77050. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.902222&lng=-95.256666&zoom=13&type=r>. The proposed facility will emit the following contaminants: particulate matter including particulate matter with diameters of 10 microns or less and 2.5 microns or less.

The executive director has completed the technical review of the application and prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The executive director has made a preliminary decision to issue the permit because it meets all rules and regulations.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments to the Office of the Chief Clerk at the address below. The TCEQ will consider all public comments in developing a final decision on the application. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administra-

tive Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application, and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. At the conclusion of the comment period, all formal comments will be considered before a decision is reached on the permit application. A written response to all formal comments will be prepared by the Executive Director and will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Thursday, February 9, 2017 at 7:00 p.m.

DoubleTree by Hilton Houston Intercontinental Airport

15747 John F. Kennedy Boulevard

Houston, Texas 77032

INFORMATION. Citizens are encouraged to submit written comments anytime during the public meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at <http://www.tceq.texas.gov/about/comments.html>. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. General information can be found at our Web site at www.tceq.texas.gov. *Si desea información en español, puede llamar al (800) 687-4040.*

The permit application, executive director's preliminary decision, and draft permit will be available for viewing and copying at the TCEQ central office and the TCEQ Houston regional office, 5425 Polk Street, Suite H, Houston, Harris County, Texas, beginning the first day of publication of this notice. The facility's compliance file, if any exists, is available for public review at the TCEQ Houston regional office of the TCEQ. Further information may also be obtained from Cherry Crushed Concrete, Inc. at the address stated above or by calling Mrs. Elizabeth Stanko, Project Manager at (713) 244-1039.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least one week prior to the meeting.

Notice Issuance Date: January 25, 2017

TRD-201700438

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 1, 2017



Notice of Public Meeting for an Air Quality Standard Permit for Concrete Batch Plant Registration Proposed Registration Number: 142657

APPLICATION. JLB Contracting, LLC, P.O. Box 24131, Fort Worth, Texas 76124-1131, has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard

Permit for a Concrete Batch Plant Registration Number 142657, which would authorize construction of a permanent concrete batch plant under Title 30 Texas Administrative Code §116.611 (30 TAC § 116.611) at 7151 Randol Mill Road, Fort Worth, Tarrant County, Texas 76120. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=32.785781&lng=-97.203326&zoom=13&type=r>. The proposed facility will emit the following air contaminants: particulate matter including (but not limited to) aggregate, cement, road dust, and particulate matter with diameters of 10 microns or less and 2.5 microns or less.

The executive director has completed the technical review of the application and determined that the application meets all of the requirements of a Standard Permit authorized by 30 TAC § 116.611 which would establish the conditions under which the facility must operate. The executive director has made a preliminary decision to issue the registration because it meets all rules and regulations.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments to the Office of the Chief Clerk at the address below. The TCEQ will consider all public comments in developing a final decision on the application. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. At the conclusion of the comment period, all formal comments will be considered before a decision is reached on the permit application. A written response to all formal comments will be prepared by the Executive Director and will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Thursday, February 16, 2017 at 7:00 p.m.

John T. White Elementary School Auditorium

7300 John T. White Road

Fort Worth, Texas 76120

INFORMATION. Citizens are encouraged to submit written comments anytime during the public meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at <http://www.tceq.texas.gov/about/comments.html>. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. General information can be found at our Web site at www.tceq.texas.gov. *Si desea información en español, puede llamar al (800) 687-4040.*

The permit application, executive director's preliminary decision, and standard permit will be available for viewing and copying at the TCEQ central office, the TCEQ Dallas/Fort Worth regional office, and the Fort

Worth Library - East Regional Branch, 6301 Bridge Street, Fort Worth, Tarrant County, Texas. The facility's compliance file, if any exists, is available for public review at the TCEQ Dallas/Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas. Further information may also be obtained from JLB Contracting, LLC at the address stated above or by calling Mr. Sam Davis, President at (817) 261-2991.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least one week prior to the meeting.

Notice Issuance Date: January 31, 2017

TRD-201700439

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 1, 2017



Notice of Water Rights Application

Notice issued January 27, 2017

APPLICATION NO. 13338; Lonestar Operating, LLC, 600 Bailey Ave. Suite 200, Fort Worth, Texas 76107, Applicant, seeks a temporary water use permit to divert and use not to exceed 100 acre-feet of water within a period of six months from Carter Lake (authorized by Certificate of Adjudication No. 12-5310) located on an unnamed tributary of Carters Creek, Brazos River Basin for mining purposes in Brazos County. The application and fees were received on August 8, 2016. Additional information was received on December 2 and December 5, 2016. The application was declared administratively complete and filed with the Office of the Chief Clerk on December 08, 2016. The Executive Director completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would include special conditions including, but not limited to, stream-flow restrictions and installing a measuring device for diversions. The application, technical memoranda, and Executive Director's draft permit are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Bldg. F., Austin, TX 78753. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided below, by February 14, 2017.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement (I/we) request a contested case hearing; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105,

TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en Español, puede llamar al (800) 687-4040.

TRD-201700440

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 1, 2017



Update to the Water Quality Management Plan

The Texas Commission on Environmental Quality (TCEQ or commission) requests comments from the public on the draft January 2017 Update to the Water Quality Management Plan (WQMP) for the State of Texas.

Download the draft January 2017 WQMP Update at https://www.tceq.texas.gov/permitting/wqmp/WQmanagement_updates.html or view a printed copy at the TCEQ Library, Building A, 12100 Park 35 Circle, Austin, Texas.

The WQMP is developed and promulgated in accordance with the requirements of Federal Clean Water Act, §208. The draft update includes projected effluent limits of specific domestic dischargers, which may be useful for planning in future permit actions. The draft update may also contain service area populations for listed wastewater treatment facilities, designated management agency information, and total maximum daily load (TMDL) revisions.

Once the commission certifies a WQMP update, it is submitted to the United States Environmental Protection Agency (EPA) for approval. For some Texas Pollutant Discharge Elimination System (TPDES) permits, the EPA's approval of a corresponding WQMP update is a necessary precondition to TPDES permit issuance by the commission.

Deadline

All comments must be received at the TCEQ no later than **5:00 p.m. on March 13, 2017**.

How to Submit Comments

Comments must be submitted in writing to:

Nancy Vignali, Texas Commission on Environmental Quality Water Quality Division, MC 150 P.O. Box 13087 Austin, Texas 78711-3087

Comments may also be faxed to (512) 239-4420, but must be followed up with written comments by mail within three working days of the fax date or by the comment deadline, whichever is sooner.

For further information, or questions, please contact Ms. Vignali by phone at (512) 239-1303 or by email at Nancy.Vignali@tceq.texas.gov.

TRD-201700434

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: January 31, 2017



Texas Ethics Commission

List of Late Filers

Below is a list from the Texas Ethics Commission of names of filers who did not file a report or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Michelle Gonzales at (512) 463-5800.

Deadline: Semiannual Report due July 15, 2015, for Candidates and Officeholders

Kevin P. Ludlow, 1235 Broadmoor Dr., Austin, Texas 78723

Deadline: Semiannual Report due January 15, 2016, for Candidates and Officeholders

Amanda M. Rudolph, 4575 FM 2864, Nacogdoches, Texas 75965

Deadline: 30-Day Pre-Election Report due October 11, 2016, for Candidates and Officeholders

Ronald E. Reynolds, 6140 Hwy. 6 South, Ste. 233, Missouri City, Texas 77459-3802 (\$500)

TRD-201700388

Ian Steusloff

Interim Executive Director

Texas Ethics Commission

Filed: January 26, 2017

Department of Family and Protective Services

Correction of Error

The Department of Family and Protective Services filed an updated chart regarding 40 TAC, Chapter 745, Licensing, §745.651 of this title (relating to What types of criminal convictions may affect a person's ability to be present at an operation?). The charts were published in the January 20, 2017, issue of the *Texas Register* in the "In Addition" section. The following text was inadvertently omitted by the agency, along with the charts.

Criminal History Requirements for Child Care Operations

Section 745.651 of this title (relating to What types of criminal convictions may affect a person's ability to be present at an operation?) states that the three charts listed in subsection (a) of the section will be updated annually and published every January in the *Texas Register* as an "In Addition" document. The three charts are entitled: (1) Licensed or Certified Child Care Operations: Criminal History Requirements; (2) Foster or Adoptive Placements: Criminal History Requirements; and (3) Registered Child Care Homes and Listed Family Homes: Criminal History Requirements. Each chart has three parts to it: an introduction that explains the types of operations each chart covers, that defines certain terms used in the chart, and that clarifies certain assumptions; a Table of Contents; and the actual chart.

There have been changes made to each chart, which include: (1) adding notation to the Licensed or Certified Child Care Operations: Criminal History Requirements and Registered Child Care Homes and Listed Family Homes: Criminal History Requirements charts to reflect action required for certain offenses due to the implementation of federal Child Care Development Block Grant legislation (42 USC 9858f.548H); (2) adding notation to all three charts to indicate when action is still required if certain felony offenses are reduced to a misdemeanor conviction as a result of TPC 12.44(b), but the criminal activity may still indicate risk; and (3) updated Risk Evaluation requirements for certain offenses due to the severity of the crimes.

TRD-201700431

Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Filed: January 31, 2017

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 January 2, 2017, through January 13, 2017. 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 3, 2017. The public comment period for this project will close at 5:00 p.m. on Monday, March 6, 2017.

FEDERAL AGENCY ACTIVITIES:

Applicant: United States Army Corps of Engineers

Project Description: The U.S. Army Corps of Engineers (Corps) announced the reissuance of all 50 existing nationwide permits (NWPs), general conditions, and definitions with some modifications. The Corps also issued two new NWPs, one new general condition, and five new definitions. The 2017 NWPs will go into effect on March 19, 2017 and will expire on March 18, 2022. Proposed final regional conditions for the Southwestern Division are also under consideration.

CMP Project No: 17-1107-F5

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from Mr. Jesse Solis, P.O. Box 12873, Austin, Texas 78711-2873, or via email at federal.consistency@glo.texas.gov. Comments should be sent to Mr. Solis at the above address or by email.

TRD-201700444

Anne L. Idsal

Chief Clerk, Deputy Land Commissioner

General Land Office

Filed: February 1, 2017

Texas Health and Human Services Commission

Public Notice - Amendment to the Deaf Blind with Multiple Disabilities Waiver Program

The Texas Health and Human Services Commission (HHSC) is submitting to the Centers for Medicare & Medicaid Services (CMS) a request for an amendment to the Deaf Blind with Multiple Disabilities (DBMD) waiver program, a waiver implemented under the authority of section 1915(c) of the Social Security Act. CMS has approved this waiver through February 28, 2018. The proposed effective date for the amendment is February 28, 2017, with no changes to cost neutrality.

This notice revises and is intended to replace the notice that was sent on January 6, 2017. CMS has approved this waiver through February 28, 2018. The proposed changes are considered non-substantive for purposes of 42 CFR §441.304.

This amendment request proposes to make the following changes:

Appendix B and Appendix J: The waiver is being amended to increase the unduplicated count of participants (Factor C) and the point-in-time (PIT). The Factor C and PIT updates will be for waiver year 4 and 5. Appendix B and J will be updated to include additional DBMD waiver enrollments based on legislative funding. In Appendix J, Factor D and D' are being updated to reflect the changes regarding Community First Choice in Amendment 3 that was effective February 28, 2016.

The Deaf Blind with Multiple Disabilities program serves individuals with legal blindness, deafness, or a condition that leads to deaf-blindness, and at least one additional disability that limits functional abilities. The program serves individuals in the community who would otherwise require care in an intermediate care facility for individuals with an intellectual disability or related condition (ICF/IID).

An individual may obtain free copies of the proposed waiver amendment, including the DBMD settings transition plan, or if you have questions, need additional information, or wish to submit comments regarding this amendment or the DBMD settings transition plan, interested parties may contact Jacqueline Pernell by U.S. mail, telephone, fax, or email. The addresses are as follows:

U.S. Mail

Texas Health and Human Services Commission

Attention: Jacqueline Pernell, Waiver Coordinator, Policy Development Support

PO Box 13247

Mail Code H-600

Austin, Texas 78711-3247

Telephone

(512) 428-1931

Fax

Attention: Jacqueline Pernell, Waiver Coordinator, at (512) 730-7477

Email

TX_Medicaid_Waivers@hhsc.state.tx.us.

TRD-201700442

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: February 1, 2017



Department of State Health Services

Licensing Actions for Radioactive Materials

During the first half of January, 2017, 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 TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, 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 granting exemptions to the licensing requirements of Chapter 289, the Department has determined that the exemption is not prohibited by law and will not result in a significant risk to public health and safety and the environment.

A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. 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. 25 TAC, §289.205(b)(15); Health and Safety Code, §401.003(15). Requests must be made in writing and should contain the words "hearing request," the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radiation Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: 512-834-6690, or by e-mail to: RAMlicensing@dshs.state.tx.us.

NEW LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Houston	Keane Frac L.P.	L06829	Houston	00	01/10/17
Lubbock	META Isotope Technology L.L.C.	L06827	Lubbock	00	01/02/17
Shenandoah	Jasmine R. Khan M.D., P.A. dba The Woodlands Heart and Vascular Center	L06828	Shenandoah	00	01/09/17

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
Arlington	Texas Oncology P.A.	L05116	Arlington	29	01/10/17
Austin	St. David's Healthcare Partnership L.P., L.L.P dba St. David's Medical Center	L00740	Austin	141	01/09/17
Austin	Austin Heart P.L.L.C.	L04623	Austin	90	01/06/17
Baytown	JSW Steel USA Inc.	L06717	Baytown	01	01/10/17
Dallas	Triad Isotopes Inc.	L06334	Dallas	13	01/09/17
Dallas	Dallas Medical Center L.L.C.	L06584	Dallas	07	01/11/17
Fort Worth	Texas Oncology P.A.	L05545	Fort Worth	57	01/13/17
Freeport	BASF Corporation	L01021	Freeport	64	01/05/17
Houston	Houston Refining L.P.	L00187	Houston	74	01/04/17
Houston	Memorial Hermann Health System dba Memorial Hermann Southwest Hospital	L00439	Houston	224	01/10/17
Houston	Memorial Hermann Health System dba Memorial Hermann Memorial City Medical Center	L01168	Houston	168	01/17/17
Houston	Memorial Hermann Health System dba Memorial Hermann Northeast Hospital	L02412	Houston	119	01/10/17

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

Houston	Memorial Hermann Health System dba Memorial Hermann Katy Hospital	L03052	Houston	82	01/10/17
Houston	Memorial Hermann Health System dba Memorial Hermann Sugarland Hospital	L03457	Houston	62	01/17/17
Houston	Memorial Hermann Health System dba Mem. Hermann Hospital The Woodlands	L03772	Houston	142	01/09/17
Houston	Memorial Hermann Health System dba Mem. Hermann Hospital The Woodlands	L03772	Houston	143	01/10/17
Houston	South Texas Nuclear Pharmacy	L05304	Houston	15	01/13/17
Houston	Memorial Hermann Medical Group	L06430	Houston	22	01/17/17
Houston	St. Luke's Hospital at the Vintage	L06612	Houston	03	01/04/17
Houston	Versa Integrity Group Inc	L06669	Houston	11	01/10/17
Houston	Providence Hospital of North Houston L.L.C.	L06773	Houston	01	01/04/17
Irving	Health Texas Provider Network dba Cottonwood Cardiology	L06414	Irving	03	01/10/17
Kerrville	Sid Peterson Memorial Hospital dba Peterson Regional Medical Center	L01722	Kerrville	43	01/10/17
Lake Jackson	The Dow Chemical Company	L00451	Lake Jackson	102	01/17/17
Lubbock	University Medical Center	L04719	Lubbock	155	01/03/17
Lubbock	Caprock Cardiovascular Center L.L.P.	L06783	Lubbock	01	01/17/17
Orange	E I DU De Nemours & Co.	L00005	Orange	80	01/10/17
Plano	Texas Health Resources dba Heart First	L06480	Plano	12	01/12/17
Port Lavaca	Memorial Medical Center in Calhoun County	L04685	Port Lavaca	11	01/09/17
San Antonio	South Texas Radiology Imaging Centers	L00325	San Antonio	236	01/10/17
San Antonio	Alamo Cement Company	L04951	San Antonio	13	01/13/17
Sugar Land	TMH Physician Associates P.L.L.C. dba Methodist Diagnostic Cardiology of Houston	L06527	Sugar Land	04	01/03/17
Texas City	Blanchard Refining Company L.L.C.	L06526	Texas City	10	01/03/17
Texas City	Blanchard Refining Company L.L.C.	L06526	Texas City	11	01/12/17
Throughout TX	US NDI Inc.	L06597	Abilene	03	01/04/17
Throughout TX	US NDI L.L.C.	L06597	Abilene	04	01/17/17
Throughout TX	Weatherford International L.L.C.	L00747	Benbrook	105	01/17/17
Throughout TX	Spectrum Tracker Services L.L.C.	L06361	Corpus Christi	09	01/05/17
Throughout TX	HVJ North Texas-Chelliah Consultants Inc.	L06807	Dallas	01	01/05/17
Throughout TX	D&S Engineering Labs L.L.C.	L06677	Denton	08	01/04/17
Throughout TX	EFR Alta Mesa L.L.C.	L05939	Encino	08	01/05/17
Throughout TX	Sterigenics U.S., L.L.C.	L03851	Fort Worth	46	01/17/17
Throughout TX	National Inspection Services L.L.C.	L05930	Fort Worth	39	01/04/17
Throughout TX	Professional Service Industries Inc.	L06169	Harker Heights	04	01/03/17
Throughout TX	HTS Inc. Consultants	L02757	Houston	23	01/13/17
Throughout TX	Amerapex Corporation	L06417	Houston	13	01/03/17
Throughout TX	Micro Motion Inc. dba Roxar	L06760	Houston	02	01/17/17
Throughout TX	Spectral Oil & Gas Corporation	L06231	Humble	05	01/13/17
Throughout TX	City of Lubbock Street /Draining Engineering	L01735	Lubbock	39	01/11/17
Throughout TX	Rush Wellsite Services L.L.C.	L06723	Midland	01	01/04/17
Throughout TX	Team Industrial Services Inc.	L00087	Pasadena	243	01/06/17
Throughout TX	CIMA Inspection Inc.	L06586	Pasadena	06	01/11/17
Throughout TX	Truglo Inc.	L05519	Richardson	14	01/03/17
Throughout TX	PSI Wireline Inc.	L05911	San Angelo	09	01/04/17
Throughout TX	Oilpatch NDT L.L.C.	L06718	Seabrook	05	01/03/17
Victoria	Invista Sarl	L00386	Victoria	91	01/03/17
Waco	Hillcrest Baptist Medical Center dba Baylor Scott & White	L00845	Waco	111	01/06/17
Waco	Waco Cardiology Associates	L05158	Waco	23	01/04/17

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

Weatherford	Weatherford Texas Hospital Company L.L.C. dba Weather Regional Medical Center	L02973	Weatherford	34	01/11/17
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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
Brownwood	Brownwood Hospital L.P. dba Brownwood Regional Medical Center	L02322	Brownwood	63	01/06/17
Paris	Heart Clinic of Paris P.A.	L06013	Paris	05	01/10/17

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
Throughout TX	KEANE FRAC TX LLC	L06799	HOUSTON	03	01/10/17

TRD-201700384
 Lisa Hernandez
 General Counsel
 Department of State Health Services
 Filed: January 25, 2017

Applications will be accepted on a first-come, first-served basis until Thursday, June 1, 2017, 5:00 p.m. Austin local time as further described in the NOFAs.

TRD-201700447
 Timothy K. Irvine
 Executive Director
 Texas Department of Housing and Community Affairs
 Filed: February 1, 2017

◆ ◆ ◆
Texas Department of Housing and Community Affairs

Notice of Funding Availability

The Texas Department of Housing and Community Affairs ("Department") is making available 2017 HOME Investment Partnerships Program ("HOME") funding for single family activities.

Funds will be available through two 2017 HOME Program Notice of Funding Availability ("NOFA") for Single Family Programs including approximately \$2,000,000 for Single Family Development ("SFD") activities and approximately \$3,000,000 Tenant-Based Rental Assistance and Homebuyer Assistance activities. Applications will be awarded on a first-come first-served basis.

The availability and use of these funds are subject to the Department's Administrative Rule at 10 TAC Chapter 1, Enforcement Rule at 10 TAC Chapter 2, Single Family Umbrella Rules at 10 TAC Chapter 20, the Minimum Energy Efficiency Requirements for Single Family Construction Activities at 10 TAC Chapter 21, the Department's HOME Program Rule at 10 TAC Chapter 23, and federal regulations governing the HOME Program at 24 CFR Part 92.

The NOFAs are available on the Department's website at <http://www.td-hca.state.tx.us/nofa.htm>.

All Application materials including manuals, NOFA, program guidelines, and applicable HOME rules and regulations are available on the Department's website at <http://www.td-hca.state.tx.us/home-division/applications.htm>.

◆ ◆ ◆
Texas Department of Insurance

Company Licensing

Application to do business in the State of Texas by DONEGAL MUTUAL INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Marietta, Pennsylvania.

Application to do business in the State of Texas by CROWN GLOBAL INSURANCE COMPANY OF AMERICA, a life, accident and/or health company. The home office is in Wilmington, Delaware.

Application to do business in the State of Texas by UNITED HOME INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Paragould, Arkansas.

Application to do business in the State of Texas by ISMIE MUTUAL INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Chicago, Illinois.

Application for incorporation in the State of Texas by LIFE OPTIONS INSURANCE COMPANY, a domestic life, accident and/or health company. The home office is in Houston, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Jeff Hunt, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201700443
Norma Garcia
General Counsel
Texas Department of Insurance
Filed: February 1, 2017



Notice of Application by a Small Employer Issuer to be a Risk-Assuming Issuer

Notice is given to the public of the application of the listed small employer health benefit plan issuer to be a risk-assuming health benefit plan issuer under Insurance Code §1501.312. A small employer health benefit plan issuer is defined by Insurance Code §1501.002(16) as a health benefit plan issuer offering, delivering, issuing for delivery, or renewing health benefit plans subject to Insurance Code Chapter 1501, Subchapters C - H. A risk-assuming health benefit plan issuer is defined by Insurance Code §1501.301(4) as a small employer health benefit plan issuer that does not participate in the Texas Health Reinsurance System. The following small employer health benefit plan issuer has applied to be a risk-assuming health benefit plan issuer:

UnitedHealthcare of Texas, Inc.

The issuer's application is available for public inspection at the Texas Department of Insurance, Legal Services, Office of Policy Development Counsel. To inspect the application, contact Robert Rucker, Staff Attorney, William P. Hobby Jr. Building, 333 Guadalupe, Tower I, Room 930C, Austin, Texas.

If you wish to comment on the application from UnitedHealthcare of Texas, Inc. to be a risk-assuming issuer, you must submit your written comments within 60 days after publication of this notice in the *Texas Register* to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or by email to chiefclerk@tdi.texas.gov. On consideration of the application, if the commissioner is satisfied that all requirements of law have been met, the commissioner or the commissioner's designee may take action to approve UnitedHealthcare of Texas, Inc.'s application to be a risk-assuming issuer.

TRD-201700386
Norma Garcia
General Counsel
Texas Department of Insurance
Filed: January 26, 2017



Notice of Application by a Small Employer Issuer to be a Risk-Assuming Issuer

Notice is given to the public of the application of the listed small employer health benefit plan issuer to be a risk-assuming health benefit plan issuer under Insurance Code §1501.312. A small employer health benefit plan issuer is defined by Insurance Code §1501.002(16) as a health benefit plan issuer offering, delivering, issuing for delivery, or renewing health benefit plans subject to Insurance Code Chapter 1501, Subchapters C - H. A risk-assuming health benefit plan issuer is defined by Insurance Code §1501.301(4) as a small employer health benefit plan issuer that does not participate in the Texas Health Reinsurance System. The following small employer health benefit plan issuer has applied to be a risk-assuming health benefit plan issuer:

UnitedHealthcare Insurance Company

The issuer's application is available for public inspection at the Texas Department of Insurance, Legal Services, Office of Policy Development Counsel. To inspect the application, contact Robert Rucker, Staff Attorney, William P. Hobby Jr. Building, 333 Guadalupe, Tower I, Room 930C, Austin, Texas.

If you wish to comment on the application from UnitedHealthcare Insurance Company to be a risk-assuming issuer, you must submit your written comments within 60 days after publication of this notice in the *Texas Register* to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or by email to chiefclerk@tdi.texas.gov. On consideration of the application, if the commissioner is satisfied that all requirements of law have been met, the commissioner or the commissioner's designee may take action to approve UnitedHealthcare Insurance Company's application to be a risk-assuming issuer.

TRD-201700387
Norma Garcia
General Counsel
Texas Department of Insurance
Filed: January 26, 2017



Texas Lottery Commission

Scratch Ticket Game Number 1868 "Bonus Cashword"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 1868 is "BONUS CASHWORD". The play style is "crossword".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 1868 shall be \$3.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 1868.


A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z and BLACKENED SQUARE SYMBOL.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. Crossword and Bingo style games do not typically have Play Symbol Captions. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1868 - 1.2D

PLAY SYMBOL	CAPTION
A	
B	
C	
D	
E	
F	
G	
H	
I	
J	
K	
L	
M	
N	
O	
P	
Q	
R	
S	
T	
U	
V	
W	
X	
Y	
Z	
 SYMBOL	

E. Serial Number- A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Scratch Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Pack-Scratch Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1868), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket

numbers start with 001 and end with 125 within each Pack. The format will be: 1868-0000001-001.

H. Pack - A Pack of "BONUS CASHWORD" Scratch Ticket Game contains 125 Tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 125 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other Pack will reverse i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 125 will be shown on the back of the Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does

not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - A Texas Lottery "BONUS CASHWORD" Scratch Ticket Game No. 1868.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "BONUS CASHWORD" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 141 (one hundred forty-one) possible Play Symbols. The player must scratch all of the 18 YOUR LETTERS and the 2 BONUS letters. The player then scratches all the letters found in the BONUS CASHWORD puzzle that exactly match the YOUR LETTERS and the BONUS letters. If the player has scratched at least 3 complete WORDS, the player wins the prize found in the PRIZE LEGEND. Only one prize paid per ticket. Only letters within the BONUS CASHWORD puzzle that are matched with the YOUR LETTERS and BONUS letters can be used to form a complete WORD. In the BONUS CASHWORD puzzle, every lettered square within an unbroken horizontal (left to right) or vertical (top to bottom) sequence must be matched with the YOUR LETTERS or BONUS letters to be considered a complete WORD. Words revealed in a diagonal sequence are not considered valid WORDS. Words within WORDS are not eligible for a prize. A complete WORD must contain at least three letters. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly one hundred forty-one (141) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption; Crossword and Bingo games do not typically have Play Symbol captions;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly 141 (one hundred forty-one) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Scratch Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 141 (one hundred forty-one) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 141 (one hundred forty-one) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have matching patterns of either Play Symbols or Prize Symbols.

B. A Ticket will win as indicated by the prize structure.

C. Each Ticket consists of a YOUR LETTERS play area, a BONUS letters play area and one BONUS CASHWORD Puzzle Grid.

D. The BONUS CASHWORD Puzzle Grid will be formatted with at least one thousand (1,000) configurations (i.e., puzzle layouts not including words).

E. All BONUS CASHWORD Puzzle Grid configurations will be formatted within a grid that contains eleven (11) spaces (height) by eleven (11) spaces (width).

F. Each word will appear only once per Ticket on the BONUS CASHWORD Puzzle Grid.

G. Each letter will only appear once per Ticket in the YOUR LETTERS play area and BONUS letters play area.

H. Each BONUS CASHWORD Puzzle Grid will contain the following: (a) 4 sets of 3 - letter words, (b) 5 sets of 4 - letter words, (c) 3 sets of 5 - letter words, (d) 3 sets of 6 - letter words, (e) 1 set of 7 - letter words, (f) 2 sets of 8 - letter words and (g) 1 set of 9 - letter words.

I. All BONUS CASHWORD Puzzle Grids will have an equal chance of winning a prize.

J. There will be a minimum of three (3) vowels in the YOUR LETTERS play area and BONUS letters play area combined.

K. The length of words found in the BONUS CASHWORD Puzzle Grid will range from three (3) to nine (9) letters.

L. Only words from the approved word list will appear in the BONUS CASHWORD Puzzle Grid. (Texas_Bonus_v2_2July2015.doc)

M. None of the prohibited words (Texas_Prohibited_v3_2July2015.doc) will appear horizontally (in either direction), vertically (in either direction) or diagonally (in either direction) in the YOUR LETTERS play area (including the BONUS letters play area). In addition, when all rows of the YOUR LETTERS (including the BONUS letters play area) are joined together into a single continuous row of letters (first row, followed by second row, etc.), none of the prohibited words will appear in either the forward or reverse direction.

N. A player will never find a word horizontally (in either direction), vertically (in either direction) or diagonally (in either direction) in the YOUR LETTERS play area that matches a word in the BONUS CASHWORD Puzzle Grid.

O. Each BONUS CASHWORD Puzzle Grid will have a maximum number of different grid formations with respect to other constraints. That is, for identically formatted BONUS CASHWORD Puzzles (i.e., the same grid), all "approved words" will appear in every logical (i.e., 3 letter word = 3 letter space) position, with regards to limitations caused by the actual letters contained in each word (i.e., this will not place the word "ZOO" in a position that causes an intersecting word to require the second letter to be "Z", when in fact, there are no approved words with a "Z" in the second letter position).

P. Each letter, with the exception of vowels, will appear no more than nine (9) times in the BONUS CASHWORD Puzzle Grid.

Q. No Ticket will match eleven (11) words or more.

R. Only one (1) prize paid per Ticket.

S. Three (3) to ten (10) completed words will be revealed as per the prize structure.

T. Sixteen (16) to eighteen (18) YOUR LETTERS will open at least one (1) letter in the BONUS CASHWORD Puzzle Grid. At least one (1) of the two (2) BONUS letters will open one (1) or more positions on the BONUS CASHWORD Puzzle Grid.

2.3 Procedure for Claiming Prizes.

A. To claim a "BONUS CASHWORD" Scratch Ticket Game prize of \$3.00, \$5.00, \$10.00, \$20.00, \$100 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay

a \$100 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "BONUS CASHWORD" Scratch Ticket Game prize of \$5,000 or \$50,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BONUS CASHWORD" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other BONUS CASHWORD to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "BONUS

CASHWORD" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "BONUS CASHWORD" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 35,040,000 Scratch Tickets in Scratch Ticket Game No. 1868. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1868 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$3	3,363,840	10.42
\$5	5,045,760	6.94
\$10	700,800	50.00
\$20	420,480	83.33
\$100	73,876	474.31
\$500	18,104	1,935.48
\$5,000	90	389,333.33
\$50,000	35	1,001,142.86

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.64. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 1868 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket

Game No. 1868, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-201700437
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: January 31, 2017

◆ ◆ ◆
Public Utility Commission of Texas

Notice of Application for Amendment to a Certificated Service Area Boundary

Notice is given to the public of an application filed on January 25, 2017, with the Public Utility Commission of Texas for an amendment to a certificated service area boundary in Kendall County, Texas.

Docket Style and Number: Application of Frontier Southwest Incorporated d/b/a Frontier Communications of Texas to Amend a Certificate of Convenience and Necessity for a Minor Service Area Boundary Change in Kendall County. Docket Number 46801.

The Application: The minor boundary amendment is being filed to realign the boundary between the Boerne exchange of Frontier Southwest Incorporated d/b/a Frontier Communications of Texas and the Kenberg exchange of Guadalupe Valley Telephone Cooperative, Inc. The amendment will transfer a portion of Frontier's serving area in the Boerne exchange to GVTC's Kenberg exchange.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by February 17, 2017, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 46801.

TRD-201700404
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 30, 2017

Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on January 26, 2017, pursuant to the Texas Water Code.

Docket Style and Number: Application of Melvin Block and City of Bridge City for Sale, Transfer, or Merger of Facilities and Certificate Rights in Orange County, Docket Number 46806.

The Application: Melvin Block and the City of Bridge City filed an application for approval of the sale, transfer, or merger of facilities and certificate rights in Orange County. Specifically, Bridge City seeks approval to purchase the water assets of Melvin Block, certificate of convenience and necessity number 11438, and retain the seller's current water certificated service areas. The total area being requested includes approximately 26.3 acres and serves 31 current customers.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the commission as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 46806.

TRD-201700418
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 30, 2017

Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on January 23, 2017, to amend a certificate of convenience and necessity for a proposed transmission line in Willacy and Cameron Counties, Texas.

Docket Style and Number: Application of AEP Texas to Amend a Certificate of Convenience and Necessity for the Bonilla to Ladekidde Double-Circuit 345-kV Transmission Line in Willacy and Cameron Counties, Docket Number 46716.

The Application: The application of AEP Texas for a proposed 345-kV transmission line located in Willacy and Cameron Counties is designated as the Bonilla to Ladekidde Double-Circuit 345-kV Transmission Line Project. The new 345-kV transmission line will begin at the new Bonilla substation to be constructed by AEP Texas located in Cameron County. The new transmission line will generally extend to the northeast until it reaches the new Ladekidde substation to be constructed by Magic Valley Wind Farm II, LLC in Willacy County. AEP Texas plans to construct the transmission line on steel single-pole structures, which initially will have only one 345-kV circuit installed. The total estimated cost for the project ranges from approximately \$49.5 million to \$75.4 million depending on the route chosen.

The proposed project is presented with 21 alternate routes and is estimated to be approximately 22 to 32 miles in length. Any of the routes or route segments presented in the application could, however, be approved by the commission.

This application includes facilities subject to the Coastal Management Program and must be consistent with the Coastal Management Program goals and policies.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. The deadline for intervention in this proceeding is March 9, 2017. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 46716.

TRD-201700399
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 27, 2017

Notice of Application to Amend a Water Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application to amend a water certificate of convenience and necessity.

Docket Style and Number: Application of Salado Water Supply Corporation to amend a Certificate of Convenience and Necessity in Bell County, Docket Number 46794.

The Application: Salado Water Supply Corporation filed an application to amend water certificate of convenience and necessity number 10879 in Bell County. The total area being requested includes approximately 120 acres and 0 current customers.

Persons wishing to intervene or comment on the action sought should contact the commission 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 telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 46794.

TRD-201700401
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 27, 2017



Notice of Application to Amend a Water Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application to amend a water certificate of convenience and necessity in Hopkins County.

Docket Style and Number: Application of Cash Special Utility District to Amend a Certificate of Convenience and Necessity in Hopkins County, Docket Number 46809.

The Application: Cash Special Utility District filed an application to amend its water certificate of convenience and necessity No. 10824 in Hopkins County, Texas. The total new service area being requested includes approximately 8 acres and 0 current customers.

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 telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 46809.

TRD-201700427
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 31, 2017



Notice of Application to Amend a Water Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application to amend a water certificate of convenience and necessity.

Docket Style and Number: Application of the City of Fort Worth to Amend a Certificate of Convenience and Necessity in Tarrant County, Docket Number 46808.

The Application: The City of Fort Worth filed an application to amend water certificate of convenience and necessity number 12311 in Tarrant County. The total area being requested includes approximately 84 acres and no current customers.

Persons wishing to intervene or comment on the action sought should contact the commission 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 telephone

(TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 46808.

TRD-201700429
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 31, 2017



Notice of Petition for Amendment to a 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 January 25, 2017, a petition to amend a certificate of convenience and necessity by expedited release in Travis County, Texas.

Docket Style and Number: Petition by Carma Easton, LLC to Amend Creedmoor-Maha Water Supply Corporation's Certificate of Convenience and Necessity in Travis County by Expedited Release, Docket No. 46802.

The Petition: Carma Easton, LLC filed a petition for the expedited release of two tracts of land that are smaller than 25 acres, one approximately 4.134 acres and the other approximately 19,808 square feet, that are adjacent to and contiguous with a tract of land that is greater than 25 acres from Creedmoor-Maha Water Supply Corporation's water certificate of convenience and necessity number 11029 in Travis County under Texas Water Code §13.254 (a-5) and 16 Texas Administrative Code §24.113(r).

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas no later than February 24, 2017, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 46802.

TRD-201700402
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 27, 2017



Notice of Petition for Amendment to a 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 January 25, 2017, a petition to amend a certificate of convenience and necessity by expedited release in Travis County, Texas.

Docket Style and Number: Petition by Carma Easton, LLC to Amend Creedmoor-Maha Water Supply Corporation's Certificate of Convenience and Necessity in Travis County by Expedited Release, Docket No. 46803.

The Petition: Carma Easton, LLC filed a petition for the expedited release of two adjacent and contiguous tracts of land, one approximately 37.390 acres and the other approximately 0.484 acres, from Creedmoor-Maha Water Supply Corporation's water certificate of convenience and necessity number 11029 in Travis County under Texas Water Code §13.254 (a-5) and 16 Texas Administrative Code §24.113(r).

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas no later than February 24, 2017, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 46803.

TRD-201700403
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 27, 2017

◆ ◆ ◆

Supreme Court of Texas

Order Adopting Amendments to Texas Rules of Appellate Procedure 9.4, 72.2, and 73.7

Misc. Docket No. 17-9007

ORDERED that:

By order dated December 1, 2016, in Misc. Docket No. 16-005, the Court of Criminal Appeals adopted amendments to Rules of Appellate Procedure 9.4, 72.2, and 73.7 and invited public comments. This joint order contains the final version of the amendments, which are effective February 1, 2017.

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: January 25, 2017.

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

9.4. Form....

(i) Length. . . .

(D) A petition and response in an original proceeding in the Supreme Court and the Court of Criminal Appeals, except for petitions and responses in an original proceeding in a case in which the death penalty has been assessed, a petition for review and response in the Supreme Court, a petition for discretionary review in the Court of Criminal Appeals, and a motion for rehearing and response in an appellate court: 4,500 words if computer-generated, and 15 pages if not.

(E) A reply to a response to a petition for review in the Supreme Court, a reply to a response to a petition in an original proceeding in the Supreme Court and the Court of Criminal Appeals, except a reply to a response in an original proceeding in a case in which the death penalty has been assessed, and a reply to a petition for discretionary review in the Court of Criminal Appeals: 2,400 words if computer-generated, and 8 pages if not.

(F) A petition and response in an original proceeding in the Court of Criminal Appeals in a case in which the death penalty has been assessed: 9,000 words if computer-generated, and 30 pages if not.

(G) A reply to a response to a petition in an original proceeding in the Court of Criminal Appeals in a case in which the death penalty has been assessed: 4,800 words if computer-generated, and 16 pages if not.

72.2. Disposition

If five judges tentatively believe that the case should be filed and set for submission, the motion for leave will be granted and the case will then be handled and disposed of in accordance with Rule 52.8. If the motion for leave is denied, no motions for rehearing or reconsideration will be entertained. But the Court may, on its own initiative, reconsider a denial of a motion for leave.

Rule 73. Postconviction Applications for Writs of Habeas Corpus....

Rule 73.7. New Evidence After Application Forwarded to Court of Criminal Appeals

If an Article 11.07 or 11.071 application has been forwarded to this Court, and a party wishes this Court to consider evidence not filed in the trial court, then the party must comply with the following procedures or the evidence will not be considered.

(a) If the Court of Criminal Appeals has received an Article 11.07 or 11.071 application from the district clerk of the county of conviction and has filed and set the application for submission, a party has two options:

(1) The party may file the evidence directly in the Court of Criminal Appeals with a motion for the Court of Criminal Appeals to consider the evidence. In this motion, the party should describe the evidence, explain its evidentiary value, and state why compelling and extraordinary circumstances exist for the Court of Criminal Appeals to consider the evidence directly. The moving party must immediately serve copies of the motion and the evidence the party seeks to file on the other party or parties in the case. If the Court of Criminal Appeals grants this motion, the Court will consider the evidence in its review of the application. The Court of Criminal Appeals will grant such a motion only if the Court concludes the circumstances are truly exceptional.

(2) The party may file in the Court of Criminal Appeals a motion to supplement the record in the trial court. In this motion, the party should describe the evidence the party intends to file, explain its evidentiary value, and state why the evidence could not have been filed in the trial

court before the Court of Criminal Appeals filed and set the application for submission. The moving party must immediately serve copies of the motion and the evidence the party seeks to file on the other party or parties in the case. If the Court of Criminal Appeals grants the motion, the party may file the evidence with the district clerk of the county of conviction, and should attach a copy of the motion to supplement and the Court of Criminal Appeals' order granting said motion. The district clerk shall immediately send a copy of the filed materials to the trial judge assigned to the habeas case and to the other party or parties in the case, and otherwise comply with the procedures set out in Rule 73.4(b) of these rules.

(b) If the Court of Criminal Appeals has received an Article 11.07 or 11.071 application from the district clerk of the county of conviction, but the Court has not yet filed and set the application for submission, the party must file in the Court of Criminal Appeals a motion to stay the proceedings pending the filing of the evidence in the trial court. In this motion, the party should describe the evidence the party intends to file and explain its evidentiary value. The moving party must immediately serve copies of the motion and the evidence the party seeks to file on the other party or parties in the case. If the Court of Criminal Appeals grants the motion, the Court will specify a designated time frame for the party to file the evidence with the district clerk of the county of conviction. The party should attach a copy of the motion to stay proceedings and the Court of Criminal Appeals' order granting said motion to the evidentiary filing. The district clerk of the county of conviction shall immediately send a copy of the filed materials to the trial judge assigned to the habeas case and to the other party or parties in the case, and otherwise comply with the procedures set out in Rule 73.4(b) of these rules.

Comment to 2017 change: Rule 73.7 is added. This rule only applies after an Article 11.07 or 11.071 application has been forwarded to the Court of Criminal Appeals. If an Article 11.07 or 11.071 application is pending in the trial court and has not been forwarded to the Court of Criminal Appeals, a party may file additional evidentiary materials with the district clerk of the county of conviction without filing any special motion in the Court of Criminal Appeals or the trial court. But the district clerk of the county of conviction still must immediately send a copy of the filed materials to the trial judge assigned to the habeas case and to the other party or parties in the case, and otherwise comply with the procedures set out in Rule 73.4(b) of these rules.

TRD-201700452
Martha Newton
Rules Attorney
Supreme Court of Texas
Filed: February 2, 2107



Texas Department of Transportation

Aviation Division - Request for Qualifications for Professional Architectural/Engineering Services

The City of Monahans, through its agent, the Texas Department of Transportation (TxDOT), intends to engage a professional architectural/engineering firm for services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT Aviation Division will solicit and receive qualification statements for the current aviation project as described below.

Current Project: City of Monahans; TxDOT CSJ No.: 1706MONHN.

Scope: Provide engineering/design services, including construction administration, to reconstruct Runway 12-30 (with pavement assessment).

The Agent, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§2000d - 2000d-4) and the Regulations, hereby notifies all respondents that it will affirmatively ensure that any contract entered into pursuant to this advertisement, that disadvantaged business enterprises will be afforded full and fair opportunity to submit in response to this solicitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

The proposed contract is subject to 49 CFR Part 26 concerning the participation of Disadvantaged Business Enterprises.

The DBE goal for the **design phase of the current project is 7%.** **The goal will be re-set for the construction phase.** TxDOT Project Manager is Stephanie Kleiber, PE.

A voluntary pre-submittal meeting is scheduled from 2:00 p.m. - 3:00 p.m. on February 23, 2017, at Roy Hurd Memorial Airport, 801 S. Mabel Street, Monahans, TX 79756. There will be an opportunity for interested firms to ask questions followed by an airport site visit.

Utilizing multiple engineering/design and construction grants over the course of the next five years, future scope of work items at the Roy Hurd Memorial Airport may include the following:

Reconstruction of Runway 12-30 and rehabilitation of airfield pavement.

The City of Monahans reserves the right to determine which of the above services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your qualification statement preparation, the criteria, 5010 drawing, project diagram, and most recent Airport Layout Plan are available online at <http://www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm> by selecting "Roy Hurd Memorial Airport." The qualification statement should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

AVN-550 Preparation Instructions:

Interested firms shall utilize the latest version of Form AVN-550, titled "Qualifications for Aviation Architectural/Engineering Services." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT website at <http://www.txdot.gov/inside-txdot/division/aviation/projects.html>. The form may not be altered in any way. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-550 template. The AVN-550 consists of eight pages of data plus one optional illustration page. A prime provider may only submit one AVN-550. If a prime provider submits more than one AVN-550, that provider will be disqualified. Responses to this solicitation WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

The completed Form AVN-550 **must be received** in the TxDOT Aviation eGrants system no later than March 21, 2017, 11:59 p.m. (CDST). Electronic facsimiles or forms sent by email or regular/overnight mail will not be accepted.

Firms that wish to submit a response to this solicitation must be a user in the TxDOT Aviation eGrants system no later than one business day

before the solicitation due date. To request access to eGrants, please complete the Contact Us webform located at <http://txdot.gov/government/funding/egrants-2016/aviation.html>.

An instructional video on how to respond to a solicitation in eGrants is available at <http://txdot.gov/government/funding/egrants-2016/aviation.html>.

Step by step instructions on how to respond to a solicitation in eGrants will also be posted in the RFQ packet at <http://www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm>.

The consultant selection committee will be composed of Aviation Division staff. The final selection by the committee will generally be made following the completion of review of AVN-550s. The committee will review all AVN-550s and rate and rank each. The Evaluation Criteria for Engineering Qualifications can be found at <http://www.txdot.gov/inside-txdot/division/aviation/projects.html> under Information for Consultants. All firms will be notified and the top rated firm will be contacted to begin fee negotiations for the design and bidding phases. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Kelle Chancey, Grant Manager. For technical questions, please contact Stephanie Kleiber, Project Manager.

For questions regarding responding to this solicitation in eGrants, please contact the TxDOT Aviation help desk at 1-800-687-4568 or avn-egrantshelp@txdot.gov.

TRD-201700435

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: January 31, 2017



Rescind Notice of Intent to Prepare an Environmental Impact Statement for the Lone Star Rail Project in Central Texas

The Federal Highway Administration (FHWA), the Texas Department of Transportation (TxDOT), and the Lone Star Rail District (LSRD) published a Notice of Intent in the *Texas Register* on October 17, 2014 (39 TexReg 8305) and a revised Notice of Intent on December 26, 2014 (39 TexReg 10556) to prepare an EIS for the proposed project to construct and operate the Lone Star Rail Project, a regional passenger rail service system connecting the greater Austin and San Antonio metropolitan areas. A Notice of Intent was also published in the Federal Register on October 6, 2014 (79 Fed. Reg. 60232). The proposed EIS was to evaluate the reasonable corridor alternatives.

The LSRD conducted numerous studies and conducted public meetings to gather input from the public and other stakeholders to consider in the development of the Draft EIS (DEIS). In October 2016, TxDOT requested that preparation of the DEIS be stopped and the Notice of Intent be rescinded. In January 2017, TxDOT provided information to FHWA supporting its request to rescind the Notice of Intent. FHWA published its Notice to Rescind Notice of Intent to prepare an EIS for the Lone Star Rail Project in the Federal Register on January 24, 2017 (82 Fed. Reg. 8255).

The request is based on a number of issues. First, Union Pacific Railroad Company (UPRR) cancelled the UPRR/LSRD agreement for the possible use of UPRR's MoPac corridor (the locally preferred alternative), rendering the alternative of using the UPRR right of way

nonviable. This action caused a cascade of additional actions by other entities, including the removal of the project from the Capital Area Metropolitan Planning Organization's (CAMPO) metropolitan transportation plan (MTP) and an ongoing effort to remove the project from the Alamo Area Metropolitan Planning Organization's (AAMPO) MTP. Pursuant to current regulations (23 C.F.R. Part 450), the project could not advance to a NEPA decision without being in both MPOs' MTPs. Further, TxDOT analyzed the remaining initially reasonable alternatives and determined that:

- The use of the IH 35 corridor would not be financially feasible due to ROW constraints and ongoing IH 35 improvements.
- The use of the SH 130 corridor per the LSRD 2008 fatal flaw analysis concluded the corridor would not support a commuter rail line, and ridership and connectivity would make the corridor nonviable.
- Other alternative or hybrid combinations such as the IH 35 and UPRR corridors lack viability.

Further, with an estimated cost of between \$2 to \$3 billion, funding anticipated by LSRD, such as the State's Rail Relocation and Investment Fund, Federal Rail Administration grants, and private investment have not been capitalized or funded at levels necessary to complete the project.

Due to the issues described above, further development of the DEIS is not warranted at this time. As a result, the above-mentioned original Notice of Intent and the revised Notice of Intent are rescinded.

FHWA and TxDOT agree that the information gathered during the LSRD EIS project can be used in future efforts to determine viable transportation options for the Austin-San Antonio corridor.

For further information, please contact Michael T. Leary, Director, Planning and Program Development, Federal Highway Administration, 300 East 8th Street, Austin, Texas 78701, telephone (512) 536-5940; or Melissa Neeley, Rail Projects Manager, Texas Department of Transportation, 118 East Riverside, Austin, Texas, 78704, telephone (512) 416-3014.

TRD-201700405

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: January 30, 2017



Workforce Solutions North Texas

Child Care Services Request for Proposals

Workforce Resource, Inc. dba Workforce Solutions North Texas, is a 501c3 non-profit corporation seeking proposals for management and operation of its Child Care Services, which covers 11 counties.

To obtain Request for Proposal packets available via email on February 10, 2017, or to obtain more information, contact Patti Hamilton at (940) 767-1432 or email to patricia.hamilton@ntxworksolutions.org.

Deadline to submit proposal is 4:00 p.m. (CDT) Monday, April 3, 2017.

We will hold a Bidders Conference at 2:00 p.m. on Monday, February 27, 2017, in the Workforce Solutions conference room at 901 Indiana, Suite 180, Wichita Falls, TX 76301.

Workforce Solutions North Texas is an Equal Opportunity Employer/Program and a proud partner of the American Job Center network. Auxiliary aids and services are available upon request to

individuals with disabilities. Program operation is dependent upon availability of funds from Texas Workforce Commission.



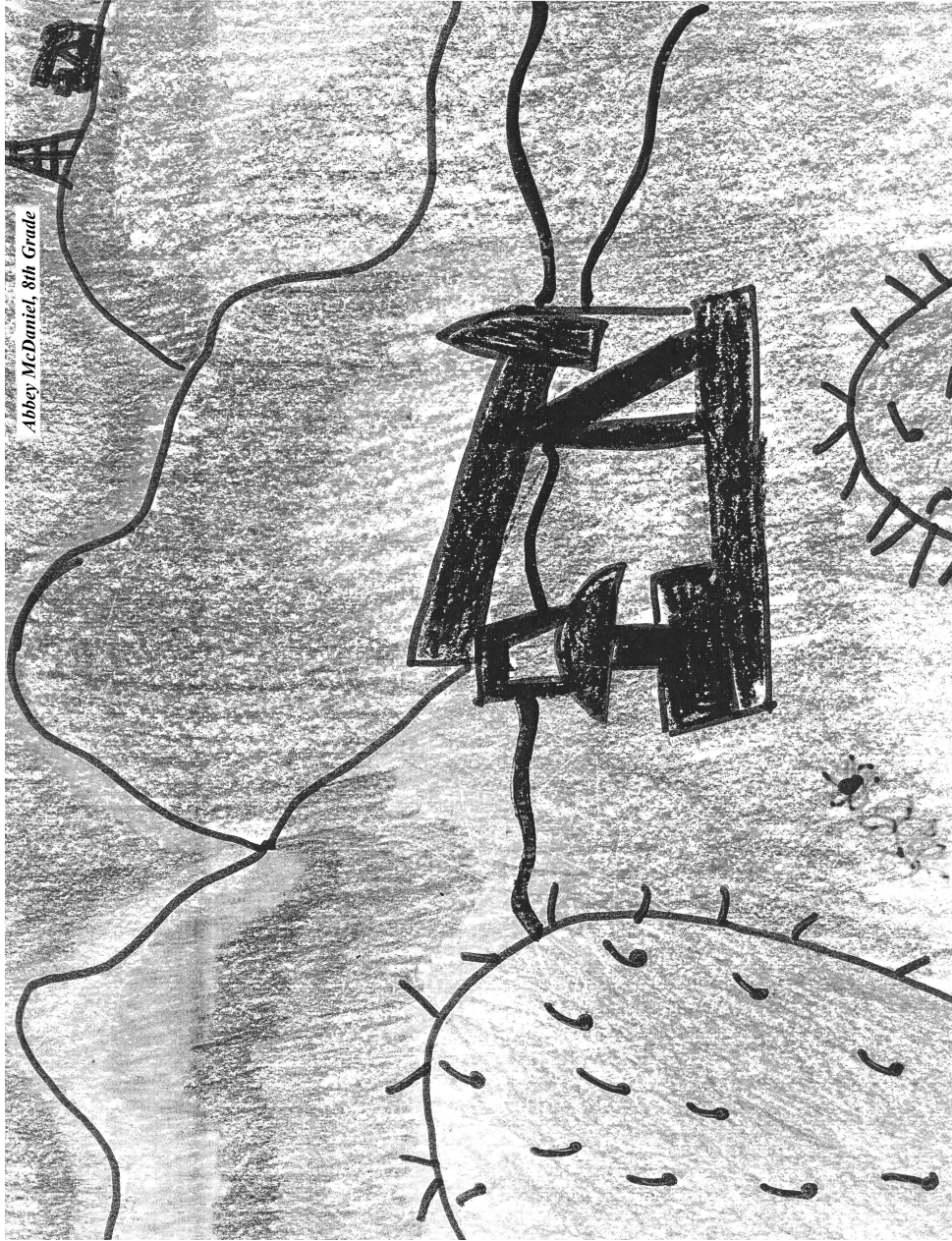
TRD-201700432

Kitty Howard

Deputy Director

Workforce Solutions North Texas

Filed: January 31, 2017



Abby McDaniel, 8th Grade

How to Use the Texas Register

Information Available: The 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.

Review of Agency Rules - notices of state agency rules review.

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.

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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