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# TEXAS REGISTER

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Cody Cooper  
11th Grade

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

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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 463-5561 in Austin. For out-of-town callers our toll-free number is 800-226-7199. Or request a copy by email: [register@sos.state.tx.us](mailto: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://www.oag.state.tx.us/opinopen/opengovt.shtml>

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

Additional information about state government may be found here:  
<http://www.state.tx.us/>

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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

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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>.)

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Request for Opinion

**RQ-0690-GA**

**Requestor:**

The Honorable Mike Krusee

Chair, Committee on Transportation

Texas House of Representatives

P.O. Box 2910

Austin, Texas 78768-2910

Re: Whether the term "country in which the person that owns or controls the vehicle is domiciled or is a citizen" in section 681.101(a)(4), Transportation Code, refers only to the country of domicile or citizen-

ship of the person who holds actual legal title to the vehicle (RQ-0690-GA)

**Briefs requested by May 1, 2008**

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

TRD-200801721

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: April 2, 2008

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# 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). 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 4. AGRICULTURE

### PART 1. TEXAS DEPARTMENT OF AGRICULTURE

#### CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

##### SUBCHAPTER V. MEXICAN FRUIT FLY QUARANTINE

###### 4 TAC §§19.500 - 19.508

The Texas Department of Agriculture (the department) adopts on an emergency basis new §§19.500 - 19.508, concerning a quarantine for the Mexican fruit fly, *Anastrepha ludens* (Loew). The new sections are adopted on an emergency basis to prevent the spread of Mexican fruit fly and to facilitate its eradication. The new sections require application of treatments to achieve eradication and prescribe specific restrictions on the handling and movement of quarantined articles. In the January 29, 2008, issue of the Federal Register, the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture published an Interim Rule, which removed Willacy County from the list of counties quarantined for the Mexican fruit fly. Based on the trapping surveys conducted by the department and APHIS, it was determined that the Mexican fruit has been eradicated from Willacy County since the last fly in this county was detected on May 6, 2005. Nevertheless, continuation of a trapping survey at a lesser intensity is required to demonstrate absence of the flies to maintain the fly-free status of a county. During such a survey, four immature and/or unmated Mexican fruit flies were detected in Willacy County since February 28, 2008; however, their distribution pattern and the fly count were insufficient to meet the quarantine trigger. Nevertheless, the quarantine trigger was met on March 14, 2008, when a mated female of the Mexican fruit fly was trapped on a residential property near Raymondville, Willacy County. In addition, an unmated female of the Mexican fruit fly was trapped on March 25, 2008, near Raymondville. The McPhail traps have been used in Texas over 20 years to survey for infestations of the Mexican fruit fly and certain other fruit fly species. Host plants of the Mexican fruit fly include citrus, stonies fruits, avocados, mangoes and apples.

The department believes that it is necessary to take this immediate action to maintain the fly-free status of the Willacy County and to prevent the spread of the Mexican fruit fly into other commercial citrus growing areas of Texas and other states, and adoption of this quarantine on an emergency basis is both necessary and appropriate. The citrus industry in particular is in peril because without this emergency quarantine and treatment of the infestation, USDA would quarantine Willacy County and possibly the entire state of Texas and as a result,

Texas could lose important export markets and would require regulatory treatments such as fumigation of all exported fruit. The emergency quarantine takes necessary steps to prevent the artificial spread of the quarantined pest and provides for its elimination, thus protecting the state's citrus crops, an agricultural industry important to the state of Texas. In addition to Willacy County, commercial citrus is also grown in Cameron and Hidalgo counties of Texas. Cameron and Hidalgo counties are currently quarantined for the Mexican fruit fly and export of citrus fruit from these counties is facilitated using procedures described in the Texas Rio Grande Valley Mexican Fruit Fly Protocol 2007-2008.

New §19.500 states the basis for the quarantine and defines the quarantined pest. New §19.501 establishes the duration of the quarantine. New §19.502 designates the infested areas subject to quarantine. New §19.503 lists the articles subject to the quarantine. New §19.504 provides restrictions on the movement of articles subject to the quarantine. New §19.505 provides requirements for monitoring and handling and treatment of regulated articles located within the quarantined area. New §19.506 provides consequences for failure to comply with quarantine restrictions. New §19.507 provides for the appeal of action taken for failure to comply with the quarantine restrictions or requirements. New §19.508 provides procedures for handling of discrepancies or other inconsistencies in textual descriptions in this subchapter with graphic representations. The department may propose adoption of these rules on a permanent basis in a separate submission.

The new sections are adopted on an emergency basis under the Texas Agriculture Code, §71.004, which authorizes the department to establish emergency quarantines; §71.007 which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for specific treatment of a grove or orchard or of infested or infected plants, plant products, or substances; §12.020 which authorizes the department to assess administrative penalties for violations of Chapter 71; and the Texas Government Code, §2001.034, which provides for the adoption of administrative rules on an emergency basis, without notice and comment.

§19.500. Basis for Quarantine--Dangerous Insect Pest or Plant Disease (Proscribed Biological Entity).

(a) The department finds that *Anastrepha ludens* (Loew), also known as the Mexican fruit fly, is at any stage of development a dangerous insect pest or plant disease that is not widely distributed in this state.

(b) Description of dangerous insect pest or plant disease. The Mexican fruit fly, scientific name *Anastrepha ludens* (Loew), is a dangerous pest of the numerous host plants listed in §19.503 of this title (relating to Articles Subject to the Quarantine). The fly oviposits in the fruit where the larvae subsequently hatch and begin feeding. The larvae, feeding inside the fruit, cause damage to the flesh of the fruit,



making it unmarketable. The United States Department of Agriculture (USDA), as well as many states, consider the Mexican fruit fly to be a serious plant pest whose control and eventual eradication from quarantined areas is imperative.

(c) Unless otherwise expressly stated, the term "Mexican fruit fly" when used in this subchapter refers to any or all developmental stages of the dangerous insect pest or a plant disease described in this section.

(d) The department is authorized by the Texas Agriculture Code, §71.002, to establish a quarantine against the dangerous insect pest or plant disease identified in this section.

§19.501. Duration of the Quarantine.

The quarantine established by this subchapter shall remain in effect until the dangerous insect pest or plant disease described in §19.500 of this title (relating to Basis for Quarantine--Dangerous Insect Pest or Plant Disease (Proscribed Biological Entity)) is eradicated. The Mexican fruit fly shall be considered eradicated from the quarantined area when no additional Mexican fruit flies are detected for a time period equal to three consecutive generations after the most recent detection. For the Mexican fruit fly, the number of days required to complete a reproductive cycle, one generation, is dependent upon temperature. Therefore, a day-degree model will be used to calculate the duration of each consecutive generation.

§19.502. Infested Geographical Areas Subject to the Quarantine.

(a) Quarantined infested areas.

(1) Quarantined infested areas (infested geographical areas subject to the quarantine) are those locations within this state in which the dangerous insect pest or plant disease is currently found, from which dissemination of the pest or disease is to be prevented, and in which the pest or disease is to be eradicated.

(2) The following areas are declared to be quarantined infested areas: the quarantined area is that portion of Willacy County, bounded by a line drawn as follows: beginning at the intersection of FM 498 and FM 2845; then easterly along FM 498 to its intersection with FM 2099; then continuing northerly along FM 2099 to its intersection with FM 490; then continuing easterly along FM 490 to its intersection with latitude 26.4536 and longitude -97.6991; then continuing in a straight northerly imaginary line intersecting with road CR 3796; then westerly along CR 3796 to its intersection with Santa Margarita Road; then continuing northerly along Santa Margarita Road to its intersection with Riggin Road; then continuing westerly along Riggin Road to its intersection with Cantu Road; then straight northwesterly along an imaginary line intersecting with Latitude 26.57423 and Longitude -97.70461; then westerly along a straight imaginary line intersecting with Latitude 26.57483 and Longitude -97.88234; then continuing straight southerly along an imaginary line to Latitude 26.46614 and Longitude -97.88359; then continuing easterly along Goya Garcia Road to its intersection with FM 1425; then continuing southerly along FM 1425 to its intersection with FM 490; then continuing easterly along FM 490 to its intersection with Valdez Road; then continuing southerly along Valdez Road to its intersection with CR 2400; then continuing easterly along CR 2400 to its intersection with FM 2845; then continuing southerly along FM 2845 to the point of beginning.

(3) A map of the quarantined area may be obtained by contacting USDA, 4909 East Grimes Street, Suite 103, Harlingen, Texas 78550, (956) 421-4041 or the department's Valley Regional Office, 900-B East Expressway 82, San Juan, Texas 78598, (956) 787-8866.

(b) Creating, modifying, or extending quarantined infested areas. When five or more males or unmated females of the Mexican fruit flies are trapped or otherwise discovered within a time period equal to

one fly generation and within 3 miles of each other or a mated female or one larva or pupa is trapped or otherwise discovered, a quarantine area shall be established around the site where the fly was trapped or otherwise discovered. The area quarantined shall consist of an area of approximately 4.5-mile radius with the detection site at the center (roughly 81 square miles).

(c) Core areas. In addition to the quarantined area, one or more core areas may be established within each quarantined area around a detection site. Each core area shall consist of an approximately 1.0 square mile area with a detection site at or near the center. Each approximately square-shaped core area is defined by four GPS readings for each corner of the core area. Core areas are subject to more extensive monitoring and handling requirements and the Mexican fruit fly host plants within the core area shall be treated by ground or aerial sprays as prescribed by the department or the USDA. Three core areas are currently in place for the Mexican fruit fly quarantine as described by the following GPS coordinates:

(1) N 26.513632; N 26.499158; W 97.818252; W 97.802081;

(2) N 26.477374; N 26.491847; W 97.777883; W 97.76172; and

(3) N 26.477201; N 26.462727; W 97.785990; W 97.76981.

(d) Core areas are shown on the map of the quarantined area referred to in subsection (a) of this section. Additional core areas, if any, shall be published in the In Addition section of the *Texas Register* as they are established.

§19.503. Articles Subject to the Quarantine.

An article subject to the quarantine, or regulated article, is an item the handling of which is controlled, regulated, or restricted by Chapter 71 of the Texas Agriculture Code, this subchapter, and any department orders issued pursuant to these rules and Chapter 71, in order to prevent dissemination of the dangerous insect pest or plant disease to areas located outside a quarantined infested area or into a quarantined non-infested area. The following articles are subject to the quarantine:

(1) the Mexican fruit fly;

(2) the fruit, at any stage of development, of all of the following plants, listed by common name with genus and species in parentheses, when grown, harvested, processed, or otherwise handled within or transported through the quarantined area:

(A) Apple (*Malus domestica*);

(B) Apricot (*Prunus armeniaca*);

(C) Avocado (*Persea americana*);

(D) Calamondin orange (*X citrofortunella mitis*);

(E) Cherimoya (*Annona cherimola*);

(F) Citrus citron (*Citrus medica*);

(G) Custard apple (*Annona reticulata*);

(H) Grapefruit (*Citrus paradise*);

(I) Guava (*Pisidium guajava*);

(J) Japanese plum (*Prunus salicina*);

(K) Lemon (*Citrus limon*) except Eureka, Lisbon, and Vila Franca cultivars (smooth skinned sour lemon);

(L) Lime (*Citrus aurantifolia*);

(M) Mammy-Apple (*Mammea americana*);

- (N) Mandarin orange (tangerine) (*Citrus reticulata*);
- (O) Mango (*Mangifera indica*);
- (P) Nectarine (*Prunus persica*);
- (Q) Peach (*Prunus persica*);
- (R) Pear (*Pyrus communis*);
- (S) Plum (*Prunus americana*);
- (T) Pomogranate (*Punica granatum*);
- (U) Prune, Plum (*Prunus domestica*);
- (V) Pummelo (shaddock) (*Citrus maxima*);
- (W) Quince (*Cydonia oblonga*);
- (X) Rose apple (*Syzyglum jambos*) (*Eugenia jambos*);
- (Y) Sour orange (*Citrus aurantium*);
- (Z) Sapote (*Casimiroa* spp.);
- (AA) Sapota, Sapodilla (Sapotaceae);
- (BB) Sargentia, yellow chapote (*Sargentia greggi*);
- (CC) Soanish Plum, purple mombin or Ciruela (*Spondias* spp.);
- (DD) Sweet orange (*Citrus sinensis*);

(3) any other fruit capable of hosting, harboring, propagating, or disseminating the Mexican fruit fly;

(4) the producing plant if it has one or more fruits listed in paragraph (2) of this section attached to or growing from it; and

(5) any article, item, conveyance, or thing on or in which the Mexican fruit fly is actually found.

§19.504. Restrictions on Movement of Articles Subject to the Quarantine.

(a) In General.

(1) A regulated article originating within a quarantined infested area may not be moved outside the infested area except as otherwise provided by these rules.

(2) In order to prevent the movement of regulated articles, including the dangerous insect pest or plant disease, from a quarantined area into a non-quarantined area, as required by the Texas Agriculture Code, §71.005(a), a person that transports a regulated article through or within an infested area using a motor vehicle, railcar, or other conveyance capable of transporting the regulated article outside the infested area, is subject to the requirements of subsection (c) of this section.

(b) Conditions Under Which Regulated Articles May Be Moved Out of an Infested Area. Plants that are regulated articles shall not be moved outside the quarantined infested area with fruit attached. Detached fruit originating within a quarantined infested area may be moved outside the infested area if:

(1) the fruit is covered by a tarpaulin or other approved covering and taken directly to and segregated in an approved packing house or other approved treatment facility and fumigated as prescribed in the Texas Rio Grande Valley Mexican Fruit Fly Protocol 2007-2008, a copy of which may be obtained at the department's Valley Regional Office, 900-B East Expressway 82, San Juan, Texas 78598, (956) 787-8866, and the fruit is accompanied by a copy of all documentation of origin or treatment required by this subchapter or a compliance agreement with the department or USDA;

(2) the grower has entered into a compliance agreement with the department or the USDA, the fruit has been treated and is being handled in accordance with the requirements set forth in the compliance agreement (at the time these rules are published, a compliance agreement requires use of approved bait sprays at 10 to 12 day intervals, or a shorter or longer period upon receipt of written notice from the department or the USDA of the modified treatment interval, starting at least 30 days before harvest and continued through the harvest period), and the fruit is accompanied by all documentation of origin or treatment required by this subchapter or a compliance agreement with the department or USDA; or

(3) the fruit is to be moved outside the quarantined area for juicing and the fruit is covered by a tarpaulin or other approved covering and accompanied by all documentation of origin or treatment required by this subchapter or a compliance agreement with the department or USDA.

(c) Requirements for Transporters of Regulated Articles Within or Through an Infested Area.

(1) A person who transports a regulated article within or through an infested area using a motor vehicle, railcar, other conveyance, or equipment capable of transporting the regulated article outside the infested area shall take the following precautions to ensure that the dangerous insect pest or plant disease is not disseminated outside the quarantined area and that non-infested regulated articles do not become infested by virtue of transport within or through the infested area: if carried in a part of the conveyance or equipment that is open to the outside environment, detached fruit must be covered by a tarpaulin, plastic sheet, or other covering sufficient to prevent the Mexican fruit fly from contacting the fruit; regulated articles other than detached fruit shall not be moved within or through the quarantined area unless handled in accordance with the provisions of a written notice issued by the department or the USDA or a written compliance agreement between the person and the department or the USDA.

(2) Regulated articles originating outside the quarantined area and transported through the quarantined area in an open part of a conveyance or piece of equipment and without an appropriate covering shall be treated the same under this subchapter as regulated articles originating in the quarantined area and shall be handled according to the procedures described in subsection (b) of this section and elsewhere in this subchapter.

§19.505. Monitoring and Eradication of the Dangerous Pest or Plant Disease.

(a) A regulated article located within a core area shall be monitored, handled, and treated by ground or aerial sprays, as prescribed in a written notice issued by the department or the USDA or as specified in a written compliance agreement between the owner or person in control of the regulated article or the property on which the regulated article is located.

(b) The owner or manager of an orchard, other commercial fruit operation, or nursery subject to quarantine requirements may be required to bear all treatment expenses.

(c) Homeowners located in the core areas who enter into a written compliance agreement with the department or the USDA shall not be required to pay treatment expenses for fruit or fruit trees grown, harvested, or found on their residential property, unless the fruit or fruit tree is transported to the residential property from an orchard, other commercial fruit operation, or nursery owned or operated by the homeowner or at which the homeowner is employed, at a time during which the quarantine is in effect.

(d) Unless otherwise specified in a written notice issued by the department or the USDA or in a written compliance agreement between the person and the department or the USDA, a wholesaler, fruit retailer, street fruit vendor, or flea market stall operator located within the quarantined area shall cover or enclose detached fruit with air curtains, screens of appropriate mesh, plastic sheets, boxes without holes or other openings, or tarpaulins.

(e) A person who within the quarantined area is holding or displaying for sale or distribution a plant that is a regulated article shall ensure that each such plant is free from fruit at all times prior to sale or distribution.

§19.506. Consequences for Failure to Comply with Quarantine Restrictions.

A person who fails to comply with quarantine restrictions or requirements or a department order relating to the quarantine may be subject to administrative penalties not to exceed \$5,000 per occurrence, civil penalties not to exceed \$10,000 per occurrence, or criminal prosecution. Each day a violation occurs or continues may be considered a separate occurrence. Additionally, the department is authorized to seize and treat or destroy, or order to be treated or destroyed, any quarantined article that is found to be infested with the quarantined pest or, regardless whether infested or not, transported out of or through the quarantined area in violation of these rules. Treatment, destruction, storage, or other charges, including those incurred by the department, are chargeable to the owner of the quarantined article to be treated or destroyed.

§19.507. Appeal of Department Action Taken for Failure to Comply with Quarantine Restrictions.

An order under the quarantine may be appealed according to procedures set forth in the Texas Agriculture Code, §71.010.

§19.508. Conflicts Between Graphical Representations and Textual Descriptions; Other Inconsistencies.

(a) In the event that discrepancies exist between graphical representations and textual descriptions in this subchapter, the representation or description creating the larger geographical area or more stringent requirements regarding the handling or movement of quarantined articles shall control.

(b) The textual description of the insect pest or plant disease shall control over any graphical representation of the same.

(c) Where otherwise clear as to intent, the mistyping of a scientific or common name in this subchapter shall not be grounds for avoiding the requirements of this subchapter.

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

Filed with the Office of the Secretary of State on March 26, 2008.

TRD-200801599

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Effective Date: March 26, 2008

Expiration Date: July 23, 2008

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



# PROPOSED RULES

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

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

## TITLE 1. ADMINISTRATION

### PART 3. OFFICE OF THE ATTORNEY GENERAL

#### CHAPTER 55. CHILD SUPPORT ENFORCEMENT

##### SUBCHAPTER D. FORMS FOR CHILD SUPPORT ENFORCEMENT

###### 1 TAC §55.116

The Office of the Attorney General, Child Support Division proposes an amendment to 1 TAC §55.116, regarding forms for child support enforcement. The proposed amendment includes revisions to the Notice to Withhold Income for Child Support and Order Notice to Withhold Income for Child Support, to conform to the forms currently used by the Office of the Attorney General, Child Support Division.

Alicia G. Key, Deputy Attorney General for the Child Support Division, has determined that for the first five years the amended section as proposed is in effect, there will be no significant fiscal implications for state or local government.

Ms. Key has also determined that for each year of the first five years the amended section as proposed is in effect, the public benefit as a result of the amended section will be compliance forms authorized by state and federal statutes.

Ms. Key has also determined that for the first five years the amended section as proposed is in effect, there will be no significant fiscal implications for small businesses or individuals. In addition, there will be no local employment impact as a result of the amended section as proposed.

Comments on this proposed amendment should be submitted to Kathy Shafer, Deputy Director, Legal Counsel Division, Child Support Division, Office of the Attorney General, (physical address) 5500 East Oltorf, Austin, Texas 78741 or (mailing address) P.O. Box 12017, Mail Code 044, Austin, Texas 78711-2017.

The proposed amendment is authorized by Texas Family Code §158.106.

The proposed amendment affects Texas Family Code Chapters 157 and 158.

*§55.116. Notice of Administrative Writ of Withholding and the Order/Notice to Withhold Income for Child Support.*

(a) This form is sent to the obligor by the Title IV-D agency or a domestic relations office informing the obligor that withholding has commenced and providing procedures for contesting the withholding.

Figure: 1 TAC §55.116(a)

(b) This form is issued by the Title IV-D agency or domestic relations office to initiate withholding for the enforcement of an existing order.

Figure: 1 TAC §55.116(b)

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

Filed with the Office of the Secretary of State on March 31, 2008.

TRD-200801681

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Earliest possible date of adoption: May 11, 2008

For further information, please call: (512) 936-1841



## TITLE 10. COMMUNITY DEVELOPMENT

### PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

#### CHAPTER 80. MANUFACTURED HOUSING

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs (the "Department") proposes to amend 10 TAC, Chapter 80, §§80.3, 80.90, 80.93, and 80.100 relating to the regulation of the manufactured housing program. The amendments add additional rules and forms to comply with HB 1460 that was passed by the 80th Legislature (2007 Regular Session) and became effective on January 1, 2008.

Section 80.3(m). The subsection is amended relating to fee refunds by the Department to comply with §1201.059(d) of the Standards Act.

Section 80.90(g). The new subsection is for the holder or servicer of loan to elect a home real property when the title company or attorney fails to complete conversion. The new subsection is added to comply with §1201.2055(i)(3) of the Standards Act.

Section 80.90(h). The new subsection is for requiring an affidavit of fact when submitting an application for SOL pursuant to the abandonment provision in §1201.217 of the Standards Act.

Figure: 10 TAC §80.93(b) - The tax lien layout form is revised because the Department cannot accept dummy numbers (999-999-99) in lieu of a taxing entity number or central tax collector number when filing a lien.

Section 80.100(a). Amended the list of forms to revise existing forms and to add new forms to the list.

Figure: 10 TAC §80.100(b)(1) - Revised the Application for Manufacturer's License by adding a column for the date of birth.

Figure: 10 TAC §80.100(b)(2) - Revised the Application for License for a Retailer, Broker, Installer and/or Rebuilder by adding a column for the date of birth.

Figure: 10 TAC §80.100(b)(4) - Revised the Application for Salesperson's License by updating the education requirements information in the certification section.

Figure: 10 TAC §80.100(b)(16) - Revised the Notice of Installation form by removing the Installation Decal Number field because the proposal to issue decal numbers was not implemented when new rules were adopted in December of 2007, corrected the number of days required to submit the form from 15 to 7 days to comply with the Standards Act, and added a section for the Department to report the inspection results.

Figure: 10 TAC §80.100(b)(19) - Revised the Application for Statement of Ownership and Location by adding 2(b), 4(c), 4(d), home identification at the top of the 2nd page, and lienholder contact information in Block 8.

Figure: 10 TAC §80.100(b)(20) - Deleting Application for Correction to a Statement of Ownership and Location and replacing with new Affidavit of Fact for Real Property form.

Figure: 10 TAC §80.100(b)(24) - Replaced the Affidavit of Fact for Incomplete SOL with Addendum to Application for SOL that does not require the form to be notarized.

Figure: 10 TAC §80.100(b)(31) - Revised the Notice of Lien to Perfect a Lien (Other than Tax Lien) by removing the requirement to notarize signatures in Block 3 and adding Block 4 for lien assignments.

Figure: 10 TAC §80.100(b)(32) - Revised Notification of Filing Status as a Central Tax Collector by correcting the block number for Notarized Signature Required from Block 3 to Block 4 and the number on page 2 from Block 2 to Block 3.

Figure: 10 TAC §80.100(b)(35) - Revised form by adding requirement to attach list of related persons as required by §1201.103 of the Standards Act.

Figure: 10 TAC §80.100(b)(38) - New Probationary Installation (Form T) form to comply with §1201.104(f) of the Standards Act.

Figure: 10 TAC §80.100(b)(39) - New Statement from Tax Assessor-Collector form to meet requirements of §1201.206(g) of the Standards Act.

Figure: 10 TAC §80.100(b)(40) - New Notice of Intent to Acquire Ownership of an Abandoned Manufactured Home form to comply with §1201.217 of the Standards Act.

Figure: 10 TAC §80.100(b)(41) - New Affidavit of Fact for Abandonment form to comply with §1201.217 of the Standards Act.

Figure: 10 TAC §80.100(b)(42) - New Disclosure to Consumer relating to occupying a manufactured home before financing is closed required by §1201.513 of the Standards Act.

Figure: 10 TAC §80.100(b)(43) - New Application for Salesperson's License Renewal to comply with §1201.103 of the Standards Act.

Figure: 10 TAC §80.100(b)(44) - New Application for Educational Instruction Providers to comply with §1201.104(e) of the Standards Act and 10 TAC, Chapter 80, §80.41(c).

Joe A. Garcia, Executive Director of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, has determined that for the first five-year period that the proposed rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering these sections. There will be no effect on small or micro-businesses because of the proposed amendments. There are no anticipated economic costs to persons who are required to comply with the proposed rules.

Mr. Garcia also has determined that for each year of the first five years that the proposed rules are in effect the public benefit as a result of enforcing the amendments will be to provide clarification of procedures and compliance with the Standards Act.

Mr. Garcia has also determined that for each year of the first five years the proposed rules are in effect there should be no adverse effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

If requested, the Department will conduct a public hearing on this rulemaking, pursuant to the Administrative Procedure Act, Texas Government Code §2001.029. The request for a public hearing must be received by the Department within 15 days after publication.

Comments may be submitted to Mr. Joe A. Garcia, Executive Director of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, P.O. Box 12489, Austin, Texas 78711-2489 or by e-mail at the following address [joe.garcia@tdhca.state.tx.us](mailto:joe.garcia@tdhca.state.tx.us). The deadline for comments is no later than 30 days from the date that these proposed rules are published in the *Texas Register*.

## SUBCHAPTER A. CODES, STANDARDS, TERMS, FEES AND ADMINISTRATION

### 10 TAC §80.3

The amended sections are proposed under the Texas Manufactured Housing Standards Act, Occupations Code, Chapter 1201, §1201.052, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.6014, which authorizes the director to propose rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

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

#### §80.3. Fees.

##### (a) License Fees and Renewal Fees:

- (1) \$850 for each manufacturer's plant license;
- (2) \$550 for each retailer's sales license;
- (3) \$550 for each retailer's branch location sales license;
- (4) \$550 for each rebuilder's license;
- (5) \$350 for each broker's license;
- (6) \$350 for each installer's license; and

(7) \$200 for each salesperson's license.

(b) Installation Fees:

(1) There is a reporting fee of \$75 for the installation of a single section manufactured home and \$25 for each additional section.

(2) The reporting fee must be submitted to the Department with the completed Notice of Installation (Form T) no later than seven (7) days after which the installation is completed, but not later than three (3) days for probationary installers.

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

(c) Seal Fee: Except for an application by a tax appraiser or a tax assessor-collector, for which there is no fee, there is a fee of \$35 for the issuance of a Texas Seal for one manufactured home section. Any person who sells, exchanges, lease purchases, or offers for sale, exchange, or lease purchase one or more sections of used HUD-Code manufactured homes manufactured after June 15, 1976, that do not each have a HUD label affixed, or one or more sections of a used mobile home manufactured prior to June 15, 1976, that do not each have a Texas Seal affixed shall file an application for statement and location to the Department for a Texas Seal and issuance of an updated Statement of Ownership and Location. The application shall be accompanied by the seal fee of \$35 per section made payable to the Department.

(d) Education Fee: Each attendee at the regularly offered course of initial instruction in the law and consumer protection regulations for license applicants shall be assessed a fee of \$250. Subject to availability of staff, the Department may provide additional initial instruction courses upon request for a fee of \$250 per attendee plus reimbursement to the Department for the actual costs of the training session and any related costs, such as travel, meal, and lodging.

(e) There is a fee of \$300 to process an application for a contract to be approved to provide an initial instruction for licensing course or a continuing education program under §1201.113 of the Standards Act.

(f) Industry Request. The manufacturer or retailer may request a consumer complaint home inspection. The request must be accompanied by the required fee of \$150.00.

(g) There is a fee of \$150 for the inspection of a manufactured home which is to be designated for residential use after having been previously designated for business use or which is elected as personal property after having been designated as real property. The purpose of the inspection is to determine if the home is habitable. The fee must accompany a written request for inspection and must be submitted either prior to or in connection with the submission of an Application for Statement of Ownership and Location.

(h) There is a fee of \$200 for the plan review and inspection of a salvaged manufactured home which is to be rebuilt. The purpose of the inspection is to determine if the home is habitable as defined by §1201.453 of the Standards Act so that it may be designated for residential use.

(1) The fee and required notification shall be submitted in accordance with §80.36 of this chapter (relating to Rebuilder's Responsibilities and Requirements).

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

(3) The Department shall invoice the rebuilder for the charges incurred, and no Statement of Ownership and Location shall be issued until all charges and fees have been paid.

(i) There is no fee for an initial inspection relating to a complaint. If a re-inspection is requested by a consumer or a licensee, a fee of \$150 will be assessed against any licensee found, by final order, to have violated any warranty or any other requirements of the Standards Act or these rules made the subject of the complaint.

(j) Fees Relating to Statements of Ownership and Location. Each fee shall accompany the required documents delivered or mailed to the Department at its principal office in Austin.

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

(2) A fee of \$1.50 will be required for each additional requested certified copy other than copies provided at issuance as required by the Standards Act;

(3) If a correction of a document is required as a result of a mistake by the Department, there is no fee for the issuance of corrected document. However, if the error was not made by the Department, a request for correction of the error must be made on a completed Application for Statement of Ownership and Location and submitted to the Department along with the required fee of \$55 and any necessary supporting documentation.

(4) When multiple applications are submitted, the Form M set forth in Subchapter I of this chapter (relating to Forms) must be completed and attached to the front of the applications to identify each application and reconcile the fee for each application with the total amount of the payment. Failure to provide this form, properly completed, will delay the application's being deemed complete for processing.

(k) Method of Payment.

(1) All checks shall be made payable to the Texas Department of Housing and Community Affairs or TDHCA.

(2) All license renewals may also be paid by credit card or ACH, if submitted through Texas Online.

(l) Loss of Check Writing Privileges. Any person who has more than one (1) time paid for anything requiring a fee under these rules with a check that is returned uncollectible, whether "NSF," closed account, refer to maker, or for any similar reason, is required to make all future payments, if any, by means of money order or cashier's check.

(m) The director may approve a refund of all or a portion of any fee collected if he or she makes a documented determination showing that:

(1) The fee was for a service applied for in error based on incorrect advice from the Department; ~~or~~

(2) The fee represented a duplicate payment for a service for which money had already been collected by the Department or a licensee; or [-]

(3) A refund is justified and warranted.

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

Filed with the Office of the Secretary of State on March 31, 2008.  
TRD-200801684

Joe A. Garcia  
Executive Director, Manufactured Housing Division  
Texas Department of Housing and Community Affairs  
Earliest possible date of adoption: May 11, 2008  
For further information, please call: (512) 475-2206

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## SUBCHAPTER H. STATEMENTS OF OWNERSHIP AND LOCATION

### 10 TAC §80.90, §80.93

The amended sections are proposed under the Texas Manufactured Housing Standards Act, Occupations Code, Chapter 1201, §1201.052, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.6014, which authorizes the director to propose rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

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

#### §80.90. *Issuance of Statements of Ownership and Location.*

(a) **Application Requirements.** In order to be deemed complete, an application for a Statement of Ownership and Location must include, as applicable:

(1) A completed and fully executed Application for Statement of Ownership and Location on the Department's prescribed current form;

(2) The required fee;

(3) If the statement of ownership and location is to reflect the recordation of a lien, other than a tax lien, for which the Department does not have the owner's consent, copies of documentation establishing the creation and existence of each such lien, and an affidavit of fact explaining the circumstances of the lien;

(4) When one or more existing liens are to be released, assigned, or foreclosed, appropriate supporting documentation;

(5) When an application for Statement of Ownership and Location indicates a change in ownership but no change in lien, supporting documentation that clearly establishes that the lien holder consented to that change; and

(6) When a manufactured home is to be designated for use as a dwelling after the home has been designated for business use, salvage, or as real property, evidence of a satisfactory habitability inspection by the Department.

(b) **Right of Survivorship:** If a right of survivorship election is made, then the Department will issue a new Statement of Ownership and Location to the surviving person(s) upon receipt of a copy of the death certificate of the deceased person(s), and a properly executed application for Statement of Ownership and Location, and the applicable fee.

(c) **Corrections to Statements of Ownership and Location.**

(1) If a correction is required as a result of a Department error, it will be corrected at no charge.

(2) If a correction is requested because of an error made by a party other than the Department, the correction will not be made until the Department receives the following:

(A) A complete corrected application for Statement of Ownership and Location,

(B) Any necessary supporting documentation, and

(C) The required fee, which can be reduced or waived by the director for good cause.

(d) Upon issuance of a Statement of Ownership and Location, the Department will mail one certified copy to the owner and one certified copy to the lienholder. If additional certified copies are desired, an application for a certified copy must be submitted and accompanied by the additional fee.

(e) **Exchanging a Document of Title for a Statement of Ownership and Location:** The Department will issue a Statement of Ownership, with no change in status, to replace a title at no charge upon receipt of the original title and the physical location of the home. If a manufactured home title showed that it was personal property, that will be presumed to be its status until and unless a revised Statement of Ownership and Location is applied for and issued. Likewise, if a manufactured home has had a certificate of attachment issued and had title cancelled to real property, that shall be presumed to be its status until and unless a revised Statement of Ownership and Location is applied for and issued.

(f) **Updating of Statements of Ownership and Location on Manufactured Homes Transferred as Real Property.**

(1) When a manufactured home has become real property because the owner completed the conversion process required by the Standards Act, the home may be sold, transferred, or encumbered as real property by the customary means used for real property transactions. As long as the home remains real property at the same location, ownership of the home is confirmed in the same manner as any other real property, rather than by verifying Department records. A new Statement of Ownership and Location does not have to be applied for until and unless:

(A) the manufactured home is moved to a new location;

(B) the current owner of the manufactured home wishes to convert it to personal property status; or

(C) the manufactured home no longer meets the requirements to be classified as real property (such as the home being on property subject to a long term lease which is not assignable to the buyer or transferee).

(2) To convert a manufactured home from real property to personal property, the owner of the home must submit a completed Application for Statement of Ownership and Location to the Department with supporting documentation as follows:

(A) If the applicant is not the owner of record with the Department, satisfactory proof of ownership under a complete chain of title. Acceptable evidence would include, but not be limited to, authenticated copies of all intervening transfer documents, a court order confirming ownership, or title insurance policy in such owner's name issued by a title insurance company licensed to do business in Texas.

(B) Satisfactory evidence that any liens on the manufactured home have been discharged or that all lienholders have consented to the change.

(C) Evidence of either a satisfactory habitability inspection by the Department or an election to convert the status of the home to business use or salvage.

(3) To update the ownership on a manufactured home already elected and perfected as real property, and remaining in the same

location as real property, the new owner of the home must submit a completed Application for Statement of Ownership and Location to the Department with supporting documentation as follows:

(A) If the applicant is not the owner of record with the Department, satisfactory proof of ownership under a complete chain of title. Acceptable evidence would include, but not be limited to, authenticated copies of all intervening transfer documents, a court order confirming ownership, or title insurance policy in such owner's name issued by a title insurance company licensed to do business in Texas.

(B) Satisfactory evidence that any liens on the manufactured home have been discharged or that all lienholders have consented to the change.

(4) When a home is being converted to real property, a copy stamped "filed" by the county must be submitted to the Department as evidence that the requirements of §1201.2055 of the Standards Act have been satisfied and the real property election has been perfected. This must be done within sixty (60) days from the issuance date reflected on the Statement of Ownership and Location.

(g) When a title company or attorney's office fails to complete the conversion of a manufactured home to real property, the holder or servicer of the loan may apply for a statement of ownership and location electing real property status after-the-fact, providing that evidence of notice to all parties is sent via certified mail and that proof of such efforts is provided along with an affidavit of fact describing such efforts, pursuant to §1201.2055(i)(3) of the Standards Act.

(h) Submitting an application for Statement of Ownership and Location pursuant to the abandonment provision in §1201.217 of the Standards Act, should include an affidavit of fact, on the prescribed form, attesting to that all statutory notifications have been made to the appropriate parties, including the tax assessor-collector of the county where the home is located, and evidence that all notification was sent via certified mail.

#### §80.93. Recording Tax Liens on Manufactured Homes.

(a) Manually filed tax liens shall be filed with the Department using the form set forth in Subchapter I of this chapter (relating to Forms). No other form will be accepted for the manual filing of tax liens. The form must be properly completed.

(b) Electronically filed tax liens and tax lien releases shall be filed with the Department using the required format as provided in the following Tax Lien File Layout. No other format will be accepted for electronic filing of tax liens.

Figure: 10 TAC §80.93(b)

(c) For tax liens recorded after June 18, 2005, but prior to the rules that were effective on January 29, 2006, those tax liens relating to tax years prior to 2001 will be disregarded and will not be treated as having been recorded.

(d) A tax collector may file as a central tax collector under a single taxing entity ID number, in which case the liens recorded or released under that taxing entity ID number will extend to all liens created for tax obligations to the taxing entity for which the filer collects. In order, however, to file as a central collector, the filer must complete and provide to the Department the form set forth in Subchapter I of this chapter. A single filing for multiple taxing entities must reflect the aggregate amount of the tax liabilities to which the filing relates.

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

Filed with the Office of the Secretary of State on March 31, 2008.

TRD-200801685

Joe A. Garcia

Executive Director, Manufactured Housing Division  
Texas Department of Housing and Community Affairs  
Earliest possible date of adoption: May 11, 2008  
For further information, please call: (512) 475-2206



## SUBCHAPTER I. FORMS

### 10 TAC §80.100

The amended sections are proposed under the Texas Manufactured Housing Standards Act, Occupations Code, Chapter 1201, §1201.052, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.6014, which authorizes the director to propose rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

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

#### §80.100. List of Forms.

(a) The following list is in numerical order with the forms located in subsection (b) of this section.

- (1) Application for Manufacturer's License.
- (2) Application for Retailer, Broker, Installer and/or Re-builder's License.
- (3) Application for Retailer with Branch Locations License.
- (4) Application for Salesperson's License.
- (5) Licensing Surety Bond.
- (6) Licensing Security Agreement.
- (7) Manufacturer's Certificate of Origin (MCO).
- (8) Consumer Disclosure Statement.
- (9) Warranty and Disclosure for a Used Manufactured Home.
- (10) Retail Monitoring Checklist.
- (11) Consumer Notice of Licensed and Bonded Location.
- (12) Notice and Informed Consent to Installation on an Improperly Prepared Site.
- (13) Formaldehyde Notice.
- (14) Texas Inventory Finance Security Form.
- (15) Broker Disclosure Form.
- (16) Notice of Installation (Form T).
- (17) Installation Checklist.
- (18) Estimate for Reassigned Warranty Work.
- (19) Application for Statement of Ownership and Location.
- (20) Affidavit of Fact for Real Property. [~~Application for Correction to Statement of Ownership and Location.~~]
- (21) Affidavit of Fact.



- (22) Affidavit of Error.
  - (23) Affidavit of Fact for Right of Survivorship.
  - (24) Addendum to Application for SOL. [~~Affidavit of Fact for Incomplete SOL Application.~~]
  - (25) Release or Foreclosure of Lien (Form B).
  - (26) Statement of Inheritance (Form C).
  - (27) Taxing Entity Application for Texas Seal (Form S).
  - (28) Multiple Application Log (Form M).
  - (29) Instructions to Third Party Closer.
  - (30) Notice of Lien for Tax Lien/Release Form.
  - (31) Notice of Lien to Perfect a Lien (Other than Tax Lien) Form.
  - (32) Notification of filing status as a Central Tax Collector.
  - (33) Site Preparation Notice Form.
  - (34) Sample of Statement of Ownership and Location.
  - (35) Application for License Renewal (other than a salesperson).
  - (36) Right of Rescission Waiver Form.
  - (37) List of Unlicensed Installers Form.
  - (38) Probationary Notice of Installation (Form T).
  - (39) Statement from Tax Assessor-Collector.
  - (40) Notice of Intent to Acquire Ownership of an Abandoned Home.
  - (41) Affidavit of Fact for Abandonment.
  - (42) Disclosure to Consumer (Possible Need to Vacate Home if Financing does not Close.)
  - (43) Application for Salesperson's License Renewal.
  - (44) Application for License Instruction Provider.
- (b) Forms.
- (1) Application for Manufacturer's License.  
Figure: 10 TAC §80.100(b)(1)
  - (2) Application for Retailer, Broker, Installer and/or Rebuilder's License.  
Figure: 10 TAC §80.100(b)(2)
  - (3) (No change.)
  - (4) Application for Salesperson's License.  
Figure: 10 TAC §80.100(b)(4)
  - (5) - (15) (No change.)
  - (16) Notice of Installation (Form T).  
Figure: 10 TAC §80.100(b)(16)
  - (17) - (18) (No change.)
  - (19) Application for Statement of Ownership and Location.  
Figure: 10 TAC §80.100(b)(19)
  - (20) Affidavit of Fact for Real Property. [~~Application for Correction to Statement of Ownership and Location.~~]  
Figure: 10 TAC §80.100(b)(20)
  - (21) - (23) (No change.)

- (24) Addendum to Application for SOL. [~~Affidavit of Fact for Incomplete SOL Application.~~]  
Figure: 10 TAC §80.100(b)(24)
- (25) - (30) (No change.)
- (31) Notice of Lien to Perfect a Lien (Other than Tax Lien) Form.  
Figure: 10 TAC §80.100(b)(31)
- (32) Notification of filing status as a Central Tax Collector.  
Figure: 10 TAC §80.100(b)(32)
- (33) - (34) (No change.)
- (35) Application for License Renewal (other than a salesperson).  
Figure: 10 TAC §80.100(b)(35)
- (36) - (37) (No change.)
- (38) Probationary Notice of Installation (Form T).  
Figure: 10 TAC §80.100(b)(38)
- (39) Statement from Tax Assessor-Collector.  
Figure: 10 TAC §80.100(b)(39)
- (40) Notice of Intent to Acquire Ownership of Abandoned Manufactured Home.  
Figure: 10 TAC §80.100(b)(40)
- (41) Affidavit of Fact for Abandonment.  
Figure: 10 TAC §80.100(b)(41)
- (42) Disclosure to Consumer of Possible Need to Vacate Home if Financing does not close.  
Figure: 10 TAC §80.100(b)(42)
- (43) Application for Salesperson's License Renewal.  
Figure: 10 TAC §80.100(b)(43)
- (44) Application for License Instruction Providers.  
Figure: 10 TAC §80.100(b)(44)

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

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TRD-200801686  
Joe A. Garcia  
Executive Director, Manufactured Housing Division  
Texas Department of Housing and Community Affairs  
Earliest possible date of adoption: May 11, 2008  
For further information, please call: (512) 475-2206

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## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 105. FOUNDATION SCHOOL PROGRAM

#### SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING OPTIONAL EXTENDED YEAR PROGRAM

#### 19 TAC §105.1001

The Texas Education Agency (TEA) proposes an amendment to §105.1001, concerning the optional extended year program. Section 105.1001 establishes provisions relating to the administration of the optional extended year program. The proposed amendment would update agency administration of the program and provide minor technical corrections to enhance the understanding of the rule for school districts.

Texas Education Code (TEC), §29.082, Optional Extended Year Program, was added in 1995 by the 74th Texas Legislature and amended in 1997 and 2003 by the 75th and 78th Texas legislatures, respectively. TEC, §29.082, allows the commissioner of education to adopt rules for the administration of programs provided under this section. In accordance with the TEC, §29.082, a school district may apply to the TEA for funding of an extended year program for a period not to exceed 30 instructional days for students in Kindergarten-Grade 11 who are identified as likely not to be promoted to the next grade level for the succeeding school year or for students in Grade 12 who are identified as likely not to graduate from high school before the beginning of the succeeding school year. The commissioner exercised rulemaking authority to adopt 19 TAC §105.1001, Optional Extended Year Program, to be effective December 1, 1997, and has amended the rule twice to reflect changes to statute and agency administration of the program. The proposed amendment presented at this time would revise the maximum entitlement requirements to increase the amount per-student allocation and would add, revise, or delete text to reflect minor technical corrections, as follows.

New subsections (b) and (c) would be added to clarify the definition of the Optional Extended Year Program and student eligibility requirements. Subsequent subsections would be re-lettered accordingly.

Re-lettered subsection (d)(2) would be modified to reflect the change to the maximum entitlement requirement to serve at least 5.0% of the at-risk population in Kindergarten-Grade 12 rather than 10%. This change in the at-risk requirement would encourage more school districts to apply for funding and will increase the amount per-student funding allocation for school districts statewide.

Re-lettered subsection (d)(4) would be modified to remove the 50% or more economically disadvantaged reallocation formula thus allowing all funded school districts the opportunity to equally receive reallocation funds as available.

Existing subsections (f) and (i) would be deleted because those provisions would be addressed in new subsections (b) and (c), respectively. Existing subsections (g) and (j) would be deleted, as these items are no longer necessary requirements for the program, based on feedback from participating districts.

Re-lettered subsection (i) would be revised to provide clarification regarding the required teacher training for the program.

Re-lettered subsection (j) would be modified to clarify requirements for a tutorial program. A technical edit would be made in re-lettered subsection (k).

Barbara Knaggs, associate commissioner for state initiatives, has determined that for the first five-year period the amendment is in effect there will be no additional costs for state or local government as a result of enforcing or administering the amendment. The proposal would, however, have positive fiscal implications for school districts. The proposed amendment will assist school districts to have quality extended year programs to serve

at-risk students and attain lower retention rates by increasing the available amount of funding per student. The required number of students to serve will be reduced from 10% to 5.0%, which will result in a per-student funding allocation increase with the Optional Extended Year Program Grant opportunity. Currently, on average, 46% of funded school districts have difficulty in serving the required 10%. These districts are then required to pay back the TEA for those students not served. Six percent, on average, decide not to claim the funding awarded to them. This results in a yearly average of \$1,650,000 in unused funds that have to be returned to the Foundation School Program. There will be a positive impact on school districts, as the redistribution of funding requirements will result in a greater per-student allocation amount that will allow districts to provide a more in-depth quality program to serve students. Eligible school districts that were not previously participating may choose to apply for and use state funding for extended year programs.

Ms. Knaggs has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment would be a higher per-student allocation amount to school districts to better serve and provide quality programs to at-risk populations in Kindergarten-Grade 12 participating in the Optional Extended Year Program. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

There is no projected economic impact to small businesses or microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal begins April 11, 2008, and ends May 11, 2008. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 463-0028. All requests for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register* on April 11, 2008.

The amendment is proposed under the Texas Education Code, §29.082, which authorizes the commissioner of education to adopt rules for the administration of optional extended year programs.

The amendment implements the Texas Education Code, §29.082.

*§105.1001. Optional Extended Year Program.*

(a) Each school district seeking funding for an optional extended year program under the Texas Education Code, §29.082, must submit an application in a format prescribed by the commissioner of education. Once funded, the program shall comply with the provisions of the Texas Education Code, §29.082.

(b) An optional extended year program may extend the day, the week, or the year to provide additional support and instruction for eligible students. The program shall be conducted beyond the required instructional days, which may include intercessions for year-round programs.

(c) A student is eligible for services in accordance with the Texas Education Code, §29.082(a)(1) - (2). A student who does not demonstrate proficiency in a subject area as determined by the district is also eligible for services.

(d) ~~[(b)]~~ School districts shall be funded annually based on the most recent district data available to the Texas Education Agency through the Public Education Information Management System (PEIMS). Funding shall be based on the following:

(1) Eligibility. School districts in which at least 40% of the students in Kindergarten through Grade 12 are from economically disadvantaged families will be eligible for funding.

(2) Maximum entitlement. Funding for an eligible school district under this section shall be based on the amount necessary to provide extended year instructional services to at least 5.0% ~~[10%]~~ of the at-risk student population in Kindergarten through Grade 12.

(3) Per capita amount. The per capita amount will be determined by dividing the total program allocation by the sum of the maximum entitlement populations in Kindergarten through Grade 12 in eligible school districts.

(4) Reallocation. Program funds not requested by eligible school districts will be reallocated to school districts identified in paragraph (1) of this subsection that requested funding. ~~[with 50% or more economically disadvantaged students.]~~

(e) ~~[(e)]~~ At a minimum, school districts will be required to provide services to the number of students identified on the school district's entitlement notice used for funding. School districts that have fewer students participating in the optional extended year program than identified for calculating the school district's maximum entitlement (including reallocation, if applicable) will have their entitlement reduced on a per-capita basis.

(f) ~~[(d)]~~ A school district receiving funds under the Texas Education Code, §29.082, that is also receiving funds for an optional extended year program for students in Kindergarten through Grade 12 under the Option 4 wealth equalization agreement authorized under the Texas Education Code, Chapter 41, must adjust its Option 4 equalization agreement. The district must adjust the agreement to redirect the use of funds to a qualifying activity other than an optional extended year program for students in Kindergarten through Grade 12 to the extent necessary to avoid duplicate funding of optional extended year programs.

(g) ~~[(e)]~~ A school district receiving funds for the accelerated reading instruction program authorized under the Texas Education Code, §28.006(g), is eligible to use funds authorized under the Texas Education Code, §29.082, to serve students in Kindergarten through Grade 2. Each optional extended year program must have auditable funding documentation linking direct service expenditures and optional extended year program funds used to identify eligible students.

~~[(f)] An optional extended year program may extend the day, the week, or the year. The program shall be conducted beyond the required instructional days which may include intercessions for year-round programs.]~~

~~[(g)] A school district may use funds under this section for follow-up activities so long as the optional extended year program is provided for no less than 30 instructional days. Follow-up activities provided by this subsection are restricted to participants of the program.]~~

(h) All costs under the optional extended year program must be necessary and reasonable for carrying out the objectives of the program and for the proper and efficient performance and administration of the program.

~~[(i)] Students who do not meet district standards or policies for promotion on the basis of academic achievement or demonstrated proficiency of the subject matter of the course or grade level shall be eligible for services under the optional extended year program.]~~

~~[(j)] A school district must include a parent/family awareness component in the program.]~~

(i) ~~[(k)]~~ Teacher training ~~[Training]~~ required under the Texas Education Code, §29.082(d), shall address the provisions set forth in this subsection. ~~[provide teachers with the knowledge and skills needed to help students in the program meet challenging state content and student performance standards.]~~ Training is to occur prior to the implementation of the program. Additional training ~~[professional development]~~ may be provided throughout the implementation of the program. The required training shall provide teachers with the following:

(1) knowledge and skills needed to help students in the program meet challenging state content and student performance standards; and

(2) innovative instructional practices suitable for accelerating the academic performance of at-risk students.

(j) ~~[(l)]~~ A school district shall incorporate effective instructional strategies into the design of the program to ensure students are provided with the skills needed to be successful in the following school year. An extended day program must be implemented beyond the regular seven-hour day and may not include tutorials or extended in-school day-care services. A ~~[tutorial]~~ program with the basic design to complete homework is not an acceptable instructional design for the program. A tutorial program using pre- and post-testing with each student working on a sequenced and focused program over time to enable the student to attain greater academic success is acceptable.

(k) ~~[(m)]~~ A school district shall submit an annual report evaluating the program in the time and format required by the commissioner ~~[Agency]~~. A school district shall also submit, in a manner determined by the commissioner, a complete list of students who participated in the program for at least one day.

(l) ~~[(n)]~~ For audit purposes, a school district shall maintain documentation to support each of the requirements of this section.

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

Filed with the Office of the Secretary of State on March 31, 2008.

TRD-200801682

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: May 11, 2008

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



## TITLE 22. EXAMINING BOARDS

### PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

#### CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

##### SUBCHAPTER A. GENERAL PROVISIONS

###### 22 TAC §501.52

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.52 concerning Definitions.

The amendment to §501.52 will: replace (22) with (21) in paragraph (17).

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be clearer definitions that are consistent with changes in the Texas Public Accountancy Act as well as changes in other Board rules.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on May 12, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to propose rules deemed necessary or advisable to effectuate the Act.

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

#### §501.52. Definitions.

The following words and terms, when used in title 22, part 22 of the Texas Administrative Code relating to the Texas State Board of Public Accountancy, shall have the following meanings, unless the context clearly indicates otherwise. The masculine shall be construed to in-

clude the feminine or neuter and vice versa, and the singular shall be construed to include the plural and vice versa.

(1) "Act" means the Public Accountancy Act, Chapter 901, Occupations Code;

(2) "Advertisement" means a message which is transmitted to persons by, or at the direction of, a person and which has reference to the availability of the person to perform Professional Accounting Services;

(3) "Affiliated entity" means an entity controlling or being controlled by or under common control with another entity, directly or indirectly, through one or more intermediaries;

(4) "Attest Service" means:

(A) an audit or other engagement required by the board to be performed in accordance with the auditing standards adopted by the AICPA, PCAOB, or another national or international accountancy organization recognized by the board;

(B) a review, compilation or other engagement required by the board to be performed in accordance with standards for accounting and review services adopted by the AICPA or another national or international accountancy organization recognized by the board;

(C) an engagement required by the board to be performed in accordance with standards for attestation engagements adopted by the AICPA or another national or international accountancy organization recognized by the board; or

(D) any other assurance service required by the board to be performed in accordance with professional standards adopted by the AICPA or another national or international accountancy organization recognized by the board;

(5) "Board" means the Texas State Board of Public Accountancy;

(6) "Charitable Organization" means an organization which has been granted tax-exempt status under the Internal Revenue Code of 1986, §501(c), as amended;

(7) "Client" means a party who enters into an agreement with a license holder or a license holder's employer to receive a professional accounting service or professional accounting work;

(8) "Client Practice of Public Accountancy" is the offer to perform or the performance by a person for a client or a potential client of professional accounting services or professional accounting work, and also includes:

(A) the advice or recommendations in connection with the sale or offer for sale of products (including the design and implementation of computer software), when the advice or recommendations routinely require or imply the possession of accounting or auditing skills or expert knowledge in auditing or accounting; and

(B) the performance of litigation support services;

(9) "Commission" means compensation for recommending or referring any product or service to be supplied by another party;

(10) "Contingent fee" means a fee for any service where no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service. However, a person's non-Contingent fees may vary depending, for example, on the complexity of the services rendered. Fees are not contingent if they are fixed by courts or governmental entities acting in a judicial or regulatory capacity, or in tax matters if determined based on the results of judicial proceedings or

the findings of governmental agencies acting in a judicial or regulatory capacity, or if there is a reasonable expectation of substantive review by a taxing authority;

(11) "Financial Statements" means a presentation of financial data, including accompanying notes, derived from accounting records and intended to communicate an entity's economic resources or obligations at a point in time, or the changes therein for a period of time, in accordance with generally accepted accounting principles or other comprehensive basis of accounting. Incidental financial data to support recommendations to a client or in documents for which the reporting is governed by Statements or Standards for Attestation Engagements and tax returns and supporting schedules do not constitute financial statements for the purposes of this definition;

(12) "Firm" means a sole proprietorship, partnership, limited liability partnership, limited liability company, corporation or other legally recognized business entity engaged in the practice of public accountancy;

(13) "Good standing" means compliance by a licensee with the board's licensing rules, including the mandatory continuing education requirements and payment of the annual license fee, and any penalties and other costs attached thereto. In the case of board-imposed disciplinary or administrative sanctions, the person must be in compliance with all the provisions of the board order to be considered in good standing;

(14) "Licensee" means the holder of a license issued by the board to a person pursuant to the Act, or pursuant to provisions of a prior Act;

(15) "Out of state practitioner and out of state firm" means a person licensed in another jurisdiction practicing in Texas pursuant to a practice privilege as provided for in §901.461 and §901.462 of the Act;

(16) "Peer review", "Quality Review" or "Compliance Assurance" means the study, appraisal, or review of the professional accounting work of a public accountancy firm that performs attest services by a certificate holder who is not affiliated with the firm;

(17) "Person" means an individual, sole proprietorship, partnership, limited liability partnership, limited liability company, corporation or other legally recognized business entity that provides or offers to provide professional accounting services or professional accounting work as defined in paragraph (21) [~~(22)~~] of this section;

(18) "Principal office" means the location specified by the client as the address to which a service described in §517.1(a)(2) is directed and is synonymous with Home Office where it appears in the Act;

(19) "Practice unit" means an office of a firm required to be licensed with the board for the purpose of the client practice of public accountancy;

(20) "Practice privilege" means the privilege for an out-of-state person to provide certain Professional Accounting Services or Professional Accounting Work in Texas to the extent permitted under Chapter 517 of the board rules;

(21) "Professional Accounting Services" or "professional accounting work" means services or work that requires the specialized knowledge or skills associated with certified public accountants, including:

(A) issuing reports on financial statement(s);

(B) providing management or financial advisory or consulting services;

(C) preparing tax returns;

(D) providing advice in tax matters;

(E) providing forensic accounting services; and

(F) providing internal auditing services.

(22) "Report" means an opinion, report, or other document, prepared in connection with an attest service that states or implies assurance as to the reliability of financial statement(s); and includes or is accompanied by a statement or implication that the person issuing the opinion, report, or other document has special knowledge or competence in accounting or auditing. A statement or implication of assurance as to the reliability of a financial statement or as to the special knowledge or competence of the person issuing the opinion, report, or other document includes any form of language that is conventionally understood to constitute such a statement or implication. A statement or implication of special knowledge or competence in accounting or auditing may arise from the use by the issuer of the opinion, report, or other document of a name or title indicating that the person is an accountant or auditor; or the language of the opinion, report, or other document itself.

(23) Interpretive Comment: The practice of public accountancy is defined in §901.003 of the Act (relating to the Practice of Public Accountancy).

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

Filed with the Office of the Secretary of State on March 31, 2008.

TRD-200801678

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: May 11, 2008

For further information, please call: (512) 305-7848



## SUBCHAPTER C. RESPONSIBILITIES TO CLIENTS

### 22 TAC §501.75

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.75, concerning Confidential Client Communications.

The amendment to §501.75 will replace the word "subpoena" with the phrase "court order".

William Treacy, Executive Director of the Board, has determined that, for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that, for the first five-year period the amendment is in effect, the public benefits expected as a result of adoption of the proposed amendment will be a rule that mirrors the requirement in the Texas Public Accountancy Act.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on May 12, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

*§501.75. Confidential Client Communications.*

Except by permission of the client or the authorized representatives of the client, a person or any partner, officer, shareholder, or employee of a person shall not voluntarily disclose information communicated to him by the client relating to, and in connection with, professional accounting services or professional accounting work rendered to the client by the person. Such information shall be deemed confidential. However, nothing herein shall be construed as prohibiting the disclosure of information required to be disclosed by the standards of the public accounting profession in reporting on the examination of financial statements or as prohibiting disclosures pursuant to a court order [subpoena] or other compulsory process, in investigations or proceedings under the Act, in ethical investigations conducted by private professional organizations, or in the course of peer reviews.

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

Filed with the Office of the Secretary of State on March 31, 2008.  
TRD-200801679

J. Randel (Jerry) Hill  
General Counsel  
Texas State Board of Public Accountancy  
Earliest possible date of adoption: May 11, 2008  
For further information, please call: (512) 305-7848

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**CHAPTER 511. CERTIFICATION AS A CPA**  
**SUBCHAPTER C. EDUCATIONAL**  
**REQUIREMENTS**

**22 TAC §511.59**

The Texas State Board of Public Accountancy (Board) proposes new §511.59 concerning Definition of 150 Semester Hours.

The new §511.59 will provide a definition of the 150 semester hours required to qualify to sit for the CPA exam.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed new rule will be in effect:

- A. the additional estimated cost to the state expected as a result of enforcing or administering the new rule will be none.
- B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the new rule will be none.
- C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the new rule will be none.

Mr. Treacy has determined that for the first five-year period the new rule is in effect the public benefits expected as a result of adoption of the proposed new rule will be a clearer understanding of the 150 semester hours requirement necessary to qualify to sit for the CPA exam.

The probable economic cost to persons required to comply with the new rule will be none.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed new rule will not affect a local economy.

Mr. Treacy has determined that the proposed new rule will not have an adverse economic effect on small businesses because the rule does not impose any additional requirements, it merely clarifies existing requirements.

The Board requests comments on the substance and effect of the proposed new rule from any interested person. Comments must be received at the Board no later than noon on May 12, 2008, Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed new rule will have an adverse economic effect on small business; if the new rule is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the new rule is to be adopted; and if the new rule is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the new rule under any of the following standards: (a) cost per employee; (b) cost for each

hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The new rule is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to propose rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed new rule.

§511.59. Definition of 150 Semester Hours.

An individual holding a baccalaureate degree shall meet the board's 150 semester hours or quarter hour equivalents of courses in one of the following ways:

(1) Complete a master's degree or higher degree conferred by a university that is recognized by the Board; or

(2) Complete the upper level accounting courses needed to take the CPA examination as defined in §511.57 of this chapter. The hours required for a baccalaureate degree plus the additional hours must equal or exceed 150 semester hours; or

(3) Complete additional semester hours or quarter hour equivalents of upper level courses that enhance professional skills and competence, beyond the accounting hours required for a baccalaureate degree in accounting, from a university that is recognized by the Board. The hours required for a baccalaureate degree plus the additional hours must equal or exceed 150 semester hours. The coursework should be in established courses offered through colleges within the university such as: architecture, business administration, communications, engineering, fine arts, liberal arts, science, or another established discipline.

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

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J. Randell (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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## SUBCHAPTER F. EXPERIENCE REQUIREMENTS

### 22 TAC §511.122

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.122, Acceptable Work Experience.

The amendment to §511.122, will insert the following text "or higher" after text "level" and insert text "add skills" after the text "knowledge" in subsection (b); in subsection (c)(5) replace the following text "as approved by the board will" with the following text "on a full time basis may"; add subsection (c)(8) with the following text "Self employment may not be used to satisfy the work experience requirement unless approved by the Board."

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule that clarifies what constitutes acceptable work experience.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small business.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on May 12, 2008. Comments should be addressed to J. Randell (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to propose rules deemed necessary or advisable to effectuate the Act.

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

*§511.122. Acceptable Work Experience.*

(a) (No change.)

(b) Non-routine accounting involves the use of independent judgment, applying entry level or higher professional accounting knowledge and skills to select, correct, organize, interpret, and present real-world data as accounting entries, reports, statements, and analyses extending over a diverse range of tax, accounting, assurance, and control situations.

(c) All work experience, to be acceptable, shall be gained in the following categories or in any combination of these.

(1) Client practice of public accountancy. All work experience gained in a firm in the client practice of public accountancy must be of a non-routine accounting nature which continually requires independent thought and judgment on important accounting matters. If such firm is a CPA firm it shall be in good standing with the board, or, if the experience is gained in another state or territory, the firm shall be in good standing and in compliance with all laws applicable to CPA firms of that state or territory.

(2) Industry. All work experience gained in industry shall be of a non-routine accounting nature which continually requires independent thought and judgment on important accounting matters. Acceptable industry work experience includes:

- (A) internal auditor;
- (B) staff, fund or tax accountant;
- (C) accounting, financial or accounting systems analyst; and
- (D) controller.

(3) Government. All work experience gained in government shall be of a non-routine accounting nature which continually requires independent thought and judgment on important accounting matters and which meets the criteria in subparagraphs (A) - (E) of this paragraph. The board will review on a case-by-case basis experience which does not clearly meet the criteria identified in subparagraphs (A) - (E) of this paragraph. Acceptable government work experience includes but is not limited to:

- (A) employment in state government as an accountant or auditor at Salary Classification B6 or above, or a comparable rating;
- (B) employment in federal government as an accountant or auditor at a GS Level 7 or above;
- (C) employment as a special agent accountant with the FBI;
- (D) military service, as an accountant or auditor as a Second Lieutenant or above; and
- (E) employment with other governmental entities as an accountant or auditor.

(4) Law firm. All work experience gained in a law firm shall be of a non-routine accounting nature which continually requires independent thought and judgment on important accounting matters comparable to the experience ordinarily found in a CPA firm, shall be under the supervision of a CPA or an attorney, and shall be in one or more of the following areas:

- (A) tax--planning, compliance and litigation and;
- (B) estate planning.

(5) Education. Work experience gained as an instructor at a college or university will qualify if evidence is presented showing independent thought and judgment was used on non-routine accounting matters. Only the teaching of upper division courses on a full time basis may [as approved by the board will] be considered. All experience shall be supervised by the department chair or faculty member who is a CPA.

(6) Internship. The Board will consider, on a case-by-case basis, experience acquired through the accounting internship program, provided evidence is submitted demonstrating that the experience was comparable to that of a full-time staff accountant in non-routine accounting matters. If an accounting internship course is counted toward fulfilling the education requirement, the internship may not be used to fulfill the work experience requirement.

(7) Other. Work experience gained in other positions may be approved by the board as experience comparable to that gained in the practice of public accountancy under the supervision of a CPA upon certification by the person or persons supervising the candidate that the experience was of a non-routine accounting nature which continually required independent thought and judgment on important accounting matters.

(8) Self employment may not be used to satisfy the work experience requirement unless approved by the Board.

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

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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## SUBCHAPTER H. CERTIFICATION

### 22 TAC §511.163

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.163 concerning Examination on the Rules of Professional Conduct.

The amendment to §511.163 will delete the original subsection (a); add new subsection (a), the new text will be "Candidates applying for the issuance of the CPA certificate who have not completed a board-approved ethics course within the past two years to meet the education requirements to take the CPA Examination, must successfully complete a board-approved four-hour ethics course of comprehensive study on the Rules of Professional Conduct of the board (chapter 501) offered through a board-approved and registered provider of continuing professional education."; add new subsection (b) with the new text "Candidates applying for the issuance of the CPA certificate who completed a board-approved ethics course to meet the education requirements to take the CPA Examination more than two years prior to the date of submitting the application for issuance of the CPA certificate must successfully complete a board-approved four-hour ethics course of comprehensive study on the Rules of Professional Conduct of the board, (chapter 501) offered through a board-approved and registered provider of continuing professional education."; renumber the original subsection (b) with subsection (c); renumber the original subsection (c) with paragraph (1) and add the text "on the Rules of Professional Conduct"; renumber subsection (d) with paragraph (2); renumber subsection (d)(1) with subparagraph (A); delete subsection (d)(2).

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.



B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule that clarifies where a test candidate can find the rules that form the basis of the test on the rules of professional conduct and allows the candidate to take a second re-exam rather than waiting six months.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small business.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on May 12, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§511.163. *Board Approved Ethics Requirement and Examination on the Rules of Professional Conduct.*

(a) Candidates applying for the issuance of the CPA certificate who have not completed a board-approved ethics course within the past two years to meet the education requirements to take the CPA Examination, must successfully complete a board-approved four-hour ethics course of comprehensive study on the Rules of Professional Conduct of the board (chapter 501) offered through a board-approved and registered provider of continuing professional education. [Candidates applying for the issuance of the CPA certificate must successfully complete a board-approved four-hour ethics course of comprehensive study on the Rules of Professional Conduct of the board, offered through a board-approved and registered provider of continuing professional education.]

(b) Candidates applying for the issuance of the CPA certificate who completed a board-approved ethics course to meet the education requirements to take the CPA Examination more than two years prior to the date of submitting the application for issuance of the CPA certificate must successfully complete a board-approved four-hour ethics course of comprehensive study on the Rules of Professional Conduct of the board, (chapter 501) offered through a board-approved and registered provider of continuing professional education.

(c) [(b)] Candidates applying for the issuance of the CPA certificate must also pass an examination on the rules of professional conduct promulgated by the board.

(1) [(e)] The examination on the Rules of Professional Conduct must be completed not more than six months prior to the issuance of the CPA certificate.

(2) [(d)] A grade of 85% must be scored on the exam in order to be considered passing.

(3) [(4)] If a grade of 85% is not scored on the exam, the candidate will be sent another exam.

[(2) Failure to score at least 85% on the re-exam test would prevent the candidate from taking the exam for six months. Failure to again score less than 85% would continue the cycle.]

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

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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**22 TAC §§511.164 - 511.167, 511.171, 511.173, 511.174, 511.176**

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

The Texas State Board of Public Accountancy (Board) proposes the repeal of §§511.164, Names on Certificate; 511.165, Certificate; 511.166, Replacement Certificates; 511.167, Relinquishing a Certificate or Registration; 511.171, Voluntary Surrender of Certificate; 511.173, Filing Complaints; 511.174, Action Relating to Complaints; and 511.176, Certification Hearings.

The proposed repeal of these rules will be removed because they are no longer relevant. A new chapter will be added including these rules.

William Treacy, Executive Director of the Board, has determined that, for the first five-year period the proposed repeal will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the repeal will be none.

B. the estimated reductions in costs to the state and to local governments as a result of enforcing or administering the repeal will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the repeal will be none.

Mr. Treacy has determined that, for the first five-year period the repeal is in effect, the public benefits expected as a result of adoption of the proposed repeal will be the elimination of a rule that is no longer relevant.

The probable economic cost to persons required to comply with the repeal will be none.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed repeal will not affect a local economy.

Mr. Treacy has determined that the proposed repeal will not have an adverse economic effect on small businesses because the repeal does not impose any duties or obligations upon small businesses.

The Board requests comments on the substance and effect of the proposed repeal from any interested person. Comments must be received at the Board no later than noon on May 12, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed repeal will have an adverse economic effect on small business; if the repeal is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the repeal is to be adopted; and if the repeal is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the repeal under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The repeal is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed repeal.

§511.164. *Names on Certificate.*

§511.165. *Certificate.*

§511.166. *Replacement Certificates.*

§511.167. *Relinquishing a Certificate or Registration.*

§511.171. *Voluntary Surrender of Certificate.*

§511.173. *Filing Complaints.*

§511.174. *Action Relating to Complaints.*

§511.176. *Certification Hearings.*

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

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J. Randel (Jerry) Hill

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Texas State Board of Public Accountancy

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## CHAPTER 514. CERTIFICATION AS A CPA

### 22 TAC §§514.1 - 514.7

The Texas State Board of Public Accountancy (Board) proposes new Chapter 514 concerning Certification as a CPA.

The new Chapter 514 will provide new §514.1, concerning Names on Certificates, §514.2, concerning Certificate, §514.3, concerning Replacement Certificates, §514.4, concerning Filing Complaints, §514.5, concerning Action Relating to Complaints, §514.6, concerning Voluntary Surrender of Certificate and §514.7, concerning Certification Hearings.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed new rules will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the new rules will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the new rules will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the new rules will be none.

Mr. Treacy has determined that for the first five-year period the new rules are in effect the public benefits expected as a result of adoption of the proposed new rules will be adding a new section to distinguish between certificate holders and applicants applying for certification.

The probable economic cost to persons required to comply with the new rules will be none.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed new rules will not affect a local economy.

Mr. Treacy has determined that the proposed new rules will not have an adverse economic effect on small businesses because these rules do not enlarge the board's powers regarding certificates or applicants, but by grouping the rules pertaining to licensees together to distinguish the licensing rules from the rules for eligibility in Chapter 511.

The Board requests comments on the substance and effect of the proposed new rules from any interested person. Comments must be received at the Board no later than noon on May 12, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed new rules will have an adverse economic effect on small business; if the new rules are

believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the new rules are to be adopted; and if the new rules are believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the new rules under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The new rules are proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by these proposed new rules.

#### §514.1. Names on Certificates.

(a) The certificate of a certified public accountant shall be issued under the legal name of the candidate as it appears on the birth certificate, current passport or alien registration card or as changed by court order, marriage license, or divorce decree.

(b) The license of a certified public accountant may be issued in the name of the licensee as it appears on the birth certificate or other appropriate legal document in accordance with §511.22 of this title (relating to Initial Filing of the Application of Intent) or as changed by court order, marriage license, or divorce decree.

(c) At the candidate's option, words or abbreviations such as "Jr." or "III" do not have to appear on the certificate, license, or the board's records even though such words or abbreviations are part of the candidate's legal name.

#### §514.2. Certificate.

All certificates shall be issued in the name of the board and may bear the signature of all board members and the seal of the Texas State Board of Public Accountancy.

#### §514.3. Replacement Certificates.

(a) Replacement certificates may be issued by the board in appropriate cases and upon payment by the certified public accountant or public accountant of the fee as determined by the board in §521.11 of this title (relating to Fee for the Replacement of a Certificate). A registration or certificate holder is specifically prohibited from possessing more than one Texas certificate as a certified public accountant or registration as a public accountant.

(b) When a replacement certificate is requested, the registration or certificate holder must return the original or registration certificate or submit a sworn affidavit describing the occurrence that necessitated the replacement certificate or registration.

#### §514.4. Filing Complaints.

The board may, on its own motion, or on the complaint of any person, initiate proceedings to determine the eligibility of any candidate for the issuance of a certificate. Chapter 519 of this title (relating to Practice and Procedure) provides for the notice and hearing. Sufficient cause for this action includes, but is not limited to, any of the following instances:

(1) fraud or deceit by a candidate on the certification application;

(2) final conviction of a felony or of any crime, involving dishonesty, fraud, moral turpitude, alcohol abuse or controlled substances, under the laws of any state or of the United States, or the imposition of deferred adjudication in connection with the criminal prosecution of such an offense; or

(3) conduct indicating a lack of fitness to serve the public as a professional accountant.

#### §514.5. Action Relating to Complaints.

(a) The board, having conducted a hearing under this title, may reach the following conclusions:

(1) deny the candidate the opportunity for issuance of a certificate;

(2) prohibit the candidate from certification for a period not to exceed five years;

(3) issue the candidate a certificate with conditions and requirements established by the board; or

(4) close the case without adverse action against the candidate.

(b) The board shall refund the fee submitted by the candidate for certification if the candidate is denied the issuance of a certificate.

(c) The candidate may petition the board in writing for a reversal of the board's findings. After notice and hearing the board may:

(1) approve an application for certification that was previously denied;

(2) uphold its prior findings;

(3) overturn its prior findings; or

(4) modify its prior findings.

#### §514.6. Voluntary Surrender of Certificate.

(a) A certificate holder who is not under investigation by the board may voluntarily surrender his certificate by delivering the certificate to the board along with a written statement of intent to voluntarily surrender the certificate. Once a certificate holder has surrendered his certificate, he is no longer eligible to hold a license under §901.402 of the Act and licensing exemptions will no longer apply.

(b) A former certificate holder who has voluntarily surrendered his certificate under subsection (a) of this section may apply for a new certificate upon completion of the examination requirement for a new certificate. The board may waive the examination requirement for a former certificate holder upon submission of the following to the board:

(1) evidence of completion of all CPE that would have been required to be completed up to a maximum of 120 hours over the three years immediately preceding application;

(2) a sworn affidavit in the form provided by the board stating that the former certificate holder has not been convicted of, placed on community supervision or accepted deferred adjudication for any felony crime or for any misdemeanor crime involving fraud, dishonesty or moral turpitude under the laws of any state or the United States and that the former certificate holder did not surrender the certificate to avoid disciplinary action by the board or to avoid administrative revocation under board rules adopted pursuant to §§901.159, 901.411 or 901.502 of the Act; and

(3) payment of all license fees that would have been paid if the former certificate holder's license had been active since the date of surrender and all applicable late fees.

(c) A new certificate issued to a former certificate holder will bear the same certificate number as the original certificate.

(d) If an individual, subject to the approval of the Board, voluntarily surrenders and resigns the certificate or registration during the course of a disciplinary investigation or proceeding conducted by the

board, this fact shall be disclosed in any later application for a new certificate, and shall be considered before the issuance of a new certificate.

§514.7. Certification Hearings.

Unless otherwise determined by the board, the following are reasons why a person may not be certified as a CPA.

(1) The individual has been convicted of a felony offense, which results in incarceration, probation, parole, mandatory supervision or deferred adjudication.

(2) The individual has been convicted of a felony or misdemeanor offense, or granted a deferred adjudication which directly relates to the practice of public accountancy.

(3) A person applying for the issuance of a certificate who can be identified in paragraphs (1) or (2) of this section has the right to a hearing before the board, to present evidence relative to the conviction. As a part of the hearing, the board's consideration shall include the following issues before reaching a decision:

(A) the nature and seriousness of the crime as it applies to the board's statutory responsibility to ensure that a person maintains high standards of competence and integrity;

(B) the extent to which the person might have an opportunity to repeat criminal activity of the same type as that in which the individual was previously involved;

(C) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a certified public accountant; and

(D) the additional factors provided in §53.023 of the Texas Occupations Code.

(4) Because a licensee is often placed in a position of trust with respect to client funds, and the public in general, and the business community in particular, rely on the reports and other services of licensees, the board considers that the following crimes directly relate to the practice of public accountancy:

(A) a felony offense or misdemeanor offense of which dishonesty or fraud is an element;

(B) a felony offense or misdemeanor offense which results in the suspension or revocation of the right to practice before any state or federal agency for a cause which in the opinion of the board warrants its action; and

(C) crimes involving moral turpitude, alcohol abuse or controlled substances.

(5) The following procedures shall apply in the processing of the application for certification.

(A) The candidate shall respond, under penalty of perjury, to the question, "Have you ever been convicted of a felony or a misdemeanor, placed on probation, or granted deferred adjudication in any state or by the federal government?"

(B) The board shall obtain criminal history record information as stipulated in this chapter on any candidate about whom the executive director finds evidence to warrant a record search.

(C) The board shall review the application, statements made by the candidate relating to criminal activity, criminal history record information, and shall approve or disapprove the application as the evidence warrants. All applications disapproved under these conditions shall be scheduled for a hearing upon written request of the applicant.

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

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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## CHAPTER 519. PRACTICE AND PROCEDURE SUBCHAPTER D. PROCEDURES AFTER HEARING

### 22 TAC §519.72

The Texas State Board of Public Accountancy (Board) proposes an amendment to §519.72, concerning Final Decisions and Orders.

The amendment to §519.72 will replace subsection (c)(1) - (8) with new subsection (c): The board may change a finding of fact or conclusion of law made by the administrative law judge, or may vacate or modify an order issued by the administrative law judge, only if the board determines: (1) that the administrative law judge did not properly apply or interpret applicable law, agency rules, written policies provided to the administrative law judge with a written statement of applicable rules or policies, or prior administrative decisions; (2) that a prior administrative decision on which the administrative law judge relied is incorrect or should be changed; or (3) that a technical error in a finding of fact should be changed.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be zero.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be none.

The probable economic cost to persons required to comply with the amendment will be to facilitate implementation of §2001.058(c) of the Administrative Procedures Act before the Texas State Board of Public Accountancy.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on May 12, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§519.72. *Final Decisions and Orders.*

(a) - (b) No change.)

(c) The board may change a finding of fact or conclusion of law made by the administrative law judge, or may vacate or modify an order issued by the administrative judge, only if the board determines:

(1) that the administrative law judge did not properly apply or interpret applicable law, agency rules, written policies provided to the administrative law judge with a written statement of applicable rules or policies, or prior administrative decisions;

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

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

~~It is the policy of the board to change a finding of fact or conclusion of law or to vacate or modify any proposed order of an ALJ when the proposed order is:~~

~~(1) erroneous;~~

~~(2) against the weight of the evidence;~~

~~(3) based on unsound accounting principles or auditing standards;~~

~~(4) based on insufficient review of the evidence;~~

~~(5) not sufficient to protect the public interest;~~

~~(6) not sufficient to adequately allow rehabilitation of the licensee;~~

~~(7) an infringement on the board's discretion to determine the board's policies; or~~

~~(8) to correct a technical error.~~

(d) - (g) (No change.)

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

Filed with the Office of the Secretary of State on March 31, 2008.

TRD-200801672

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: May 11, 2008

For further information, please call: (512) 305-7848

◆ ◆ ◆  
CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION  
SUBCHAPTER B. CONTINUING PROFESSIONAL EDUCATION RULES FOR INDIVIDUALS

**22 TAC §523.112**

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.112 concerning Mandatory CPE Attendance.

The amendment to §523.112 will replace the phrase (3)(B), (C), (D), and (F) in paragraph (5) with (3)(A), (B), (C), (D), (E) and (F).

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be that the amendment will provide greater clarity regarding the continuing professional education requirements necessary to re-activate a license.

The probable economic cost to persons required to comply with the amendment will vary according to the number of CPE courses the person decides to offer and take.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on May 12, 2008. Comments should be addressed to J. Randel

(Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

*§523.112. Mandatory CPE Attendance.*

A licensee shall complete at least 120 hours of CPE in each three-year period, and a minimum of 20 hours in each one-year period. CPE, except as provided by board rule shall be offered by board contracted CPE sponsors. The exception to this requirement is an initial licensee, one who has been certified or registered for less than 12 months.

(1) The exception to the requirement of 120 hours of CPE is an initial licensee, one who is paying the license fee for the first time.

(A) To be issued a license that is less than twelve months from the date of certification or registration, the licensee does not have a CPE hour requirement. The first license period begins on the date of certification and ends with the last day of the licensee's birth month.

(B) To be issued a license for the first full twelve-month license period, the licensee does not have a CPE accrual requirement and can report zero hours. CPE earned prior to the first twelve month license period will not be applied toward the three year requirement.

(C) To be issued a license for the second full twelve-month period, the licensee must report a minimum of 20 CPE hours. The hours must be accrued in the 12 months preceding the license period.

(D) To be issued a license for the third full twelve-month license period, the licensee must report a total of at least 60 CPE hours that were accrued in the 24 months preceding the license period. At least 20 hours of the requirement must be accrued in the 12 months preceding the license period.

(E) To be issued a license for the fourth full twelve-month period, the licensee must report 100 CPE hours that were accrued in the 36 months preceding the license period. At least 20 hours of the requirement must be accrued in the 12 months preceding the license period.

(F) To be issued a license for the fifth and subsequent license periods, the licensee must report a total of at least 120 CPE hours that were accrued in the 36 months preceding the license period, and at least 20 hours of the requirement must be accrued in the 12 months preceding the license period.

(2) A former licensee whose certificate or registration has been revoked for failure to pay the license fee and who makes application for reinstatement must pay the required fees and penalties and must accrue the minimum CPE credit hours missed.

(3) The board may consider granting an exemption from the CPE requirement on a case-by-case basis if:

(A) a licensee completes and forwards to the board a sworn affidavit indicating that the licensee will not be employed during the period for which the exemption is requested. A licensee who has been granted this exemption and who re-enters the work force shall be required to report prior to re-entering the workforce a minimum of 40 CPE hours. Such CPE hours shall be accrued from the technical area as described in §523.103 and §523.130 of this title (relating to Standards for CPE Program Development and Ethics Course Requirements for Licensees);

(B) a licensee completes and forwards to the board a sworn affidavit indicating no association with accounting work. The affidavit shall include, as a minimum, a brief description of the duties performed, job title, and verification by the licensee's immediate supervisor;

(i) For purposes of this section, the term "association with accounting work" shall include the following:

(I) working or supervising work performed in the areas of financial accounting and reporting; tax compliance, planning or advice; management advisory services; accounting information systems; treasury, finance, or audit; or

(II) representing to the public, including an employer, that the licensee is a CPA or public accountant in connection with the sale of any services or products involving professional accounting services or professional accounting work, including such designation on a business card, letterhead, promotional brochure, advertisement, or office; or

(III) offering testimony in a court of law purporting to have expertise in accounting and reporting, auditing, tax, or management services; or

(IV) for purposes of making a determination as to whether the licensee fits one of the categories listed in this subclause and subclauses (I) - (III) of this clause, the questions shall be resolved in favor of including the work as an "association with accounting work."

(ii) A licensee who has been granted this exemption and who loses the exemption shall accrue 40 CPE hours prior to re-entering the workforce. Such CPE hours shall be earned in the technical area as described in §523.103 and §523.130 of this title (relating to Standards for CPE Program Development and Ethics Course Requirements for Licensees).

(C) a licensee not residing in Texas, who submits a sworn statement to the board that the licensee does not serve Texas clients from out of state;

(D) a licensee shows reasons of health, certified by a medical doctor, that prevent compliance with the CPE requirement. A licensee must petition the board for the exemption and provide documentation that clearly establishes the period of disability and the resulting physical limitations;

(E) a licensee is on extended active military duty during the period for which the exemption is requested, and files a copy of orders to active military duty with the board; or

(F) a licensee shows reason which prevents compliance that is acceptable to the board.

(4) A licensee who has been granted the retired or disabled status under §515.8 of this title (relating to Retirement Status or Permanent Disability) is not required to report any CPE hours.

(5) A licensee who has been granted exemptions under paragraph (3)(A), (B), (C), (D), (E) and (F) [~~(3)(B), (C), (D), and (F)~~] of this rule and no longer qualifies for the exemption or has been granted retired or disabled status under §515.8 of this title and no longer qualifies for retired or disabled status shall be required to report a minimum of 40 CPE hours prior to re-entry into the workforce. Such CPE hours shall be earned in the technical area as described in §523.103 and §523.130 of this title (relating to Standards for CPE Program Development and Ethics Course Requirements for Licensees).

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

Filed with the Office of the Secretary of State on March 31, 2008.

TRD-200801673

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: May 11, 2008

For further information, please call: (512) 305-7848



## SUBCHAPTER D. STANDARDS FOR CONTINUING PROFESSIONAL EDUCATION PROGRAMS AND RULES FOR SPONSORS

### 22 TAC §523.143

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.143 concerning Sponsor's Record.

The amendment to §523.143 will require CPE sponsors to keep a copy of the complete course material as required by §523.140 rather than just an outline for the course.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be negligible because the amendment does not impose additional costs to the state.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be negligible because the amendment does not reduce costs to the state.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be negligible because the amendment does not affect revenue.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a more thorough record for CPE sponsors.

The probable economic cost to persons required to comply with the amendment will be negligible because the amendment does not impose additional costs on those required to comply.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose additional costs on small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on May 12, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§523.143. *Sponsor's Record.*

(a) In order to support the reports required of participants, the sponsor of group or self-study programs must retain for an appropriate period:

- (1) record of participation;
- (2) course materials as required by §523.140 of this title (relating to Program Standards); [outline of the course (or equivalent)];
- (3) date(s);
- (4) location;
- (5) instructor(s);
- (6) number of credit hours; and
- (7) evaluation of program as directed in §523.141(b) of this title (relating to Evaluation).

(b) To satisfy the detailed requirements of all jurisdictions, a retention period of three years from the date the program is completed is appropriate. The record of attendance should reflect the credit hours earned by each participant, including those who arrive late or leave early.

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

Filed with the Office of the Secretary of State on March 31, 2008.

TRD-200801671

J. Randel (Jerry) Hill  
General Counsel  
Texas State Board of Public Accountancy  
Earliest possible date of adoption: May 11, 2008  
For further information, please call: (512) 305-7848



## PART 29. TEXAS BOARD OF PROFESSIONAL LAND SURVEYING

### CHAPTER 663. STANDARDS OF RESPONSIBILITY AND RULES OF CONDUCT SUBCHAPTER A. ETHICAL STANDARDS

#### 22 TAC §663.11

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Board of Professional Land Surveying or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Board of Professional Land Surveying (TBPLS) proposes the repeal of §663.11, concerning certification and monumentation of surveys. This rule is currently under Professional and Technical Standards, §663.17, which concerns monumentation.

The repeal of this rule is to remove wording that already exists in another rule.

Sandy Smith, Executive Director, has determined that for the first five year period the rule is in effect there will be no fiscal impact to state or local government as a result of enforcing or administering this amendment.

Ms. Smith has also determined that for each year of the first five years the rule is in effect the public will benefit from the rule because it will remove duplication of an existing rule.

There will be no effect on small or micro businesses that are in compliance with the Board's Act and Rules. There are no anticipated costs to those who are required to comply with the rule as proposed.

Comments on the repeal of the rule may be submitted in writing to Sandy Smith, Executive Director, Texas Board of Professional Land Surveying, 12100 Park 35 Circle, Building A, Suite 156, Austin, Texas 78753. Comments may also be faxed to Ms. Smith at the Board at (512) 239-5253 or may be sent electronically to [ssmith@txls.state.tx.us](mailto:ssmith@txls.state.tx.us). All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by the Executive Director not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The repeal is proposed pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

The repeal implements the Texas Administrative Code, Title 22, Part 29, General Rules of Procedures and Practices.

§663.11. *Certification and Monumentation of Surveys.*

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

Filed with the Office of the Secretary of State on March 27, 2008.

TRD-200801619  
Sandy Smith  
Executive Director  
Texas Board of Professional Land Surveying  
Earliest possible date of adoption: May 11, 2008  
For further information, please call: (512) 239-5263



## SUBCHAPTER B. PROFESSIONAL AND TECHNICAL STANDARDS

#### 22 TAC §663.16

The Texas Board of Professional Land Surveying (TBPLS) proposes an amendment to §663.16, concerning Boundary Construction. This section identifies the requirements a registered professional land surveyor must follow in order to meet standards set up by the Board.

The amendment will further clarify what the surveyor should do when delineating a property or boundary line.

Sandy Smith, Executive Director, has determined that for the first five year period the rule is in effect there will be no fiscal impact to state or local government as a result of enforcing or administering this amendment.

Ms. Smith has also determined that for each year of the first five years the rule is in effect the public will benefit from the rule because it will clarify the steps a surveyor should following in delineating a property or boundary line.

There will be no effect on small or micro businesses that are in compliance with the Board's Act and Rules. There are no anticipated costs to those who are required to comply with the rule as proposed.

Comments on the proposed amendment may be submitted in writing to Sandy Smith, Executive Director, Texas Board of Professional Land Surveying, 12100 Park 35 Circle, Building A, Suite 156, Austin, Texas 78753. Comments may also be faxed to Ms. Smith at the Board at (512) 239-5253 or may be sent electronically to [ssmith@txls.state.tx.us](mailto:ssmith@txls.state.tx.us). All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by the Executive Director not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The amendment is proposed pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

The proposed amendment implements the Texas Administrative Code, Title 22, Part 29, General Rules of Procedures and Practices.

§663.16. *Boundary Construction.*

(a) When delineating a property or boundary line as an integral portion of a survey, the surveyor shall respect junior/senior property rights, footsteps of the original surveyor, the record, the intent as evidenced by the record [~~of the parties involved~~], the proper application of the rules of dignity or the priority of calls, and applicable statutory and case law of Texas.

(b) - (d) (No change.)



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

Filed with the Office of the Secretary of State on March 27, 2008.

TRD-200801620

Sandy Smith

Executive Director

Texas Board of Professional Land Surveying

Earliest possible date of adoption: May 11, 2008

For further information, please call: (512) 239-5263



## 22 TAC §663.17

The Texas Board of Professional Land Surveying (TBPLS) proposes an amendment to §663.17, concerning monumentation. This section identifies the requirements a registered professional land surveyor must follow in regards to the setting of monuments.

The amendment will further clarify what the surveyor should do when setting monumentation.

Sandy Smith, Executive Director, has determined that for the first five year period the rule is in effect there will be no fiscal impact to state or local government as a result of enforcing or administering this amendment.

Ms. Smith has also determined that for each year of the first five years the rule is in effect the public will benefit from the rule because it will clarify the rule regarding the setting of monuments.

There will be no effect on small or micro businesses that are in compliance with the Board's Act and Rules. There are no anticipated costs to those who are required to comply with the rule as proposed.

Comments on the proposed amendment may be submitted in writing to Sandy Smith, Executive Director, Texas Board of Professional Land Surveying, 12100 Park 35 Circle, Building A, Suite 156, Austin, Texas 78753. Comments may also be faxed to Ms. Smith at the Board at (512) 239-5253 or may be sent electronically to [ssmith@txls.state.tx.us](mailto:ssmith@txls.state.tx.us). All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by the Executive Director not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The amendment is proposed pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

The proposed amendment implements the Texas Administrative Code, Title 22, Part 29, General Rules of Procedures and Practices.

### §663.17. Monumentation.

(a) (No change.)

(b) When delineating a property or boundary line as an integral portion of a survey (survey being defined in the Act, §1071.002(6) or (8), the land surveyor shall set, or leave as found, sufficient, stable and reasonably permanent survey markers to represent or reference the property or boundary corners, angle points, and points of curvature or tangency.

(1) All survey markers shall be shown and described with sufficient evidence of the location of such markers on the surveyors' plat. If the land surveyor shall prepare a written description of the surveyed premise, he/she shall include in that written description:

(A) [~~4~~] reference to and a description of the survey markers as shown on the plat; and

(B) [~~2~~] the seal and signature of a registered or licensed surveyor.

(2) In addition, the surveyor may furnish an electronic copy of a written description provided that the text is verbatim to that on the certified document retained in the surveyor's file.

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

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

Filed with the Office of the Secretary of State on March 27, 2008.

TRD-200801621

Sandy Smith

Executive Director

Texas Board of Professional Land Surveying

Earliest possible date of adoption: May 11, 2008

For further information, please call: (512) 239-5263



## 22 TAC §663.19

The Texas Board of Professional Land Surveying (TBPLS) proposes an amendment to §663.19, concerning Plat/Description/Report. This section identifies what the registered land surveyor is required to include in surveying reports.

The amendment will further clarify the definition of what a report shall include.

Sandy Smith, Executive Director, has determined that for the first five year period the rule is in effect there will be no fiscal impact to state or local government as a result of enforcing or administering this amendment.

Ms. Smith has also determined that for each year of the first five years the rule is in effect the public will benefit from the rule because it will clarify the definition of a report.

There will be no effect on small or micro businesses that are in compliance with the Board's Act and Rules. There are no anticipated costs to those who are required to comply with the rule as proposed.

Comments on the proposed amendment may be submitted in writing to Sandy Smith, Executive Director, Texas Board of Professional Land Surveying, 12100 Park 35 Circle, Building A, Suite 156, Austin, Texas 78753. Comments may also be faxed to Ms. Smith at the Board at (512) 239-5253 or may be sent electronically to [ssmith@txls.state.tx.us](mailto:ssmith@txls.state.tx.us). All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by the Executive Director not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The amendment is proposed pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt

and enforce reasonable and necessary rules to perform its duties.

The proposed amendment implements the Texas Administrative Code, Title 22, Part 29, General Rules of Procedures and Practices.

§663.19. *Plat/Description/Report.*

For the purposes of these rules the word "report" shall mean any or all of the following survey plat, descriptions, or written [separate] narratives.

(1) - (10) (No change.)

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

Filed with the Office of the Secretary of State on March 27, 2008.

TRD-200801618

Sandy Smith

Executive Director

Texas Board of Professional Land Surveying

Earliest possible date of adoption: May 11, 2008

For further information, please call: (512) 239-5263



## **TITLE 25. HEALTH SERVICES**

### **PART 1. DEPARTMENT OF STATE HEALTH SERVICES**

#### **CHAPTER 37. MATERNAL AND INFANT HEALTH SERVICES**

##### **SUBCHAPTER G. SPINAL SCREENING PROGRAM**

###### **25 TAC §§37.141 - 37.152**

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes amendments to §§37.141 - 37.152, concerning the minimum standards and requirements for detection of abnormal spinal curvature in certain school-age children attending public and private schools.

###### **BACKGROUND AND PURPOSE**

The amendments are necessary to comply with Health and Safety Code, Chapter 37, which requires the department to provide training to screeners for the detection of abnormal spinal curvature and the collection of screening data.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 37.141 - 37.152 have been reviewed, and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed.

###### **SECTION-BY-SECTION SUMMARY**

Amendments to §§37.141 - 37.152 include editorial changes, clarification to the rules, and where applicable, changes to the new agency name from the legacy agency name.

An amendment to §37.141 restates and clarifies the purpose of the subchapter.

The amendments to §37.142 and §37.143 change "Texas Department of Health" to "Department of State Health Services."

The amendments to §§37.144, 37.145, 37.146(b), 37.149, and 37.150(b) add new language for clarity, delete superfluous language, and restructure sentences for clarity.

The amendment to §37.147(1) provides the department's current mailing address.

The amendment to §37.148 clarifies how the screening requirements can be met.

The amendment to §37.151 clarifies that the program cannot unilaterally enforce a promise of confidentiality of information pertaining to individuals screened unless also permitted to do so by statute.

The amendment to §37.152 includes the name of the program directly in the nondiscrimination statement.

###### **FISCAL NOTE**

Jann Melton-Kissel, Director, Specialized Health Services Section, has determined that for each year of the first five years the sections will be in effect, there will be no fiscal implications to state or local government as a result of enforcing and administering the sections as proposed.

###### **SMALL AND MICRO-BUSINESS IMPACT ANALYSIS**

Ms. Melton-Kissel has also determined that there will be no adverse economic effect on screeners subject to these sections as small businesses or micro-businesses because the amended sections make no changes in the scope of coverage of the current Spinal Screening Program, and the changes do not require small businesses or micro-businesses to alter their business practices in any way in order to comply with the sections. There is no impact anticipated on local employment.

###### **PUBLIC BENEFIT**

In addition, Ms. Melton-Kissel has also determined that for each year of the first five years the sections are in effect, the public benefits anticipated as a result of enforcing the sections will be increased assurance that all school-aged children will receive spinal screening as mandated by law; increased efficiency of the spinal screening certification process; and increased efficiency in the implementation of the program.

###### **REGULATORY ANALYSIS**

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

###### **TAKINGS IMPACT ASSESSMENT**

The department has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and,

therefore, does not constitute a taking under Government Code, §2007.043.

#### PUBLIC COMMENT

Comments on the proposal may be submitted to Elijah R. Brown, Department of State Health Services, Health Screening and Case Management Unit, MC 1938, P.O. Box 149347, Austin, Texas 78714-9347; phone (512) 458-7111, extension 6442; or fax (512) 458-7256. 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 proposed amendments are authorized by Health and Safety Code, §37.001(c), which mandates adoption of rules necessary to carry out the program; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

The proposed amendments affect the Health and Safety Code, Chapters 37 and 1001; and Government Code, Chapters 531 and 2001.

##### §37.141. Purpose.

The purpose of these rules is to implement the requirements of Health and Safety Code, Chapter 37, concerning ~~relating to~~ the detection of abnormal spinal curvature in children.

##### §37.142. Definitions.

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

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

(4) Department--~~The~~ Department of State Health Services [~~Texas Department of Health~~].

(5) - (15) (No change.)

##### §37.143. Stages of the Department's Authorization.

The department, in cooperation and coordination with the Texas Education Agency and other department bureaus, divisions or programs serving school-age children, shall develop, implement, and administer a program for the detection of abnormal spinal curvature in children. The program shall be known as the Department of State Health Services [~~Texas Department of Health~~] Spinal Screening Program, and ~~and~~ ~~[which]~~ is authorized to:

(1) - (8) (No change.)

##### §37.144. Certification Training for Non-health Practitioners.

The department shall monitor ~~[be responsible for monitoring]~~ the quality of spinal screener training activities under the following guidelines.

(1) - (5) (No change.)

##### §37.145. Approval of Certification Courses and Trainers.

(a) (No change.)

(b) ~~The~~ ~~[In addition, the]~~ individual must have a minimum of two years of school spinal-screening experience.

(c) - (f) (No change.)

##### §37.146. Termination of Screener or Trainer Participation.

(a) (No change.)

(b) ~~The department may suspend or terminate a screener's approval~~ [Approval of a screener may be suspended or terminated] if the screener:

(1) - (5) (No change.)

(c) (No change.)

##### §37.147. Standards for Spinal Screening Testing.

The department and school districts, private schools, state agencies, volunteer organizations, and other entities performing spinal screening shall adhere to the following standards.

(1) The basic spinal screening test, known as the forward-bend test, shall be used to screen children for abnormal spinal curvature. A description of the test is available from the Department of State Health Services, Health Screening and Case Management Unit, MC 1938, P.O. Box 149347, Austin, Texas 78714-9347 [~~Texas Department of Health, Bureau of Children's Health, Child Wellness Division, 1100 West 49th Street, Austin, Texas 78756~~].

(2) (No change.)

##### §37.148. Responsibilities of Public and Private Schools.

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

(c) New students enrolling in grades scheduled for screening (i.e., grades six and nine or five and eight) who have no record of having received their scheduled screening(s) shall be screened the year they enroll. Schools may offer ~~[shall consider offering]~~ a student enrolling in grades 10, 11, or 12 the opportunity for spinal screening if the student has no record of having been screened previously.

(d) - (o) (No change.)

##### §37.149. Responsibilities of Parent, Managing Conservator, or Guardian.

When screening indicates possible abnormal spinal curvature, the child's parent, managing conservator, or guardian is ~~[shall be]~~ responsible for securing the services of a qualified health practitioner to perform a professional examination to diagnose the problem.

##### §37.150. Further Responsibilities of the Department.

(a) (No change.)

(b) Coordination and cooperation. The department shall encourage coordination and cooperation among entities in areas where more than one entity provides spinal screening so that the efforts of each entity are complementary, rather than duplicative.

##### §37.151. Confidentiality of Information.

The department shall maintain the confidentiality of all information concerning those individuals screened, to the extent permitted ~~[as authorized]~~ by law.

##### §37.152. Nondiscrimination Statement.

No person shall be excluded from participation ~~[in the program]~~, be denied ~~[the]~~ benefits ~~[of the program]~~, or be otherwise subjected to discrimination in the Department of State Health Services Spinal Screening Program on the grounds of race, color, national origin, sex, creed, handicap, or age.

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

Filed with the Office of the Secretary of State on March 26, 2008.

TRD-200801595

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: May 11, 2008

For further information, please call: (512) 458-7111 x6972



## **TITLE 31. NATURAL RESOURCES AND CONSERVATION**

### **PART 10. TEXAS WATER DEVELOPMENT BOARD**

#### **CHAPTER 363. FINANCIAL ASSISTANCE PROGRAMS**

##### **SUBCHAPTER A. GENERAL PROVISIONS**

The Texas Water Development Board (Board) proposes this rule-making to amend §363.15 regarding Required Water Conservation Plan and §363.71 regarding General Responsibilities.

##### **BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES.**

These rules concern water conservation plans, which are required for certain water rights permit applicants or holders of water rights permits under Texas Water Code (Water Code) §11.1271 regarding Additional Requirements: Water Conservation Plans; for certain retail public utilities under Water Code §13.146 regarding Water Conservation Plan; and for applicants for the Board's financial programs, under Water Code §15.103 regarding Application for Assistance, §15.106 regarding Approval of Application, §15.208 regarding Approval of Application, §15.607 regarding Approval of Application, §15.735 regarding Application Submission and Approval, §15.910 regarding Application for Assistance, §15.975 regarding Approval of Applications, §15.995 regarding Financial Assistance, §17.122 regarding Application for Assistance, §17.125 regarding Approval of Application, §17.274 regarding Application for Assistance, §17.277 regarding Approval of Application, and 17.857 regarding Approval of Application. The proposed amendments update the rules and make changes that are necessary because of the passage of Senate Bill 3 and House Bill 4 in 2007. In these bills, the 80th Legislature created new Water Code provisions related to water conservation plans, including Water Code §16.402. Water Code §16.402 requires that the Board and the Texas Commission on Environmental Quality (TCEQ) jointly adopt rules to identify the minimum requirements and submission deadlines for annual reports required by Water Code §16.402(b), and to provide for enforcement of §16.402 and rules adopted under §16.402. To comply with this requirement, the TCEQ adopted a rulemaking as published in the January 4, 2008, issue of the *Texas Register* (33 TexReg 193). The Board proposes these amendments to comply with the new legislation and for consistency with TCEQ rules.

##### **SECTION BY SECTION DISCUSSION.**

The proposed amendment of §363.15(b) inserts language that requires an applicant to submit a new or revised water conservation plan to include five-year and ten-year targets, unless the applicant has implemented an approved plan since May 1, 2005 that contains the minimum requirements, and that has been in effect for less than five years. This provision clarifies whether an applicant must create or revise its water conservation plan in order to comply with Water Code §§11.1271(c), 15.106(b-1), 17.125(b-1), 17.277(b-1), and 17.858(b-1). Similar language currently exists in §363.15(c)(3) as an exception, but this provision does not belong with the other exceptions in subsection (c) because it is not clearly identified as an exception in statute (Water Code §§15.106(c), 17.125(c), 17.277(c), and 17.857(c)). Instead, it fits the subject matter of subsection (b) better. Also, the proposed amendment of §363.15(b)(2) adds the word "any" to make the rule grammatically correct.

The proposed amendment of §363.15(c) adds statutory references to Water Code §§15.106(c), 17.125(c), 17.277(c), and 17.857(c) to clarify that the exceptions listed in this rule are statutory. Also, the proposed changes clarify that an applicant for a flood control project under Water Code, Chapter 17, Subchapter G is exempt from the water conservation plan requirement because it is not required under Water Code, Chapter 17, Subchapter G. Section 363.15(c)(2) is also reworded to clarify that an applicant who has received an exception because of an emergency must continue to justify the exception by reporting on the existence of the emergency every six months after the Board makes a commitment to provide financial assistance. Once the Board's Executive Administrator finds that the emergency is over, the applicant will have six months to submit a water conservation plan. Section 363.15(c)(3) is to be deleted because a similar provision is proposed to be included in subsection (b). This provision does not belong with the other exceptions in subsection (c) because it is not clearly identified as an exception in statute (Water Code §§15.106(c), 17.125(c), 17.277(c), and 17.857(c)). Instead, it fits the subject matter of subsection (b) better.

The proposed amendment of §363.15(d) clarifies that a political subdivision that will utilize a project to furnish water or services to another political subdivision that in turn will furnish the water or services to the ultimate consumer must both submit its own water conservation plan, the other entity's water conservation plan, if one exists, and provide, by contract with its customer, that its customer will also adopt a water conservation plan, which the applicant is responsible for submitting to the Board. This provision is consistent with Water Code §§15.106(d) and (e), 17.125(e), 17.277(e), and 17.857(e), which allow such political subdivisions to comply with the water conservation requirements through contractual arrangements providing for establishment of a water conservation plan. Currently, §363.15(d) is not clear exactly what type of contractual provision is necessary, and whether the political subdivision's customer must also adopt a water conservation plan. The proposed amendments will provide clarity on the type of contractual arrangement required and that the applicant is responsible for assuring that its customer's water conservation plan is submitted to the Board, consistent with the Board's rules requiring adoption of water conservation plans before closing on financial assistance, at 31 TAC §§363.42(a)(3), 371.71(a)(3), 375.71(a)(3), and 384.41(a)(3).

The proposed amendment of §363.15(e) clarifies that the Board will accept a water conservation plan that has been approved by the TCEQ for purposes of meeting the Board's minimum requirements for water conservation plans from applicants for financial assistance.

Proposed §363.15(f) provides that water conservation plans that are submitted to the TCEQ and copied to the Board under Water Code §16.402 must contain the minimum requirements for water conservation plans established by the TCEQ in its rules at 30 TAC Chapter 288. The purpose of this provision is to establish minimum requirements for water conservation plans for the Executive Administrator's review of the plans. Water Code §16.402(a) requires each entity that is required to submit a water conservation plan to the TCEQ to submit a copy of the plan to the Executive Administrator. Water Code §16.402(c) requires that the Executive Administrator must review each water conservation plan to determine compliance with the minimum requirements established by Water Code §11.1271. These water conservation plans are not required from applicants for financial assistance, but are instead required under Water Code §11.1271, which requires a water conservation plan for an applicant for a new or amended water right and the holder of an existing permit, certified filing, or certificate of adjudication for the appropriation of surface water in the amount of 1,000 acre-feet a year or more for municipal, industrial, and other uses, and 10,000 acre-feet a year or more for irrigation uses; and Water Code §13.146, which requires a water conservation plan for a retail public utility that provides potable water service to 3,300 or more connections.

Proposed §363.15(g) establishes the minimum requirements and submission deadlines for the annual reports required under Water Code §16.402(b). This subsection satisfies Water Code §16.402(e)(1), which requires the TCEQ and the Board to jointly adopt rules identifying the minimum requirements and submission deadlines for the annual reports required by §16.402(b). Annual reports must address each of the minimum requirements in the water conservation plan. The deadlines in paragraph (1) are identical to the TCEQ's deadlines established in 30 TAC §288.30(10)(C). Paragraph (2) requires a recipient of financial assistance from the Board to submit annual reports on its progress in implementing each of the minimum requirements in its water conservation plan and the status of any of its customers' water conservation plans required by contract, beginning within one year of closing on the financial assistance and continuing until all financial obligations to the state have been discharged. A similar provision currently exists in §363.71(a)(2), but will be moved to this paragraph so that the annual reporting requirements are all in one place. Paragraph (2) is consistent with the Board's rules requiring that the political subdivision implement its water conservation program until all financial obligations to the state are discharged, at 31 TAC §§363.42(a)(2)(F), 371.71(a)(2)(F), 375.71(a)(2)(F), and 384.41(a)(2)(F).

Proposed §363.15(h) defines a violation of Board rules for purposes of Water Code §16.402: (1) failure to timely submit a water conservation plan containing the minimum requirements established under this section; and (2) failure to timely submit a complete annual report on the entity's progress in implementing its plan, addressing each element in its water conservation plan, as required by Water Code §16.402 and 31 TAC §363.15(g) and §363.71(a)(2). This provision is proposed under Water Code §16.402(e)(2), which requires the Board to adopt rules regarding enforcement of that statute and rules adopted under that statute.

The proposed amendment of §363.71(a) deletes paragraph (2) because a similar provision is proposed for §363.15(g)(2), so that all the annual reporting requirements will be in one place. Paragraph (1) is combined with subsection (a) so that there will no longer be any paragraphs in this subsection.

#### FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS.

Bill Mullican, Deputy Executive Administrator, has determined that there will be no fiscal implications for state or local governments as a result of the proposed rulemaking.

#### PUBLIC BENEFITS AND COSTS.

Mr. Mullican also has determined that for each year of the first five years the proposed rulemaking is in effect, the public will benefit from the rulemaking because it will clarify and enhance the efficiency of the Board's operations and will impose no new requirements on the public or persons required to comply with the rules.

#### LOCAL EMPLOYMENT IMPACT STATEMENT.

The Board has determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect because it will impose no new requirements on local economies.

The Board has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this rulemaking. The Board has also determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

#### REGULATORY IMPACT ANALYSIS.

The Board has determined that the proposed rulemaking is not subject to Government Code §2001.0225 because it is not a major environmental rule under that section.

#### TAKINGS IMPACT ASSESSMENT.

The Board has determined that the promulgation and enforcement of these proposed rule amendments will constitute neither a statutory nor a constitutional taking of private real property. The proposed rule amendments do not adversely affect a landowner's rights in private real property, in whole or in part, temporarily or permanently, because this proposed rulemaking does not burden nor restrict or limit the owner's right to property. More specifically, this proposed rulemaking implements water conservation measures and reporting requirements which do not impose any burdens or restrictions on private real property. Therefore, the proposed amendments do not constitute a taking under Texas Government Code, Chapter 2007.

#### SUBMITTAL OF COMMENTS.

Comments on the proposed rulemaking will be accepted for 30 days following publication and may be submitted to Legal Services, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711-3231, [rulescomments@twdb.state.tx.us](mailto:rulescomments@twdb.state.tx.us), or by fax at (512) 463-5580.

## DIVISION 2. GENERAL APPLICATION PROCEDURES

### 31 TAC §363.15

#### STATUTORY AUTHORITY.

This rulemaking is proposed under the authority of Water Code §6.101, which authorizes the Board to adopt rules necessary to carry out the powers and duties of the Board; §§15.103, 15.105, 15.204, 15.603, 15.604, 15.605, 15.737, 15.909, 15.977, 17.122, 17.125, 17.274, 17.277, and 17.857, which authorize

the Board to prescribe in its rules water conservation plan requirements for applicants for financial assistance; §16.402(e), which requires that the Board and the TCEQ jointly adopt rules identifying the minimum requirement and submission deadlines for the annual reports required by that statute, and providing for enforcement of that statute and rules adopted under it.

Cross reference to statute: Texas Water Code §§11.1271, 13.146, 15.102, 15.103, 15.106, 15.208, 15.607, 15.735, 15.737, 15.910, 15.975, 15.995, 16.402, 17.122, 17.125, 17.274, 17.277, and 17.857.

§363.15. *Required Water Conservation Plan.*

(a) An applicant, if not eligible for an exemption under subsection (c) of this section, shall submit, with its application, two copies of its water conservation plan for approval. The executive administrator shall review all water conservation plans submitted as part of an application for financial assistance for a project and shall determine if the plans meet the requirements of this section.

(b) The water conservation plan required under subsection (a) of this section must be new or revised to include five-year and ten-year targets for water savings, unless the applicant has, since May 1, 2005, implemented an approved water conservation plan that meets the requirements of this section, and that has been in effect for less than five years. The water conservation plan [this section] shall include an evaluation of the applicant's water and wastewater system and customer water use characteristics to identify water conservation opportunities and shall set goals to be accomplished by water conservation measures. The water conservation plan shall provide information in response to the following minimum requirements. If the plan does not provide information for each minimum requirement, the applicant shall include in the plan an explanation of why the requirement is not applicable.

(1) Minimum requirements. Water conservation plans shall include the following elements:

(A) a utility profile including, but not limited to, information regarding population and customer data, water use data, water supply system data, and wastewater system data;

(B) specific, quantified five-year and ten-year targets for water savings to include goals for water loss programs in gallons per capita per day, and goals for municipal use, in gallons per capita per day;

(C) a schedule for implementing the plan to achieve the applicant's targets and goals;

(D) a method for tracking the implementation and effectiveness of the plan;

(E) a master meter to measure and account for the amount of water diverted from the source of supply;

(F) a program for universal metering of both customer and public uses of water, for meter testing and repair, and for periodic meter replacement;

(G) measures to determine and control water loss (for example, periodic visual inspections along distribution lines; annual or monthly audit of the water system to determine illegal connections, abandoned services, etc.);

(H) a program of leak detection, repair, and water loss accounting for the water transmission, delivery, and distribution system;

(I) a program of continuing public education and information regarding water conservation;

(J) a water rate structure which is not "promotional," i.e., a rate structure which is cost-based and which does not encourage the excessive use of water;

(K) a means of implementation and enforcement which shall be evidenced by:

(i) a copy of the ordinance, resolution, or tariff indicating official adoption of the water conservation plan by the applicant; and

(ii) a description of the authority by which the applicant will implement and enforce the conservation plan;

(L) documentation that the regional water planning groups for the service area of the applicant have been notified of the applicant's water conservation plan; and

(M) a current drought contingency plan which includes specific water supply or water demand management measures and, at a minimum, includes, trigger conditions, demand management measures, initiation and termination procedures, a means of implementation, and measures to educate and inform the public regarding the drought contingency plan.

(2) Additional conservation strategies. The water conservation plan may also include any other water conservation practice, method, or technique that the applicant deems appropriate.

(c) Pursuant to Water Code §§15.106(c) 17.125(c), 17.277(c), and 17.857(c), an [The board may not require an] applicant is not required to provide a water conservation plan if the board determines an emergency exists; the amount of financial assistance to be provided is \$500,000 or less; or the board finds that implementation of a water conservation program is not reasonably necessary to facilitate water conservation; or the application is for flood control purposes under Water Code, Chapter 17, Subchapter G.

(1) An emergency exists when:

(A) a public water system or wastewater system has already failed, or is in a condition which poses an imminent threat of failure, causing the health and safety of the citizens served to be endangered;

(B) sudden, unforeseen demands are placed on a water system or wastewater system (i.e., because of military operations or emergency population relocation);

(C) a disaster has been declared by the governor or president; or

(D) the governor's Division of Emergency Management of the Texas Department of Public Safety has determined that an emergency exists.

(2) If the board determines that an emergency exists and commits to financial assistance without requiring a water conservation plan, the applicant must report whether the emergency continues to exist every [The board shall review an application for which an emergency is determined to exist] six months after the board commits to financial assistance [and also at the time of any extensions of the loan commitment]. If the Executive Administrator [board] finds that the emergency no longer exists, the applicant must submit a water conservation plan within six months of the finding [it may then require submission, within six months, of a water conservation plan satisfactory to the board before making any further disbursements on the commitments].

~~[(3) Submission of a new plan is not necessary to facilitate water conservation if the applicant has implemented a water conservation plan that meets the requirements of this section after May 1, 2005 and that plan has been in effect for less than five years.]~~

~~(d) Pursuant to Water Code §§15.106(d)(e), 17.125(e), 17.277(e), and 17.857(e), if [H] the applicant will utilize the project financed by the board to furnish water or wastewater services to another entity that in turn will furnish the water or wastewater services to the ultimate consumer, the applicant shall:~~

~~(1) submit its own water conservation plan before closing on the financial assistance; and~~

~~(2) submit the other entity's water conservation plan, if one exists, before closing on the financial assistance; and~~

~~(3) require, by contract, that the other entity adopt a water conservation plan that conforms to the board's requirements and submit it to the board. If the requirement is to be included in an existing water or wastewater service contract, it may be included, [the requirements for the water conservation plan may be met either through contractual agreements between the applicant and that entity providing for establishment of a water conservation plan, which shall be included in the contract] at the earliest of the [original execution,] renewal or substantial amendment of that contract, or by other appropriate measures.~~

~~(e) The board will accept a water conservation plan determined by the commission to satisfy the requirements of 30 TAC Chapter 288 for purposes of meeting the minimum requirements of subsection (b) of this section.~~

~~(f) Water conservation plans that are submitted to the TCEQ and copied to the board under Water Code §16.402 must contain the applicable minimum requirements for water conservation plans established by the Commission in its rules at 30 TAC Chapter 288.~~

~~(g) Annual reports.~~

~~(1) Each entity that is required to submit a water conservation plan to the board or the commission, other than a recipient of financial assistance from the board, shall file a report not later than May 1, 2010, and annually thereafter to the executive administrator on the entity's progress in implementing each of the minimum requirements in the water conservation plan.~~

~~(2) Recipients of financial assistance from the board shall maintain an approved water conservation plan in effect until all financial obligations to the state have been discharged and shall file a report with the executive administrator on the applicant's progress in implementing each of the minimum requirements in its water conservation plan and the status of any of its customers' water conservation plans required by contract, within one year after closing on the financial assistance and annually thereafter until all financial obligations to the state have been discharged.~~

~~(3) Annual reports prepared for the Commission providing the information required by this subsection may be provided to the board to fulfill the board's reporting requirements.~~

~~(h) The following are violations of board rules for purposes of Water Code §16.402:~~

~~(1) failure to submit a water conservation plan containing the minimum requirements in subsections (b) and (f) of this section; and~~

~~(2) failure to timely submit a complete annual report on the entity's progress in implementing its plan that addresses each element~~

in its water conservation plan, as required by Water Code §16.402 and subsection (g) of this section.

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

Filed with the Office of the Secretary of State on March 28, 2008.

TRD-200801627

Ingrid K. Hansen

Acting General Counsel

Texas Water Development Board

Earliest possible date of adoption: May 11, 2008

For further information, please call: (512) 463-8061



## DIVISION 6. POST-CONSTRUCTION RESPONSIBILITIES

### 31 TAC §363.71

#### STATUTORY AUTHORITY

This rulemaking is proposed under the authority of Water Code §6.101, which authorizes the board to adopt rules necessary to carry out the powers and duties of the board; §§15.103, 15.105, 15.204, 15.603, 15.604, 15.605, 15.737, 15.909, 15.977, 17.122, 17.125, 17.274, 17.277, and 17.857, which authorize the Board to prescribe in its rules water conservation plan requirements for applicants for financial assistance; §16.402(e), which requires that the Board and the TCEQ jointly adopt rules identifying the minimum requirement and submission deadlines for the annual reports required by that statute, and providing for enforcement of that statute and rules adopted under it.

Cross reference to statute: Texas Water Code §§11.1271, 13.146, 15.102, 15.103, 15.106, 15.208, 15.607, 15.735, 15.737, 15.910, 15.975, 15.995, 16.402, 17.122, 17.125, 17.274, 17.277, and 17.857.

§363.71. *General Requirements.*

(a) After the satisfactory completion of the project, the political subdivision shall be held responsible by the board for the continued compliance with all representations and assurances made to the board. To protect the state's monetary investment and the public interest, the [following provisions shall be observed:]

[(1) The] executive administrator is authorized to inspect the project and review operational and financial records. Certified copies of all documents relating to the operation of the project and compliance with agreements relating to board financial assistance shall be provided as requested.

[(2) Political subdivisions shall maintain an approved water conservation program in effect until all financial obligations to the state have been discharged and shall report annually to the executive administrator on the implementation and status of required water conservation programs for three years after the date of loan closing. If the executive administrator determines that the water conservation program is not in compliance with the approved water conservation plan, the political subdivisions shall continue to supply annual reports beyond the three years until the executive administrator determines that deficiencies in the plan have been resolved. Annual reports prepared for the commission providing the information required by this subparagraph may be provided to the board to fulfill the board's reporting requirements.]

(b) Should any information obtained by the executive administrator indicate noncompliance with any agreements, the executive administrator shall require the political subdivision to take timely corrective action. Failure to correct problems may be cause for referral to the attorney general.

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

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TRD-200801630

Ingrid K. Hansen

Acting General Counsel

Texas Water Development Board

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For further information, please call: (512) 463-8061



## CHAPTER 379. ADVISORY COMMITTEES

### 31 TAC §§379.1 - 379.3

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

The Texas Water Development Board (Board) proposes the repeal of §§379.1 - 379.3, relating to Advisory Committees. Chapter 379 contains §§379.1 - 379.3, relating to advisory committees, and lists the Groundwater Availability Modeling (GAM) Technical Advisory Group as an advisory committee. The purpose of the GAM Technical Advisory Group is to provide guidance to the board regarding the development and evaluation of groundwater availability models used in the regional and state water planning process. The GAM Technical Advisory Group advises and assists on developing guidelines on the development and documentation of groundwater flow models and on the evaluation of groundwater availability. Chapter 379 is no longer necessary because the GAM Technical Advisory Group is not an advisory committee under Texas Government Code §2110.0012. The Board currently has no advisory committees, and there is no state or federal law specifically creating or authorizing the creation of an advisory committee for the board.

Section 379.1 contains Definitions which should be repealed with the other sections in Chapter 379 because they will no longer be necessary.

Section 379.2 contains General Provisions which duplicate provisions of Government Code §2110.002(a) and §2110.003(a) and is, therefore, unnecessary.

Section 379.3 contains provisions relating to the GAM Technical Advisory Group, which was previously considered to be an advisory committee. Section 379.3 is no longer necessary because the GAM Technical Advisory Group is not an advisory committee under Texas Government Code Chapter 2110. Texas Government Code §2110.0012 was adopted by the Texas Legislature in 2001, providing that a state agency has established an advisory committee if state or federal law has specifically created the committee to advise the agency, or the agency has, under state or federal law, created the committee to advise the agency. There is no state or federal law specifically requiring or

authorizing the creation of the GAM Technical Advisory Group. Therefore, §379.3 is no longer necessary.

Bill Mullican, Deputy Executive Administrator, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the repeals as proposed.

Mr. Mullican has also determined that for each year of the first five years the proposed repeals are in effect the public will benefit from the repeals because the deletion of unnecessary rules will enhance the efficiency of the board's operations. There will be no impact on local economies. There are no anticipated economic costs to persons who are required to comply with the repeals as proposed. There is no effect on small or micro businesses.

Comments on the proposed repeals will be accepted for 30 days following publication and may be submitted to Legal Services, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, [rulescomments@twdb.state.tx.us](mailto:rulescomments@twdb.state.tx.us), or by fax at (512) 463-5580.

The repeals are proposed under the authority of the Texas Water Code §6.101, which provides the board with the authority to adopt rules necessary to carry out the powers and duties of the board.

Cross reference to statute: Texas Government Code Chapter 2110.

§379.1. *Definitions.*

§379.2. *General Provisions.*

§379.3. *Groundwater Availability Modeling (GAM) Technical Advisory Group.*

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

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Ingrid K. Hansen

Acting General Counsel

Texas Water Development Board

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For further information, please call: (512) 463-8061



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

#### CHAPTER 152. CORRECTIONAL INSTITUTIONS DIVISION

##### SUBCHAPTER D. OTHER RULES

### 37 TAC §152.51

The Texas Board of Criminal Justice files this notice of intent to review and proposes amendments to §152.51, Authorized Witnesses to the Execution of an Inmate Sentenced to Death.



This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four (4) years. The amendments are necessary to add clarity, increase the number of victim witnesses to six (6) under certain circumstances and authorize other persons to witness the execution upon approval of the TDCJ Executive Director.

Charles Marsh, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that, for each year of the first five (5) years the rule will be in effect, enforcing or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. Marsh has also determined that, for the first five (5) year period, there will not be an economic impact on persons required to comply with the rule. There will not be an adverse economic impact on small or micro businesses. Therefore, no regulatory flexibility analysis is required. The anticipated public benefit, as a result of enforcing the rule, will be to provide the close relatives of the victim, offender relatives and friends, the media, and public officials the opportunity to witness executions.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amendments are proposed under Texas Code of Criminal Procedure, art. 43.20.

Cross Reference to Statutes: Texas Government Code, §492.013.

§152.51. *Authorized Witnesses to the Execution of an Offender [~~Inmate~~] Sentenced to Death.*

(a) Purpose. The purpose of this rule is to specify those persons who are authorized to witness the scheduled execution of an offender who has been [~~inmate~~] sentenced to death.

(b) Victim Witnesses. [~~Definition: "Close relative of the deceased victim" means the following persons in relation to the victim for whose death an inmate is sentenced to death;~~]

(1) "Close relative of the victim" means the following persons in relation to the victim for whose death an offender is sentenced to death: [~~the spouse of the victim at the time of the victim's death;~~]

(A) The spouse of the victim at the time of the victim's death;

(B) A parent or stepparent of the victim;

(C) An adult brother, sister, child or stepchild of the victim (adult is defined as anyone 18 years of age or older); or

(D) An individual who had a close relationship with the victim or has a close relationship with a relative of the victim, upon the recommendation of the Victim Services Division (VSD) and the approval of the Director of the Correctional Institutions Division (CID).

(2) The number of close relatives of the victim who are permitted to witness an execution may not exceed five (5). [~~a parent or stepparent of the deceased victim; or~~]

(3) If there are fewer than five (5) close relatives of the victim, others may be permitted to attend the execution as follows: [~~an adult brother, sister, child, or stepchild of the deceased victim (adult is defined as anyone 18 years of age or older); or~~ ]

(A) Close relatives of a victim for whose death the offender has been convicted but for whose death the offender is not sentenced to death;

(B) If there are still fewer than five (5) persons, close relatives of a victim for whose death the offender is unequivocally responsible, upon the recommendation of the VSD and approval of the Director of the CID; and

(C) If there are multiple victims involved relating to the offense for which the offender has been convicted and sentenced to death, the total number of witnesses shall be increased to six (6).

~~{(4) another individual with a close relationship to the deceased victim, or to a close relative of the victim, upon the recommendation of the Victim Services Division (VSD) and approval of the Director of the Texas Department of Criminal Justice Institutional Division (TDCJ-ID). }~~

(c) Offender Witnesses. Individuals that may be offender witnesses are as follows: [~~The only persons authorized to witness an execution are as follows: ]~~

(1) Five (5) relatives or friends and a spiritual advisor, if requested by the condemned offender, are eligible to attend the execution of the condemned offender if: [~~departmental staff as deemed necessary by the Director of the TDCJ-ID; ]~~

(A) The condemned offender provides a list of witnesses and the name or type of spiritual advisor requested to attend the execution to the Classification and Records Department at least 14 days prior to the date of execution; and

(B) The witnesses and spiritual advisor requested by the offender are on the offender's approved Visitors List and the witnesses are 18 years of age or older.

(2) If less than 14 days prior to the scheduled execution the condemned offender requests to change the names of previously submitted witnesses or requested spiritual advisor, the offender shall submit a request in writing to the Director of the CID who shall approve or disapprove the changes. [~~members of the Texas Board of Criminal Justice;~~]

(3) The spiritual advisor shall be a bona fide pastor or comparable official (e.g., minister, priest or rabbi) of the condemned offender's elected religion. [~~chaplains of the Texas Department of Criminal Justice;~~]

~~{(4) Walker County Judge;}~~

~~{(5) Walker County Sheriff;}~~

~~{(6) media pool representatives consisting of:}~~

~~{(A) one reporter from the Huntsville Item;}~~

~~{(B) one reporter from the United Press International and the Associated Press; }~~

~~{(C) one additional print media representative and one broadcast representative selected from rotating lists of applicants maintained by the TDCJ-ID Public Information Office. }~~

~~{(7) relatives or friends requested by the condemned inmate, not to exceed five in number, who are eligible under subsections (d)(1) and (d)(2) of this section, and one spiritual advisor requested by the condemned inmate who is eligible under subsection (d) of this section; }~~

~~{(8) close relatives of the deceased victim not to exceed five in number; and}~~

~~{(9) if there are fewer than five close relatives of the deceased victim:}~~

~~{(A) additional close relatives of a victim for whose death the inmate has been convicted but for whose death the inmate is not sentenced to death; and }~~

~~{(B) if there are still fewer than five persons, additional close relatives of a victim for whose death the inmate is unequivocally responsible, upon the recommendation of the Victim Services Division and approval of the Director of TDCJ-ID. }~~

~~(d) Other Witnesses. The only persons other than those listed in subsections (b) and (c) above who are authorized to witness an execution are: [Spiritual Advisor and Relatives or friends of the inmate.]~~

~~(1) Texas Department of Criminal Justice (TDCJ) staff or law enforcement staff as deemed necessary by the Director of the CID; [Five relatives or friends and a spiritual advisor, if requested by the condemned inmate, are eligible to attend the execution of the condemned inmate if: ]~~

~~{(A) the condemned inmate provides a list of witnesses and the name or type of spiritual advisor he/she wishes to attend the execution to the Bureau of Classification at least 14 days prior to the date of execution; and}~~

~~{(B) the witnesses and spiritual advisor requested by the inmate are on the inmate's approved "Visitor's List." }~~

~~(2) Members of the Texas Board of Criminal Justice (TBCJ); [If less than 14 days prior to the scheduled execution, the condemned inmate wishes to change the names of his/her witnesses or spiritual advisor, the inmate shall submit a request in writing to the Director of TDCJ-ID who shall approve or disapprove the changes.]~~

~~(3) Inspector General or designee and the Office of the Inspector General (OIG) assigned staff as deemed necessary by the Inspector General;~~

~~(4) ~~{(3)}~~ TDCJ Chaplains; [The spiritual advisor must be a bonafide pastor or comparable official (e.g., minister, priest, or rabbi) of the church of the condemned inmate's elected religion. ]~~

~~(5) Walker County Judge;~~

~~(6) Walker County Sheriff;~~

~~(7) Media pool representatives consisting of:~~

~~(A) One (1) reporter from the Huntsville Item;~~

~~(B) One (1) reporter from the Associated Press (AP);~~

~~(C) Three (3) additional print media and/or broadcast media representatives selected from rotating lists of applicants maintained by the TDCJ Public Information Office; and~~

~~(8) Any other person as approved by the TDCJ Executive Director.~~

~~(e) Prohibition of Attendance. [on attendance-] Any offender [inmate] currently confined within the TDCJ is specifically denied authorization to witness the execution of an offender. [inmate sentenced to death.]~~

~~(f) Victim Notification.~~

~~(1) The VSD shall maintain a list of scheduled executions and any subsequent updates regarding significant changes pertaining to the execution (e.g., dates, court rulings, etc.). The Executive Clemency Section of the Board of Pardons and Paroles (BPP) will provide a list of scheduled executions to the VSD in an expedient manner.~~

~~{(1) The TDCJ-ID Victim Services Liaison (VSL) shall be responsible for maintaining a list of scheduled executions.}~~

~~{(2) The VSL/Emergency Action Center (EAC) shall provide a list of scheduled executions to the TDCJ (VSD). Subsequent updates regarding significant changes pertaining to the execution (e.g., dates, court rulings, etc.) shall also be provided to the TDCJ VSD by the VSL/EAC in an expedient manner. }~~

~~(2) ~~{(3)}~~ The VSD is responsible for notifying the victim(s) and/or close relatives of the victim of the scheduled execution date, time[;] and location, upon request. It is the responsibility of the victim(s) and/or close relatives [relatives] to notify the [TDCJ] VSD of any subsequent address or telephone number changes and their intent to attend.~~

~~(3) ~~{(4)}~~ The relatives [relative] of the victim shall [must] be identified and approved by the VSD.~~

~~(4) ~~{(5)}~~ It is the responsibility of the VSD to notify the Director of the CID, [VSL,] no later than five (5) days prior to the scheduled execution date, of the names and contact numbers for the victim's witnesses who plan [those persons planning] to attend.~~

~~(5) ~~{(6)}~~ The VSD shall contact the relatives [relative] of the victim and provide information regarding the written procedures affecting their participation.~~

~~(g) Requirements for the Execution Chamber. [execution chamber-] The room provided for the execution shall be arranged so that:~~

~~(1) There [there] is sight and sound separation between any offender witnesses and any victim witnesses; [relative or friend of the condemned inmate and any close relative of a deceased victim;] and~~

~~(2) There [there] is sound separation between the condemned offender [inmate] and those in attendance, except [that] arrangements shall be provided to [that] allow those in attendance to hear the statements of the condemned offender. [inmate-]~~

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

Filed with the Office of the Secretary of State on March 28, 2008.

TRD-200801623

Melinda Hoyle Bozarth

General Counsel

Texas Department of Criminal Justice

Earliest possible date of adoption: May 11, 2008

For further information, please call: (512) 463-0422



## CHAPTER 159. SPECIAL PROGRAMS

### 37 TAC §159.1

The Texas Board of Criminal Justice files this notice of intent to review and proposes amendments to §159.1, Substance Abuse Felony Punishment Facilities (SAFPF) Eligibility Criteria. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four (4) years. The proposed amendments are necessary to conform to state law.

Charles Marsh, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that, for each year of the first five (5) years the rule will be in effect, enforcing or administering

the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. Marsh has also determined that, for the first five (5) year period, there will not be an economic impact on persons required to comply with the rule. There will not be an adverse economic impact on small or micro businesses. Therefore, no regulatory flexibility analysis is required. The anticipated public benefit, as a result of enforcing the rule, will be to provide substance abuse treatment for eligible offenders.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amendments are proposed under Texas Government Code §493.009 and Texas Code of Criminal Procedure, art. 42.12, §14.

Cross Reference to Statutes: Texas Government Code, §492.013.

§159.1. *Substance Abuse Felony Punishment Facilities (SAFPF) Eligibility Criteria.*

(a) Offenders [Defendants] with a detainer filed by the United States Immigration and Customs Enforcement, or a felony detainer, or misdemeanor detainer, or pending charges except as noted in subsection (d) below are not eligible to participate unless the jurisdiction that placed the detainer agrees not to seek custody of the defendant until after the program and continuum of care requirements have been completed. Exceptions may be made on a case by case basis for offenders whose sentences are being served concurrently, provided that the sentence length is the same or less than the term of confinement in the SAFPF.

(b) Offenders shall [Persons must] be physically and mentally capable of uninterrupted participation in a rigorous, stressful, and confrontational therapeutic community program. Offenders [Defendants] with special medical or psychological needs shall [must] meet the eligibility criteria for the Special Needs SAFPF as defined in both the Community Justice Assistance Division CJAD/SAFPF Procedure Manual and the Substance Abuse Treatment Operations Manual.

(c) Offenders [Persons] who have signs or symptoms of acute drug or alcohol withdrawal or who require detoxification are not eligible to participate until they have detoxified.

(d) Pretrial detainees are eligible to participate if ordered to do so pursuant to a drug court program established under Chapter 469, Health and Safety Code, or a similar program. The detainee must have already been ordered to participate in an outpatient substance abuse treatment program or a residential substance abuse treatment facility, if available, as a condition of a pretrial order for the charges that are currently pending and has been unsuccessfully discharged from both programs.

(e) Offenders convicted of offenses for which sex offender registration is required are not eligible to participate.

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

Filed with the Office of the Secretary of State on March 28, 2008.  
TRD-200801624

Melinda Hoyle Bozarth

General Counsel

Texas Department of Criminal Justice

Earliest possible date of adoption: May 11, 2008

For further information, please call: (512) 463-0422

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**TITLE 43. TRANSPORTATION**

**PART 1. TEXAS DEPARTMENT OF TRANSPORTATION**

**CHAPTER 8. MOTOR VEHICLE DISTRIBUTION**

The Texas Department of Transportation (department) proposes new §8.87, License Terms and Fees, and new §8.88, Transition Period for the Issuance of Two-Year Licenses, and amendments to §8.133, General Distinguishing Number, all concerning license terms.

**EXPLANATION OF PROPOSED AMENDMENTS AND NEW SECTIONS**

The proposed amendments and new sections are necessary to give effect to House Bill 2651, 80th Legislature, Regular Session, 2007. Licenses issued by the department to new and independent motor vehicle dealers, motor vehicle manufacturers, distributors, converters, their representatives, lessors, and lease facilitators currently expire one year after the date of issuance. HB 2651 removes the annual renewal requirement for motor vehicle distribution licenses and authorizes the department to set the period for which licenses are valid.

New §8.87, License Terms and Fees, states that the license period is two years for all licenses, general distinguishing numbers, and license plates issued by the department under Occupations Code, Chapter 2301 or Transportation Code, Chapter 503 unless otherwise provided for by statute. Due to an increase in requirements over the years, the application processing time has increased, which has resulted in backlogs for the issuance and renewals of licenses. A two-year license term will reduce the renewal backlog and associated call volume. Reduction of the renewal workload will allow the department to provide better service to the public and process license renewals in a more timely manner.

New §8.87 incorporates the existing requirements of §8.133(i)(2) that metal plates issued by the department in connection with a license expire on the same date as the license. The language is transferred from Subchapter E, General Distinguishing Numbers, to Subchapter C, Licenses, Generally, to clarify that the requirements apply to all licensees, including manufacturers who may have manufacturer license plates but do not hold general distinguishing number licenses. The two-year license term will not apply to personalized prestige dealer license plates, also known as vanity plates, issued under Transportation Code, §503.0615. Those plates are issued by county tax assessor collectors under the authority of the Vehicle Titles and Registration Division of the department and are not affected by these amendments.

New §8.87 further clarifies that the annual license fees required by statute will be multiplied by the number of years in the license term to determine the amount of the fee, which is due at the time

of application. Fees are not increased, although licensees will be required to pay two years of license fees at one time.

New §8.88, Transition Period for the Issuance of Two-Year Licenses, describes how the transition from one to two-year license periods will be accomplished. During the first year of implementation, the department will randomly select one-half of the licensees whose license will be renewed for a one-year term. Prior to renewal of those licenses, the department will notify the licensees of their license term. The phased implementation will balance the renewal workload between the years in the two-year license cycle. If an application for a new license is received by the department after August 31, 2008, the licensee will be issued a two-year term. This section automatically expires on December 31, 2009 by which time the transition to the two-year license term will have been completed.

Amendments to §8.133, General Distinguishing Number, remove specific references to a one-year license term. Language clarifying the term of a license and requiring payment of a license fee in full at the time of application is transferred to new §8.87. The language is transferred because the requirements apply to all licensees as opposed to only general distinguishing number license holders. Language regarding the issuance and expiration of dealer metal plates is also transferred to new §8.87. The metal plates issued by the division will be issued for the same period as the license.

In addition, the amendments correct citations in §8.133(b)(8), §8.133(c)(1), and §8.133(f). The amendments also correct formatting and punctuation errors in §8.133(c)(5) and (6).

#### FISCAL NOTE

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

The fiscal impact to state government in the first year of implementation will be a one-time revenue gain to the state highway fund of approximately \$3.3 million. Annual license renewal revenue is approximately \$6.6 million. During the first year of implementation, half of the licensees will renew their licenses for one year at the current annual rate and half of the licensees will renew for a two-year period at twice the annual rate. After the first year of implementation, half the licensees will renew each year at twice the annual rate, and annual license renewal revenue will return to a constant level. If the department returns to one-year license periods, there would be a similar \$3.3 million loss in the last year of the two-year renewal cycle.

Brett Bray, Director, Motor Vehicle Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments and new sections.

#### PUBLIC BENEFIT AND COST

Mr. Bray has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments and new sections will be better service to the regulated community and timelier renewal of licenses. The license renewal backlog and associated call volume should be reduced. There will be minimal economic costs for persons required to comply with the sections as proposed. Under the revisions to the rules, all licensees will be required to submit the fee for two years at the time of the ap-

plication or renewal. The licensee will see an increased cost in year one of the license term and an equal decrease in cost in the second year of the term. Since the licensee will see an increase in fees in year one, the department has conducted a small business analysis to study alternatives to the two-year license term.

Government Code, §2006.002 requires that, before adopting a rule that may have an adverse economic effect on small businesses, a state agency must prepare an economic impact statement and a regulatory flexibility analysis. The statute defines "small business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has fewer than 100 employees or less than \$6 million in annual gross receipts. A "micro-business" is a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has not more than 20 employees. The department currently has 18,396 licensees. Of these licensees, 13,494 are independent dealer licensees, 2,664 are franchised dealer licensees, 293 are manufacturer licensees, 134 are converter licensees, 1,557 are representative licensees, 155 are lessor licensees, 54 are lease facilitator licensees, and 45 are In-Transit licensees. The department does not maintain data of a nature that would allow the categorization of a particular licensee under Government Code, Chapter 2006. However, the nature of the motor vehicle industry indicates that a large majority of all of the licensees would be categorized as small businesses since the determining factor would be fewer than 100 employees or less than \$6 million in gross receipts. A small percentage of licensees, principally in the manufacturer, lessor, lease facilitator, converter, and large franchised dealer categories, would meet the more than \$6 million in gross receipts with more than 100 employees standard required not to be classified as a "small business." The majority of the "small business" licensees, principally the independent dealer licensees, would have 20 or fewer employees and would be categorized as "micro-businesses." For the purposes of this impact statement and flexibility analysis, the distinction between "small business" and "micro-business" under Government Code, Chapter 2006 is insignificant and "small business" will be used for both.

Licensing fees vary depending on the type of license acquired. The higher fees are generally associated with business operations that exceed the small business definition for gross sales or number of employees. The highest fee that would usually be encountered by a "small business" would be \$475, which reflects the \$275 annual fee for a franchised dealer license, and the \$200 annual fee for the companion general distinguishing number license. Assuming a present value annuity factor of three percent and using \$475 as an example, the cost of paying the additional \$475 at the time of application instead of in year two would be \$14.25. However, the loss would be offset by not incurring the \$10.83 cost of processing the application by the small business. The department estimates that at a minimum it would take 1-1/2 hours for a licensee to complete the application, mail the application to the department, and communicate with the department regarding the application and license issuance. The \$10.83 is computed by multiplying 1.5 hours by the minimum wage rate of \$6.55/hour plus \$1 in postage under the new postal rate for a 2 oz. first class large envelope. The majority of license applications will be prepared by the applicant, whose time would be valued at a rate above the minimum wage employee used in this example.

Another example is the fee of independent dealers, who are the largest license group. They pay \$200 for a renewal application and are required to obtain a bond. The cost of paying the additional \$200 at the time of application would be \$6 using a three percent present value annuity factor. Again, the loss would be offset by not incurring the \$17.38 cost of processing the application by the small business. The department estimates that it will take an independent dealer a minimum of 2-1/2 hours to complete the application, complete a bond application, secure a bond, mail the application with the bond to the department, and communicate with the department regarding the application and license issuance. The \$17.38 is computed by multiplying 2.5 hours by the minimum wage rate of \$6.55 plus \$1 in postage under the new postal rate for a 2 oz. first class large envelope, totaling \$17.38. The majority of license applications will be prepared by the applicant, whose time would be valued at a rate above the minimum wage employee used in this calculation. Bond costs are specific to the individual applicant and not subject to an objective quantification but overall bond costs are expected to encounter the same economic forces as the department's application fees with a similar economic benefit to the license applicant.

The cost for each license fee based on the three percent annuity factor is set out in the following chart:

Figure: 43 TAC Chapter 8 - Preamble

The department considered several alternative methods for achieving the purposes of these rules during the proposal process. The department considered maintaining the current one-year license term, but determined that a reduction in the department's renewal workload would benefit licensees by allowing faster renewal of licenses. Timely issuance of renewed licenses will eliminate the need to fax letters to the licensee, tax assessor-collectors, and others verifying license status until a licensee receives the license in the mail. Elimination of this step will allow the department to allocate resources to license processing, saving the department labor costs and reducing the current backlog in the renewal application process.

The department considered implementing two-year license terms. Instituting two-year terms achieves the department workload benefits mentioned above. In addition, the licensees' workloads would decrease since the licensee would process one set of renewal application forms instead of two, secure one bond instead of two, and spend less time contacting the department and tracking the progress of its renewal application. The licensees would incur the additional cost associated with the paying of all monies at the beginning of the two-year term, instead of paying half each year. However, the department believes that the low cost to licensees will be offset by the labor savings resulting from the decrease in workload.

The department considered a license term of more than two years, but determined that the license application backlog would not be proportionately decreased by additional time. Additionally, the department's ability to enforce dealer laws will be impacted to a significant degree by the longer license term since license renewal provides licensees an incentive to pay outstanding civil penalties or suffer the consequence of license renewal denial.

The department considered allowing licensees the option of securing a license for either a one-year or two-year term. Under this option, the department considered whether the continued maintenance of a system that provided for both one- and

two-year term licenses would justify the licensee option. Providing an option system eliminates some of the benefits the department achieves by requiring all licensees obtain a two-year license. The reduction in backlog and faster processing time will be reduced by the number of licensees that chose the one-year option. The department could also potentially see an increase in costs due to maintaining an electronic system that will allow for the dual system. The department concluded that the low cost to the dealers for the two-year term did not justify the additional expense or loss of benefits caused by a dual system.

The department concluded that the rules as proposed accomplish the objectives needed to improve the safety of the general public and the economic welfare of the state with the least amount of economic impact on the regulated industries and that the rules are necessary to achieve a sound system of distributing and selling motor vehicles as required under Occupations Code, §2301.001.

#### PUBLIC HEARING

Pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed rules. The public hearing will be held at 9:00 a.m. on Tuesday, April 29, 2008, in the first floor hearing room of the Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin, Texas and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 8:30 a.m. Any interested persons may appear and offer comments, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views and identical or similar comments through a representative member when possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc. for proper reference. Any suggestions or requests for alternative language or other revisions to the proposed text should be submitted in written form. Presentations must remain pertinent to the issues being discussed. A person may not assign a portion of his or her time to another speaker. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Randall Dillard, Government and Public Affairs Division, 125 East 11th Street, Austin, Texas 78701-2483, (512) 305-9137 at least two working days prior to the hearing so that appropriate services can be provided.

#### SUBMITTAL OF COMMENTS

Written comments on the proposed new §8.87 and §8.88 and amendments to §8.133 may be submitted to Brett Bray, Director, Motor Vehicle Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on May 12, 2008.

#### SUBCHAPTER C. LICENSES, GENERALLY

##### 43 TAC §8.87, §8.88

##### STATUTORY AUTHORITY

The new sections are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Occupations Code, §2301.005 and §2301.155 and Transportation Code, §503.002, which authorize the commission to establish rules for motor vehicle distribution licensees and Occupations Code, §2301.301 and Transportation Code, §503.010, which authorize the commission to establish the term of the licenses to which the new rules apply.

#### CROSS REFERENCE TO STATUTE

Occupations Code, Chapter 2301, Subchapter G, and Transportation Code, §§503.007, 503.008, 503.010, and 503.011.

#### §8.87. License Terms and Fees.

(a) Except as provided by other law, the term of a license or license plate issued by the division under Occupations Code, Chapter 2301 or Transportation Code, Chapter 503 is two years.

(b) Metal plates issued by the division in connection with a license expire on the same date as the license.

(c) The fee for a license or license plate is computed by multiplying the applicable annual fee by the number of years of the license term. The entire amount of the fee is due at the time of application for the license or license renewal.

#### §8.88. Transition Period for the Issuance of Two-Year Licenses.

(a) To better equalize the division's workload relating to the issuance and renewal of licenses and license plates, the division will renew approximately one-half of the number of licenses and associated license plates for a one-year period.

(b) The division will randomly select the licensees whose licenses will be renewed for the one-year period.

(c) The division will notify each licensee of the term of the licensee's renewal.

(d) Except as provided by other law, all initial licenses the applications for which are received after August 31, 2008 will be issued for a two-year period.

(e) This section expires December 31, 2009.

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

Filed with the Office of the Secretary of State on March 28, 2008.

TRD-200801645

Bob Jackson

General Counsel

Texas Department of Transportation

Earliest possible date of adoption: May 11, 2008

For further information, please call: (512) 463-8683



## SUBCHAPTER E. GENERAL DISTINGUISHING NUMBERS

### 43 TAC §8.133

#### STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission

(commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Occupations Code, §2301.005 and §2301.155 and Transportation Code, §503.002, which authorize the commission to establish rules for motor vehicle distribution licensees and Occupations Code, §2301.301 and Transportation Code, §503.010, which authorize the commission to establish the term of the licenses to which the new rules apply.

#### CROSS REFERENCE TO STATUTE

Occupations Code, Chapter 2301, Subchapter G, and Transportation Code, §§503.007, 503.008, 503.010, and 503.011.

#### *§8.133. 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 division 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 division as provided in §8.135 [~~§8.35~~] of this chapter (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 division, 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 director properly completed by the applicant showing all information requested thereon and shall be submitted to the director accompanied by the following:

(1) a \$25,000 surety bond as provided in §8.137 [~~§8.37~~] of this chapter (relating to Security Requirements);

(2) a [~~one-year~~] lease for the term of the license as cited in §8.140 of this chapter (relating to Established and Permanent Place of Business), or deed for the dealer's location in the name of the applicant;

(3) the fee for the general distinguishing number as prescribed by law for each type of license requested;

(4) the fee as prescribed by law for each dealer metal plate requested and the license plate reflectorization fee as prescribed by law;

(5) photographs clearly showing:

(A) the interior of the dealer's office;

(B) the exterior of the dealer's office;

(C) the dealer's sign; and

(D) the vehicle display area; [~~and~~]

(6) verification of all assumed name(s), if applicable, in the form of assumed name certificate(s) on file with the Secretary of State or county clerk; and[-]

(7) a photocopy of the current driver's license or Department of Public Safety identification of the owner, president or managing partner of the dealership.

(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 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, as it appears on file with the Secretary of State, shall be recorded on the application.

(f) A licensed wholesale dealer who elects to buy, sell to, or exchange vehicles with persons other than licensed dealers, must satisfy the display space requirements of §8.140 [~~§8.40~~] of this chapter (relating to Established and Permanent Place of Business) and exchange the wholesale dealer license for a general distinguishing number which is appropriate for the type of vehicles the dealer wishes to buy, sell, or exchange.

(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.

~~{(i) Each license will be issued for a period of one year from the date of issuance of the license. The entire yearly license fee will be due at that time.}~~

~~(i) [(4)]~~ The security requirement stated in Transportation Code, §503.033, must be effective, at a minimum, for the period for which the general distinguishing number will be valid.

~~{(2) All dealer metal plates issued to a licensed dealer shall expire on the same date as the expiration of the dealer's general distinguishing number.}~~

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

Filed with the Office of the Secretary of State on March 28, 2008.

TRD-200801646

Bob Jackson

General Counsel

Texas Department of Transportation

Earliest possible date of adoption: May 11, 2008

For further information, please call: (512) 463-8683



## CHAPTER 17. VEHICLE TITLES AND REGISTRATION

### SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

#### 43 TAC §17.28, §17.40

The Texas Department of Transportation (department) proposes amendments to §17.28, concerning specialty license plates, symbols, tabs, and other devices, and new §17.40, marketing of specialty license plates through a private vendor, all concerning motor vehicle registration.

#### EXPLANATION OF PROPOSED AMENDMENTS AND NEW SECTION

The proposed amendments and new section are necessary to implement the provisions of House Bills 191, 2282, and 2627 of the 80th Legislature, Regular Session, 2007; and to update or clarify existing information.

House Bill 191 amended Transportation Code, §502.184 and Transportation Code, Chapter 504 to standardize the fees assessed for specialty license plates issued to active or former members of the United States Armed Forces and their surviving spouses.

House Bill 2282 amended Transportation Code, Chapter 504 by adding new §504.316, which requires the department to issue specialty license plates to persons who have received the Legion of Merit medal and provides the fees associated with issuance of Legion of Merit License Plates.

House Bill 2627 amended Transportation Code, §504.701 and §504.702 by decreasing the amount of deposit that must be submitted to the department by a sponsoring entity prior to manufacture of specialty license plates authorized by a law. The deposit amount was decreased from \$15,000 to \$8,000.

Amendments to §17.28(b)(2) clarify that the license plate fee for the Legion of Merit specialty license plate is the same amount as the fee for other military specialty license plates. House Bill

2282, enacted during the regular session of the 80th Legislature, added Transportation Code, §504.316, which provides for the issuance of license plates for Legion of Merit medal recipients and sets the fees for those plates. House Bill 191 amended several provisions relating to specialty plates that are authorized for certain types of military service and honors and established a general structure for fees charged for those plates. Section 14 of House Bill 191 provides that, in the case of an inconsistency between the provisions of that bill and another bill that was enacted during the regular session that relates to fees for military specialty plates, House Bill 191 controls. The fee provision of House Bill 2282 conflicts with the fee structure provided under House Bill 191; under Section 14 of House Bill 191, the fee structure provided by that bill controls. The language added in the proposed rule expressly provides the statutory authority for charging a fee that is different than the fee provided by Transportation Code, §504.316.

New subparagraph (C) of §17.28(b)(2) states the existing policy that the fee for specialty plates is non-refundable after the application is submitted and the issuance is approved by the department. The application fee is used to offset the administrative costs of processing the application. Subsequent subparagraphs are relettered.

Amendments to §17.28(b)(3), (d)(2)(B), and (d)(3)(C) address changes related to the Legion of Valor license plates. Legion of Valor is deleted from the list of specialty license plates that require an application to be submitted to the department to allow those plates to be processed by the county tax assessor-collector offices. This change makes applying for those plates more convenient. Legion of Valor license plates are also deleted from the list of license plates that expire in March of each year. This change allows the department to stagger the expiration of Legion of Valor license plates to distribute the work more evenly throughout the year.

Amendments to §17.28(d)(2)(C) revise the language of that provision to delete Texas Guard license plates from the list of license plates that expire in June of each year. This change allows the department to stagger the expiration of Texas Guard license plates to distribute the work more evenly throughout the year. Subsequent subparagraphs are relettered.

Amendments to redesignated subparagraph (E) of §17.28(d)(3) clarify that the six and eight year periods for the issuance of new specialty license plates at no charge is calculated from the date of issuance of personalized license plates and other specialty license plates, respectively. This language is added to eliminate confusion regarding whether the six and eight year periods for the issuance of new specialty license plates begins to run from the date of issuance or on the one year anniversary of the date of issuance.

Amendments to §17.28(e)(1)(C) and (2) delete references to Transportation Code, §504.851 as the procedure for the transfer of new specialty license plates created under Transportation Code, §504.851 is being proposed in new §17.40(f). The deletion of former subparagraph (A) of §17.28(e)(2) removes the ability to transfer specialty license plates issued under Transportation Code, Chapter 504, Subchapters B and G, between persons. Currently, there is little demand for this service, and the procedure is burdensome. This prohibition is combined with the substance of former subparagraph (B) of §17.28(e)(2) into new subparagraph (A) of §17.28(e)(2).

Amendments to §17.28(f)(2) clarify that interim replacement tags issued for non-personalized specialty license plates will include the new specialty license plate number and not the number on the license plate that has been lost, destroyed, or mutilated. At the time the replacement tags are issued, the department invalidates the lost, destroyed, or mutilated non-personalized license plate number and updates its records to reflect the new license plate number. If the lost, destroyed, or mutilated license plate number is personalized, the same personalized license plate number will be shown on the interim replacement tag. Additionally, the term "cardboard" has been deleted to allow the department discretion to select the material from which the interim replacement tags are made.

To conform to the changes made by House Bill 2627, the amendments to §17.28(g)(2)(A) and (C)(ii) change the amount of the deposit required prior to manufacture of new specialty license plates from \$15,000 to \$8,000.

Existing §17.28(j), Marketing of specialty license plates through a private vendor, is repealed and new language regarding the marketing of specialty license plates is proposed in new §17.40. The substance of existing §17.28(j) is redundant of Transportation Code provisions and is, therefore, unnecessary.

New §17.40, Marketing of specialty license plates through a private vendor, is proposed to address provisions for the specialty license plate vendor program. Transportation Code, §504.851 requires the department to contract with a vendor to provide for the marketing and sale of specialty and personalized license plates. The statute requires that the department establish by rule the fees for the issuance of the vendor-marketed specialty and personalized plates. The proposed fee schedule allows vehicle owners to purchase vendor-designed license plates for multiple years by paying at the time of purchase all specialty plate fees, including the applicable renewal fees, at a price that is lower than the total of the corresponding annual fees. The fee schedule includes fees for one-year, five-year, or 10-year periods. Owners of multi-year specialty license plates must pay all statutorily prescribed registration fees as required by Transportation Code, Chapter 502 to use the plates on a motor vehicle. The fee for the issuance of a vendor-marketed specialty license plate will range from \$95 and \$795 based on the category and time span of license plate.

New §17.40(a), Refunds, adds a refund policy for vendor-marketed specialty license plates that is identical to the policy for specialty license plates approved by the department.

New §17.40(b), Multi-year, vendor-marketed specialty license plates, explains that the vendor will directly market specialty license plates that may be purchased for one-year, five-year, and 10-year periods. The multi-year options will allow the vendor to reduce the cost of the license plate as compared to the purchase of similar plates annually by eliminating some of the administrative duties. The issuance of multi-year specialty license plates does not effect the requirement that a person must pay the registration fees under Transportation Code, Chapter 502 to use the plates on a motor vehicle.

New §17.40(c), Payment of fees, provides that the specialty license plate fee is paid directly to the vendor. The language requires that all multi-year specialty license plate fees be paid at one time to benefit from the reduced fee. The language clarifies that specialty license plate fees are in addition to the annual registration fees.



New §17.40(d), License plate categories and associated fees, provides the categories of specialty license plates that will be marketed by the vendor and the schedule of fees for each category. The vendor will offer three categories of specialty license plates: Color/Themed, Limited Edition/Special Event, and Luxury/Prestige license plates. At the time of purchase, the purchaser will have the option of paying the annual specialty license plate fee for a period of one, five, or 10 years. The multi-year fees are designed to encourage customers to pay for multiple years at the initial purchase by passing on cost savings. The department resources associated with maintaining an annual license plate decrease significantly with multi-year license plates. The fee structure developed by the vendor will enable the department to recoup all costs associated with implementation of the program, compensate the vendor for start up costs and the risk incurred by this venture, and allow the vendor to make a profit if enough vendor-marketed plates are purchased. To assist with the development of the fee structure, the vendor commissioned nationally recognized research firms to conduct two studies. The firms conducted a poll of Texans aged 18 and above from various cities who either owned a vehicle that had been purchased in the previous three years or who indicated an intent to purchase a vehicle in the next 12 months. Of the Texans polled, 26 percent indicated that they were amenable to paying the proposed fees for specialty license plates. Of those who were amenable to paying the proposed fees, 80 percent indicated that they would consider giving a specialty license plate as a gift. The vendor recommended fee schedules for the specialty license plates that research indicated would maximize profits for the vendor and, in turn, would maximize revenues for the state, from the sale of vendor-marketed plates. The fees reflect the vendor's recommendations.

New §17.40(e), Replacement, adds a replacement policy for vendor-marketed specialty license plates that is the same as the replacement policy for specialty license plates approved by the department. The application for replacement must be made directly to a county tax assessor-collector. Upon application and payment of the statutory fee for replacement of a personalized specialty license plate, as provided in Transportation Code, §504.101(d), an interim temporary tag will be issued by the county tax assessor-collector for use on the vehicle until the vendor-marketed specialty license plate has been remanufactured.

New §17.40(f), Transfer of vendor-marketed specialty license plates, adds a transfer policy for vendor-marketed specialty license plates that tracks the provisions of §17.28(e) relating to the transfer policy for specialty plates approved by the department. The language provides an explanation regarding when vendor-marketed specialty license plates may be transferred between vehicles and prohibits the transfer of vendor-marketed specialty license plates between owners.

New §17.40(g), Gift plates, adds a policy for the purchase of vendor-marketed specialty license plates as a gift and the use of the plates on a motor vehicle. The ability to give plates will expand the market of the plates, thus increasing the state's revenue. The procedure includes information that will track the name of the recipient and the vehicle identification of the recipient's vehicle.

#### FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the amendments and new section as proposed are in effect, there will be fiscal implications for the state that will be positive (revenue generating) as a result of en-

forcing or administering the amendments and new section. The specialty license plate marketing contract with the vendor guarantees the state a minimum return of \$40 million or a percentage-based royalty on the sale of the plates over the five-year contract period. More specifically, the contract guarantees a minimum financial return that will be deposited into General Revenue of \$2 million in CY 2008, \$4 million in CY 2009, \$6 million in CY 2010, \$10 million in CY 2011, and \$18 million in CY 2012. The administrative and manufacturing costs are similar to the costs for existing specialty license plates and the contract allows the department to recoup all costs incurred. In addition to the percentage-based or guaranteed minimum financial return, the vendor will pay \$8 for each set of vendor-marketed specialty license plates issued, which will be deposited to the State Highway Fund for the cost recoupment. The volume of sales of vendor-marketed specialty license plates is unknown at this time, and the revenue to the General Revenue Fund could exceed \$40 million if the vendor's license plate sales are greater than anticipated.

Rebecca Davio, Director, Vehicle Titles and Registration Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments and new section.

#### PUBLIC BENEFIT AND COST

Ms. Davio has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments and new section will be to provide current information regarding issuance, replacement, and renewal of specialty license plates and insure the availability of and fees for specialty license plates designed, marketed, and sold by the vendor. There will be no fiscal implications for local governments as a result of enforcing or administering the amendments and new section. There are no anticipated economic costs for persons required to comply with the sections as proposed. The sections that offset deposit amounts for specialty license plate applications are required by statutory changes. The department is proposing the amendments and new section to comply with current statutes. There will be no adverse economic effect on small businesses.

#### PUBLIC HEARING

Pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed rules. The public hearing will be held at 9:00 a.m. on Monday, April 28, 2008, in the Ric Williamson Hearing Room, Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin, Texas and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 8:30 a.m. Any interested persons may appear and offer comments, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views and identical or similar comments through a representative member when possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc. for proper reference. Any suggestions or requests for

alternative language or other revisions to the proposed text should be submitted in written form. Presentations must remain pertinent to the issues being discussed. A person may not assign a portion of his or her time to another speaker. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Randall Dillard, Government and Public Affairs Division, 125 East 11th Street, Austin, Texas 78701-2483, (512) 305-9137 at least two working days prior to the hearing so that appropriate services can be provided.

#### SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §17.28 and new §17.40 may be submitted to Rebecca Davio, Director, Vehicle Titles and Registration Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on May 12, 2008.

#### STATUTORY AUTHORITY

The amendments and new section are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department and, more specifically, Transportation Code, §504.004, which authorizes the commission to adopt rules to administer issuance of specialty license plates, symbols, tabs, or other devices and Transportation Code, §504.851, which authorizes the commission to establish fees for the issuance or renewal of vendor-marketed license plates.

#### CROSS REFERENCE TO STATUTE

Transportation Code, §§502.184, 504.3015, 504.316, 504.701, 504.702, 504.801, 504.851, and 504.852.

§17.28. *Specialty License Plates, Symbols, Tabs, and Other Devices.*

(a) Purpose and Scope. Transportation Code, Chapter 504, charges the department with the responsibility of issuing a plate or plates, symbols, tabs, or other devices that, when attached to a vehicle as prescribed by the department, act as the legal registration insignia for the period issued. In addition, Transportation Code, Chapter 504, charges the department with providing specialty license plates, symbols, tabs, and other devices. For the department to perform these duties efficiently and effectively, this section prescribes the policies and procedures for the application, issuance, and renewal of specialty license plates, symbols, tabs, and other devices, through the county tax assessor-collectors, and establishes application fees, expiration dates, and registration periods for certain specialty license plates.

(b) Initial application for specialty license plates, symbols, tabs, or other devices.

##### (1) Application Process.

(A) Procedure. An owner of a vehicle registered as specified in §17.22 of this subchapter who wishes to apply for a specialty license plate, symbol, tab, or other device must do so on a form prescribed by the director.

(B) Form requirements. The application form shall at a minimum require the name and complete address of the applicant.

##### (2) Fees and Documentation.

(A) The application must be accompanied by the prescribed registration fee, unless exempted by statute.

(B) The application must be accompanied by the statutorily prescribed specialty license plate fee. In accordance with Acts of the 80th Legislature, Regular Session, 2007, Chapter 1166, Section 14, the fees for Legion of Merit license plates issued under Transportation Code, §504.316 are determined under Transportation Code, §504.3015(a). If a registration period is greater than 12 months, the expiration date of a specialty license plate, symbol, tab, or other device will be aligned with the registration period and the specialty plate fee will be adjusted to yield the appropriate fee. If the statutory annual fee for a specialty license plate is \$5.00 or less, it will not be prorated.

(C) Specialty license plate fees will not be refunded after an application is submitted and the department has approved issuance of the license plate.

~~(D)~~ [(C)] The application must be accompanied by prescribed local fees or other fees that are collected in conjunction with registering a vehicle, with the exception of vehicles bearing license plates that are exempt by statute from these fees.

~~(E)~~ [(D)] The application must include evidence of eligibility for any specialty license plates. The evidence of eligibility may include, but is not limited to:

- (i) an official document issued by a governmental entity;
- (ii) a letter issued by a governmental entity on that agency's letterhead;
- (iii) discharge papers; or
- (iv) a death certificate.

~~(F)~~ [(E)] Initial applications for license plates for display on Exhibition Vehicles must include a photograph of the completed vehicle.

(3) Place of application. Applications for specialty license plates may be made directly to the county tax assessor-collector, except that applications for the following license plates must be made directly to the department:

- (A) Congressional Medal of Honor;
- (B) County Judge;
- ~~[(C)] Legion of Valor;~~
- ~~(C)~~ [(D)] Federal Administrative Law Judge;
- ~~(D)~~ [(E)] State Judge;
- ~~(E)~~ [(F)] State Official;
- ~~(F)~~ [(G)] U.S. Congress-House;
- ~~(G)~~ [(H)] U.S. Congress-Senate; and
- ~~(H)~~ [(I)] U.S. Judge.

(c) Initial issuance of specialty license plates, symbols, tabs, or other devices.

(1) Issuance. On receipt of a completed initial application for registration, accompanied by the prescribed documentation and fees, the department will issue specialty license plates, symbols, tabs, or other devices to be displayed on the vehicle for which the license plates, symbols, tabs, or other devices were issued for the current registration period. If the vehicle for which the specialty license plates, symbols, tabs, or other devices are issued is currently registered, the owner must surrender the license plates currently displayed on the vehicle, along with the corresponding license receipt, before the specialty license plates may be issued.

(2) Number of plates issued.

(A) Two plates. Unless otherwise listed in subparagraph (B) of this paragraph, two specialty license plates, each bearing the same license plate number, will be issued per vehicle.

(B) One plate. One license plate will be issued per vehicle for all motorcycles and for the following specialty license plates:

- (i) Antique Vehicle;
- (ii) Classic Travel Trailer;
- (iii) Cotton Vehicle;
- (iv) Disaster Relief;
- (v) Forestry Vehicle;
- (vi) Golf Cart;
- (vii) Log Loader;
- (viii) Military Vehicle; and
- (ix) Parade.

(C) Registration number. The identification number assigned by the military may be approved as the registration number instead of displaying Military Vehicle license plates on a former military vehicle.

(3) Validation stickers and tabs. Instead of license plates, the department will issue validation stickers and tabs to the following vehicles.

(A) Classic Motor Vehicles. Validation stickers will be issued for display on vehicles with existing Texas license plates that were originally issued the same year as the model year of a Classic Motor Vehicle.

(B) Certain Exhibition Vehicles. Validation stickers or tabs will be issued for display on vehicles with existing Texas license plates that were originally issued the same year as the model year of the Exhibition Vehicle.

(4) Assignment of plates.

(A) Title holder. Unless otherwise exempted by law or this section, the vehicle on which specialty license plates, symbols, tabs, or other devices is to be displayed shall be titled in the name of the person to whom the specialty license plates, symbols, tabs, or other devices is assigned, or a certificate of title application shall be filed in that person's name at the time the specialty license plates, symbols, tabs, or other devices are issued.

(B) Non-owner vehicle. If the vehicle is titled in a name other than that of the applicant, the applicant must provide evidence of having the legal right of possession and control of the vehicle.

(C) Leased vehicle. In the case of a leased vehicle, the applicant must provide a copy of the lease agreement verifying that the applicant currently leases the vehicle.

(5) Classification of golf carts. If a golf cart does not meet the statutorily prescribed criteria for Golf Cart license plates but must be registered, its registration classification will be determined by whether it is designed as a 4-wheeled truck, a 4-wheeled passenger vehicle, or a 3-wheeled motorcycle.

(6) Number of vehicles. An owner may obtain specialty license plates, symbols, tabs, or other devices for an unlimited number of vehicles, unless the statute limits the number of vehicles for which the specialty license plate may be issued.

(7) Other classes of vehicle. A specialty license plate design may be varied to accommodate its use on motor vehicles other than passenger cars and light trucks. The department will determine whether a specialty license plate will be made available for one or more classes of vehicles in addition to passenger cars and light trucks and, if so, to which class or classes. In making this determination, the department will consider the cost of redesigning a specialty license plate to accommodate another class of vehicle, the potential demand for that specialty license plate on that class of vehicle, and other factors bearing on the potential cost or benefit to the public of expanding the availability of a specialty license plate.

(8) Personalized plate numbers.

(A) Issuance. The director will issue a personalized license plate number subject to the exceptions set forth in this paragraph.

(B) Character limit. A personalized license plate number may contain no more than six alpha or numeric characters or a combination of characters. Depending upon the specialty license plate design and vehicle class, the number of characters may vary. Spaces, hyphens, periods, the International Symbol of Access, or silhouettes of the state of Texas may be used in conjunction with the license plate number.

(C) Personalized plates not approved. A personalized license plate number will not be approved by the director if the alphanumeric sequence:

- (i) conflicts with the department's current or proposed regular license plate numbering system;
- (ii) would violate §17.22(c)(3) of this chapter, as determined by the executive director; or
- (iii) is currently issued to another owner.

(D) Classifications of vehicles eligible for personalized plates. Unless otherwise listed in subparagraph (E) of this paragraph, personalized plates are available for all classifications of vehicles.

(E) Categories of plates for which personalized plates are not available. Personalized license plate numbers are not available for display on the following specialty license plates:

- (i) Amateur Radio (other than the official call letters of the vehicle owner);
- (ii) Antique Motorcycle;
- (iii) Antique Vehicle;
- (iv) Apportioned;
- (v) Congressional Medal of Honor;
- (vi) Cotton Vehicle;
- (vii) Disabled Veteran;
- (viii) Disaster Relief;
- (ix) Farm Trailer (except Go Texan II);
- (x) Farm Truck (except Go Texan II);
- (xi) Farm Truck Tractor (except Go Texan II);
- (xii) Fertilizer;
- (xiii) Forestry Vehicle;
- (xiv) Log Loader;
- (xv) Machinery;
- (xvi) Parade;

- (xvii) Permit;
- (xviii) Rental Trailer;
- (xix) Soil Conservation; and
- (xx) Texas Guard.

(F) Fee. The statutorily prescribed personalized license plate fee will be charged in addition to any prescribed specialty license plate fee.

(G) Priority. Once a personalized license plate number has been assigned to an applicant, the owner shall have priority to that number for succeeding years if a timely renewal application is submitted to the county tax assessor-collector each year in accordance with subsection (d) of this section.

(d) Specialty license plate renewal.

(1) Renewal deadline. If a personalized license plate is not renewed within 60 days after its expiration date, a subsequent renewal application will be treated as an application for new personalized license plates.

(2) Length of validation. With the following exceptions, all specialty license plates, symbols, tabs, or other devices shall be valid for 12 months from the month of issuance or for a prorated period of at least 12 months coinciding with the expiration of registration.

(A) Five year period. The following license plates and registration numbers are issued for a five-year period:

- (i) Antique Vehicle and Antique Motorcycle license plates and Antique tabs;
- (ii) Military Vehicle license plates and registration numbers;
- (iii) Parade license plates; and
- (iv) Foreign Organization license plates.

(B) March expiration dates. The following license plates expire each March 31:

- (i) Congressional Medal of Honor;
- (ii) Cotton Vehicle;
- (iii) Disaster Relief; and
- ~~(iv) Legion of Valor.~~

(C) June expiration dates. Honorary Consul ~~[The following]~~ license plates expire each June 30.:

- ~~(i) Honorary Consul; and~~
- ~~(ii) Texas Guard.~~

(D) September expiration dates. Log Loader license plates expire each September 30.

(E) December expiration dates. The following license plates expire each December 31:

- (i) County Judge;
- (ii) Federal Administrative Law Judge;
- (iii) State Judge;
- (iv) State Official;
- (v) U.S. Congress-House;
- (vi) U.S. Congress-Senate; and

- (vii) U.S. Judge.

(F) Except as otherwise provided in this paragraph, if a vehicle's registration period is other than 12 months, the expiration date of the specialty license plate, symbol, tab, or other device will be set to align it with the expiration of registration.

(3) Renewal.

(A) Renewal Notice. Approximately 60 days before the expiration date of a specialty license plate, symbol, tab, or other device, the department will send each owner a renewal notice that includes the amount of the specialty plate fee and the registration fee.

(B) Return of Notice. The owner must return the fee and any prescribed documentation to the tax assessor-collector of the county in which the owner resides, except that the owner of a vehicle with one of the following license plates must return the documentation and specialty license plate fee directly to the department and submit the registration fee to the county tax assessor-collector:

- (i) County Judge;
- (ii) Federal Administrative Law Judge;
- (iii) State Judge;
- (iv) State Official;
- (v) U.S. Congress-House;
- (vi) U.S. Congress-Senate; and
- (vii) U.S. Judge.

(C) Return of documents. The owner of a vehicle with Congressional Medal of Honor ~~[one of the following]~~ license plates must return the documentation and specialty license plate fee, if any, directly to the department.:

- ~~(i) Congressional Medal of Honor; and~~
- ~~(ii) Legion of Valor.~~

~~(D) Second set of plates. To obtain a second set of Legion of Valor specialty license plates, the applicant must return the documentation and specialty license plate fee directly to the department and submit the registration fee to the county tax assessor-collector.~~

(D) ~~[(E)]~~ Expired plate numbers. The department will retain a specialty license plate number for 60 days after the expiration date of the plates if the plates are not renewed on or before their expiration date. After 60 days the number may be reissued to a new applicant. All specialty license plate renewals received after the expiration of the 60 days will be treated as new applications.

(E) ~~[(F)]~~ Issuance of validation insignia. On receipt of a completed license plate renewal application and prescribed documentation, the department will issue registration validation insignia as specified in §17.22 of this subchapter, except for those plates listed in clauses (i) or (ii) of this subparagraph or unless this section or other law requires the issuance of new license plates to the owner.

(i) New license plates will be issued when the following specialty license plates are renewed:

- (I) Antique Motorcycle;
- (II) Antique Vehicle;
- (III) Congressional Medal of Honor;
- (IV) County Judge;
- (V) Disaster Relief;

- (VI) Federal Administrative Law Judge;
- (VII) Military Vehicle;
- (VIII) Parade;
- (IX) State Judge;
- (X) State Official;
- (XI) U.S. Congress-House;
- (XII) U.S. Congress-Senate; and
- (XIII) U.S. Judge.

(ii) New license plates shall be issued at no extra cost every six years from the date of issuance for renewed personalized license plates, and every eight years from the date of issuance for other specialty license plates, in accordance with the provisions of §17.22 of this subchapter.

(F) ~~[(G)]~~ Lost or destroyed renewal notices. If a renewal notice is lost, destroyed, or not received by the vehicle owner, the specialty license plates, symbol, tab, or other device may be renewed if the owner provides acceptable personal identification along with the appropriate fees and documentation. Failure to receive the notice does not relieve the owner of the responsibility to renew the vehicle's registration.

(e) Transfer of specialty license plates.

(1) Transfer between vehicles.

(A) Transferable between vehicles. The owner of a vehicle with specialty license plates, symbols, tabs, or other devices may transfer the specialty plates between vehicles by filing an application through the county tax assessor-collector if the vehicle to which the plates are transferred:

- (i) is titled or leased in the owner's name; and
- (ii) meets the vehicle classification requirements for that particular specialty license plate, symbol, tab, or other device.

(B) Non-transferable between vehicles. The following specialty license plates, symbols, tabs, or other devices are non-transferable between vehicles:

- (i) Antique Vehicle license plates, Antique Motorcycle license plates, and Antique tabs;
- (ii) Military Vehicle license plates and registration numbers;
- (iii) Classic Auto, Classic Truck, Classic Motorcycle, and Classic Travel Trailer license plates;
- (iv) Parade license plates;
- (v) Forestry Vehicle license plates; and
- (vi) Log Loader license plates.

(C) New specialty license plates. If the department creates a new specialty license plate under Transportation Code, §504.801 ~~[or §504.851]~~, the department will specify at the time of creation whether the license plate may be transferred between vehicles.

(2) Transfer between owners.

(A) Non-transferable between owners. Specialty license plates, symbols, tabs, or other devices issued under Transportation Code, Chapter 504, Subchapters B and G, may not be transferred between persons. Specialty license plates, symbols, tabs, or other

devices issued under Transportation Code, Chapter 504, Subchapters C, D, E, and F are not transferable from one person to another except as specifically permitted by statute.

~~[(A) Transferable between owners. Specialty license plates, symbols, tabs, or other devices issued under Transportation Code, Chapter 504, Subchapters B and G, may not be transferred between persons unless:]~~

~~[(i) the transfer is approved by the department as consistent with statutory standards;]~~

~~[(ii) the recipient files an application with the county tax assessor-collector and pays the full annual fee; and]~~

~~[(iii) the recipient is eligible for that particular specialty license plate, symbol, tab, or other device.]~~

~~[(B) Non-transferable between owners. Specialty license plates, symbols, tabs, or other devices issued under Transportation Code, Chapter 504, Subchapters C, D, E, and F are not transferable from one person to another except as specifically permitted by statute.]~~

(B) ~~[(C)]~~ New specialty license plates. If the department creates a new specialty license plate under Transportation Code, §504.801 ~~[or §504.851]~~, the department will specify at the time of creation whether the license plate may be transferred between owners.

(3) Simultaneous transfer between owners and vehicles. Specialty license plates, symbols, tabs, or other devices are transferable between owners and vehicles simultaneously only if the owners and vehicles meet all the requirements in both paragraph (1) and paragraph (2) of this subsection.

(f) Replacement.

(1) Application. When specialty license plates, symbols, tabs, or other devices are lost, stolen, or mutilated, the owner shall apply directly to the county tax assessor-collector for the issuance of replacements, except that Log Loader license plates must be reapplied for and accompanied by the prescribed fees and documentation.

(2) Interim replacement tags. If the specialty license plate, symbol, tab, or other device is lost, destroyed, or mutilated to such an extent that it is unusable, and if issuance of a replacement license plate would require that it be remanufactured, the owner must pay the statutory replacement fee, and the department will issue a temporary ~~[earboard]~~ tag for interim use. The owner's new specialty license plate number will be shown on the temporary ~~[earboard]~~ tag unless it is a personalized license plate, in which case the same personalized license plate number will be shown.

(3) Stolen specialty license plates. The county tax assessor-collector will not approve the issuance of replacement license plates with the same personalized license plate number when the department's records indicate that the vehicle displaying the personalized license plates, symbols, tabs, or other devices or the license plates, symbols, tabs, or other devices themselves were reported as stolen. On expiration or recovery of the stolen vehicle or license plates, symbols, tabs, or other devices, the department will issue, at the owner's request, replacement license plates, symbols, tabs, or other devices bearing the same personalized number as those that were stolen.

(g) License plates created after January 1, 1999. In accordance with Transportation Code, §504.702, the department will begin to issue specialty license plates authorized by a law enacted after January 1, 1999, only if the sponsoring entity for that license plate submits the following items before the fifth anniversary of the effective date of the law.

(1) The sponsoring entity must submit a written application. The application must be on a form approved by the director and include, at a minimum:

- (A) the name of the license plate;
- (B) the name and address of the sponsoring entity;
- (C) the name and telephone number of a person authorized to act for the sponsoring entity; and
- (D) the deposit or license plate fees set forth in paragraph (2) of this subsection.

(2) The written request must be accompanied by:

(A) a deposit in the amount of \$8,000 [~~\$15,000~~] in the form of a single payment, made payable to the Texas Department of Transportation; or

(B) if the license plates are presold, the prescribed number of properly executed applications for that license plate accompanied by a single payment, made payable to the Texas Department of Transportation, in an amount equal to the prescribed fees for issuance of those license plates; or

(C) if the sponsoring entity submits less than the prescribed number of properly executed applications for that license plate accompanied by a single payment, a deposit made payable to the Texas Department of Transportation, that consists of:

(i) the prescribed license plate fees for those applications submitted; and

(ii) a deposit equal to \$8,000 [~~\$15,000~~] less the prescribed portion of those license plate fees to be retained by the department, and deposited to the State Highway Fund, for issuance of the license plates for which applications are submitted.

(3) The deposit submitted to the department under paragraph (2)(A) or (2)(C) of this subsection will be returned to the sponsoring entity only if the prescribed number of sets of the applicable license are issued or presold.

(4) A sponsoring entity is not an agent of the department and does not act for the department in any matter, and the department does not assume any responsibility for fees or applications collected by a sponsoring entity.

(h) Assignment procedures for state, federal, and county officials.

(1) State Officials. State Official license plates contain the prefix "SO" and are assigned in the following order:

- (A) Governor;
- (B) Lieutenant Governor;
- (C) Speaker of the House;
- (D) Attorney General;
- (E) Comptroller;
- (F) Land Commissioner;
- (G) Agriculture Commissioner;
- (H) Secretary of State;
- (I) Railroad Commission Presiding Officer followed by the remaining members based on their seniority;
- (J) Supreme Court Chief Justice followed by the remaining justices based on their seniority;

(K) Criminal Court of Appeals Presiding Judge followed by the remaining judges based on their seniority;

(L) Members of the State Legislature, with Senators assigned in order of district number followed by Representatives assigned in order of district number, except that in the event of redistricting, license plates will be reassigned; and

(M) Board of Education Presiding Officer followed by the remaining members assigned in district number order, except that in the event of redistricting, license plates will be reassigned.

(2) Members of the U.S. Congress.

(A) U.S. Senate license plates contain the prefix "Senate" and are assigned by seniority; and

(B) U.S. House license plates contain the prefix "House" and are assigned in order of district number, except that in the event of redistricting, license plates will be reassigned.

(3) Federal Judge.

(A) Federal Judge license plates contain the prefix "USA" and are assigned on a seniority basis within each court in the following order:

- (i) Judges of the Fifth Circuit Court of Appeals;
- (ii) Judges of the United States District Courts;
- (iii) United States Bankruptcy Judges; and
- (iv) United States Magistrates.

(B) Federal Administrative Law Judge plates contain the prefix "US" and are assigned in the order in which applications are received.

(C) A federal judge who retired on or before August 31, 2003, and who held license plates expiring in March 2004 may continue to receive federal judge plates. A federal judge who retired after August 31, 2003, is not eligible for U.S. Judge license plates.

(4) State Judge.

(A) State Judge license plates contain the prefix "TX" and are assigned sequentially in the following order:

- (i) Appellate District Courts;
- (ii) Presiding Judges of Administrative Regions;
- (iii) Judicial District Courts;
- (iv) Criminal District Courts; and
- (v) Family District Courts and County Statutory Courts.

(B) A particular alpha-numeric combination will always be assigned to a judge of the same court to which it was originally assigned.

(C) A state judge who retired on or before August 31, 2003, and who held license plates expiring in March 2004 may continue to receive state judge plates. A state judge who retired after August 31, 2003, is not eligible for State Judge license plates.

(5) County Judge license plates contain the prefix "CJ" and are assigned by county number.

(6) In the event of redistricting or other plate reallocation, the department may allow a state official to retain that official's plate number if the official has had the number for five or more consecutive years.

(i) Development of new specialty license plates.

(1) Procedure. The following procedure governs the process of authorizing new specialty license plates under Transportation Code, §504.801. It applies whether the new license plate originated as a result of an application or on the department's own initiative.

(A) The executive director will appoint no fewer than three employees of the department to a specialty license plate committee. The committee shall meet at least once every six months and shall review all completed specialty license plate applications.

(B) The committee may request additional information from an applicant if necessary to reach a decision.

(C) The recommendation of the committee will be based on the following:

- (i) the projected sales of the license plate as demonstrated in the marketing plan and by the listing of target purchasers;
- (ii) compliance with Transportation Code, §504.801; and
- (iii) other information provided during the application process.

(D) If the committee recommends the issuance of a proposed specialty license plate, notice of the proposed new license plate will be published in the Texas Register and the license plate design will be posted on the department's web site to receive public comment. Comments must be received 10 days from the date the notice is published in the Texas Register.

(E) Specialty license plate applications that are restricted to certain individuals or groups of individuals (qualifying plates) will be reviewed by the committee using the same procedures as applications submitted for plates that are available to everyone (non-qualifying plates). The limited number of potential purchasers will be a factor in the approval decision.

(2) Applications for the creation of new specialty license plates.

(A) Requirements. To apply for the creation of a new specialty license plate, an applicant must submit a written application on a form approved by the director. The application shall include:

- (i) the applicant's name, address, telephone number, and other identifying information as directed on the form;
- (ii) a current certification provided by the Internal Revenue Service on that department's letterhead, stating that the applicant is a not-for-profit enterprise;
- (iii) a draft design of the specialty license plate;
- (iv) projected sales of the plate, including an explanation of how the projected figure was established;
- (v) a marketing plan for the plate including a description of the target market;
- (vi) a letter from the executive director of the sponsoring state agency stating that the agency agrees to receive and distribute revenues from the specialty license plate and that the use of the funds will not violate a statute or constitutional provision; and
- (vii) other information necessary for the committee to reach a decision regarding approval of the requested specialty plate.

(B) Application Process.

(i) The application must be complete to be considered by the committee.

(ii) If the committee reviews an application and determines that additional information is needed from the applicant that may contribute to the application decision, the decision on the application will be postponed until the next committee meeting.

(iii) If the additional requested information is not received prior to the next committee meeting the application will not be considered and will be returned to the applicant as incomplete.

(iv) The executive director will make the final decision on the specialty license plate application based on the committee's recommendation and the comments received during the posting period.

(v) An applicant whose application is not approved by the executive director must submit a new application and supporting documentation to be considered again by the committee.

(3) Issuance of specialty plates.

(A) If the specialty license plate is approved, the applicant must comply with Transportation Code, §504.702 before any further design and processing of the license plate.

(B) Approval of the plate does not guarantee that the submitted draft plate design will be used. The department has final approval of all specialty license plate designs and can adjust or reconfigure the submitted draft design to comply with the format of the license plate specifications.

(4) Redesign of specialty license plate.

(A) At the request of the original or subsequent applicant, the department may redesign a specialty license plate.

(B) A request for a new design will go through the application and approval process required by this subsection.

(C) An approved license plate redesign does not require the full deposit required by Transportation Code, §504.702.

(D) The original or subsequent applicant will pay a redesign cost to cover administrative expenses.

~~[(j) Marketing of specialty license plates through a private vendor. The commission authorizes the department to enter into a contract with the private vendor whose proposal to perform all services under the contract is most advantageous to the state, as determined from competitive sealed proposals, that satisfies the requirements of Transportation Code, §504.851 for the marketing and sale of specialty license plates.]~~

~~[(1) Types of license plates. The private vendor may agree to market and sell existing non-qualifying specialty license plates issued under Transportation Code, Chapter 504, Subchapters B and G, and new specialty license plates issued under Transportation Code, §504.801 and §504.851. Non-qualifying specialty license plates are license plates that do not have specific qualifications that may be issued to anyone.]~~

~~[(2) New specialty license plates. The decision to issue or not to issue new specialty license plates for marketing and sale through the private vendor shall be made jointly under the terms of the contract. The contract does not prohibit the department from creating new specialty license plates on its own initiative or prohibit an organization from applying for a new specialty license plate directly to the department in accordance with Transportation Code, §504.801.]~~

~~[(3) Refunds. Personalized specialty license plate applications that are not approved by the department will be rejected by the~~

private vendor, and the refund of fees will be the responsibility of the private vendor. Refunds to customers dissatisfied with an unused specialty license plate sold by the private vendor will be the responsibility of the private vendor.]

{(4) Fees. The private vendor must submit a schedule of specialty license plate fees for approval by the commission.}

§17.40. Marketing of Specialty License Plates through a Private Vendor.

(a) Refunds. Fees for vendor-marketed specialty license plate fees will not be refunded after an application is submitted to the vendor and the department has approved issuance of the license plate.

(b) Multi-year vendor-marketed specialty license plates. Purchasers will have the option of purchasing vendor-marketed specialty license plates for one-year, five-year or 10-year periods.

(c) Payment of fees.

(1) Payment of specialty license plate fees. The fees for issuance of vendor-marketed specialty license plates will be paid directly to the vendor for the license plate category and period selected by the purchaser. A person who purchases a multi-year vendor-marketed specialty license plate must pay upon purchase the full fee which includes the renewal fees.

(2) Payment of statutory registration fees. To be valid for use on a motor vehicle, the license plate owner is required to pay, in addition to the vendor-marketed specialty license plate fees, any statutorily required registration fees in the amount as provided by Transportation Code, Chapter 502, and this subchapter.

(d) License plate categories and associated fees. The vendor will design, market, and offer for sale categories of customized specialty license plates that meet legibility and reflectivity standards established by the department. The categories and the associated fees are provided in this subsection.

(1) Color/Themed license plates. Color/Themed license plates include license plates with a variety of pre-approved background and character color combinations that may be customized with five characters that are either three alpha and two numeric characters or two numeric and three alpha characters. The fees for issuance of Color/Themed license plates are:

- (A) \$95 for one year;
- (B) \$295 for five years; and
- (C) \$395 for 10 years.

(2) Limited Edition/Special Event license plates. Limited Edition/Special Event license plates may be customized with any five alphanumeric characters on department-approved colored backgrounds or designs approved by the department. Special Event license plates will be made available to coincide with extraordinary events of public interest to Texas registrants. The fees for issuance of Limited Edition/Special Event license plates are:

- (A) \$195 for one year;
- (B) \$495 for five years; and
- (C) \$595 for 10 years.

(3) Luxury/Prestige license plates. Luxury/Prestige license plates may be customized with up to six alphanumeric characters on colored backgrounds or designs approved by the department. The fees for issuance of Luxury/Prestige license plates are:

- (A) \$395 for one year;

(B) \$695 for five years; and

(C) \$795 for 10 years.

(e) Replacement.

(1) Application and fees. When vendor-marketed specialty license plates are lost, destroyed, or mutilated, the owner shall apply directly to the county tax assessor-collector for the issuance of replacement license plates and pay the statutory replacement fee for personalized license plates provided in Transportation Code, §504.101(d).

(2) Interim replacement tags. If the vendor-marketed specialty license plates are lost, destroyed, or mutilated to such an extent that they are unusable, replacement license plates will need to be re-manufactured. The county tax assessor-collector will issue interim replacement tags for use until the replacements are available. The owner's vendor-marketed specialty license plate number will be shown on the interim replacement tags.

(f) Transfer of vendor-marketed specialty license plates.

(1) Transfer between vehicles. The owner of a vehicle with vendor-marketed specialty license plates may transfer the license plates between vehicles by filing an application through the county tax assessor-collector if the vehicle to which the plates are transferred:

(A) is titled or leased in the owner's name; and

(B) meets the vehicle classification requirements for that particular specialty license plate.

(2) Transfer between owners. Vendor-marketed specialty license plates may not be transferred between persons.

(g) Gift plates.

(1) A person may purchase plates as a gift for another person if the purchaser signs a statement that provides:

(A) the purchaser's name and address;

(B) the name and address of the person who will receive the plates; and

(C) the vehicle identification number of the vehicle on which the plates will be displayed or a statement that the plates will not be displayed on a vehicle.

(2) To be valid for use on a motor vehicle, the recipient of the plates must file an application with the county tax assessor-collector and pay the statutorily required registration fees in the amount as provided by Transportation Code, Chapter 502, and this subchapter.

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

Filed with the Office of the Secretary of State on March 28, 2008.

TRD-200801647

Bob Jackson

General Counsel

Texas Department of Transportation

Earliest possible date of adoption: May 11, 2008

For further information, please call: (512) 463-8683



## CHAPTER 18. MOTOR CARRIERS



The Texas Department of Transportation (department) proposes the repeal of §§18.80 - 18.96, concerning vehicle storage facilities, and §§18.100 - 18.104, concerning nonconsent towing fees schedule.

#### EXPLANATION OF PROPOSED REPEALS

House Bill 2094, 80th Legislature, Regular Session, 2007, transferred all functions and activities performed by the department relating to tow trucks, towing operations, and vehicle storage facilities to the Department of Licensing and Regulation (TDLR). The transfer of responsibilities occurred on February 1, 2008. The department is no longer involved in the regulation of these entities.

TDLR proposed rules regarding these subjects on February 8, 2007 in 33 *Texas Register* 1027. The rules proposed by TDLR address similar issues and will provide for continued regulation of these entities. House Bill 2094 transferred the rules of the department to TDLR. The repeal of these sections is for the purpose of removing provisions that no longer have legal effect.

#### FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the repeals as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the repeals.

Carol Davis, Director, Motor Carrier Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the repeals.

#### PUBLIC BENEFIT AND COST

Ms. Davis has also determined that for each year of the first five years the repeal of these sections is in effect, the public benefit anticipated as a result of enforcing or administering the repeals will be notification that the department does not regulate tow trucks, tow operations, and vehicle storage facilities. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

#### SUBMITTAL OF COMMENTS

Written comments on the proposed repeals of §§18.80 - 18.96 and §§18.100 - 18.104 may be submitted to Carol Davis, Director, Motor Carrier Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on May 12, 2008.

#### SUBCHAPTER G. VEHICLE STORAGE FACILITIES

##### 43 TAC §§18.80 - 18.96

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

#### STATUTORY AUTHORITY

The repeals are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically House Bill 2094, 80th Legislature, Regular Session, 2007.

#### CROSS REFERENCE TO STATUTE

Occupations Code, Chapter 2303.

§18.80. *Purpose and Scope.*

§18.81. *Applicability.*

§18.82. *Definitions.*

§18.83. *Application for Original Vehicle Storage Facility License.*

§18.84. *Issuance and Renewal of License.*

§18.85. *Payment of Fees.*

§18.86. *Insurance Requirements.*

§18.87. *Notifications Regarding Towed Vehicles.*

§18.88. *Documentation and Records.*

§18.89. *Notice of Complaint Procedure.*

§18.90. *Rights of Owner or Authorized Representative.*

§18.91. *Facility Requirements.*

§18.92. *Technical Requirements.*

§18.93. *Storage Fees and Charges.*

§18.94. *Sanctions.*

§18.95. *Criminal Convictions, Insurance, and Family Code.*

§18.96. *Disposal of Certain Vehicles.*

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

Filed with the Office of the Secretary of State on March 28, 2008.

TRD-200801648

Bob Jackson

General Counsel

Texas Department of Transportation

Earliest possible date of adoption: May 11, 2008

For further information, please call: (512) 463-8683



#### SUBCHAPTER H. NONCONSENT TOWING FEES SCHEDULE

##### 43 TAC §§18.100 - 18.104

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

#### STATUTORY AUTHORITY

The repeals are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically House Bill 2094, 80th Legislature, Regular Session, 2007.

#### CROSS REFERENCE TO STATUTE

Occupations Code, Chapter 2303.

§18.100. *Purpose and Scope.*

§18.101. *Filing Nonconsent Towing Fees Schedule.*

§18.102. *Review of Nonconsent Towing Fees Schedule.*

§18.103. *Required Posting at Vehicle Storage Facility (VSF).*

§18.104. *Sanctions.*

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

Filed with the Office of the Secretary of State on March 28, 2008.

TRD-200801649

Bob Jackson

General Counsel

Texas Department of Transportation

Earliest possible date of adoption: May 11, 2008

For further information, please call: (512) 463-8683



# 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 1. ADMINISTRATION

### PART 4. OFFICE OF THE SECRETARY OF STATE

#### CHAPTER 81. ELECTIONS

##### SUBCHAPTER I. IMPLEMENTATION OF THE HELP AMERICA VOTE ACT OF 2002

###### 1 TAC §81.177

The Office of the Secretary of State withdraws the proposed new §81.177 which appeared in the January 4, 2008, issue of the *Texas Register* (33 TexReg 18).

Filed with the Office of the Secretary of State on March 25, 2008.

TRD-200801576

Ann McGeehan

Director of Elections

Office of the Secretary of State

Effective date: March 25, 2008

For further information, please call: (512) 463-5650



## TITLE 22. EXAMINING BOARDS

### PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

#### CHAPTER 511. CERTIFICATION AS A CPA

##### SUBCHAPTER F. EXPERIENCE REQUIREMENTS

###### 22 TAC §511.122

The Texas State Board of Public Accountancy withdraws the proposed amendments to §511.122 which appeared in the February 8, 2008, issue of the *Texas Register* (33 TexReg 1069).

Filed with the Office of the Secretary of State on March 31, 2008.

TRD-200801666

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: March 31, 2008

For further information, please call: (512) 305-7848



##### SUBCHAPTER H. CERTIFICATION

###### 22 TAC §511.163

The Texas State Board of Public Accountancy withdraws the proposed amendments to §511.163 which appeared in the February 8, 2008, issue of the *Texas Register* (33 TexReg 1070).

Filed with the Office of the Secretary of State on March 31, 2008.

TRD-200801667

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: March 31, 2008

For further information, please call: (512) 305-7848



###### 22 TAC §§511.164 - 511.167, 511.171, 511.173, 511.174, 511.176

The Texas State Board of Public Accountancy withdraws the proposed repeals to §§511.164 - 511.167, 511.171, 511.173, 511.174, and 511.176 which appeared in the February 8, 2008, issue of the *Texas Register* (33 TexReg 1071).

Filed with the Office of the Secretary of State on March 31, 2008.

TRD-200801668

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: March 31, 2008

For further information, please call: (512) 305-7848



#### CHAPTER 514. CERTIFICATION AS A CPA

###### 22 TAC §§514.1 - 514.7

The Texas State Board of Public Accountancy withdraws the proposed new §§514.1 - 514.7 which appeared in the February 8, 2008, issue of the *Texas Register* (33 TexReg 1072).

Filed with the Office of the Secretary of State on March 31, 2008.

TRD-200801669

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: March 31, 2008

For further information, please call: (512) 305-7848



#### CHAPTER 519. PRACTICE AND PROCEDURE

SUBCHAPTER D. PROCEDURES AFTER HEARING

**22 TAC §519.72**

The Texas State Board of Public Accountancy withdraws the proposed amendments to §519.72 which appeared in the February 8, 2008, issue of the *Texas Register* (33 TexReg 1074).

Filed with the Office of the Secretary of State on March 31, 2008.

TRD-200801670

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: March 31, 2008

For further information, please call: (512) 305-7848



CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION

SUBCHAPTER D. STANDARDS FOR CONTINUING PROFESSIONAL EDUCATION PROGRAMS AND RULES FOR SPONSORS

**22 TAC §523.143**

The Texas State Board of Public Accountancy withdraws the proposed amendments to §523.143 which appeared in the March 14, 2008, issue of the *Texas Register* (33 TexReg 2106).

Filed with the Office of the Secretary of State on March 31, 2008.

TRD-200801689

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: March 31, 2008

For further information, please call: (512) 305-7848



# 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 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

#### CHAPTER 68. ELIMINATION OF ARCHITECTURAL BARRIERS

##### 16 TAC §68.74

The Texas Commission of Licensing and Regulation ("Commission") adopts amendments to an existing rule at 16 Texas Administrative Code ("TAC") Chapter 68, §68.74 concerning continuing education requirements for registered accessibility specialists in the elimination of architectural barriers program as published in the January 18, 2008, issue of the *Texas Register* (33 TexReg 467), without changes, and will not be republished.

The Commission adopted §68.74 as a new rule effective March 1, 2007. The rule as adopted requires registered accessibility specialists to complete eight hours of continuing education as a condition of renewing the certificate of registration. Four of the hours must be in Department-approved courses offered by providers that are registered with the Department. Subsection (i) states that the rule applies to certificates of registration that expire on or after March 1, 2008.

The adopted amendment to subsection (i) require continuing education for those certificates of registration expiring on or after March 1, 2009. This change extends the time for registered accessibility specialists to comply with continuing education requirements. The change is needed because not enough continuing education providers have sought Department approval to offer continuing education courses to registered accessibility specialists. Because of this, registered accessibility specialists needing to renew their certificates of registrations beginning March 1, 2008, will have difficulty meeting the continuing education requirements. The Department expects that the extension of time will allow for additional providers to obtain approval for continuing education courses.

This rule is necessary to implement Texas Occupations Code, §51.405, which require the Commission to recognize, prepare, or administer continuing education programs for license holders.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposal was published in the *Texas Register* on January 18, 2008. The comment period closed on February 18, 2008.

One public comment was received in response to the proposal from a registered accessibility specialist who was in favor of the change. Additionally, six members of the Architectural Barriers Advisory Committee individually commented on the proposed amendment and were also in support of the change.

The amendments are adopted under Texas Government Code, Chapter 469 and Texas Occupations Code, Chapter 51, which authorize the Department to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department. In particular, the rule implements Texas Occupations Code, §51.405.

The statutory provisions affected by the adoption are those set forth in Texas Government Code, Chapter 469 and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 25, 2008.

TRD-200801580

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Executive Director

Texas Department of Licensing and Regulation

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Proposal publication date: January 18, 2008

For further information, please call: (512) 463-7348



#### CHAPTER 85. VEHICLE STORAGE FACILITIES

##### 16 TAC §§85.1, 85.10, 85.20, 85.200 - 85.208, 85.400, 85.450 - 85.453, 85.650, 85.700 - 85.725, 85.800, 85.900, 85.1000 - 85.1003

The Texas Commission of Licensing and Regulation ("Commission") adopts new rules at 16 Texas Administrative Code ("TAC") §§85.1, 85.20, 85.201 - 85.208, 85.400, 85.450 - 85.453, 85.650, 85.700 - 85.703, 85.705, 85.707, 85.709, 85.711 - 85.718, and 85.720 - 85.724, 85.800, and 85.1000 - 85.1002 regarding the licensing and regulation of vehicle storage facilities and vehicle storage facility employees, as published in the February 8, 2008, issue of the *Texas Register* (33 TexReg 1027), without changes, and will not be republished. The Commission also adopts new rules at 16 TAC, Chapter 85, §§85.10, 85.200, 85.704, 85.706, 85.708, 85.710, 85.719, 85.725, 85.900, and 85.1003 with changes from the rules as published in the February 8, 2008, issue of the *Texas Register* (33 TexReg 1027) and are republished.

These rules are necessary to implement House Bill 2094, 80th Legislature, Regular Session, 2007.

New §85.1 provides statutory authority for rule adoption.

New §85.10 defines terms used in the statute and the rules, including "abandoned nuisance vehicle," "act," "affidavit of right of possession and control," "commission," "day," "department," "executive director," "fence," "immediate family," "impoundment," "license holder or "licensee," "main," "notice of right of possession for salvage," "person," "principal," "registered owner," "vehicle," "vehicle owner," "vehicle storage facility," and "vehicle transfer."

New §85.20 establishes exemptions to the rules.

New §85.200 provides that a vehicle storage license is required.

New §85.201 establishes the licensing and application requirements for vehicle storage facilities.

New §85.202 establishes criteria for the review of vehicle storage facility license applications.

New §85.203 establishes the annual renewal requirements for vehicle storage facility licenses.

New §85.204 establishes the application requirements for a vehicle storage facility employee license.

New §85.205 establishes the annual renewal requirements for a vehicle storage facility employee license.

New §85.206 provides notice to applicants of proposed denial of applications with an opportunity to cure.

New §85.207 provides additional method of notice to licensees using the last designated email address.

New §85.208 provides that a license is valid for one year.

New §85.400 establishes the insurance requirements for obtaining and renewing a vehicle storage facility license.

New §85.450 establishes the general requirement of a department initiated inspection of a vehicle storage facility.

New §85.451 provides for bi-annual inspections of a vehicle storage facility during normal business hours.

New §85.452 establishes the criteria for a risk-based inspection of a vehicle storage facility.

New §85.453 provides the procedures for corrective actions following a department initiated inspection of a vehicle storage facility.

New §85.650 provides for a Towing and Storage Advisory Board. This section list criteria of board membership, terms of office, meetings times, and board responsibilities.

New §85.700 places the burden of proving exemption from the rules on the licensee.

New §85.701 prohibits licensees from engaging in false, misleading, or deceptive advertising.

New §85.702 requires licensees to notify the department of changes in name, address, facility capacity, or the drug testing policy.

New §85.703 describes the procedures that a vehicle storage facility must initially follow to send notice to vehicle owners and lien holders.

New §85.704 describes the procedures that a vehicle storage facility must follow to provide a second notice for unclaimed vehicles before the vehicles may be disposed.

New §85.705 requires a vehicle storage facility to notify local law enforcement of every nonconsent-towed vehicle from private property stored at the facility.

New §85.706 lists the documents and information that a vehicle storage facility must retain, including the retention period.

New §85.707 requires a vehicle storage facility to give the vehicle owner the department's website and email address, mailing address, and telephone number, for purposes of directing complaints.

New §85.708 describes the rights of the vehicle owner to have access to stored vehicles.

New §85.709 prohibits un-permitted tow trucks from entering the grounds of a vehicle storage facility.

New §85.710 lists the types of documents required for release of a vehicle to the vehicle owner or representative.

New §85.711 lists the types of payment a vehicle storage facility must accept for release of a stored vehicle.

New §85.712 requires payment by lienholder and insurance company for release of vehicles regardless of when the charges accrued.

New §85.713 requires a vehicle storage facility to release a vehicle to the owner or representative regardless of whether law enforcement has paid charges resulting from a law enforcement hold, unless the charges result from a delinquent administrative penalty assessed against the vehicle owner.

New §85.714 requires a vehicle storage facility to provide to a vehicle owner or representative, on request, its liability insurance company contact information including the policy number.

New §84.715 establishes a requirement that a vehicle storage facility maintain a publicly listed telephone number and notify the department of any change to that number.

New §85.716 requires a vehicle storage facility to inspect a non-consent towed vehicle, and, if necessary, correct erroneous information on the tow ticket.

New §85.717 describes the conditions under which a vehicle storage facility may remove parts from, dismantle, or demolish a stored vehicle.

New §85.718 prohibits the personal or business use of a stored vehicle by a vehicle storage facility without written owner consent.

New §85.719 requires reasonable efforts by a vehicle storage facility for the safe storage of vehicles and describes the circumstances under which impoundment fees may be charged.

New §85.720 prohibits a vehicle storage facility from repairing or altering a stored vehicle without written consent.

New §85.721 establishes procedures for transferring a stored vehicle from one vehicle storage facility to another vehicle storage facility.

New §85.722 prohibits a vehicle storage facility from charging fees except for those fees specifically authorized for owner notification, charged for daily storage, collected on behalf of government or law enforcement, and environmental hazard fees.

New §85.723 identifies statutory authority for the disposal of certain vehicles and requires the keeping of records after disposal.

New §85.724 describes the procedures for the public sale of abandoned nuisance vehicles.

New §85.725 provides a model drug testing policy for employees of a vehicle storage facility.

New §85.800 establishes the fees for initial applications, renewal applications, inspection fees, and late renewals.

New §85.900 provides for the imposition of administrative penalties and/or sanctions against a person that violates the statute or rules.

New §85.1000 establishes fencing and security requirements for a vehicle storage facility.

New §85.1001 provides that a vehicle storage facility must have an all-weather surface.

New §85.1002 provides vehicle storage facility minimum lighting requirements.

New §85.1003 provides for the location and content of signage at a vehicle storage facility.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposal was published in the *Texas Register* on February 8, 2008. The comment period closed on March 10, 2008.

#### *February 20, 2008 Public Hearing*

A public hearing on the proposed Chapter 85 was held at the John H. Reagan State Office Building on February 20, 2008, at 10:00 a.m. At the public hearing, the department received comments from: Larry Cernosek, Paul Martin, Jim Evans, Cathy Creamer, Dave England, Rhonda Hight, Charles Exley, Bill Campbell, Frankie Garcia, Chris Palm, Rick Merritt, Billy and Beverly Hrnric, Judy Macher, Michelle Vasquez, Donald McClure, Larry Cooksey, Conrad Gamboa, and Regina Sustaita.

The comments received during the public hearing were essentially identical to those submitted in writing. Therefore, responses to the comments received during the public hearing will be addressed in the section addressing written comments.

#### *Public Comments Received During March 14, 2008 Advisory Board Meeting*

During the March 14, 2008 meeting of the Towing and Storage Advisory Board, the department received comments from: Larry Cernosek, Paul Martin, Jim Evans, Cathy Creamer, Dave England, Rhonda Hight, Charles Exley, Rick Campbell, Frankie Garcia, Chris Palm, and Rick Merritt.

The comments received during the March 14, 2008 Advisory Board Meeting were essentially identical to those heard during the February 20, 2008 Public hearing and to those submitted in writing. Therefore, responses to the comments received during the March 14, 2008, Advisory Board meeting will be addressed in the section addressing written comments.

#### *Written Comments*

The department received written comments from the following individuals: Roderick M. Jones, Kay and Albert Winwood, Dave Reinhardt, Dan W., June Clay, Gary Allen, Ronald McHam, and Michael Tucker.

The following companies submitted written comments: Expert Towing, WHW Towing Companies, Tow Partners, Evans & Associates, Shannafelt Auto Company, Houston Metropolitan Repossessions, Cowboy Towing, B&B Auto Worx, CTAR, Inc.,

Texas Independent Auto Resellers Association, Farmers Insurance, Allstate Insurance, Pro-Tow Wrecker Service, Graham's Wrecker Service, Texas Apartment Association, Cernosek Wrecker/Deer Park Paint & Body, State Farm Insurance, Westside Wrecker Service, Edd's Towing, Garcia's Wrecker Service.

One commenter requests revision of §85.10(3) to allow use of computer generated forms. The rule has not been changed in response to this comment. The department-approved form provides certainty to VSF operators and the public.

One commenter states that it is not possible to comply with §85.706 because the original documents are filed with the Department of Transportation. The commenter requested the rule be changed to only require a copy of the original. The department agrees with the commenter and §85.706 has been changed to require original documents, unless the original is submitted to the state, in which event a copy of the original is required.

Several commenters suggested that agency staff create a model consent form for industry use to comply with the drug testing policy in §85.725. The department agrees with the commenters and staff will prepare and post a model drug testing consent form.

One commenter asked that the fees in §85.800 be lowered after the first year. The rule has not been changed in response to this comment. However, the department will review fees and adjust them as appropriate.

Three commenters suggested the rule be modified to prohibit companies with a revoked license from reapplying for five years. The rule has not been changed in response to this comment. The licensing requirements are statutory.

Many commenters requested the department create a combined license for tow operators and VSF employee. The rule has not been changed in response to these comments because under the statute the licenses are separate licenses. However, while the statutes do not provide for combined licenses, the department modified the application process by combining the application for both licenses on a single document.

Two commenters sought revisions to §85.204 to eliminate dual drug testing and background checks for licensees holding a VSF employee license and a towing operator license. The department agrees with these commenters and has modified the drug testing policy to require a single drug test for persons holding a VSF employee license and a towing operator's license. The department modified its processes to require a single background check for persons holding both licenses.

Insurance companies requested the creation of an authorization form to allow for inspection of vehicles by insurance companies processing claims. The department agrees that the revision is necessary. Section 85.708(c) is revised to allow insurance companies the right to inspect vehicles at the VSF for purposes of handling claims.

Several commenters asked that the rules adopt environmental hazard fees. One commenter suggested the rule include a requirement for VSFs charging an environmental hazard fee to itemize the bill and document the size and nature of the spill. Another commenter asked that the fee be set at \$150 and be supported by pictures of the contaminated area. The rule has not been changed in response to the comments. The current rule will not provide for collection of an environmental hazard fee. These fees will be addressed in future rulemaking.

One commenter asked that the department explain the role of salvage pool operators in relation to compliance with the rules. The rule has not been changed in response to this comment. To the extent salvage pool operators operate VSFs, they are subject to the requirements of Chapter 85.

One commenter asked for a revision requiring additional rotation of advisory board member terms. The rule has not been changed in response to this comment. The terms of advisory board members are statutory.

Two commenters asked whether offsite VSFs (secondary storage lot) require separate VSF licenses. Although §85.201 requires the applicant to list the address of the facility, §85.200 has been changed to clarify that each geographic location require a separate VSF license.

One commenter asked for the justification for increasing the insurance limits for incident management towers. The rule has not been changed in response to this comment. The insurance limits in §85.400 are statutory.

Several commenters complained about the impossibility of verifying whether a person is actually a family member eligible to use the Affidavit of Right of Possession in §85.10(3). The rule has not been changed in response to this comment. The rule does not require the VSF to independently verify assertions or representations that the requestor is a family member.

Two commenters asked that the rules include provisions related to repossession companies. The rule has not been changed in response to this comment. To the extent repossession companies operate as VSFs, they are subject to the requirements of the rules.

Several commenters complained about the inability to obtain record checks required by Transportation Code, Chapter 683. The rule has not been changed in response to this comment. The department does not have jurisdiction to direct law enforcement to comply with the provisions of the Transportation Code.

One commenter states that requests under §85.703 should not be sent electronically. The rule has not been changed in response to this comment. The section does not require electronic notification. Electronic notification is one of the methods of providing notice but is not exclusive.

One commenter asked that the reference in §85.706(a)(6) to "receipt" be changed to "auction sales receipts" and the reference to "police" in subsection (b)(6) be changed to "law enforcement." The department agrees with these comments and the references have been changed accordingly.

One commenter questioned why §85.722(d) prohibits the charging of fees for vehicles registered out-of-state after five days unless notice is sent to the registered vehicle owner. The rule has not been changed in response to this comment. The time requirements provided in §85.722(d) are statutory.

Several commenters suggest that the rules for VSF employees are written for big companies. The rule has not been changed in response to this comment. The statute makes no distinction between large and small companies. However, the department is sensitive to the needs of small businesses and has taken care to minimize the impact on those businesses. For example, internal processes are in place to combine the application process and the rules are written to eliminate redundancies such as the dual drug testing of employees licensed as tow operators and

VSF employees. Finally, the rule has been changed to reduce company costs by removing the alcohol-testing requirement.

Some commenters asked for clarification of whether someone answering the phone or performing some other causal function is an employee of the VSF. The rule has not been changed in response to this comment. Whether a person is an employee of a VSF is fact dependent. The department does not believe it appropriate to attempt by rule to determine factual issues in the absence of a full evidentiary record.

One commenter asked for clarification of when the hour starts for purposes of complying with §85.710(9). The department agrees and §85.710(9) has been revised to clarify that the one hour starts with the time of the call requesting release and documented on the customer receipt.

One commenter suggested that the rule contain a protocol to release vehicles to law enforcement. The rule has not been changed in response to this comment. The statute and rules do not contain special provisions for the release of vehicles to law enforcement. The general release provisions of the rules apply.

One commenter asked that the rules be enforced to ensure the licensing of drivers and trucks. The rule has not been changed in response to this comment. As with all of the programs under the department's jurisdiction, the agency will vigorously enforce all validated violations of its rules.

Several commenters suggested that §85.722(c) read "or" rather than "and." The rule has been revised to reflect these comments.

One commenter states that the definition of "day" in §85.10(5) conflicts with the definition of "day" found in §85.722(d)(1). The rule has not been changed in response to this comment. The definition in each section is intended to cover a different situation and is therefore contextually appropriate.

Two commenters stated that the model drug testing policy in §85.725 should contain a provision authorizing drug testing based on "reasonable cause or suspicion." The rule has not been changed in response to this comment. The statute authorizes drug testing under two circumstances, i.e., annual testing and random testing. Reasonable cause or suspicion testing is not authorized by statute. Moreover, the statute provides that a VSF may adopt a drug testing policy more stringent than the model policy.

One commenter suggests that the impoundment fees in §85.719 are low and do not recover costs. The rule has not been changed in response to this comment. Impoundment fees are statutory.

One commenter believes that the annual period for federal drug testing begins on the driver's birthday. The department believes that the model drug testing should clarify when the period starts for purposes of annual drug testing. Section 85.725(a)(6)(B) has been changed to clarify that the annual drug test must be within 12-months of the initial license issuance or renewal.

One commenter suggested that drug tests be conducted randomly. The rule has not been changed in response to this comment. The statute and rule provide for random testing.

One commenter suggested that employees have two hours to report for random drug testing. The rule has not been changed in response to this comment. The published rule provides that an employee must report for testing within fifteen minutes notice up to two hours.



On commenter believes that the model drug testing policy include the testing of hair specimens. The rule has not been changed in response to this comment. Testing of hair samples will add additional administrative costs for VSFs. If the testing of urine proves inadequate, the department may revisit this issue.

One commenter states that a positive drug test be reported to law enforcement or to the department. Section 85.725(a)(6)(E) has been changed in response to this comment. The revision requires that positive test results be reported to the department.

One commenter asked for a definition of the term "public sale." The rule has not been changed in response to this comment. Section 85.704 contains the requirements for providing notice to vehicle owners and disposing of vehicles. As long as the VSF complies with the notice requirements and conducts the sale accordingly, the sale is a public sale.

A commenter asked about the disposition of personal property left in abandoned vehicles that are sold at a public sale. Section 85.704 is clarified to require the published notice reference a sale of the vehicle and personal property.

One commenter states the vehicle owners should receive excess proceeds from the sale of abandoned vehicles without initiating a court proceeding. The department revised §85.704 to clarify that the VSF must pay excess proceeds to the vehicle owner. However, in the case of a dispute about the proceeds, the statute authorizes a suit in justice court.

Several commenters complained that towing and storage fees are extraordinarily expensive. The rule has not been changed in response to this comment. The department is without statutory authority to decrease rates.

Some commenters believe that the VSF employee license should be valid for more than one year. The rule has not been changed in response to this comment. The term of the VSF employee license is statutory.

One commenter suggested that the reference to "analogous" in §85.719(c) be changed to "other." The rule has not been changed in response to this comment. Vehicle records may be maintained by more than one state agency. The term "analogous" requires that the state agency be equivalent to the Texas Department of Public Safety.

The new rules are adopted under Texas Occupations Code, Chapter 2303, which directs the Department's governing body, the Commission, to adopt rules to establish the requirements for a person to be licensed to operate a vehicle storage facility, and to ensure that the facility maintains adequate standards for the care of stored vehicles; and Texas Occupations Code, Chapter 51, which authorizes the Commission to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 2303, and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the adoption.

#### §85.10. *Definitions.*

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

(1) Abandoned nuisance vehicle--A motor vehicle that is at least 10 years old and is of a condition only to be demolished, wrecked, or dismantled.

(2) Act--The Vehicle Storage Facility Act, Texas Occupations Code, Chapter 2303.

(3) Affidavit of Right of Possession--A form prescribed by the department and provided by the licensee for use by an immediate family member certifying right of possession to a vehicle stored at a vehicle storage facility.

(4) Commission--The Texas Commission of Licensing and Regulation.

(5) Day--Twenty-four continuous hours.

(6) Department--The Texas Department of Licensing and Regulation.

(7) Executive director--The executive director of the department.

(8) Fence--An enclosure of wood, chain link, metal, concrete, or masonry, placed around an area used to store vehicles and designed to prevent intrusion and escape.

(9) Immediate family--A vehicle owner's parents, spouse, children, brothers, and sisters.

(10) Impoundment--The following actions when performed on a stored vehicle:

(A) using materials such as plastic or canvas tarpaulins to ensure the preservation of a stored vehicle if doors, windows, convertible tops, hatchbacks, sunroofs, trunks, or hoods are broken or inoperative;

(B) conducting a written inventory of any unsecured personal property contained in a stored vehicle;

(C) removing and storing all unsecured personal property that is contained in a stored vehicle and for which safekeeping is necessary; or

(D) obtaining motor vehicle registration information for a specific vehicle from the Texas Department of Transportation, Vehicle Titles and Registration Division, or an equivalent out-of-state agency.

(11) License holder or Licensee--The person to which the department issued a license.

(12) Main entrance--The initial point from the public road onto the private property leading to the vehicle storage facility at which a consumer or service recipient enters a vehicle storage facility.

(13) Notice of Right of Possession for Salvage--A form prescribed by the department and executed by persons licensed under 16 Texas Administrative Code Chapter 86 as agents for an insurance company that has documented authority from the vehicle owner obtained prior to execution of the form, certifying right of possession of a total loss vehicle stored at a vehicle storage facility.

(14) Person--An individual, corporation, organization, business trust, estate, trust, partnership, association, or other legal entity.

(15) Primary lien holder--First lien holder named on the certificate of title in the motor vehicle registration records of the Texas Department of Transportation.

(16) Principal--An individual who:

(A) holds, whether personally, as a beneficiary of a trust, or by other constructive means:

(i) 10% of a corporation's outstanding stock; or

(ii) an ownership interest in a business that is equivalent to a fair market value of more than \$25,000;

(B) has the controlling interest in a business;

(C) has a participating interest of more than 10% in the profits, proceeds, or capital gains of a business, regardless of whether the interest is direct or indirect, whether it is held through share, stock, or any other manner, or whether it includes voting rights;

(D) holds a position as a member of the board of directors or other governing body of a business; or

(E) holds a position as an elected officer of a business.

(17) Proof of loss claim form--A form prescribed by the department and submitted by an insurance company certifying right of possession to a vehicle stored at a vehicle storage facility.

(18) Registered owner--Each person in whose name a vehicle is titled under Transportation Code, Chapter 501, or in whose name a vehicle is registered under Transportation Code, Chapter 502.

(19) Vehicle--A motor vehicle subject to registration under Transportation Code, Title 7, Subtitle A, or any other device designed to be self-propelled or transported on a public highway.

(20) Vehicle owner--A person:

(A) in whose name a vehicle is registered under the Certificate of Title Act, Transportation Code, Chapter 501;

(B) in whose name a vehicle is registered under Transportation Code, Chapter 502, or a member of that person's immediate family;

(C) who holds a vehicle through a valid lease agreement;

(D) who is an unrecorded lienholder with a right to possession; or

(E) who is a lienholder that holds an affidavit of repossession and has the right to repossess a vehicle.

(21) Vehicle storage facility (VSF)--A garage, parking lot, or other facility owned or operated by a person other than a governmental entity for storing or parking 10 or more vehicles per year.

(22) Vehicle transfer--Any movement of a vehicle out of a VSF, prior to its release as prescribed in this chapter.

#### *§85.200. License Required--Vehicle Storage Facility.*

A person may not operate a VSF unless the person holds a VSF license issued by the department. For purposes of this section, each VSF physical location or lot is a separate facility and must obtain a VSF license.

#### *§85.704. Responsibilities of Licensee--Second Notice; Consent to Sale.*

(a) If a vehicle is not claimed by a person permitted to claim the vehicle or is not taken into custody by a law enforcement agency under Chapter 683, Transportation Code, before the 41st day after the date notice is mailed or published under §85.703, the operator of the VSF shall send a second notice to the registered owner and the primary lienholder of the vehicle.

(b) If a vehicle is not claimed by a person permitted to claim the vehicle before the 10th day after the date notice is mailed or published under §85.703, the operator of the VSF shall consider the vehicle to be abandoned and send notice of abandonment to a law enforcement agency under Chapter 683, Transportation Code.

(c) Notice under this section must include:

(1) the information listed in §85.703(i);

(2) a statement of the right of the facility to dispose of the vehicle under subsections (a) and (b);

(3) a statement that the failure of the owner or lienholder to claim the vehicle and personal property before the 30th day after the date the notice is provided is:

(A) a waiver by that person of all right, title, or interest in the vehicle and personal property; and

(B) a consent to the sale of the vehicle at a public sale.

(d) Notwithstanding subsection (b), if publication is required for notice under this section, the notice must include:

(1) the information listed in §85.703(i)(2); and

(2) a statement that the failure of the owner or lienholder to claim the vehicle before the date of sale is:

(A) a waiver of all right, title, and interest in the vehicle; and

(B) a consent to the sale of the vehicle at a public sale.

(e) The operator shall pay any excess proceeds to the person entitled to those proceeds.

#### *§85.706. Responsibilities of Licensee--Documentation and Records.*

(a) Retention of written documentation. Vehicle storage facility licensees must maintain a copy of the original written documentation regarding their operations for a period of two years from the date of the release or disposal of the vehicle. Written documentation shall be in the form of:

(1) motor vehicle registration checks;

(2) notification letters;

(3) certified return receipts;

(4) tow tickets (if applicable);

(5) bills for service;

(6) auction sales receipts;

(7) inventory (if applicable);

(8) certificates of authority to demolish; and

(9) any authorized document used to release a vehicle, including but not limited to a title, affidavit of right of possession and control, or court order.

(b) Minimum information. Each licensee shall keep written records on each vehicle kept or stored at the VSF. These records shall contain:

(1) the year, make, model, color, correct license plate number, state issuing the license, and correct vehicle identification number of the vehicle;

(2) the date, time and location from which the vehicle was towed, and name of person or company who authorized the tow;

(3) the name of the tow truck driver, driver TDLR license number, the name of the company that towed the vehicle, and the license plate numbers of plates issued to the tow truck under Transportation Code, §502.180, and §504.508;

(4) the date the vehicle was released, the name of the individual to whom the vehicle was released, and the type of identification (Texas drivers license or other state or federally issued photo identifi-

cation) and identification number provided by the individual to whom the vehicle was released;

(5) the date of any vehicle transfer, and the address of the location to which the vehicle was transferred along with the name of the towing company and tow truck driver, with TDLR license number, who made the transfer;

(6) a copy of any certificate of title issued after the vehicle came into the possession of the VSF, any certificate of authority to demolish, any law enforcement auction sales receipt, or any transfer document issued by the State of Texas for the vehicle if vehicle ownership has been transferred due to any action of the VSF or if the vehicle has been disposed of or demolished; and

(7) all amounts received at the time the vehicle was released, including the specific nature of each charge.

(c) Nonconsent tow tickets. The VSF shall ensure that nonconsent tow tickets (if applicable) contain the registered name of the towing company, the towing company certificate of registration number, and the full printed name and TDLR license number of the towing operator on file with the department.

(d) Regulatory documents. A VSF may not accept a vehicle for storage unless the VSF makes and maintains a copy of the towing operator's valid TDLR operator's license and tow truck cab card for the driver and truck delivering the vehicle for storage. The copies required by this subsection must be current and valid on the date a vehicle is delivered to the VSF for storage.

(e) Availability of documentation. All documents required by this chapter shall be made available by the licensee, the licensee's agent, or the licensee's employee for inspection and copying upon request by department personnel, or a law enforcement officer, during the same hours the VSF must ensure that vehicles are available for release to the vehicle owner.

(f) Care and custody of records. Required records shall be kept under the care and custody of the licensee for at least two years from the date the vehicle was released or disposed of.

*§85.708. Responsibilities of Licensee--Rights of Owner or Authorized Representative.*

(a) A VSF must allow a person claiming to be the owner of a vehicle stored or parked at the facility to have access to the vehicle's glove compartment, console, or other interior storage area if documents necessary to establish the person's identity or ownership of the vehicle are located in the glove compartment, console, or other interior storage area.

(b) When a person demonstrates ownership or right to possession of a motor vehicle stored at a VSF, the person or his/her authorized representative shall:

(1) be entitled to inspect a copy of the tow ticket for the motor vehicle and shall not be required to pay any fees or charges before doing so (reasonable opportunity to view the tow ticket displayed behind a glass enclosure satisfies this requirement);

(2) be given access to, and be allowed to remove, any personal belongings in the vehicle, unless otherwise indicated by a law enforcement officer (the VSF must require a receipt from the person to whom the personal belongings are released for any such property removed from the stored vehicle by the vehicle owner or authorized representative);

(3) have access, during normal business hours, to the vehicle for the purposes of insurance and/or repair estimates; and

(4) have access to the current nonconsent towing fees schedule on file with the department, as prescribed in §85.1003(c) (relating to Required Posting at Vehicle Storage Facility), for the specific name of the company that towed the vehicle to the VSF.

(c) When right of possession is demonstrated by submission of a proof of loss claim form from an insurance company, subsection (b)(2) does not apply.

(1) For purposes of this subsection, when an insurance company presents a proof of loss claim form, the term "access" includes, but is not limited to:

(A) verifying the present existence of such vehicle,

(B) confirming the loss,

(C) taking measurements and photographs of the interior and exterior of said vehicle,

(D) recording or attempting to ascertain mileage,

(E) verifying the VIN plate or label,

(F) opening or attempting to open doors, hood or trunk panels,

(G) writing a repair estimate, documenting features, options and conditions, and

(H) when authorized by the owner, operator or lessee of the vehicle, removing the vehicle from the VSF.

(2) Upon the request of an insurer presenting a proof of loss claim form, or upon the request of a tow truck operator possessing a notice of right of possession for salvage form, a VSF shall provide a legible copy of the tow ticket created by the towing operator responsible for towing the vehicle to the VSF to either:

(A) the insurer, within three business days of the insurer presenting the proof of loss claim form; or

(B) the tow truck operator, at the time the tow truck operator presents a copy of the notice of right to possession for salvage form to the VSF.

(3) The VSF may provide the copy of the tow ticket to the insurer, via regular mail, facsimile, or by other electronic means, provided the insurer provides the VSF with a specific mailing address, facsimile phone number, web address or email address to which to send the tow ticket.

(d) A VSF may not request a vehicle owner or operator to sign an authorization form for a tow, repair or any other service if the storage of the vehicle is the result of a tow initiated by law enforcement.

*§85.710. Responsibilities of Licensee--Release of Vehicles.*

(a) Release of vehicles. The licensee shall comply with the following requirements when releasing vehicles.

(1) The licensee shall comply with all provisions of Texas Occupations Code, Chapter 2308, Subchapter J, relating to the rights of the owner of a stored vehicle, including providing the name, address, and telephone number of:

(A) the justice court that has jurisdiction in the precinct in which the VSF is located; and

(B) the name, address and telephone number of the person or law enforcement agency that authorized the tow.

(2) The licensee shall provide the owner or the owner's representative with a tow ticket.

(3) The VSF shall allow the vehicle owner or authorized representative to obtain possession of the vehicle at any time between the hours listed on the facility information sign posted as described in §85.1003, upon payment of all fees due, presentation of valid identification (Texas drivers license or other state or federally issued photo identification), and upon presentation of:

(A) a notarized power-of-attorney;

(B) a court order;

(C) a certificate of title;

(D) a tax collector's receipt and a vehicle registration renewal card accompanied by a conforming identification;

(E) executed proof of loss claim form from an insurance company to show a right to possession;

(F) name and address information corresponding to that contained in the files of the Texas Department of Transportation's Vehicle Titles and Registration Division; or

(G) a department approved Affidavit of Right of Possession, which is to be furnished by the VSF upon request (an Affidavit of Right of Possession is not to be used as a repossession instrument).

(4) A VSF may not refuse to release a vehicle to the owner or operator of the vehicle or require a sworn affidavit of the owner or operator of the vehicle solely because the owner or operator presents valid photo identification issued by this state, another state, or a federal agency that includes a different address than the address contained in the title and registration records of the vehicle.

(5) A VSF must accept evidence of financial responsibility (insurance card), as required by §601.051, Transportation Code, as an additional form of identification that establishes ownership or right of possession or control of the vehicle.

(6) Paragraph (3) does not require a VSF to release a vehicle to the owner or operator of the vehicle if the owner or operator of the vehicle does not:

(A) pay the charges associated with delivery or storage of the vehicle; and

(B) present valid photo identification issued by this state, another state, or a federal agency.

(7) If it accepts vehicles 24 hours a day, all VSFs shall have vehicles available for release 24 hours a day within one hour's notice.

(8) If a VSF does not accept vehicles 24 hours a day, such facility must have vehicles available for release within one hour between the hours of 8:00 a.m. and midnight Monday-Saturday and from 8:00 a.m. to 5:00 p.m. on Sundays except for nationally recognized holidays. It is not the intent of this section to require release of vehicles after midnight, and refusal to release after that time, even with notice after 11:00 p.m., is not a violation of this section.

(9) For purposes of determining when the one hour for release of a vehicle starts, the VSF must clearly note on the receipt the time of the call requesting vehicle release and have the person requesting release separately initial the notation.

(b) A VSF may not require an owner, operator or agent of an owner or operator of a vehicle to sign an authorization or release form to release the vehicle from the VSF if that form:

(1) changes the status of the law enforcement initiated tow from a nonconsent status to a consent tow status;

(2) changes the status of the storage resulting from a non-consent tow from a nonconsent storage status to a consent storage status; or

(3) imposes any additional charges not regulated by the Department.

§85.719. *Responsibilities of Licensee--Reasonable Storage Efforts; Impoundment of Stored Vehicles; Impoundment Fees.*

(a) Reasonable storage efforts. A VSF operator shall make reasonable efforts necessary for the storage of a vehicle, such as locking doors, rolling up windows, and closing doors, hatchbacks, sunroofs, trunks, hoods, or convertible tops. Such actions are included in the storage fee as set forth in this chapter.

(b) Impoundment of stored vehicles. If doors, windows, convertible tops, hatchbacks, sun roofs, trunks, or hoods are broken or inoperative, materials such as plastic or canvas tarpaulins must be used to ensure the impoundment of the stored vehicle.

(c) Impoundment Fees. A VSF operator is entitled to charge a fee for impoundment if, in addition to the requirements set out in subsection (b), the VSF operator, at a minimum:

(1) conducts a written inventory of any unsecured personal property contained in the vehicle;

(2) removes and stores all such property for which safekeeping is necessary, and specifies such removal and storage on the written inventory; or

(3) obtains motor vehicle registration information for the vehicle from the Texas Department of Transportation or analogous state agency.

§85.725. *Responsibilities of Licensee--Drug Testing Policy.*

(a) A VSF adopting paragraphs (1) - (12) will comply with Texas Occupations Code, §2303.160.

(1) Purpose and Scope. This drug testing policy provides guidance to supervisors and VSF employees about their responsibilities under this policy. Except as stated in paragraph (12), this policy applies to all VSF employees and all VSF job applicants.

(2) Definitions. The words and terms used in this policy shall have their ordinary meaning unless the words or terms are used in Texas Occupations Code, Chapter 2303 or Title 49 Code of Federal Regulation Part 40, in which event the words or terms shall have the meaning designated in those regulations.

(3) Consent Form.

(A) Before a drug test is administered, VSF employees and applicants are required to sign a consent form authorizing the test and permitting release of test results to the medical review officer (MRO), the company, and the department. The consent form shall provide space for employees and applicants to acknowledge that they have been notified of the drug testing policy.

(B) The consent form shall set forth the following information:

(i) the procedure for confirming and verifying an initial positive test result;

(ii) the consequences of a verified positive test result; and

(iii) the consequences of refusing to undergo a drug test.

(C) The consent form also provides authorization for certified or licensed attending medical personnel to take and have an-

alyzed appropriate specimens to determine if the tested drugs were present in the towing operator's and applicant's system.

(4) Compliance with Drug Testing Policy. The failure or refusal by a VSF employee or applicant to cooperate fully by signing necessary consent forms or other required documents or the failure or refusal to submit to any test or any procedure under this policy in a timely manner will be grounds for refusal to hire or for termination. The submission by an applicant or employee of a urine sample that is not his/her own or is a diluted specimen shall be grounds for refusal to hire or for termination.

(5) General Rules. This drug testing policy is governed by these general rules:

(A) VSF employees shall not take or be under the influence of any drugs unless prescribed by the employee's licensed physician.

(B) VSF employees are prohibited from engaging in the manufacture, sale, distribution, use, or unauthorized possession of illegal drugs at any time.

(C) all VSF property is subject to inspection at any time without notice. There should be no expectation of privacy in or on such property. VSF property includes, but is not limited to, vehicles, desks, containers, files, and lockers.

(D) any VSF employee convicted of violating a criminal drug statute shall inform his/her supervisor of such conviction (including pleas of guilty and *nolo contendere*) within five days of the conviction occurring. Failure to inform the supervisor subjects the employee to disciplinary action up to and including termination for the first offense. The VSF will notify the Texas Department of Licensing and Regulation of the conviction (including pleas of guilty and *nolo contendere*).

(6) Types of Tests.

(A) Pre-employment. All applicants for positions requiring a VSF employee license, who have received a conditional offer of employment, must take a drug test before receiving a final offer of employment.

(B) Annual. All VSF employees employed by a VSF must complete at least one scheduled drug test each 12-month period from the date of the initial license or renewal.

(C) Random Testing. In addition to annual testing, VSF employees are subject to random urine drug testing. Under this policy, annual random test for drugs of at least 25 percent of the total number of VSF employees is required.

(i) A minimum of 15 minutes and a maximum of two hours will be allowed between notification of a VSF employee for random urine drug testing and the actual presentation for specimen collection.

(ii) Random donor selection dates will be unannounced with unpredictable frequency.

(D) Return-to-Duty and Follow-Up.

(i) Any VSF employee who has violated this drug testing policy and is allowed to return to work must submit to a return-to-duty test. Follow-up tests will be unannounced, and at least six tests will be conducted in the first 12 months after a VSF employee returns to duty. Follow-up testing may be extended for up to 60 months following return to duty. The test results of all return to duty and follow-up must be negative.

(ii) The VSF employee will be required to pay for his or her return-to-duty and follow-up tests accordingly.

(7) Drug Testing. The drugs for which tests are required under this policy are marijuana, cocaine, amphetamines, phencyclidine (PCP), and opiates.

(8) Specimen Collection Procedures.

(A) All urine specimens will be collected by a laboratory that is certified and monitored by the federal Department of Health and Human Services (DHHS).

(B) Drug testing procedures include split specimen procedures. Each urine specimen is subdivided into two bottles labeled as a "primary" and a "split" specimen. Only the primary specimen is opened and used for the urinalysis. The split specimen bottle remains sealed and is stored at the laboratory.

(C) If the analysis of the primary specimen confirms the presence of drugs, the VSF employee has 72 hours to request sending the split specimen to another federal (DHHS) certified laboratory for analysis. The VSF employee will be required to pay for his or her split specimen test(s).

(D) For the VSF employee's protection, the results of the analysis will be confidential except for the testing laboratory. After the MRO has evaluated a positive test result, the VSF employee will be notified, and the MRO will notify the company.

(E) The VSF will notify the Department of the positive test result. Notification to the Department must occur within 3 days of receipt of the confirmed test results from the MRO. The notification must include the:

(i) VSF employee's name;

(ii) VSF employee license number;

(iii) date of the positive test;

(iv) substance detected by the drug test; and

(v) disciplinary action imposed for violation of the drug testing policy.

(9) Reporting and Reviewing of Drug Testing Results.

(A) The company shall designate a medical review officer (MRO) to receive, report, and store testing information transmitted by the laboratory. This person shall be a licensed physician with knowledge of substance abuse disorders.

(B) The laboratory shall report test results only to the designated MRO, who will review them in accordance with accepted guidelines and the procedures adopted by the federal Department of Transportation.

(C) Reports from the laboratory to the MRO shall be in writing or by fax. The MRO may talk with the VSF employee by telephone upon exchange of acceptable identification.

(D) Neither the company, the laboratory, nor the MRO shall disclose any drug test results to any other person except under written authorization from the VSF employee, unless such results are necessary in the process of resolution of accident (incident) investigations, requested by court order, or required to be released to parties having a legal right-to-know as determined by state and federal law.

(10) Distribution of Information to VSF Employee. The minimal distribution of information for all VSF employees will include the display and distribution of:

(A) informational material on the physical and mental effects of drugs;

(B) an existing community services hotline number, available drug counseling, rehabilitation, and assistance program;

(C) the company's policy regarding the use of prohibited drugs and/or alcohol; and

(D) the consequences or disciplinary action that may be imposed upon VSF employees for violating the drug policy.

(11) Consequences of a Confirmed Positive Drug Test.

(A) Job applicants will be denied employment if their initial positive pre-employment drug test results have been confirmed.

(B) If a VSF employee's positive drug test result has been confirmed, the VSF employee will stand down from VSF duties and may be subject to disciplinary action up to and including termination.

(C) The company may consider the following factors in determining the appropriate disciplinary response: the VSF employee's work history, length of employment, current work assignment, current job performance, and existence of past disciplinary actions.

(D) No disciplinary action may be taken pursuant to this drug policy against VSF employees who voluntarily identify themselves as drug users, obtain counseling, rehabilitation and comply with return to duty and follow-up drug testing.

(12) Exceptions.

(A) VSF employees subject to random drug testing under Title 49 Code of Federal Regulation, Part 40 who have been randomly tested in the 12-month reporting period are exempt from the annual test requirement, provided that the VSF employee tested negative and the negative test results are submitted to and verified by the MRO.

(B) VSF employees holding a valid towing operator license issued by the department who are tested for drugs in accordance with 16 Texas Administrative Code Chapter 86 are exempt from this section.

(b) Independent drug testing policy.

(1) A VSF may file an independent drug testing policy.

(2) The filing must describe how the independent drug testing policy is as stringent as each provision of the model policy set forth in subsection (a).

§85.900. *Administrative Sanctions and Penalties.*

A person that violates Texas Occupations Code, Chapter 2303, a rule, or an order of the Executive Director or Commission relating to Texas Occupations Code, Chapter 2303, will be subject to administrative sanctions and/or administrative penalties under Texas Occupations Code, Chapters 51 and 2303 and applicable agency rules.

§85.1003. *Technical Requirements--Storage Lot Signs.*

(a) Facility information. All VSFs shall have a clearly visible and readable sign at its main entrance. Such sign shall have letters at least 2 inches in height, with contrasting background, shall be visible at 10 feet, and shall contain the following information:

(1) the registered name of the storage lot, as it appears on the VSF license;

(2) street address;

(3) the telephone number for the owner to contact in order to obtain release of the vehicle;

(4) the facility's hours, within one hour of which vehicles will be released to vehicle owners; and

(5) the storage lot's state license number preceded by the phrase "VSF License Number."

(b) All VSFs shall have a sign setting out the charge for storage and all other fees, which may be charged by the storage lot, including notification and impoundment fees. The sign shall include all forms of payments the VSF accepts for any charge associated with delivery or storage of a vehicle. The sign must be located so it is clearly visible to a vehicle owner at the place of payment and shall have letters at least 1 inch in height with a contrasting background.

(c) Nonconsent towing fees schedule. All VSFs shall conspicuously place a sign, at the place of payment, which states in 1-inch letters that: "Applicable schedules of nonconsent towing fees will be provided for viewing upon request by persons claiming vehicles." The nonconsent towing fees provided for viewing must match the nonconsent towing fees schedule on file with the department, as provided in 16 Texas Administrative Code Chapter 86, §86.500 (relating to Reporting Requirements--Towing Company).

(d) Instruments accepted for release of vehicle. All VSFs shall have a sign describing the documents that may be presented by the vehicle owner or his/her authorized representative to obtain possession of the vehicle. This sign shall list all instruments as described these rules, and shall also state: "Affidavit of Right of Possession Furnished Upon Request." This sign shall be located so it is clearly visible to a vehicle owner at the place of payment, and have letters at least 1 inch in height with a contrasting background.

(e) Combination signs. A VSF may combine the signs described in subsections (b), (c), and (d), if the combination sign meets the requirements of each of the separate signs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 26, 2008.

TRD-200801609

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

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Proposal publication date: February 8, 2008

For further information, please call: (512) 463-7348



## CHAPTER 86. VEHICLE TOWING

**16 TAC §§86.1, 86.10, 86.200 - 86.215, 86.400, 86.450 - 86.453, 86.500, 86.600, 86.650, 86.700 - 86.710, 86.800, 86.900, 86.901, 86.1000 - 86.1002**

The Texas Commission of Licensing and Regulation ("Commission") adopts new rules at 16 Texas Administrative Code ("TAC") Chapter 86, §§86.1, 86.10, 86.200 - 86.208, 86.210 - 86.215, 86.400, 86.450 - 86.453, 86.500, 86.600, 86.650, 86.702, 86.703, 86.707, 86.708, 86.901, and 86.1002 regarding the regulation and permitting of tow trucks, and the licensing of towing operators and towing companies, as published in the February 8, 2008, issue of the *Texas Register* (33 TexReg 1040), without changes, and will not be republished. The Commission also adopts new rules at 16 TAC, Chapter 86,

§§86.209, 86.700, 86.701, 86.704, 86.705, 86.706, 86.709, 86.710, 86.800, 86.900, 86.1000, and 86.1001, with changes from the rules as published in the February 8, 2008, issue of the *Texas Register* (33 TexReg 1040), with changes, and are republished.

New §86.1 provides statutory authority for rule adoption.

New §86.10 defines terms used in the statute and the rules, including "advisory board," "applicant," "certificate of insurance," "commission," "consent tow," "conspicuous," "contested case," "department," "driver's license," "license holder or licensee," "nonconsent tow," "parking facility," "parking facility owner," "permit holder," "property owners' association," "public roadway," "tow truck," "towing company," "towing operator," "unauthorized vehicle," "vehicle," "vehicle owner," and "vehicle storage facility."

New §86.200 provides that a tow truck permit is required.

New §86.201 establishes the requirements for obtaining an incident management-towing permit.

New §86.202 establishes the requirements for obtaining a private property-towing permit.

New §86.203 establishes the requirements for obtaining a consent-towing permit.

New §86.204 establishes criteria for approval or denial of towing permit applications and the form of the issued permit.

New §86.205 establishes the annual permit renewal requirements for towing permits.

New §86.206 describes the content of a department issued cab card that is required for each tow truck. The section also provides for card replacement and surrender of the card on request of the department.

New §86.207 provides that a non-transferable towing operator's license is required and is valid statewide for one year from the date of issuance.

New §86.208 establishes the requirements for obtaining an incident management towing operator license.

New §86.209 establishes the requirements for obtaining a private property towing operator license.

New §86.210 establishes the requirements for obtaining a consent towing operator license.

New §86.211 establishes the annual license renewal requirements for towing operators.

New §86.212 provides that a towing company license is required and establishes the requirements for obtaining a license.

New §86.213 establishes criteria for approval or denial of a towing company license and the form of the license.

New §86.214 establishes the annual renewal requirements for a towing company license.

New §86.215 provides an additional method of notice to licensees and permit holders using the last designated email address.

New §86.400 establishes the insurance requirements for obtaining and renewing a tow truck permit.

New §86.450 establishes the general requirements of a department initiated inspection of a towing company.

New §86.451 provides for bi-annual inspections of a towing company during normal business hours.

New §86.452 establishes the criteria for a risk-based inspection of a towing company.

New §86.453 provides the procedures for corrective actions following a department initiated inspection of a towing company.

New §86.500 requires electronic filing of nonconsent-towing fee schedules for nonconsent tows.

New §86.600 requires the department to file conforming non-consent towing fee schedules on the internet without making a determination of reasonableness.

New §86.650 provides for a Towing and Storage Advisory Board. This section lists criteria of board membership, terms of office, meeting times, and board responsibilities.

New §86.700 requires that a towing company tow vehicles subject to nonconsent towing to a licensed vehicle storage facility, unless the vehicle owner agrees to a different location.

New §86.701 lists the information that must be displayed on each side of a permitted tow truck.

New §86.702 requires permit holders and licensees to notify the department of changes in name, address, and drug testing policy.

New §86.703 requires a towing company to notify the department of a change in ownership.

New §86.704 prohibits a towing company from charging unauthorized fees without written authority from the vehicle owner.

New §86.705 establishes towing company standards of conduct including: prohibitions against giving gifts of value to parking facility owners, having monetary interests in parking facilities from which it tows vehicles, nonconsent tow charges in unincorporated areas, compliance with posting requirements, record keeping, towing only from authorized locations, and charging fees consistent with those on file with the department.

New §86.706 provides that a towing company post fees at each vehicle storage facility to which it tows vehicles, signs must be conspicuous, posted fees must be provided to vehicle owners, and match fees on file with the department.

New §86.707 requires each towing company to annually review towing fees on file with the department and correct any outdated fee.

New §86.708 requires each permitted tow truck display a current license plate that includes the words "Tow Truck."

New §86.709 requires a tow company to issue a tow ticket to the vehicle owner. The tow ticket must only contain charges directly related to towing the vehicle.

New §86.710 provides a model drug testing policy for employees of a towing company; protects privacy rights of employees; and contains due process requirements.

New §86.800 establishes the fees for initial applications, renewal applications, inspection fees, and late renewals.

New §86.900 provides for administrative penalties and/or sanctions against a person that violates the statute or rules.

New §86.901 provides for cease and desist orders issued by the executive director to a person that violates the statute or rules.

New §86.1000 lists the minimum safety equipment that must be carried by each tow truck and establishes minimum operating limits for trucks issued a tow truck permit by the department.

New §86.1001 lists the minimum safety clothing that must be worn by towing operators and specifies the forms of identification that must be carried by each towing operator issued a towing operator license by the department.

New §86.1002 requires a towing company keep records for two years, and that an out-of-state towing company maintain records in Texas, or reimburse the department for expenses incurred for the review of out-of-state records.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposal was published in the *Texas Register* on February 8, 2008. The comment period closed on March 10, 2008.

#### *February 20, 2008, Public Hearing*

A public hearing on the proposed Chapter 86 was held at the John H. Reagan State Office Building on March February 20, 2008, at 10:00 a.m. At the public hearing, the department received comments from: Larry Cernosek, Paul Martin, Jim Evans, Cathy Creamer, Dave England, Rhonda Hight, Charles Exley, Bill Campbell, Frankie Garcia, Chris Palm, Rick Merritt, Billy and Beverly Hrnric, Judy Macher, Michelle Vasquez, Donald McClure, Larry Cooksey, Conrad Gamboa, and Regina Sustaita.

The comments received during the public hearing were essentially identical to those submitted in writing. Therefore, responses to the comments received during the public hearing will be addressed in the section addressing written comments.

#### *Public Comments Received During March 14, 2008, Advisory Board Meeting*

During the March 14, 2008, meeting of the Towing and Storage Advisory Board Meeting, the department received comments from: Larry Cernosek, Paul Martin, Jim Evans, Cathy Creamer, Dave England, Rhonda Hight, Charles Exley, Rick Campbell, Frankie Garcia, Chris Palm, and Rick Merritt.

The comments received during the March 14, 2008, Advisory Board Meeting were essentially identical to those heard during the February 20, 2008 Public hearing and to those submitted in writing. Therefore, responses to the comments received during the March 14, 2008, Advisory Board meeting will be addressed in the section addressing written comments.

#### *Written Comments*

The department received written comments from the following individuals: Roderick M. Jones, Kay and Albert Winwood, Dave Reinhardt, Dan W., June Clay, Gary Allen, Ronald McHam, and Michael Tucker.

The following companies submitted written comments: Expert Towing, WHW Towing Companies, Tow Partners, Evans & Associates, Shannafelt Auto Company, Houston Metropolitan Repossessions, Cowboy Towing, B&B Auto Worx, CTAR, Inc., Texas Independent Auto Resellers Association, Farmers Insurance, Allstate Insurance, Pro-Tow Wrecker Service, Graham's Wrecker Service, Texas Apartment Association, Cernosek Wrecker/Deer Park Paint & Body, State Farm Insurance, Westside Wrecker Service, Edd's Towing, Garcia's Wrecker Service.

Several commenters suggested the commission clarify and prohibit the conversion of nonconsent tows to consent tows. Section 86.700 has been revised to include a new subsection (c)

clarifying that regardless of the designation, the nonconsent tow remain a nonconsent tow and cannot convert to a consent tow.

Some commenters suggested the rules be revised to prohibit a person with a revoked license from obtaining another license for some determined period. The rule has not been changed in response to this comment. Licensing requirements are statutory.

Many commenters asked to reduce fees for a combined VSF employee and towing operator's license. The rule has not been changed in response to this comment. While the statutes do not provide for combined licenses, the department modified the application process by combining the application for both licenses on a single document. The department modified the model drug testing policy to require a single drug test for persons holding a VSF employee license and a towing operator's license.

A commenter requested clarification of how the rules apply to repossessors. The rule has not been changed in response to this comment. The department believes that repossessors engage in consent towing. As such, they must obtain permits for the trucks and consent tow operator license for drivers.

Some commenters expressed concern about background checks for drug convictions. The rule has not been changed in response to this comment. Background checks will be conducted in accordance with the criminal conviction guidelines under development by department staff.

One commenter suggested to grandfather existing companies by providing exemption in the rule. The rule has not been changed in response to this comment. The licensing requirements are statutory and do not contain grandfathering provisions.

One commenter asked about the ability of tow trucks to display apportioned license plates. The rule has not been changed in response to this comment. The appropriate license plate for tow trucks is a statutory requirement.

Several commenters suggested the department provide a model consent form for the drug testing policy. The commission agrees. Department staff will prepare and post a model drug testing consent form for use by the industry.

Several commenters suggested the department use the Vehicle Identification Number as part of the truck permit number. The rule has not been changed in response to this comment. Modifying the permit-numbering scheme will add additional costs to the fee structure. The department does not believe the additional costs will result in benefits justifying the expense.

One commenter asked why tow companies are allowed to operate a tow company from the seat of the tow truck. The commenter also asked about the offices and company records. The rule has not been changed in response to this comment. The rules require towing companies to list their physical address on the application and renewal forms. The rules also require that records be maintained at the principle place of business, unless a waiver is granted.

One commenter believes the rules are unconstitutional, e.g., requiring uniforms and the wearing of reflective vests. The rule has not been changed in response to this comment. The uniform requirement is designed for public safety by alerting the customers that the tow operator is licensed and identifies the company name on file with the department. The uniform requirement also provides safety for towing operators.



Another commenter disagreed with the annual renewal of licenses. Instead, the commenter suggested a license be valid for 5 years and cost about \$75 or \$15 per year. The rule has not been changed in response to this comment. The statute requires an annual renewal of all licenses and permits.

One commenter suggested changes to §86.709 because in that commenter's opinion there is no way the tow company can notify the vehicle owner under the definition of vehicle owner. The rule has not been changed in response to this comment. The definition vehicle owner is a statutory requirement.

Many commenters argue that towing and storage fees are exorbitant. The rule has not been changed in response to this comment. The department is without jurisdiction to regulate these fees.

One commenter asked what is the legal recourse if companies do not comply with the rules and statute. The rule has not been changed in response to this comment. Consumers have recourse via the agency complaint/enforcement process. In addition, the statute provides for judicial recourse in the justice courts.

Some commenters complained that car hauling trailers do not register and circumvent the rules. The rule has not been changed in response to this comment. Car haulers are covered under the existing rules and definition of tow trucks.

One commenter suggested elimination of the 90-day experience requirement so that drivers can be certified to get a license without prior experience. The rule has not been changed in response to this comment. The 90-day experience requirement is not statutory or mandated by commission rules. The department understands that certifying entities have eliminated this industry practice.

One commenter suggested that §86.1000(f) refer to state inspection rather than the Department of Transportation. The rule is changed to refer to state inspections.

Several commenters believe that the requirement in §86.1001(d) requiring the display of the towing operator license will present problems for operators working under equipment causing a need for continual replacement of the license. The rule has not been changed in response to this comment. Operator towing licenses are relatively small and can be easily and inexpensively enclosed.

Some commenters suggested revision to §86.1000 by waiving some of the equipment requirements for companies operating repossession companies: (1) fire extinguishers, (2) tow dollies, (3) wheel chocks, (4) trash receptacles, (5) crow bar, (6) reflectors, cones, safety lights, and (7) uniforms. The rule has been changed to eliminate some of the requirements for consent tow operators.

One commenter suggested that the tow truck permit number include an identifier designating the type of tow truck, e.g. CT for consent tow permit. The department agrees and has modified internal procedures so that tow truck permit numbers will include the following designations, CT for consent tow, IM for incident management, and PP for private property tow.

One commenter states that many older model tow trucks have had manufacturer-warning labels removed. Another commenter requests that trucks placed in service after 2008 be required to maintain manufacturers' warning labels. Section 86.1000 is modified to include a new subsection (g) requiring that tow trucks

in service after May 1, 2008, retain the manufacturer's warning labels.

One commenter asked that the rules require refunds to consumers of all nonconsent tow fees collected in excess of the authorized amounts. The rule has not been changed in response to this comment. The department will establish an administrative penalty matrix which consider among other things, whether the company has been unjustly enriched.

One commenter requested a rule change to prohibit the tow operator from taking the vehicle to any destination other than a VSF or location agreed to with the owner. Section 86.700 has been modified to include a new subsection (c) requiring the vehicle be taken directly to the authorized location.

One commenter stated that §86.705 should explicitly authorize laws enforcement to inspect tow trucks for rule violations. The department agrees with this comment because the statute provides that law enforcement may conduct an arrest for violations of the towing statute. Section 86.705 has been modified to require tow operators submit the tow truck to law enforcement for inspection.

One commenter observed that §86.709 requires the tow ticket be given to the vehicle owner; however, the owner is usually not present at the time of the tow. Section 86.709 has been clarified to require delivery of the tow ticket to the owner only if the owner is present and available at the time of the tow.

One commenter requested the department add lien-holder to the definition of "consent tow." The rule has not been changed in response to this comment. The term "consent tow" is defined by statute.

One commenter requested the department add "or its agents" to the definition of "vehicle owner." The rule has not been changed in response to this comment. The term "vehicle owner" is defined by statute.

Some commenters believe that §86.201 and §86.203 are unfair because consent towers should also be required to carry cargo on hook insurance. The rule has not been changed in response to this comment. The insurance requirements are statutory.

One commenter suggested in §86.710 to delete "collected" and insert "tested." The rule has not been changed in response to this comment. Deletion of the word "collected" would allow the specimen to be collected by anyone without control to verify the specimen was actually collected from the appropriate person.

Another commenter suggested deletion of the second and third sentences in §86.710 which require preservation of the split sample. The rule has not been changed in response to this comment. Preservation of the split sample is fundamental to an employee's due process right to challenge and resolve disputes that may surround a positive drug test.

One commenter asked for deletion of the requirement that licensees report positive drug tests to the department. The commenter also believes that owner operators be required to enroll in a third party drug program and specify the reporting requirements. Some of the rule has been changed in response to this comment. The department has jurisdiction over the towing operators with a corresponding responsibility to know whether a licensee (towing operator) is complying with the rules. While owner operators are free to enroll in third party drug testing programs, the statute also allows self-administered programs. With

respect to reporting requirements, §86.710 has been revised include specific reporting requirements.

One commenter suggested that in §86.710, the department delete "penalties" and insert "consequences or disciplinary action." This change has been made.

One commenter believes that §86.710 is confusing. The commenter asks does the exemption apply only to DOT commercial operators or does it equally apply to non-DOT random drug testing. The rule has been modified to adopt the alternative language with minor stylist changes.

One commenter objects to limiting the use of an affidavit of right of possession to family members. The commenter believes that anyone with permission should be able to use the form. The rule has not been changed in response to this comment. However, the department notes that release of stored vehicles has been expanded to include insurance companies and salvage operators. Each group obtaining possession thought different documents.

Another commenter objects to §86.700, which allows the tow company to refuse to take the vehicle to a shop or other location requested by the owner. The rule has not been changed in response to this comment. The provision is a statutory requirement.

Several commenters suggested that §86.203(a) make it clear that salvage operators qualify for consent tow permits. The rule has not been changed in response to this comment. Salvage pool operators meeting the requirements of §86.203(a) are entitled to obtain consent tow permits.

One commenter observed that some tow trucks do not have rating plates and the manufacturer is unknown. That commenter asked for guidance. The rule has not been changed in response to this comment. While the department understands the situation, the rating plate is a safety requirement that should not be waived. The department also understands that every situation will be different and believes it inappropriate to address this issue through rulemaking.

One commenter believes that §86.10(11) should clarify that a nonconsent tow may not be converted to a consent tow. The rule has not been changed in response to this comment. The definition of a nonconsent tow is statutory. However, the issue of conversion of a nonconsent tow to consent is resolved elsewhere in the rules.

One commenter fails to see the need for uniforms with the company name. The commenter stated that his company planned to sew the name on the reflective vest and placing it on the undergarment would be meaningless. The rule has not been changed in response to this comment. The rules as written provide flexibility to each company to devise an approach to compliance. That flexibility is illustrated by the commenter's plan to sew the name onto the reflective vest. In that case, the reflective vest is a part of the uniform and complies with the rule. Other companies may devise different approaches.

Another commenter suggested that §86.10(17)(D) be revised to expand the exemption to exclude trailers that carry four vehicles or less. The rule has not been changed in response to this comment. Section 86.10(17)(D) is identical to the rules enforced by the Texas Department of Transportation and has not changed in the proposed rule.

One commenter asked for waiver of safety clothing requirements as it applies to repossessioners. The rule has not been changed in response to this comment. The technical requirements all relate to safety issues and should be equally applicable to all towing operators.

Several commenters suggested that the exemption in §86.10(17)(D) be revised to add the phrase "a trailer that can carry or haul four vehicles or less." The rule has not been changed in response to this comment. The definition of tow truck including the exemptions is identical to that used by the Texas Department of Transportation.

Some commenters asked that §86.10(17) clarify whether four loaders/auto haulers are tow trucks. The rule has not been changed in response to this comment. The definition of tow trucks is statutory. Whether a trailer used to carry a single vehicle or multiple vehicles is a question of fact. However, TDLR believes that, absent a statutory exemption, these vehicles are tow trucks subject to the requirements of these rules.

Several commenters requested a change from "driver openly displaying license" to "show license on request". The rule has not been changed in response to this comment. The requirement is a public safety requirement to assure the public that towing operators have a TDLR issued license and screened via background checks with drug screening. Operators have sufficient flexibility to individually determine how to comply based on individual working environments.

Some commenters suggested that §86.704 be revised to add that "an authorization for repairs may not be signed at the scene of the accident." With a slight modification, §86.704 has been revised to reflect this suggestion.

One commenter believes that the department authority to charge fees are be affected by §2308.201(d), which restricts fees charged by Political Subdivisions to \$15. The rule has not been changed in response to this comment. The Commission's authority to recover program costs by way of fees is independent from the fee setting authority of Political Subdivisions.

Several commenters asked that §86.705(a) clarify prohibition from: (1) offering value to parking lot owners such as striping lot in exchange for contract; and (2) providing towing fee discounts to owners and employees. These commenters also asked for provision establishing penalties for rule violations. The rule has not been changed in response to this comment. The current rules prohibit the giving of value by towing companies to property owners. This prohibition applies to discounts. In addition, the rules also prohibit the charging rates not other than those posted with the department. Penalties for the rules in general will be included in the penalty matrix developed by the Enforcement Division and published by the Secretary of State and on the agency website.

One commenter asked for a new subsection §86.705(k)(1) requiring the towing company to provide a tow ticket to the insurance company on presentation of a loss of claim form. The rule has not been changed in response to this comment. Chapter 85 contains an identical provision requiring VSFs provide the tow tickets to insurance companies. The department believes it is not necessary to place this redundant obligation on the tow company.

Another commenter asked for a new subsection §86.709(c) to help consumers by clarifying charges and demonstrating that charges must they match fees on file with the department. Sec-

tion 86.709 has been amended to add a new subsection (d) to help consumers by clarifying that charges must match fees on file with the department.

One commenter asserts that §86.705(h) goes beyond the statute by requiring the tow company receive documents demonstrating compliance with the notice provisions of §2308.253(e) of the Texas Occupations Code. While the department believes that §86.705(h) is within the requirements of Texas Occupations Code, §2308.253(e), the section has been amended to require the towing operator note compliance on the tow ticket.

One commenter states that tow companies will incur additional costs if the rules require replacing the signage on tow trucks. The rule has not been changed in response to this comment. The additional costs are imposed by statute via moving the industry from TxDOT to TDLR which necessitates removing references to TxDOT from vehicles to better inform the public of the regulatory authority with enforcement oversight.

The new rules are adopted under Texas Occupations Code, Chapter 2308, which directs the Department's governing body, the Commission, to adopt rules to establish the requirements for permitting tow trucks and licensing towing operators and towing companies, and to adopt standards of conduct for license and permit holders; and Texas Occupations Code Chapter 51, which authorizes the Commission to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 2308, and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the adoption.

*§86.209. Licensing Requirements--Private Property Towing Operator License.*

(a) A private property towing operator's license is required to operate a tow truck permitted or required to be permitted under these rules.

(b) An applicant for a private property towing operator's license must:

- (1) submit a completed application on a department-approved form;
- (2) be a licensed Texas driver;
- (3) be certified by the National Drivers Certification Program of the Towing and Recovery Association of America or another certification program approved by the department;
- (4) successfully pass a criminal background check; and
- (5) pay the fee required under §86.800.

*§86.700. Responsibilities of Tow Truck Permit Holder--Storage of Towed Vehicles.*

(a) Unless the towing company agrees to take the vehicle to a location designated by the vehicle's owner, a towing company that makes a nonconsent tow shall tow the vehicle to a vehicle storage facility operated by a person who holds a vehicle storage facility license issued by the department.

(b) A towing company or towing operator may not request a vehicle owner or operator sign a tow ticket or authorization form for a tow if the tow is initiated by law enforcement.

(c) The towing company and towing operator must take the towed vehicle to the designated location using the most direct route reasonably available at the time of the tow.

*§86.701. Responsibilities of Tow Truck Permit Holder--Tow Truck Signage.*

(a) A tow truck permit holder must display on each permitted tow truck:

- (1) the permit holder's name;
  - (2) the permit holder's publicly listed telephone number;
  - (3) the city and state where the permit holder is located;
- and
- (4) the permit number for the tow truck.

(b) The information required to be displayed must be:

(1) printed in letters and numbers that are at least two inches high and in a color that contrasts with the color of the background surface; and

(2) permanently affixed in conspicuous places on both sides of the tow truck.

*§86.704. Responsibilities of Towing Company License Holder--Unauthorized Fees.*

An authorization for repairs may not be executed at the scene of an accident or included on a tow ticket authorized by law enforcement.

*§86.705. Responsibilities of Towing Company License Holder--Standards of Conduct.*

(a) A towing company may not directly or indirectly give anything of value to a parking facility owner in connection with the removal of a vehicle from a parking facility.

(b) A towing company may not have a direct or indirect monetary interest in a parking facility from which the towing company for compensation removes unauthorized vehicles.

(c) In an area in which no political subdivision regulates the fees that may be charged or collected for a nonconsent tow from private property, a towing company must comply with Texas Occupations Code, §2308.204.

(d) A towing company may not tow a vehicle to a vehicle storage facility unless the vehicle storage facility is in compliance with the required postings in Texas Occupations Code, §2308.207.

(e) A towing company may not remove and store an unauthorized vehicle unless authorized by Texas Occupations Code, §2308.255.

(f) A towing company may not perform a nonconsent tow unless the property from which the vehicle is towed is in compliance with Texas Occupations Code, §§2308.301 - 2308.305.

(g) Except as authorized by Texas Occupations Code, §§2308.351 - 2308.354, a towing company may not perform a nonconsent tow from:

- (1) a leased right-of-way;
- (2) an area between a parking facility and a public right-of-way;
- (3) a public right-of-way; or
- (4) a public roadway.

(h) A towing company may not contract for the removal from a parking facility of a vehicle that does not display an unexpired license

plate or registration insignia or a valid inspection certificate, unless before the tow, the towing company notes on the tow ticket the:

- (1) name of the person or company that authorized the tow,
- (2) telephone number of the company or person that authorized the tow, and
- (3) date of compliance with the notice provisions in Texas Occupations Code, §2308.253(e).

(i) A licensee or permit holder may not charge a fee for a non-consent tow that is greater than the fee listed in the schedule most recently filed with the department.

(j) A licensee must keep record of every nonconsent tow including, but not limited to, the following information:

- (1) vehicle description, including license or vehicle identification number, if available;
- (2) the specific rule or statutory provision sanctioning the tow;
- (3) each fact justifying the nonconsent tow;
- (4) location vehicle towed from; and
- (5) vehicle storage location.

(k) A towing operator must allow department personnel and law enforcement to inspect a tow truck permitted under these rules.

§86.706. *Responsibilities of Towing Company License Holder--Required Postings at Vehicle Storage Facility (VSF).*

(a) A towing company must provide its nonconsent towing fees schedule to all VSF's to which the towing company delivers vehicles for storage.

(b) The nonconsent towing fees schedule provided to the VSF and made available to the public at the VSF must match the nonconsent towing fees schedule on file with the department.

(c) A towing company may not collect nonconsent towing fees unless the VSF accepting nonconsent towed vehicles post a sign in one inch letters stating "Nonconsent tow fees schedules available on request."

(d) The nonconsent towing fees schedule must be made available to any requestor during normal business hours of the VSF.

§86.709. *Responsibilities of Towing Company License Holder--Tow Ticket.*

(a) A towing company must prepare and issue a tow ticket for each nonconsent tow.

(b) A copy of the tow ticket must be given to the vehicle owner, if the owner or operator is present and available at the time of the tow, and a copy delivered to the vehicle storage facility, or place agreed upon by the towing operator and vehicle owner.

(c) The tow ticket shall only authorize charges directly related to towing the vehicle to a designated location authorized by subsection (b).

(d) The tow ticket shall itemize each charge and must characterize the fees using the identical fee structure stated in the towing company's nonconsent towing fee schedule on file with the department.

(e) The tow ticket must contain the registered name of the towing company, publicly listed telephone number, towing company certificate of registration number, and the full printed name and TDLR license number of the towing operator on file with the department.

§86.710. *Responsibilities of Towing Company Licensee--Drug Testing Policy.*

(a) A towing company adopting paragraphs (1) - (12) of this subsection will comply with Texas Occupations Code, §2308.158.

(1) Purpose and Scope. This drug testing policy provides guidance to supervisors and towing operators about their responsibilities under this policy. Except as stated in paragraph (12), this policy applies to all towing operators and all towing operator job applicants.

(2) Definitions. The words and terms used in this policy shall have their ordinary meaning unless the words or terms are used in Texas Occupations Code, Chapter 2308 or Title 49 Code of Federal Regulation Part 40, in which event the words or terms shall have the meaning designated in those regulations.

(3) Consent Form.

(A) Before a drug test is administered, towing operators and applicants are required to sign a consent form authorizing the test and permitting release of test results to the medical review officer (MRO), the company, and the department. The consent form shall provide space for employees and applicants to acknowledge that they have been notified of the drug testing policy.

(B) The consent form shall set forth the following information:

(i) the procedure for confirming and verifying an initial positive test result;

(ii) the consequences of a verified positive test result; and

(iii) the consequences of refusing to undergo a drug test.

(C) The consent form also provides authorization for certified or licensed attending medical personnel to take and have analyzed appropriate specimens to determine if the tested drugs were present in the towing operator's or applicant's system.

(4) Compliance With Drug Testing Policy. The failure or refusal by a towing operator or applicant to cooperate fully by signing necessary consent forms or other required documents or the failure or refusal to submit to any test or any procedure under this policy in a timely manner will be grounds for refusal to hire or for termination. The submission by an applicant or employee of a urine sample that is not his/her own or is a diluted specimen shall be grounds for refusal to hire or for termination.

(5) General Rules. This drug testing policy is governed by these general rules:

(A) towing operators shall not take or be under the influence of any drugs unless prescribed by the employee's licensed physician.

(B) towing operators are prohibited from engaging in the manufacture, sale, distribution, use, or unauthorized possession of illegal drugs at any time.

(C) all towing company property is subject to inspection at any time without notice. There should be no expectation of privacy in or on such property. Towing company property includes, but is not limited to, vehicles, desks, containers, files, and lockers.

(D) any towing operator convicted of violating a criminal drug statute shall inform his/her supervisor of such conviction (including pleas of guilty and *nolo contendere*) within five days of the conviction occurring. Failure to inform the supervisor subjects the employee to disciplinary action up to and including termination for the

first offense. The towing company will notify the Texas Department of Licensing and Regulation of the conviction (including pleas of guilty and *nolo contendere*).

(6) Types of Tests

(A) Pre-employment. All applicants for positions requiring a towing operator's license, who have received a conditional offer of employment, must take a drug test before receiving a final offer of employment.

(B) Annual. All towing operators employed by a towing company must complete at least one scheduled drug test each 12-month period from the date of the initial license or renewal.

(C) Random Testing. In addition to annual testing, towing operators are subject to random urine drug testing. Under this policy, annual random test for drugs of at least 25 percent of the total number of towing operators is required.

(i) A minimum of 15 minutes and a maximum of two hours will be allowed between notification of a towing operator for random urine drug testing and the actual presentation for specimen collection.

(ii) Random donor selection dates will be unannounced with unpredictable frequency.

(D) Return-to-Duty and Follow-Up.

(i) Any towing operator who has violated this drug testing policy and is allowed to return to work must submit to a return-to-duty test. Follow-up tests will be unannounced, and at least six tests will be conducted in the first 12 months after a towing operator returns to duty. Follow-up testing may be extended for up to 60 months following return to duty. The test results of all return to duty and follow-up must be negative.

(ii) The towing operator will be required to pay for his or her return-to-duty and follow-up tests accordingly.

(7) Drug Testing. The drugs for which tests are required under this policy are marijuana, cocaine, amphetamines, phencyclidine (PCP), and opiates.

(8) Specimen Collection Procedures.

(A) All urine specimens will be collected by a laboratory that is certified and monitored by the Federal Department of Health and Human Services.

(B) Drug testing procedures include split specimen procedures. Each urine specimen is subdivided into two bottles labeled as a "primary" and a "split" specimen. Only the primary specimen is opened and used for the urinalysis. The split specimen bottle remains sealed and is stored at the laboratory.

(C) If the analysis of the primary specimen confirms the presence of drugs, the towing operator has 72 hours to request sending the split specimen to another Federal Department of Health and Human Services (DHHS) certified laboratory for analysis. The towing operator will be required to pay for his or her split specimen test(s).

(D) For the towing operator's protection, the results of the analysis will be confidential except for the testing laboratory. After the MRO has evaluated a positive test result, the towing operator will be notified, and the MRO will notify the company.

(E) The towing company will notify the department of the positive test result. Notification to the department must occur within 3 days of receipt of the confirmed test results from the MRO. The notification must include the:

(i) tow operator's name;

(ii) tow operator's license number;

(iii) date of the positive test;

(iv) substance detected by the drug test; and

(v) disciplinary action imposed violation of the drug testing policy.

(9) Reporting and Reviewing of Drug Testing Results.

(A) The company shall designate a medical review officer (MRO) to receive, report, and store testing information transmitted by the laboratory. This person shall be a licensed physician with knowledge of substance abuse disorders.

(B) The laboratory shall report test results only to the designated MRO, who will review them in accordance with accepted guidelines and the procedures adopted by the Federal Department of Transportation.

(C) Reports from the laboratory to the MRO shall be in writing or by fax. The MRO may talk with the towing operator by telephone upon exchange of acceptable identification.

(D) Neither the company, the laboratory, nor the MRO shall disclose any drug test results to any other person except under written authorization from the towing operator, unless such results are necessary in the process of resolution of accident (incident) investigations, requested by court order, or required to be released to parties having a legal right-to-know as determined by state and federal law.

(10) Distribution of Information to Towing Operators. The minimal distribution of information for all towing operators will include the display and distribution of:

(A) informational material on the physical and mental effects of drugs;

(B) an existing community services hotline number, available drug counseling, rehabilitation, and assistance program;

(C) the company's policy regarding the use of prohibited drugs and/or alcohol; and

(D) the consequences or disciplinary action that may be imposed upon VSF employees for violating the drug policy.

(11) Consequences of a Confirmed Positive Drug Test.

(A) Job applicants will be denied employment if their initial positive pre-employment drug test results have been confirmed.

(B) If a towing operator's positive drug test result has been confirmed, the towing operator will stand down from towing operation duties and may be subject to disciplinary action up to and including termination.

(C) The company may consider the following factors in determining the appropriate disciplinary action: the towing operator's work history, length of employment, current work assignment, current job performance, and existence of past disciplinary actions.

(D) No disciplinary action may be taken pursuant to this drug policy against towing operators who voluntarily identify themselves as drug users, obtain counseling, rehabilitation and comply with return to duty and follow-up drug testing.

(12) Exceptions.

(A) Towing operators subject to random drug testing under Title 49, Code of Federal Regulation, Part 40 who have been randomly tested in the 12-month reporting period are exempt from the

annual test requirement, provided that the towing operator's tested negative and the negative test results are submitted to and verified by the MRO.

(B) Towing operators holding a valid Towing Operator License issued by the department who are tested for drugs in accordance with 16 Texas Administrative Code Chapter 85 are exempt from this section.

(b) Independent drug testing policy.

(1) A towing company may file an independent drug testing policy.

(2) The filing must describe how the independent drug testing policy is as stringent as each provision of the model policy set forth in subsection (a).

**§86.800. Fees.**

(a) Application Fees

(1) Permit Tow Truck

(A) Original Application--\$75

(B) Renewal--\$75

(C) Duplicate Permit--No charge

(D) Permit Amendment--\$25

(2) Tow Company License

(A) Original Application--\$350

(B) Renewal--\$350

(C) Duplicate License--\$25

(D) Permit Amendment--\$25

(3) Operator License

(A) Original Application--\$100

(B) Renewal--\$100

(C) Duplicate License--\$25

(D) Operator License Amendment--\$25

(b) Risk-based inspections--\$150

(c) Late renewal fees for licenses and permits issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees)

(d) All fees are nonrefundable except as provided for by commission rules or statute.

**§86.900. Sanctions and Administrative Penalties.**

A person that violates Texas Occupations Code, Chapter 2308, a rule, or an order of the Executive Director or Commission relating to Texas Occupations Code, Chapter 2308, will be subject to administrative sanctions and/or administrative penalties under Texas Occupations Code, Chapters 51 and 2308 and applicable agency rules.

**§86.1000. Technical Requirements--Tow Truck Safety Equipment and Truck Operations.**

(a) Except as provided in subsection (b), each tow truck must carry proper safety equipment. Proper equipment includes, but is not limited to, the following:

(1) At least one 10 pound or two 5 pound multiple purpose fire extinguisher, in good working condition;

(2) Magnetic tow lights, unless wireless, with appropriate cable and cushions to protect a vehicle's finish;

(3) Tow dollies as appropriate;

(4) Straps and tie downs as specified by the tow truck manufacturer;

(5) Gloves;

(6) Wheel chocks;

(7) Five gallon trash receptacle;

(8) Broom and shovel;

(9) Thirty-six inch crow bar; and

(10) Triangle reflectors, flares, cones, safety lights or other appropriate safety signals.

(b) Tow trucks permitted under §86.203 are exempt from the requirements of subsections (a)(3), (a)(7), and (a)(9).

(c) Each tow truck shall:

(1) have a legible manufacturer's data plate indicating the capacity of the boom, the winch or the carry mechanism; or

(2) have a document in the truck from the manufacturer stating the capacity of the boom, the winch or the carry mechanism.

(d) Every hydraulic line on each tow truck must be free of leaks and be in good working condition free of defects.

(e) The winch must not exceed the capacity of the boom or leak oil.

(f) The cables must be as specified by the manufacturer and be in good condition, within manufacturer guidelines.

(g) Each tow truck must have a copy of the annual state inspection.

(h) Tow trucks placed in service after May 1, 2008, must contain the original manufacturer's warning labels on the truck, truck bed, winches, and all other accessories.

**§86.1001. Technical Requirements--Towing Operator Safety Clothing and Identification.**

(a) Towing operators, as a condition of their license must comply with the protective clothing policy.

(b) Towing operators must wear at all times when using or assisting in the use or operation of a licensed tow truck on a road or road related area:

(1) a uniform, clearly marked with the tow company's name as it appears on department records.

(2) a reflective vest or reflective jacket at all times while working outside the tow truck; the reflective vest or reflective jacket must meet the ANSI/ISEA 207-2006 requirements for high visibility safety apparel.

(c) During daylight hours, a fluorescent shirt may be worn instead of the reflective vest or jacket; the fluorescent shirt must meet the ANSI/ISEA 207-2006 requirements for high visibility safety apparel.

(d) When performing towing operations, all tow truck operators must carry and openly display the appropriate TDLR issued original towing operator license.

(e) Tow operators permitted under §86.210 are exempt from the requirements of subsection (b)(1).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 26, 2008.  
TRD-200801610  
William H. Kuntz, Jr.  
Executive Director  
Texas Department of Licensing and Regulation  
Effective date: April 15, 2008  
Proposal publication date: February 8, 2008  
For further information, please call: (512) 463-7348



## PART 8. TEXAS RACING COMMISSION

### CHAPTER 303. GENERAL PROVISIONS SUBCHAPTER A. ORGANIZATION OF THE COMMISSION

#### 16 TAC §303.16

The Texas Racing Commission adopts an amendment to 16 TAC §303.16, which relates to historically underutilized businesses, without changes to the proposal published in the October 26, 2007, issue of the *Texas Register* (32 TexReg 7637). The enactment of House Bill 3560 transferred from the Texas Building and Procurement Commission to the Comptroller of Public Accounts those powers and duties that relate to the historically underutilized businesses program. The rules were transferred and reorganized under Title 34, Chapter 20 of the *Texas Administrative Code*. This amendment brings §303.16 into conformity with the changes resulting from House Bill 3560.

The Commission received no comments in response to the published notice.

The amendment is adopted under the Texas Racing Act, Texas Civil Statutes, Article 179e, §3.02, which authorizes the Commission to adopt rules for conducting greyhound and horse racing and rules to administer the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 26, 2008.  
TRD-200801601  
Mark Fenner  
General Counsel  
Texas Racing Commission  
Effective date: April 15, 2008  
Proposal publication date: October 26, 2007  
For further information, please call: (512) 833-6699



## PART 9. TEXAS LOTTERY COMMISSION

### CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT SUBCHAPTER D. LOTTERY GAME RULES

#### 16 TAC §401.312

The Texas Lottery Commission (Commission) adopts the repeal of Title 16, Part 9, Chapter 401, Subchapter D, §401.312 (relating to "Texas Two Step" On-Line Game), without changes to the proposed text as published in the February 1, 2008, issue of the *Texas Register* (33 TexReg 823).

The repeal is adopted concurrently with the adoption of new "Texas Two Step" On Line Game rule at 16 TAC §401.312. The purposes of the proposed new rule are to provide that no funds will be added to the Texas Two Step prize reserve fund, to allow for the depletion of the Texas Two Step prize reserve fund, to amend the prize structure to account for the fact that no funds will be added to the Texas Two Step prize reserve fund, and to make the language in the rule simpler and easier to read.

Two public comment hearings were held with regard to this repeal: one on February 5, 2008, and one on February 29, 2008. No one was present at either hearing. No written comments were received during the public comment period.

The repeal is adopted under Texas Government Code, §466.015, which authorizes the Commission to adopt rules governing the operation of the lottery. The repeal is also adopted under Texas Government Code, §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 26, 2008.  
TRD-200801603  
Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission  
Effective date: May 26, 2008  
Proposal publication date: February 1, 2008  
For further information, please call: (512) 344-5012



#### 16 TAC §401.312

The Texas Lottery Commission (Commission) adopts new Title 16, Part 9, Chapter 401, Subchapter D, §401.312 (relating to "Texas Two Step" On-Line Game), with changes to the proposed text as published in the February 1, 2008, issue of the *Texas Register* (33 TexReg 823). An effective date has been added to the adopted version of this rule at subsection (h), and extra word ("of") has been deleted from subsections (e)(6)(C) and (e)(7)(C). The proposed new rule is adopted concurrently with the adoption of the repeal of the existing "Texas Two Step" On-Line Game rule at 16 TAC §401.312.

The purposes of the adopted new rule are to provide for the elimination of the Texas Two Step prize reserve fund and to make the language in the rule simpler and easier to understand. A separate prize reserve fund for a specific lottery game is neither required by law nor necessary as a matter of practice. No other Texas Lottery on-line game rule provides for allocations to a prize reserve fund. Therefore, elimination of the prize reserve fund will result in increased consistency in Commission accounting practices in connection with on-line games. The elimination of the Texas Two Step prize reserve fund will also simplify the prize structure and may make the operation of the game easier for players to understand.

Two public comment hearings were held with regard to this new rule: one on February 5, 2008; and one on February 29, 2008. No one was present at either hearing. The Commission received no written comments during the public comment period.

The new rule is adopted under Texas Government Code, §466.015(c), which authorizes the Commission to adopt rules governing lottery games conducted by the Commission. The new rule is also adopted under Texas Government Code, §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

Texas Government Code, Chapter 466, is affected by this adoption.

§401.312. "Texas Two Step" On-Line Game.

(a) Texas Two Step. The executive director is authorized to conduct a game known as "Texas Two Step." The executive director may issue further directives for the conduct of Texas Two Step that are consistent with this rule. In the case of conflict, this rule takes precedence over §401.304 of this title (relating to On-Line Game Rules (General)).

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

(1) Play--The selection of four different numbers from one through 35 and the selection of an additional number from one through 35 for one opportunity to win in Texas Two Step, and the purchase of a ticket evidencing that selection.

(2) Playboard--Two fields on a playslip, each with 35 numbers, for use in selecting numbers for a Texas Two Step play.

(3) Playslip--An optically readable card issued by the commission for use in selecting numbers for one or more Texas Two Step plays.

(4) Roll cycle--A series of one or more drawings that ends when there is a drawing for which one or more tickets are sold that match, in accordance with the provisions of subsection (e)(1)(A) of this section, the numbers drawn in the drawing. A new roll cycle begins with the next drawing after a drawing for which one or more jackpot tickets are sold that match, in accordance with the provisions of subsection (e)(1)(A) of this section, the numbers drawn in the drawing.

(c) Plays and tickets.

(1) A ticket may be sold only by an on-line retailer and only at the location listed on the retailer's license. A ticket sold by a person other than an on-line retailer is not valid.

(2) The price of a play is \$1.

(3) A player may complete up to five playboards on a single playslip.

(4) A player may use a single playslip to purchase the same play(s) for up to 10 consecutive drawings, to begin with the next drawing after the purchase.

(5) A person may select numbers for a play either:

(A) by using a self-service terminal;

(B) by using a playslip to select numbers or the Quick Pick option;

(C) by requesting a retailer to use the Quick Pick option to select numbers; or

(D) by requesting a retailer to manually enter numbers.

(6) Playslips must be completed manually. A ticket generated from a playslip that was not completed manually is not valid.

(7) An on-line retailer may accept a request to manually enter selections or to make Quick-Pick selections only if the request is made in person.

(8) An on-line retailer shall issue a ticket as evidence of one or more plays. A ticket must show the numbers selected for each play, the number of plays, the draw date(s) for which the plays were purchased, and the security and transaction serial numbers. Tickets must be printed on official Texas Lottery paper stock.

(9) A playslip has no monetary value and is not evidence of a play.

(10) The purchaser is responsible for verifying the accuracy of the numbers and other selections shown on a ticket.

(11) An unsigned winning ticket is payable to the holder or bearer of the ticket if the ticket meets all applicable validation requirements.

(d) Drawings.

(1) Texas Two Step drawings shall be held each week on Monday and Thursday at 10:12 p.m., central time. The executive director may change the drawing schedule, if necessary.

(2) At each Texas Two Step drawing, the commission shall draw four different numbers from a set of numbers from one through 35, and the commission shall draw a single number from a separate set of numbers from one through 35.

(3) Numbers drawn must be certified by the commission in accordance with the commission's drawing procedures.

(4) The numbers selected in a drawing shall be used to determine all winners for that drawing.

(5) Each drawing shall be witnessed by an independent certified public accountant. All drawing equipment used shall be examined by a commission drawings representative and the independent certified public accountant immediately before each drawing and immediately after each drawing.

(e) Prizes.

(1) Jackpot prize (first prize).

(A) A person who holds a valid ticket for a Texas Two Step play is entitled to a share of the jackpot prize (first prize) for a drawing if:

(i) the four numbers the player selected from a field of 35 numbers match (in any order) the four numbers selected from a set of 35 numbers at the drawing; and

(ii) the single number the player selected from a field of 35 numbers matches the single number selected from a set of 35 numbers at the drawing.

(B) The jackpot prize for a Texas Two Step drawing is the amount the commission establishes and authorizes vendors to publicize for the drawing.

(C) If 23.78 percent of Texas Two Step sales proceeds for a roll cycle are not sufficient to pay a jackpot prize, the commission shall use remaining funds in the Texas Two Step prize reserve fund to pay the prize. If 23.78 percent of Texas Two Step sales proceeds for a roll cycle and any remaining funds in the Texas Two Step prize reserve fund are not sufficient to pay a jackpot prize, the commission shall



use funds from other authorized sources, including the State Lottery Account established by Government Code §466.355, to pay the prize.

(2) Second prize.

(A) A person who holds a valid ticket for a Texas Two Step play is entitled to a share of the second prize for a drawing if:

(i) the four numbers the player selected from a field of 35 numbers match (in any order) the four numbers selected from a set of 35 numbers at the drawing; and

(ii) the single number the player selected from a field of 35 numbers does not match the single number selected from a set of 35 numbers at the drawing.

(B) The second prize consists of 2.79 percent of the proceeds from Texas Two Step ticket sales for the drawing and any amounts carried forward under subparagraph (D) of this paragraph.

(C) A payment made to a person for a share of the second prize for a drawing shall be rounded to the closest whole dollar amount. An amount of fifty cents shall be rounded up to the nearest whole dollar amount.

(D) Any part of the second prize for a drawing that is not paid in prizes shall be carried forward and shall become part of the second prize for the next drawing.

(3) Third prize.

(A) A person who holds a valid ticket for a Texas Two Step play is entitled to a share of the third prize for a drawing if:

(i) three of the four numbers the player selected from a field of 35 numbers match (in any order) three of the four numbers selected from a set of 35 numbers at the drawing; and

(ii) the single number the player selected from a field of 35 numbers matches the single number selected from a set of 35 numbers at the drawing.

(B) The third prize consists of 0.34 percent of the proceeds from Texas Two Step ticket sales for the drawing and any amounts carried forward under subparagraph (D) of this paragraph.

(C) A payment made to a person for a share of the third prize for a drawing shall be rounded to the closest whole dollar amount. An amount of exactly fifty cents shall be rounded up to the nearest whole dollar amount.

(D) Any part of the third prize for a drawing that is not paid in prizes shall be carried forward and shall become part of the third prize for the next drawing.

(4) Fourth prize.

(A) A person who holds a valid ticket for a Texas Two Step play is entitled to a share of the fourth prize for a drawing if:

(i) three of the four numbers the player selected from a field of 35 numbers match (in any order) three of the four numbers selected at the drawing from a set of 35 numbers; and

(ii) the single number the player selected from a field of 35 numbers does not match the single number selected from a set of 35 numbers at the drawing.

(B) The fourth prize consists of 4.60 percent of the proceeds from Texas Two Step ticket sales for the drawing and any amounts carried forward under subparagraph (D) of this paragraph.

(C) A payment made to a person for a share of the fourth prize for a drawing shall be rounded to the closest whole dollar amount.

An amount of exactly fifty cents shall be rounded up to the nearest whole dollar amount.

(D) Any part of the fourth prize for a drawing that is not paid in prizes shall be carried forward and shall become part of the fourth prize for the next drawing.

(5) Fifth prize.

(A) A person who holds a valid ticket for a Texas Two Step play is entitled to a share of the fifth prize for a drawing if:

(i) two of the four numbers the player selected from a field of 35 numbers match (in any order) two of the four numbers selected from a set of 35 numbers at the drawing; and

(ii) the single number the player selected from a field of 35 numbers matches the single number selected from a set of 35 numbers at the drawing.

(B) The fifth prize consists of 3.04 percent of the proceeds from Texas Two Step ticket sales for the drawing and any amounts carried forward under subparagraph (D) of this paragraph.

(C) A payment made to a person for a share of the fifth prize for a drawing shall be rounded to the closest whole dollar amount. An amount of exactly fifty cents shall be rounded up to the nearest whole dollar amount.

(D) Any part of the fifth prize for a drawing that is not paid in prizes shall be carried forward and shall become part of the fifth prize for the next drawing.

(6) Sixth prize.

(A) A person who holds a valid ticket for a Texas Two Step play is entitled to a \$7 prize for a drawing if:

(i) one of the four numbers the player selected from a field of 35 numbers matches one of the four numbers selected from a set of 35 numbers at the drawing; and

(ii) the single number the player selected from a field of 35 numbers matches the single number selected from a set of 35 numbers at the drawing.

(B) If 6.87 percent of sales proceeds for the drawing are not sufficient to pay all of the sixth prizes for that drawing, the commission shall use remaining funds in the Texas Two Step prize reserve fund to pay the prizes. If 6.87 percent of sales proceeds for a drawing and any remaining funds in the Texas Two Step prize reserve fund are not sufficient to pay all of the sixth prizes for a drawing, the commission shall use funds from other authorized sources, including the State Lottery Account established by Government Code §466.355, to pay the prize.

(C) To the extent that the total amount of sixth prizes for a Texas Two Step drawing is less than 6.87 percent of the proceeds from ticket sales for the drawing, the difference shall be carried forward to fund future sixth prize payments.

(7) Seventh prize.

(A) A person who holds a valid ticket for a Texas Two Step play is entitled to a \$5 prize for a drawing if:

(i) none of the four numbers the player selected from a field of 35 numbers match any of the four numbers selected from a set of 35 numbers at the drawing; and

(ii) the single number the player selected from a field of 35 numbers matches the single number selected from a set of 35 numbers at the drawing.

(B) If 8.58 percent of sales proceeds for the drawing are not sufficient to pay all of the seventh prizes for that drawing, the commission shall use remaining funds in the Texas Two Step prize reserve fund to pay the prizes. If 8.58 percent of sales proceeds for a drawing and any remaining funds in the Texas Two Step prize reserve fund are not sufficient to pay all of the seventh prizes for a drawing, the commission shall use funds from other authorized sources, including the State Lottery Account established by Government Code §466.355, to pay the prize.

(C) To the extent that the total amount of seventh prizes for a Texas Two Step drawing is less than 8.58 percent of the proceeds from ticket sales for the drawing, the difference shall be carried forward to fund future seventh prize payments.

(8) A person may win only one prize per play per drawing. A player who holds a valid ticket for a winning play is entitled to the highest prize for that play.

(9) A share of a prize is determined by dividing the prize by the number of winning plays for that prize.

(10) A Texas Two Step prize payment shall be made upon completion of commission validation procedures.

(11) A claimant is not entitled to interest or other earnings on a prize, regardless of when a claim is actually presented and regardless of when payment is made.

(f) Texas Two Step prize reserve fund.

(1) There will be no allocations from Texas Two Step ticket sales to the Texas Two Step prize reserve fund.

(2) When all funds in the Texas Two Step prize reserve fund have been used, the fund shall be abolished.

(g) Jackpot information on Commission website. After the commission has approved an advertised estimated jackpot under subsection (e) of this section, the commission shall post the following information on the agency website:

(1) the amount of ticket sales, if any, for previous drawings in the roll cycle; and

(2) the amount of projected ticket sales for the upcoming drawing.

(h) This rule takes effect May 26, 2008.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 26, 2008.

TRD-200801604

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General Counsel

Texas Lottery Commission

Effective date: May 26, 2008

Proposal publication date: February 1, 2008

For further information, please call: (512) 344-5012



CHAPTER 402. CHARITABLE BINGO  
ADMINISTRATIVE RULES  
SUBCHAPTER E. BOOKS AND RECORDS  
16 TAC §402.500

The Texas Lottery Commission (Commission) adopts new Title 16, Part 9, Chapter 402, Subchapter E, §402.500 (relating to General Records Requirements) with changes to the proposed text as published in the November 9, 2007, issue of the *Texas Register* (32 TexReg 8076). Specifically, the changes include: (1) Subsection (a) has been deleted and replaced with a new subsection (a) which reads, "Licensees shall retain for four years all information and records required to be maintained by the Bingo Enabling Act (Texas Occupations Code, Chapter 2001) or the Charitable Bingo Administrative Rules."; (2) At subsection (b), "the", "design and use of its own forms for records", and "they contain" have been deleted, and "rule", "maintain information in a form determined by the licensee", and "that form includes" have been added; and (3) Subsection (c) now reads, "Upon request of the Commission, a licensee shall make available any information required to be maintained by the Bingo Enabling Act and the Charitable Bingo Administrative Rules. Except in cases of emergency, the Commission shall provide reasonable advance notice of the specific information and records needed and the time and location at which they must be made available."

The purpose of the adopted new rule is to clearly set forth certain general records requirements in accordance with §2001.505(b) of the Bingo Enabling Act which requires licensees to keep records to substantiate each quarterly report. Specifically, the new rule addresses the length of time records must be maintained, the forms for records that may be used, and the requirement that licensees make records available upon request of the Commission. Although these requirements also appear in existing rules, the Commission is aware of no inconsistencies and plans to propose rulemaking to eliminate any unnecessary duplication.

A public comment hearing was held on November 13, 2007. Several members of the public were present at the hearing. Representatives from the Bingo Interest Group, All Saints Bingo Unit Trust, and American Veterans Post 52 commented against the new rule. Representatives from Fort Worth Bookkeeping, Super Bingo, 19 Charities, Family Bingo Center, Saginaw Lions Club, Thompson Allstate Bingo Supply, and several charities and a bingo hall commented on the new rule without stating whether they were in favor or against the rule as a whole. Additionally, written comments were received from Earl O. Silver III, Chairman of the Bingo Advisory Committee Rules Subcommittee.

Comment: The rule presents repetition and redundancy with other rules. There is concern about conflicting rules and about the regulated community being able to follow the rules easily without doing unnecessary work.

Agency Response: The Commission agrees and is reviewing other bingo rules to identify unnecessary provisions and propose rulemaking to eliminate redundancy.

Comment: Licensees are being required to write the same numbers over and over on several different pieces of paperwork.

Agency Response: The agency disagrees. Subsection (b) has been revised to clarify that a licensee may maintain information in a form determined by the licensee as long as it includes the required information.

Comment: There are going to be additional costs to persons required to comply with the proposed rule.

Agency Response: Subsection (a) has been changed to clarify that licensees must retain records required to be maintained by the Bingo Enabling Act (Texas Occupations Code Chapter 2001)

or the Charitable Bingo Administrative Rules rather than "all information and records relating to bingo." The requirement to retain records for four years is already required in existing rules.

Comment: If this rule does, in fact, require something new to be done or to be done in a different form, then the rule should be amended to say that this will only apply to an occasion that occurs after a date certain.

Agency Response: The rule does not require anything new to be done or to be done in a different form.

Comment: Several persons expressed concern about the meaning of "all information and records" in subsection (a). It could require a lot of extra storage space and expense.

Agency Response: Subsection (a) has been modified to clarify that only records required to be maintained by the Bingo Enabling Act or the Charitable Bingo Administrative Rules must be maintained for four years.

Comment: Several persons commented that subsection (c) could be a problem when a licensee's records are being used by its accountant in order to complete IRS Form 990. The penalties are pretty stiff with the IRS if the 990 is filed late. The Commission should request information in advance to give organizations a reasonable time to gather the information.

Agency Response: The agency concurs and has made changes to subsection (c) to provide for the agency to provide reasonable advance notice of the need for records.

The new rule is adopted under Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and under Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

The adopted new rule implements Occupations Code, Chapter 2001.

#### §402.500. *General Records Requirements.*

(a) Licensees shall retain for four years all information and records required to be maintained by the Bingo Enabling Act (Texas Occupations Code, Chapter 2001) or the Charitable Bingo Administrative Rules.

(b) Unless otherwise prescribed by Commission rule, a licensee may maintain information in a form determined by the licensee as long as that form includes the information required by the Bingo Enabling Act and the Charitable Bingo Administrative Rules.

(c) Upon request of the Commission, a licensee shall make available any information required to be maintained by the Bingo Enabling Act and the Charitable Bingo Administrative Rules. Except in cases of emergency, the Commission shall provide reasonable advance notice of the specific information and records needed and the time and location at which they must be made available.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Proposal publication date: November 9, 2007  
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#### 16 TAC §402.506

The Texas Lottery Commission (Commission) adopts new Title 16, Part 9, Chapter 402, Subchapter E, §402.506 (relating to Disbursement Records Requirements) with changes to the proposed text as published in the November 9, 2007, issue of the *Texas Register* (32 TexReg 8076).

Specifically, the changes include: (1) At subsection (a), "licensee" is replaced with "licensed authorized organization or unit", "is required to" is replaced with "shall", and the phrase "cancelled check images may" has been added; (2) At subsection (b), "records that must be maintained" has been deleted and "for each type of expense listed" has been added; (3) At subsection (b)(1), "or similar documents" has been added, and "detailed", "Invoices or other appropriate supporting documents must", and "at least" have been deleted; (4) At subsection (b)(1)(A), ", address, and phone number" has been replaced with "and contact information"; (5) At subsection (b)(1)(B), "an adequate" replaces "a complete"; (6) Subsection (b)(1)(C) now reads, "the quantity of each product purchased or service received;"; (7) At subsection (b)(1)(D), "unit" has been deleted, and "product purchased or service received which may include the pricing information for services provided pursuant to a service agreement;" has been added; (8) At subsection (b)(2), "if any", "commercial", and "licensed authorized" have been added; (9) Subsection (b)(3) now reads, "Rent forgiveness letter or lease agreement signed by the commercial lessor stating the amount of any rent forgiven or permanently or temporarily reduced."; (10) Subsection (b)(4)(A) now reads "primary position worked;"; (11) At subsection (b)(5), "deposits, and receipts" has been replaced with "including related deposit slips and receipts or other documentation that the deposits were accepted."; (12) Subsection (b)(6) now reads, "Documentation of the payment of other federal, state, and local taxes, which may include tax returns, 1099's and property tax paid."; (13) Subsection (b)(8) has been deleted and the remaining provisions have been renumbered; (14) At new subsection (b)(8), "canceled" has been replaced with "cancelled" and "or cancelled check images" has been added; (15) Subsection (b)(10) has been deleted; and (16) Subsections (c) and (d) have been added to the rule.

The purpose of the adopted new rule is to set forth, in plain language, certain requirements for maintenance of records relating to disbursements from a licensed authorized organization's bingo account in accordance with §2001.505(b) of the Bingo Enabling Act which requires licensees to keep records to substantiate each quarterly report. Specifically, the new rule addresses the maintenance of records of bingo expenses, including invoices, itemized billing statements, sales receipts, or similar documents that have detailed information about the items purchased or services provided. The rule also requires maintenance of records regarding the lease agreement, if any, between the commercial lessor and the licensed authorized organization stating the amount of rent charged for the use of the bingo premises, the rent forgiveness letter or lease amendment, payroll records, federal and state payroll tax returns, including re-

lated deposit slips and receipts or other documentation that the deposits were accepted, and documentation of the payment of other federal, state, and local taxes, which may include tax returns, 1099's, and property tax paid. Commission loan approval letter for repayment of approved loans, bank statements, deposit slips and cancelled checks or cancelled check images, debit card transactions reports. The Commission believes that the requirements in the proposed new rule are consistent with existing Internal Revenue Service requirements for recordkeeping by non-profit organizations. If the Commission receives information indicating an inconsistency for a particular type of non-profit organization, the need for the requirement will be reevaluated.

A public comment hearing was held on November 13, 2007. Several members of the public were present at the hearing. Representatives from the Bingo Interest Group, All Saints Bingo Unit Trust, and American Veterans Post 52 commented against the new rule. Representatives from Fort Worth Bookkeeping, Super Bingo, 19 Charities, Family Bingo Center, Saginaw Lions Club, several charities and a bingo hall, and Thompson Allstate Bingo Supply commented on the new rule without stating whether they were in favor or against the rule as a whole. Additionally, written comments were received from Earl O. Silver, III, Chair of the Bingo Advisory Committee Rules Subcommittee.

Comment: The IRS takes cancelled checks to substantiate a purchase if there is not an invoice. So, a cancelled check should be able to substantiate a bingo expense.

Agency Response: The agency agrees that cancelled checks may substantiate a purchase if there is not an invoice.

Comment: Section 402.506: The rule contains requirements that are redundant.

Agency Response: The Commission agrees and is reviewing other rules to identify unnecessary provisions and propose rule-making to eliminate redundancy.

Comment: In subsection (a), insert "or check images" after, "cancelled checks." Many banks do not return the actual cancelled check.

Agency Response: The agency agrees and has added "cancelled check images" to subsection (a).

Comment: Subsection (b) says, "The records listed below are acceptable records that must be maintained. . . ." It is almost like when you all started writing that you meant, "These would be acceptable for documenting expenses," but then you said, "They must be maintained." Well, if they must be maintained, it does not really make any difference whether they are acceptable or not, so I would suggest the deletion of the word "acceptable".

Agency Response: The agency agrees that subsection (b) should be clarified and has deleted "records that must be maintained" and added "for each type of expense listed."

Comment: Subsection (b)(1) that lists "Invoices, itemized billing statements, or" should include "or agreement" sales receipts," because some expenses are on agreement, not on invoice.

Agency Response: The agency agrees and has added "or similar documents."

Comment: In subsection (b)(1): The word "detailed" before "information" needs to be stricken. If you want information, if you will tell us what the information is, we will give it to you.

Agency Response: The agency agrees and has deleted the word "detailed" in subsection (b)(1).

Comment: Subsection (b)(1)(A) is not broad enough to cover the type of contact information available for the person or entity selling goods or services, or providing the service. Sometimes on an invoice, the supplier does not list their phone number, or it may be the company name, the address and not a phone number. As long as they are able to be contacted in some way or form, it should suffice.

Agency Response: The agency agrees and has substituted "contact information" for "address, and phone number."

Comment: Include the concept of a service agreement in subsection (b)(1). Somebody may be charging per session.

Agency Response: The agency agrees and has included "service agreement" in subsection (b)(1)(D).

Comment: In subsection (b)(1)(B), delete "complete." A description of goods or services is enough.

Agency Response: The agency disagrees, but has changed "complete" to "adequate" to reduce the amount of detail required.

Comment: In subsection (b)(1)(C), it appears that the word "sold" is intended to say "purchased".

Agency Response: The agency agrees and has changed "sold" to "purchased" in subsection (b)(1)(C).

Comment: Subsections (b)(2) & (b)(3) need to be clearer on stating that just an invoice will support the changes that may accrue in rental charges. As it is written now the rule is very ambiguous for charities to know what exactly needs to be done.

Agency Response: The agency agrees and has clarified subsection (b)(2) by adding "if any" and (b)(3) by adding the language "or lease amendment" and "temporarily."

Comment: Every time the rule refers to an organization, it should refer to units as well.

Agency Response: The agency agrees and has made changes to subsection (a), (b)(2), and (c) to include reference to units.

Comment: The organization does not have room to keep the "Rent forgiveness letter signed by the commercial lessor stating the amount of any rent amount permanently reduced or forgiven." as required in subsection (b)(3). I do not understand why you need the paperwork to support it. If the check was not written, then obviously they are not getting the rent.

Agency Response: The agency disagrees. Documentation is necessary to substantiate bingo rent expenses, and the quantity of this documentation should not be overly burdensome.

Comment: Several commenters stated that subsection (b)(4)(A) requiring information on positions worked is burdensome and should be deleted because one particular worker may do three to four jobs in one day, just to be cost effective. They may act as an usher, a caller, and a cashier for the same occasion. When you have to break down and list every little thing they did it seems like a lot of extra stuff to keep up with just to run a bingo session.

Agency Response: Subsection (b)(4)(A) has been changed to say "primary position worked;".

Comment: Two persons commented that subsection (b)(5) regarding payroll tax returns, deposits and receipts is confusing and should be clarified. It is assumed that since a taxpayer does not get federal or state payroll tax receipts, the agency means a receipt for a deposit of those things.

Agency Response: The agency agrees and has changed the language to clarify that (b)(5) concerns federal and state payroll tax returns, including deposit slips and receipts or other documentation that the deposits were accepted.

Comment: Subsection (b)(6) is not clear as to what "other federal, state, and local documentation" is required.

Agency Response: The agency agrees and has revised (b)(6) to clarify that documentation of the payment of other federal, state, and local taxes paid is acceptable to substantiate bingo expenses. If there is not such expense, no documentation is required.

Comment: One person interpreted the word "other" in subsection (b)(6) as including 990's and the organization's state franchise tax returns and stated that this is a problem.

Agency Response: The agency agrees with the interpretation that "other" includes 990's and state franchise tax returns. If a licensed authorized organization wants credit for federal, state, and local taxes as an expense, it must have documentation to support the claim.

Comment: One person stated that there has got to be a better way to say subsection (b)(8) because people cannot figure out what it means.

Agency Response: The agency agrees and has deleted subsection (b)(8) and added revised language in new subsections (c) and (d) to provide clearer information on what is required.

Comment: Several persons asked that subsection (b)(9) be revised to insert "or check images" after the words "cancelled checks."

Agency Response: The agency agrees and has added "or cancelled check images" to new subsection (b)(8).

Comment: Subsection (b)(9): The Federal Law states that a financial institution is not required to return the checks to its customers. To reproduce these items would come at a very high expense to the charities. A large number of charities make deposits through the night deposit. Deposit slips and cancelled checks need to be removed from this line.

Agency Response: Texas Occupations Code §2001.452(c) requires that a "licensed authorized organization shall keep and account for all checks and withdrawal slips, including voided checks and withdrawal slips."

Comment: Proposed subsection (b)(11) concerning game schedules and pricing structure documents does not relate to disbursement records and does not fit in this rule. If it needs to be addressed, it needs to be addressed somewhere else. Commenters are opposed to addressing it anywhere else because those things change frequently, and there is no reason that they should not be able to be changed. Having to try to keep game pricing and structures every time you make a little change would create a huge amount of paperwork.

Agency Response: Proposed subsection (b)(11), now subsection (b)(10) due to renumbering has been deleted. Game schedules and pricing structure documents may be addressed in a future proposed rule relating to bingo occasions.

The new rule is adopted under Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and under Government Code §467.102, which authorizes the Commission to adopt rules for

the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

The adopted new rule implements Occupations Code, Chapter 2001.

*§402.506. Disbursement Records Requirements.*

(a) The licensed authorized organization or unit shall maintain records to substantiate bingo expenses. Bank statements, cancelled checks and cancelled check images may not be adequate to substantiate bingo expenses.

(b) The records listed below are acceptable to substantiate bingo expenses for each type of expense listed:

(1) Invoices, itemized billing statements, sales receipts or similar documents that have information about the items purchased or services provided and contain the following details:

(A) The name and contact information of the person or entity selling the goods or providing the service;

(B) an adequate description of goods or services purchased;

(C) the quantity of each product purchased or service received;

(D) the price of each product purchased or service received which may include the pricing information for services provided pursuant to a service agreement;

(E) the total dollar amount billed; and

(F) the date of the transaction.

(2) Written lease agreement, if any, between the commercial lessor and the licensed authorized organization or unit stating the amount of rent charged for the use of bingo premises. If there is no written agreement, the organization must support the rental payments with an invoice from the lessor stating location, rental dates, and rental amounts by occasion.

(3) Rent forgiveness letter or lease amendment signed by the commercial lessor stating the amount of any rent forgiven or permanently or temporarily reduced.

(4) Payroll records that include a listing for each employee showing:

(A) primary position worked;

(B) date and occasion number worked (if more than one occasion held on a single day);

(C) total number of hours worked per occasion (if paid hourly);

(D) rate and criteria (hourly, per occasion, etc.);

(E) gross wages;

(F) all taxes and payroll deduction amounts; and

(G) net payroll amount.

(5) Federal and state payroll tax returns, including related deposit slips and receipts or other documentation that the deposits were accepted.

(6) Documentation of the payment of other federal, state, and local taxes, which may include tax returns, 1099's and property tax paid.

(7) Commission loan approval letter for repayment of approved loans.

(8) Bank statements, deposit slips and cancelled checks or cancelled check images.

(9) Debit card transactions reports.

(c) The licensed authorized organization or unit shall maintain records to document the allocation method for bingo expenses which are shared by organizations in a hall.

(d) The licensed authorized organization or unit shall maintain records to document the allocation method for expenses that are divided between bingo and non-bingo expense or between bingo expense and charitable distribution.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 26, 2008.

TRD-200801605

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Effective date: April 15, 2008

Proposal publication date: November 9, 2007

For further information, please call: (512) 344-5012



#### 16 TAC §402.511

The Texas Lottery Commission (Commission) adopts new Title 16, Part 9, Chapter 402, Subchapter E, §402.511 (relating to Required Inventory Records) with changes to the proposed text as published in the November 9, 2007, issue of the *Texas Register* (32 TexReg 8076).

Specifically, the changes include: (1) At subsection (a) the phrase "or unit", the word "shall", and a colon at the end of the subsection have been added; (2) Also at subsection (a), the word "must" and the language "all disposable bingo cards and pull-tab bingo tickets:" has been deleted; (3) New language at subsections (a)(1) and (a)(2) have been added to the rule; (4) At subsection (b), the word "The" has been replaced with "Each" and the word "must" has been replaced with "shall"; (5) At subsection (c), the language, "for reimbursing its bingo account with non-bingo funds" has been deleted; (6) Subsection (d) has been modified to read as, "The perpetual inventory of disposable bingo cards shall contain:"; (7) Subsection (d)(1)(A) has been renumbered as subsection (d)(1) and the phrase, "or unit's" has been added; (8) Subsection (d)(1)(B) has been renumbered as subsection (d)(2); (9) Subsection (d)(1)(C) has been deleted; (10) Subsection (d)(1)(D) has been renumbered as subsection (d)(3), and the following has been added, "and the color of the paper or border"; (11) Subsection (d)(1)(E) has been renumbered as subsection (d)(4); (12) Subsection (d)(1)(F) has been renumbered as subsection (d)(5), and "packs in package" has been replaced with "UPS pads for each serial and series number remaining after each occasion"; (13) Subsections (d)(1)(G) and (d)(1)(H) have been deleted; (14) Subsection (d)(1)(I) has been renumbered as subsection (d)(6), and the words "the" and "was" have been added; (15) Subsections (d)(1)(J) and (d)(1)(K) have been deleted; (16) Subsection (d)(1)(L) has been renumbered as subsection (d)(7), and the word "sold" has been added; (17) Subsections (d)(1)(M) through (d)(1)(P) have been deleted; (18) Subsection (d)(1)(Q) has been renumbered as subsection (d)(8); (19) Subsection (d)(2) has been renumbered

as subsection (e) and reads, "The perpetual inventory of pull-tab bingo tickets shall contain:"; (20) Subsection (d)(2)(A) has been renumbered as subsection (e)(1) and adds the phrase, "or unit's"; (21) Subsection (d)(2)(B) has been renumbered as subsection (e)(2) and adds the word "and" and deletes, "and address"; (22) Subsections (d)(2)(C) and (d)(2)(D) have been deleted; (23) Subsection (d)(2)(E) has been renumbered as subsection (e)(3); (24) Subsection (d)(2)(F) has been renumbered as subsection (e)(4); (25) Subsections (d)(2)(G) and (d)(2)(H) have been deleted; (26) Subsection (d)(2)(H), which was listed twice in error in the proposed version, has been renumbered as subsection (e)(5) and replaces the word "tabs" with the word "tickets"; (27) Subsection (d)(2)(I) has been deleted; (28) Subsection (d)(2)(J) has been renumbered as subsection (e)(6) and now reads, "number of tickets sold, missing, or damaged by occasion date"; (29) Subsection (d)(2)(K) has been renumbered as subsection (e)(7) and replaces "after the occasion" with "if the deal is closed"; and (30) Subsections (d)(2)(L) and (d)(2)(M) have been deleted.

The purpose of the adopted new rule is to clearly set forth certain requirements for maintenance of a licensed authorized organization's inventory records in accordance with §2001.505(b) of the Bingo Enabling Act which requires licensees to keep records to substantiate each quarterly report. Specifically, the new rule requires a licensed authorized organization to maintain a perpetual inventory of all disposable bingo cards and pull-tab bingo tickets. The perpetual inventory must account for all sold and unsold disposable bingo cards and pull-tab tickets as well as inventory items designated for destruction. The new rule also provides that the licensed authorized organization may be held responsible for gross receipts, prizes and prize fees associated with missing or unaccounted for disposable bingo cards and pull-tab bingo tickets. Additionally, the new rule requires the maintenance of a perpetual inventory of disposable bingo cards and pull-tab bingo tickets. Although some of these requirements may also appear in existing rules, the Commission is aware of no inconsistencies and plans to propose rulemaking to eliminate any unnecessary duplication.

A public comment hearing was held on November 13, 2007. Representatives from the Bingo Interest Group, All Saints Bingo Unit Trust, Thompson Allstate Bingo Supply, and American Veterans Post 52 commented against the new rule. Representatives from Fort Worth Bookkeeping, Super Bingo, 19 Charities, Family Bingo Center, Saginaw Lions Club, and several charities and a bingo hall commented on the new rule without stating whether they were in favor or against the rule as a whole. Additionally, written comments were received from Earl O. Silver III, Chair of the Bingo Advisory Committee Rules Subcommittee.

Comment: Compliance with Section 402.511 will be burdensome if it is retroactive.

Agency Response: The Commission has specified in new Section 402.500(b) that unless otherwise prescribed by Commission rule, a licensee may maintain information in a form determined by the licensee as long as that form contains the information required by the Bingo Enabling Act and the Charitable Bingo Administrative Rules.

Comment: Section 402.511 is redundant because it includes requirements already in existing bingo rules.

Agency Response: The Commission agrees and is reviewing other rules to identify unnecessary provisions and propose rulemaking to eliminate redundancy.

Comment: Several commenters stated that the proposed section 402.511 seems to require unnecessary, repetitive entry of information on two different forms such as the disposable card sale summary and the perpetual inventory. What appears to be additional terminology for a perpetual inventory causes confusion.

Agency Response: The Commission agrees and has changed the rule to clarify that the disposable card sales summary and the perpetual inventory for disposable card sales are the same document. Likewise, the pull-tab sales summary and the perpetual inventory for pull-tab bingo tickets are one document. Specifically, subsection (a) has been revised to clarify the perpetual inventory is the disposable card sales summary. In addition, subsections (d) and (e) have been modified to eliminate the terms "Disposable Card Sales Summary" and "Pull-tab Sales Summary."

Comment: In regards to subsection (c), several commenters stated that there should be some allowance for nominal slip-page due to human error such as misplacement, cards sticking together, and manufacturer error.

Agency Response: The agency agrees and has deleted "is" and added "may be held", and deleted "for reimbursing its bingo account with non-bingo funds" from subsection (c) so that determination of the appropriate remedy for an organization's failure to account for all gross receipts, prizes and prize fees for disposable bingo cards and pull-tab bingo tickets will be based on specific fact situations.

Comment: Numerous commenters stated that the rule should permit several series to be logged on one sheet in order to save time and eliminate errors in filling out the information.

Agency Response: The agency concurs and has deleted from language from subsection (d)(1) requiring that each serial number must be recorded on a separate sheet.

Comment: Requiring the invoice date and number on the perpetual inventory creates a redundant task because this information is already captured on the invoice. Furthermore, a lot of times the people that get the inventory in check it off of the sales sheet or the packing list that is sent to a bookkeeper. When the bookkeeper has the invoice, the information is not readily available.

Agency Response: The agency agrees and has deleted the requirement in proposed subsection (d)(1)(C) that the perpetual inventory must include invoice date and number.

Comment: Subsections (d)(1)(E) and (d)(1)(F) seem to require the same information.

Agency Response: The agency disagrees that proposed subsections (d)(1)(E) and (d)(1)(F) require the same information. "Number of faces (ON) and number of sheets (UP)" describes the type of paper. "Number of sheets or packs" describes the quantity for each serial and series number. The agency has renumbered the provisions as (d)(4) and (d)(5), and has revised language in (d)(5) to clarify the meaning.

Comment: Subsection (d)(1)(G) requiring the color of the paper and border is redundant because it is the commenter's understanding that in industry standards, the color of the paper is the border color.

Agency Response: The agency disagrees. The color of the paper and the color of the border are two distinct items. Subsection (d)(1)(G) has been deleted, and similar language has been included in subsection (d)(3).

Comment: Subsection (d)(1)(P) relating to cumulative number of sheets sold is basically providing the same information as the number of sheets remaining.

Agency Response: The agency agrees and has deleted the provision requiring the number of sheets remaining.

Comment: The requirements in subsection (d)(1)(N) and (d)(1)(P) for providing information on the selling price per occasion and the total gross sales per occasion should be deleted because they have nothing to do with inventory.

Agency Response: The agency agrees and has deleted the provisions requiring information on the selling price per occasion and the total gross sales per occasion.

Comment: Subsections (d)(2)(H), (L), and (M) pertaining to total prize payout per deal, number of pull-tab tickets remaining after the occasion, and total gross sales per occasion are all information that should be kept in daily paperwork but have nothing to do with inventory. An inventory should be a thorough and accurate number showing what was used and what is left after each and every occasion.

Agency Response: The agency agrees as to (d)(2)(H) and (M) and has removed the language requiring total prize payout per deal and total gross sales per occasion. The language in subsection (d)(2)(L), now subsection (e)(7) due to renumbering, "after the occasion" has been revised to "if the deal is closed" in order to account for unsold tickets.

The new rule is adopted under Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and under Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

The adopted new rule implements Occupations Code, Chapter 2001.

*§402.511. Required Inventory Records.*

(a) A licensed authorized organization or unit shall maintain a perpetual inventory of:

(1) disposable bingo cards described in subsection (d) of this section; and

(2) pull-tab bingo tickets described in subsection (e) of this section.

(b) Each perpetual inventory shall account for all sold and unsold disposable bingo cards and pull-tab bingo tickets, as well as inventory items designated for destruction.

(c) The licensed authorized organization may be held responsible for the gross receipts, prizes and prize fees associated with missing or unaccounted for disposable bingo cards and pull-tab bingo tickets.

(d) The perpetual inventory of disposable bingo cards shall contain:

(1) organization's or unit's name and taxpayer number;

(2) distributor's name and taxpayer number;

(3) serial and series number and the color of the paper or border (For UPS pad, use the top sheet for obtaining color, serial and series numbers.);

(4) number of faces (ON) and number of sheets (UP);

- (5) number of sheets or UPS pads for each serial and series number remaining after each occasion;
  - (6) occasion date(s) the paper was used;
  - (7) number of sheets or packs sold, missing or damaged by date; and
  - (8) initials of person entering the information per occasion.
- (e) The perpetual inventory of pull-tab bingo tickets shall contain:
- (1) organization's or unit's name and taxpayer number;
  - (2) distributor's name and taxpayer number;
  - (3) form number;
  - (4) serial number;
  - (5) number of tickets per deal;
  - (6) number of tickets sold, missing, or damaged by occasion date; and
  - (7) number of pull-tab tickets remaining if the deal is closed.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 26, 2008.

TRD-200801606  
 Kimberly L. Kiplin  
 General Counsel  
 Texas Lottery Commission  
 Effective date: April 15, 2008  
 Proposal publication date: November 9, 2007  
 For further information, please call: (512) 344-5012

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**TITLE 22. EXAMINING BOARDS**

**PART 27. BOARD OF TAX PROFESSIONAL EXAMINERS**

**CHAPTER 628. ETHICAL CONDUCT**

**22 TAC §628.4**

The Board of Tax Professional Examiners adopts an amendment to §628.4 concerning Conflict of Interest, without changes to the proposed text as published in the February 1, 2008, issue of the *Texas Register* (33 TexReg 842) and will not be republished.

The Board received no public written comments and no one appeared to testify at the public hearing held on March 20, 2008.

The amendment is adopted under the authority of Texas Civil Statutes Occupations Code, Chapter 1151, Property Taxation Professional Certification Act, which provides the Board of Tax Professional Examiners with the authority to promulgate rules consistent with the Statute.

No other article, statute or code is affected by this adopted amendment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 31, 2008.

TRD-200801687  
 David E. Montoya  
 Executive Director  
 Board of Tax Professional Examiners  
 Effective date: April 20, 2008  
 Proposal publication date: February 1, 2008  
 For further information, please call: (512) 305-7300

◆ ◆ ◆  
**TITLE 25. HEALTH SERVICES**

**PART 1. DEPARTMENT OF STATE HEALTH SERVICES**

**CHAPTER 411. STATE MENTAL HEALTH AUTHORITY RESPONSIBILITIES**

**SUBCHAPTER I. TDMHMR IN-HOME AND FAMILY SUPPORT PROGRAM**

**25 TAC §§411.401 - 411.414**

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts the repeal of §§411.401 - 411.414, concerning the in-home and family support program without changes to the proposed text as published in the November 30, 2007, issue of the *Texas Register* (32 TexReg 8665) and, therefore, the sections will not be republished.

**BACKGROUND AND PURPOSE**

Government Code, §2001.039, 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 411.401 - 411.414, relating to TDMHMR In-Home and Family Support Program, have been reviewed and the department has determined that the reasons for adopting these sections no longer exist, and the repeal of the rules is adopted. Funding for the services addressed by these rules has not been provided for several years. There is no indication nor reasonable expectation that funds will be appropriated by the Legislature for these services in the future.

**SECTION-BY-SECTION SUMMARY**

Sections 411.401 - 411.414, concerning the in-home and family support program, are being repealed in their entirety. Because this program is no longer being funded, rules governing the program are unnecessary.

**COMMENT**

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

**LEGAL CERTIFICATION**

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been re-



viewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

#### STATUTORY AUTHORITY

The repeals are adopted under the Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the sections implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 28, 2008.

TRD-200801662

Lisa Hernandez

General Counsel

Department of State Health Services

Effective date: April 17, 2008

Proposal publication date: November 30, 2007

For further information, please call: (512) 458-7111 x6972



## CHAPTER 412. LOCAL MENTAL HEALTH AUTHORITY RESPONSIBILITIES

### SUBCHAPTER Z. JAIL DIVERSION PILOT PROGRAM

#### 25 TAC §§412.951 - 412.960

The Executive Commissioner of the Health and Human Services Commission (commission) on behalf of the Department of State Health Services (department) adopts the repeal of §§412.951 - 412.960, concerning the jail diversion pilot program without changes to the proposed text as published in the November 30, 2007, issue of the *Texas Register* (32 TexReg 8666) and, therefore, the sections will not be republished.

#### BACKGROUND AND PURPOSE

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). After reviewing §§412.951 - 412.960, relating to the jail diversion pilot program, the department has determined that the reasons for adopting these sections no longer exist. The authorizing statute, Health and Safety Code, §§533.101 - 533.107, expired effective September 1, 2005. Jail diversion measures and strategies are implemented by the local mental health authorities (LMHA) throughout the state, as required by Health and Safety Code, §533.0345(b) and the LMHA performance contracts.

#### SECTION-BY-SECTION-SUMMARY

Sections 412.951 - 412.960 are repealed in their entirety. The statutory sections mandating the jail diversion pilot program have expired, and the rules implementing the program are unnecessary.

#### COMMENTS

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

#### 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.

#### STATUTORY AUTHORITY

The repeals are 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. Review of the sections implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 28, 2008.

TRD-200801663

Lisa Hernandez

General Counsel

Department of State Health Services

Effective date: April 17, 2008

Proposal publication date: November 30, 2007

For further information, please call: (512) 458-7111 x6972



## TITLE 34. PUBLIC FINANCE

### PART 5. TEXAS COUNTY AND DISTRICT RETIREMENT SYSTEM

#### CHAPTER 105. CREDITABLE SERVICE

##### 34 TAC §105.3

The Texas County and District Retirement System adopts an amendment to §105.3, concerning the granting of credited service in the system for qualified military service of the member for other than qualified military service under the Uniformed Services Employment and Reemployment Rights Act (the USERRA) (38 U.S.C. §4301 et seq.) granted under §105.4. This amended rule is adopted without changes to the proposed text as published in the February 1, 2008, issue of the *Texas Register* (33 TexReg 922).

The adopted amendment deletes the limitation on the accumulation of credited service under this section on a combined basis with qualified military service credited under the USERRA. The adopted rule clarifies that the categories of qualified military eligible for crediting are separate and that each category is subject to a 60 month maximum independent of the other.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under the Government Code, §843.502(b), which authorizes the board of trustees of the

Texas County and District Retirement System to adopt rules that modify the terms of Government Code, §843.502, for the purpose of compliance with the USERRA.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 28, 2008.

TRD-200801622

Tom Harrison

Deputy Director and General Counsel

Texas County and District Retirement System

Effective date: April 17, 2008

Proposal publication date: February 1, 2008

For further information, please call: (512) 637-3230



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

#### CHAPTER 151. GENERAL PROVISIONS

##### 37 TAC §151.6

The Texas Board of Criminal Justice (TBCJ) adopts the amendments to §151.6, Petition for the Adoption of a Rule, with changes to the text as proposed in the February 8, 2008, issue of the *Texas Register* (33 TexReg 1076).

The amendments are necessary to conform to state law and add clarity.

Comments were received from the Texas Department of Criminal Justice (TDCJ) Office of the General Counsel. It was noted that subsection (c)(2) incorrectly referenced subsection (a)(3) instead of subsection (b)(3). The amended rule is being adopted with a correction to that reference.

The amendments are adopted under Texas Government Code, §492.016, §2001.021 and Chapter 2008.

Cross Reference to Statutes: Texas Government Code, §492.013.

##### §151.6. *Petition for the Adoption of a Rule.*

(a) Policy. It is the policy of the Texas Board of Criminal Justice (TBCJ or Board) to encourage public input in the Board's rulemaking process.

(b) Submission of the Petition.

(1) Any person may petition a state agency to adopt a rule as defined by the *Texas Administrative Procedure Act*, Chapter 2001 of the Texas Government Code.

(2) A petition for a rule under Title 37 of the Texas Administrative Code shall be mailed to the General Counsel of Texas Department of Criminal Justice (TDCJ or Agency) at P.O. Box 13084, Austin, Texas 78711.

(3) The petition shall be in writing, shall contain the petitioner's name and address and shall describe the rule and the reason for making such petition. If the General Counsel determines that further information is necessary to assist the Agency in reaching a decision,

the General Counsel may require that the petitioner resubmit the petition and that it contain:

(A) A brief explanation of the proposed rule;

(B) The text of the proposed rule prepared in a manner to indicate the words to be added or deleted from the current text, if any;

(C) A statement of the statutory or other authority under which the rule is to be promulgated;

(D) Whether there will be an economic impact on persons required to comply with the proposed rule;

(E) An economic impact statement which estimates the number of small businesses subject to the proposed rule, projects the economic impact of the rule on small businesses and describes alternative methods of achieving the purpose of the proposed rule;

(F) A regulatory flexibility analysis as defined in Texas Government Code, §2006.002; and

(G) The public benefit anticipated as a result of adopting the rule or the anticipated injury or inequity that could result from the failure to adopt the proposed rule.

(4) In addition to the petition, the person may submit a proposal for the adoption of the proposed rule through negotiated rulemaking. The proposal shall identify the potential participants for the negotiated rulemaking committee, possible third party facilitators and a timeline for the process.

(c) Consideration and Disposition of the Petition.

(1) Except as provided in subsection (d) of this rule, the Chairman, in consultation with the General Counsel, shall consider and dispose of all petitions submitted.

(2) Within 60 days after receipt of the petition by the General Counsel, or within 60 days after receipt by the General Counsel of a resubmitted petition in accordance with subsection (b)(3) of this rule, the Chairman, in consultation with the General Counsel, shall deny the petition or institute rulemaking procedures in accordance with established Agency procedures and the *Texas Administrative Procedure Act*. The Chairman, in consultation with the General Counsel, may deny parts of the petition or institute rulemaking procedures on parts of the petition.

(3) The Board may initiate a negotiated rulemaking process pursuant to Texas Government Code, Chapter 2008, upon the filing of a petition to initiate the rulemaking proceeding under subsection (b) of this rule.

(4) If the Chairman, in consultation with the General Counsel, denies the petition, the General Counsel shall give the petitioner written notice of the Agency's denial and the reasons for the denial.

(d) Subsequent Petitions to Adopt the Same or Similar Rule. The General Counsel may refuse to consider any subsequent petition for the adoption of the same or similar rule submitted within six (6) months after the date of the initial petition.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 28, 2008.

TRD-200801625

Melinda Hoyle Bozarth  
General Counsel  
Texas Department of Criminal Justice  
Effective date: April 17, 2008  
Proposal publication date: February 8, 2008  
For further information, please call: (512) 463-0422



## CHAPTER 159. SPECIAL PROGRAMS

### 37 TAC §159.13

The Texas Board of Criminal Justice (TBCJ) adopts the amendments to §159.13, Educational Services to Released Offenders/Memorandum of Understanding, without changes to the text as published in the February 8, 2008, issue of the *Texas Register* (33 TexReg 1077) and will not be republished.

The amendments are necessary to add clarity and expand the locations where the memorandum of understanding is filed.

No comments were received.

The amendments are adopted under Texas Government Code, §508.318.

Cross Reference to Statutes: Texas Government Code, §492.013.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 28, 2008.

TRD-200801626  
Melinda Hoyle Bozarth  
General Counsel  
Texas Department of Criminal Justice  
Effective date: April 17, 2008  
Proposal publication date: February 8, 2008  
For further information, please call: (512) 463-0422



## CHAPTER 163. COMMUNITY JUSTICE ASSISTANCE DIVISION STANDARDS

### 37 TAC §163.5

The Texas Board of Criminal Justice (TBCJ) adopts the amendments to §163.5, Waiver to Standards, without changes to the text as proposed in the February 8, 2008, issue of the *Texas Register* (33 TexReg 1078) and will not be republished.

The amendments are necessary to add clarity.

No comments were received.

The amendments are adopted under Texas Government Code, §509.003.

Cross Reference to Statutes: Texas Government Code, §492.013.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 28, 2008.

TRD-200801628  
Melinda Hoyle Bozarth  
General Counsel  
Texas Department of Criminal Justice  
Effective date: April 17, 2008  
Proposal publication date: February 8, 2008  
For further information, please call: (512) 463-0422



### 37 TAC §163.33

The Texas Board of Criminal Justice (TBCJ) adopts the amendments to §163.33, Community Supervision Officers, without changes to the text as proposed in the February 8, 2008, issue of the *Texas Register* (33 TexReg 1078) and will not be republished.

The amendments are necessary to conform to state law and add clarity.

No comments were received.

The amendments are adopted under Texas Government Code, §509.008 and §509.009.

Cross Reference to Statutes: Texas Government Code, §492.013 and §509.003.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 28, 2008.

TRD-200801629  
Melinda Hoyle Bozarth  
General Counsel  
Texas Department of Criminal Justice  
Effective date: April 17, 2008  
Proposal publication date: February 8, 2008  
For further information, please call: (512) 463-0422



### 37 TAC §163.38

The Texas Board of Criminal Justice (TBCJ) adopts the amendments to §163.38, Sex Offender Supervision, without changes to the text as published in the February 8, 2008, issue of the *Texas Register* (33 TexReg 1081) and will not be republished.

The amendments are necessary to add clarity and conform to state law.

No comments were received.

The amendments are adopted under Texas Government Code, §76.016 and §509.003 and Texas Code of Criminal Procedure, art. 42.12 and Chapter 62.

Cross Reference to Statutes: Texas Government Code, §492.013.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 28, 2008.

TRD-200801631

Melinda Hoyle Bozarth  
General Counsel  
Texas Department of Criminal Justice  
Effective date: April 17, 2008  
Proposal publication date: February 8, 2008  
For further information, please call: (512) 463-0422



### 37 TAC §163.41

The Texas Board of Criminal Justice (TBCJ) adopts the amendments to §163.41, Medical and Psychological Information, without changes to the text as published in the February 8, 2008, issue of the *Texas Register* (33 TexReg 1082) and will not be republished.

The amendments are necessary to conform the rule to state law and to add clarity.

No comments were received.

The amendments are adopted under Texas Government Code, §509.003 and Texas Health and Safety Code §85.142.

Cross Reference to Statutes: Texas Government Code, §492.013 and Texas Health and Safety Code, §§85.001, 85.141, 85.143 and Chapter 614.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 28, 2008.

TRD-200801632

Melinda Hoyle Bozarth

General Counsel

Texas Department of Criminal Justice

Effective date: April 17, 2008

Proposal publication date: February 8, 2008

For further information, please call: (512) 463-0422



### 37 TAC §163.43

The Texas Board of Criminal Justice (TBCJ) adopts amendments to §163.43, Funding and Financial Management, without changes to the text as published in the February 8, 2008, issue of the *Texas Register* (33 TexReg 1083) and will not be republished.

The amendments are necessary to conform the rule to state law and to add clarity.

No comments were received.

The amendments are adopted under Texas Government Code, §509.003 and §509.004.

Cross Reference to Statutes: Texas Government Code, §§76.004, 76.008, 76.009, 76.010, 492.013 and Chapter 551, and Texas Local Government Code §140.003 and §140.004.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 28, 2008.

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## TITLE 43. TRANSPORTATION

### PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

#### CHAPTER 1. MANAGEMENT

##### SUBCHAPTER F. ADVISORY COMMITTEES

#### 43 TAC §1.82

The Texas Department of Transportation (department) adopts amendments to §1.82, Statutory Advisory Committee Operations and Procedures. The amendments to §1.82 are adopted with changes to the proposed text as published in the December 28, 2007, issue of the *Texas Register* (32 TexReg 9922).

#### EXPLANATION OF ADOPTED AMENDMENTS

The statutory advisory committees of the department are required by 43 TAC §1.82(c)(1) to post and hold their meetings in accordance with the open meetings law, Government Code, Chapter 551. That requirement is not imposed by the open meetings law or any other statute. This rule subjects advisory committees and their members to the enforcement provisions of the open meetings laws and to all of the technical requirements that the courts and the attorney general have determined are a part of the open meetings law. The open meetings law requirements impose a heavy burden on members of advisory committees, who are often members of the general public rather than elected or appointed government officials, whose only duties are to offer considered advice to the department, and who have no policy making powers or management or supervisory authority over any of the department's functions.

Section 1.82 prescribes rules governing the operations and procedures of department advisory committees that are created specifically by state law.

Amendments to §1.82(c), Meetings, provide that instead of subjecting the advisory committees to the requirements of the state's open meetings law, the advisory committees would be required to follow the specific requirements set out in the rule. The rule requires publication in the *Texas Register* of a 10-day notice of each meeting of an advisory committee, requires each meeting of an advisory committee to be open to the public, and requires an advisory committee to follow the agenda set for the meeting. The changes ensure that the activities of the advisory committees would remain open to the public but remove unnecessary requirements of the present rules.

Section 1.82(c)(3), Quorum, is revised by changing the number of votes required for an advisory committee to act from a majority vote of its membership to a majority vote of the members present at the meeting. Advisory committees may be large and contain representation from all areas of the state. Because of the time and expense required for members to gather for a meeting, it is sometimes difficult to arrange a meeting at which a quorum is present. Under current rules, a committee action would require

a unanimous vote of those present if the minimum number for a quorum were present at the meeting. The revision is made to facilitate advisory committee actions while maintaining a requirement that a significant number of members agree for the committee to officially act.

#### COMMENTS

No comments on the proposed amendments were received.

#### STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §§21.003, 55.009, 201.114, and 455.004 which authorize the commission to adopt rules to govern the operations of the respective advisory committees.

#### CROSS REFERENCE TO STATUTE

Government Code, Chapter 2110, and Transportation Code, §§21.003, 21.106 - 21.109, 55.006, 201.114, 201.6011, and 455.004.

#### §1.82. Statutory Advisory Committee Operations and Procedures.

(a) Applicability. This section applies to statutory advisory committees and governs the operation of statutory advisory committees unless it is superseded by a specific provision in §1.84 of this subchapter.

(b) Election of officers and terms of members.

(1) Unless otherwise specified with regard to a particular committee, each committee shall elect a chair and vice-chair by majority vote of the members of the committee. The chair and vice-chair shall each be elected for a term of not less than one year and not more than two years. Once elected, the chair and vice-chair may stand for reelection, without limit on the number of consecutive terms.

(2) Members shall serve on an advisory committee until new members are appointed.

(c) Meetings.

(1) Meeting requirements. The office designated for an advisory committee under subsection (f) of this section shall publish notice of a meeting of the advisory committee in the *Texas Register* at least 10 days before the date of the meeting. The notice must provide the date, time, place, and subject of the meeting. A meeting of an advisory committee must be open to the public. An advisory committee will follow the agenda set for each meeting under paragraph (2) of this subsection. Filing of notice of meetings with the Secretary of State shall be coordinated through the department's Office of General Counsel.

(2) Scheduling of meetings. Meeting dates, times, places, and agendas will be set by the office designated under subsection (f) of this section. Any committee member may suggest the need for a meeting or an agenda item, provided that the committee may only discuss items that are within the committee's and the department's jurisdiction. The office designated under subsection (f) of this section will provide notice of the time, date, place, and purpose of meetings to the members, by mail, email, telephone or any combination of the three, at least 10 calendar days in advance of each meeting. All meetings must take place in Texas and must be held in a location that is readily accessible to the general public.

(3) Quorum. A majority of the membership of an advisory committee, including the chairman, constitutes a quorum. The com-

mittee may act only by majority vote of the members present at the meeting.

(4) Removal. A committee member may be removed at any time without cause by the person or entity that appointed the member or by that person's or entity's successor.

(5) Parliamentary procedure. Parliamentary procedures for all committee meetings shall be in accordance with the latest edition of Robert's Rules of Order, except that the chair may vote on any action as any other member of the committee, and except to the extent that Robert's Rules of Order are inconsistent with any statute or this subchapter.

(6) Record. Minutes of all committee meetings shall be prepared and filed with the commission. The complete proceedings of all committee meetings must also be recorded by electronic means.

(7) Public information. All minutes, transcripts, and other records of the advisory committees are records of the commission and as such may be subject to disclosure under the provisions of Government Code, Chapter 552.

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

(e) Conflict of interest. Advisory committee members are subject to the same laws and policies governing ethical standards of conduct as those for commission members and employees of the department.

(f) Administrative support. For each advisory committee, the executive director will designate an office of the department that will be responsible for providing any necessary administrative support essential to the functions of the committee.

(g) Advisory committee recommendations. In developing department policies, the commission will consider the recommendations submitted by advisory committees.

(h) Manner of reporting.

(1) The office designated under subsection (f) of this section shall, in writing, report to the commission an official action of a statutory advisory committee, including any advice and recommendations, prior to commission action on the issue. The chair of the advisory committee or the chair's designee will also be invited by the department to appear before the commission prior to commission action on a posted agenda item to present the committee's advice and recommendations.

(2) In the event a written report cannot be furnished to the commission prior to commission action, the report may be given orally, provided that a written report is furnished within 10 days of commission action.

(i) Duration. Except as otherwise specified in this subchapter, each statutory advisory committee is abolished December 31, 2009, unless the commission amends its rules to provide for a different date.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## CHAPTER 8. MOTOR VEHICLE DISTRIBUTION SUBCHAPTER E. GENERAL DISTINGUISH- ING NUMBERS

The Texas Department of Transportation (department) adopts the repeal of §8.138, Temporary Cardboard Tags, §8.139, Metal Dealer License Plates and Temporary Cardboard Tags, §8.140, Established and Permanent Place of Business, and §8.146, Metal Converter's License Plates and Temporary Cardboard Tags, and new §8.138, Use of Metal Dealer License Plates, §8.139, Metal Dealer Plate Allocation, §8.140, Established and Permanent Place of Business, §8.146, Metal Converter's License Plates, §8.150, Authorization to Issue Temporary Tags, §8.151, Temporary Tags, General Use Requirements, and Prohibitions, §8.152, Obtaining Numbers for Issuance of Temporary Tags, §8.153, Specifications for All Temporary Tags, §8.154, Dealer Temporary Tags, §8.155, Buyer's Temporary Tags, §8.156, Buyer's Temporary Tag Receipt and Notice to Buyer, §8.157, Advance Numbers, Internet-down Buyer's Temporary Tags, §8.158, Advance Numbers, Emergency Buyer's Temporary Tags, §8.159, General Requirements and Allocation of Internet-down and Emergency Buyer's Tag Numbers, and §8.160, Converter's Temporary Tags, all concerning general distinguishing numbers. Sections 8.138, 8.140, 8.146, 8.151, 8.153, 8.154, 8.155, and 8.160 are adopted with changes to the proposed text as published in the January 18, 2008, issue of the *Texas Register* (33 TexReg 527). The repeal of §§8.138 - 8.140, and 8.146 and new §§8.139, 8.150, 8.152 and 8.156 - 8.159, are adopted without changes to the proposed text as published in the January 18, 2008, issue of the *Texas Register* (33 TexReg 527) and will not be republished.

### EXPLANATION OF REPEALS AND ADOPTED NEW SECTIONS

Article 8 of Senate Bill 11 and Senate Bill 1786, 80th Legislature, Regular Session, 2007, require the department to create and maintain databases that allow for real time access to owner information on recently sold vehicles or vehicles operated under other temporary tags. The system must be capable of generating a vehicle-specific number for the issuance of dealer, buyer's, and converter temporary tags. The department must adopt rules and implement procedures for the generation of the vehicle-specific numbered temporary tags by dealers and converters, advance issuance of Internet-down and emergency tags to dealers for use when internet access is unavailable at the time of sale, display of temporary tags on vehicles by dealers, converters, and buyers, and the provision of information by dealers to buyers on the use of temporary tags, associated criminal penalties, actions required of buyers concerning temporary tags, and other information as determined by the department concerning the purchase and registration of vehicles. It is necessary to repeal existing §8.138, Temporary Cardboard Tags; §8.139, Metal Dealer License Plates and Temporary Cardboard Tags; §8.140, Estab-

lished and Permanent Place of Business; and §8.146, Metal Converter's License Plates and Temporary Cardboard Tags and simultaneously adopt new sections for a data-based temporary tag issuance system as mandated by Senate Bill 11 and Senate Bill 1786.

Implementation of SB 11 and SB 1786 will require significant changes in the design, format, and method of issuing dealer and buyer's temporary tags. A dealer will provide the state with information about a vehicle and buyer, and the department will provide a specific number to be used on the temporary tag. The number on the temporary tag will greatly enhance law enforcement efforts to ascertain the true owners of vehicles prior to permanent registration.

New provisions set out additional premises requirements for dealers who file applications after May 1, 2008. A majority of the additional requirements are minimal. For example, dealership premises must have features such as electricity and a 100-square foot office. Existing dealers generally meet these standards. Other new provisions address safety issues, recognize new technology, and provide a small amount of consumer protection. The new section will raise industry standards and give legitimate dealers a better chance of competing with persons who would use a general distinguishing number license for convenience or to mask unlawful activities.

The department revised the rules by making technical and grammatical corrections to the adopted language. For example the department corrected references to the vehicle identification number so that all references are consistent throughout the rules. These technical revisions do not substantively change the rules. All substantive changes to the adopted text are explained in this preamble.

New §8.138, Use of Metal Dealer License Plates, and §8.139, Metal Dealer Plate Allocation, reorganizes and incorporates portions of existing §8.138 with only minor non-substantive changes. The changes clarify existing provisions and remove unnecessary language.

In response to comments, the department revised §8.138(a) as proposed to clarify that, although highly recommended, it is not a requirement for dealer employees to carry the metal dealer plate receipt in vehicles bearing metal dealer license plates. Proposed §8.138(c) is revised to make it clear that the prohibition against non-franchised dealers displaying metal plates on new motor vehicles only applies to the display of metal dealer plates.

Existing §8.139(a), relating to plate attachment to rear license plate holder and keeping of receipts in vehicles; §8.139(c), relating to prohibited usage of metal plates; §8.139(e), relating to usage on types of vehicles for which the dealer is licensed; and §8.139(i) - (j), relating to metal plate records and void plates, are reenacted in the new section. New §8.139 reenacts existing §8.138(n) relating to metal dealer's plate allocation.

A portion of existing §8.138(a) is not reenacted. Currently, the section requires dealers to remove and safeguard unvalidated multi-year license plates when placing a dealer plate on a vehicle and to put them back on the vehicle when the dealer plate is removed. Transportation Code, §502.451, enacted by House Bill 310, 80th Legislature, Regular Session, 2007, now requires dealers to remove license plates and registration insignia when they acquire a vehicle. Therefore, the provisions relating to multi-year license plates in existing §8.138(a) are no longer applicable.

Existing §8.140 contains premises and office standards for retail dealers and wholesale dealers. The current rule is confusing and difficult for retail dealers and wholesale dealers to easily understand the different standards that apply to their types of businesses. New §8.140 segregates the differing standards for retail and wholesale dealers and identifies those provisions that are applicable to both retail and wholesale dealers or applicable to only retail dealers. The new format is more comprehensible and contains additional descriptions to clarify some standards.

New §8.140(1), Business hours for retail dealers, incorporates existing requirements with only minor non-substantive changes. The changes delete unnecessary language making the section easier to read and understand. Specifically, existing §8.140(1)(A) provisions relating to posting and maintaining office hours for retail dealers and the existing §8.140(1)(B) provisions relating to having the telephone answered between 8:00 a.m. and 5:00 p.m. weekdays are contained in this paragraph. The restructuring allows a retail dealer to more easily identify the business hours and telephone requirements that apply specifically to a retail dealer.

New §8.140(2), Business hours for wholesale dealers, contains a new requirement that wholesale dealers must have the telephone answered by a bona fide employee, answering machine, or answering service during the hours of 8:00 a.m. and 5:00 p.m. on weekdays. In addition, wholesale dealers must now be at the licensed location for two consecutive hours at least two days a week instead of one day a week. The new requirements will help ensure that wholesale dealers are available at their place of business to meet with other dealers and department personnel as may be necessary. The remainder of the section incorporates existing §8.140(1)(G) provisions relating to posting and maintaining office hours for wholesale dealers and §8.140(1)(B) provisions relating to having the telephone answered between 8:00 a.m. and 5:00 p.m. weekdays. The restructuring allows a wholesale dealer to more easily identify the business hours and telephone requirements that apply specifically to a wholesale dealer.

New §8.140(3), Business sign requirements for retail dealers, incorporates existing §8.140(2) provisions relating to a retail dealer's signage. New language clarifies existing standards, by expressly stating that the sign must be permanently mounted and readable from the street. The sign must display the business name or assumed name under which the dealer conducts business as reflected on the dealer's license. It is acceptable to omit terms such "Inc.," "LLC," "LP" or similar identifiers of the business entity. In response to comments, the department acknowledges that franchised dealers may face particular difficulties in opening such a large business and has amended the 8.140(3) to clarify that, even though temporary signs or banners are not acceptable, franchised dealers may use temporary signs or banners for the purpose of obtaining a license until permanent factory-specific signage has been received and installed.

New §8.140(4), Business sign requirements for wholesale dealers, incorporates the existing §8.140(2) provisions relating to wholesale dealer's signage. New language sets out existing standards, by clarifying that temporary signs or banners are not acceptable, and that the sign must be permanently mounted. The sign must display the business name or assumed name under which the dealer conducts business as reflected on the dealer's license. It is acceptable to omit terms such "Inc.," "LLC," "LP" or similar identifiers of the business entity. Additional clarification is made that the sign may be on the main door to

the dealer's office, the side of the building where the wholesale dealer is located, or other location on the business property. If the business sign is on or beside the main door to the dealer's office two inch high lettering is acceptable.

New office structure requirements in §8.140(5), Office structure for retail and wholesale dealers, apply to dealers that file applications for new license or a supplemental location after May 1, 2008. Dealers licensed before that date are not required to upgrade their premises to meet additional standards. The department has determined that new requirements should only apply to future new license applicants who could better incorporate any economic impact in making the initial decision of applying for a license.

New §8.140(5) incorporates existing §8.140(1)(B) - (C) provisions relating to definition of the building structure and the requirements for zoning compliance, use of portable buildings, and physical business address recognized by the U.S. Postal Service. Changes clarify that portable structures are still acceptable, provided that the structure is not a readily movable trailer or vehicle.

A new requirement is that internal office space must be not less than 100 square feet with a minimum seven foot ceiling. Other new provisions require electricity with adequate heating and lighting. It is not acceptable to locate a dealership office in a storeroom, closet, stock room, or other room that is not open to the public. New requirements prohibit offices located in a room within a residence, apartment house, motel, hotel, or rooming house. A vehicle purchase is one of the largest investments made by most consumers. The public is entitled to transact business in a professional setting. It is inappropriate to require the public to enter or approach a personal dwelling to conduct such a transaction. For health and safety reasons, the route to a dealership office may not pass through a food preparation area. This paragraph establishes the minimum structural standard necessary for a dealer's office to adequately and effectively serve the needs of the consumer.

The department revised §8.140(5) to require the dealer meet the requirements of paragraph (5) instead of subsection (5) for applications filed after May 1, 2008. The department intended that the dealer must meet all the requirements for the office structure as discussed in paragraph (5) and incorrectly referenced subsection.

Section 8.140(5)(G) states that licenses and dealer plates will not be mailed to out-of-state addresses. In response to comments, the section is slightly revised by including the word "metal" to make it clear that the dealer plates referred to are metal dealer plates.

New §8.140(6), Required office equipment for retail and wholesale dealers, incorporates existing §8.140(1)(B) provisions related to office furniture and telephones and further specifies that dealers must have a desk, two chairs, a file cabinet, Internet access, a printer, a fax machine, and a land based, business listed, working telephone. The new requirements for Internet access, printer, and fax machine recognize the changes in technology in the business environment. In addition, Senate Bill 1786 and article 8 of Senate Bill 11, 80th Legislature, Regular Session, 2007, require dealers to have Internet access to interact with the temporary tag database.

New §8.140(7), Number of retail dealers in one office, and §8.140(8), Number of wholesale dealers in one office, incorporate without change the existing §8.140(1)(B) and (F) provisions

relating to the allowable number of retail and wholesale dealers in one office. New §8.140(9), Wholesale and retail dealers office sharing prohibition, incorporates the existing §8.140(1)(D) and (E) provisions relating to dealers conducting business in offices with other businesses. The restructuring allows retail and wholesale dealers to more easily identify the requirements related to the number of dealers in a single location that apply specifically to a retail or wholesale dealer and clearly states that the two entities cannot be located in the same structure if either of the entities were established after 1999. This language is in the current version of §8.140(1), relating to office requirements, however clarification was needed.

New §8.140(10), Dealer housed with other business, incorporates the existing §8.140(3) provisions relating to the display space requirements. Further clarifying information related to permanent barriers, signage, and the use of additional space when the designated display area is full is provided. The clarifications establish standards for barriers and signage at locations where other businesses are operated so that the dealer's operations are clearly distinguishable by consumers from the other businesses operated at that location. This subsection will prevent consumer confusion with the other businesses and establish the separate relationship between the motor vehicle transaction and those other businesses.

New §8.140(11), Display area requirements, requires outside lighting if a dealership is open after sundown. This paragraph also requires that if a dealer's premises include gasoline pumps or another business that sells gasoline, the display areas may not be part of the parking area for gasoline customers and may not interfere with access to gasoline pumps. Display space may not contain a fuel fill port or fire prevention access to fuel tanks. The creation of the lighting requirement and segregation from fuel storage areas provide additional safety for consumers. The lighting requirement also allows the consumer to make more informed choices when purchasing motor vehicles from dealers by allowing a better opportunity to examine the vehicle if shopping after dark.

New §8.140(12), Dealer with salvage dealer license, provides that dealers who also hold a salvage dealer's license must mark all salvage vehicles on the premises with signage informing potential buyers that the vehicles are salvage. This identification will enable the consumer to more easily identify a salvage vehicle from a non-salvage vehicle at the salvage dealer's facility. In response to comments, proposed paragraph (12) of §8.140 is revised to exempt licensed salvage pool operators from the sign requirement. Salvage pool operators do business with members of the pool who are aware that the vehicles are salvage and therefore, the need to mark the vehicles is unnecessary.

New §8.140(13), Lease requirements, incorporates existing §8.140(4) provisions relating to lease requirements and further provides that the lease must be in effect for the term of the current license. This provision helps assure operations will remain at the dealer's licensed location throughout the term of the license.

New §8.140(14), Dealer must display license, incorporates existing §8.140(5) provisions relating to the display of the dealer's license. This allows a consumer to see that the consumer is doing business with a licensed dealer.

New §8.146, Metal Converter's License Plates, reorganizes and incorporates portions of existing §8.146 with only minor non-substantive changes to improve the language of the rule.

Existing §8.146(a), relating to plate attachment to rear license plate holder; §8.146(h), relating to usage on types of vehicles for which the converter is licensed; and existing §8.146(l) - (o), relating to metal plate records and void plates are reenacted in this new section.

The department revised the language in §8.146 to clarify that the converter must notify the department within three days of discovering that the metal converter plate is not accounted for. This discovery language was included in the proposed draft for §8.138(e) in reference to lost dealer metal plates but was inadvertently excluded from the requirements for converters. To maintain consistency throughout the rule the department added the language from §8.138(e) "of the date that the discovery is made" to §8.146(e).

New §8.150, Authorization to Issue Temporary Tags, states that licensed dealers and converters are authorized to issue temporary tags applicable to their businesses. Authorization to issue tags in connection with day-to-day business operations is assured until a license is cancelled, revoked, or suspended. However, because advance Internet-down and emergency numbers are more vulnerable to misuse, theft, and counterfeiting, a dealer's authorization to obtain these types of numbers in advance may be separately modified, suspended, or revoked after an opportunity for hearing.

New §8.151, Temporary Tags, General Use Requirements, and Prohibitions, requires all temporary tags to be displayed in the rear license plate display area of the vehicle, eliminating the option of rear window display. Transportation Code, §502.451, enacted by House Bill 310, 80th Legislature, Regular Session, 2007, now requires dealers to remove license plates and registration insignia when they acquire vehicles, making the license plate holders available for use. A temporary tag displayed in a tinted rear window is often difficult to see. It is vital that law enforcement officers be able to view the tag easily now that they can access the database and obtain identifying information about the owner of a vehicle in real time. The remaining portions of §8.150 incorporate existing requirements with only minor non-substantive changes to make the section easier to read and understand.

New §8.152, Obtaining Numbers for Issuance of Temporary Tags, requires dealers and converters to have Internet access to obtain a specific number for each tag from the temporary tag databases maintained by the department. Dealers and converters are required to enter information into the databases and obtain a number before a temporary tag may be issued and displayed on a vehicle. The only permissible exceptions are contained in §8.155 and §8.156, relating to obtaining advance numbers in the event that Internet connectivity is down or power and communications are disrupted for more than two days. Senate Bill 11 and Senate Bill 1786 require that licensees connect to the databases through the Internet. It is necessary that all dealers and converters have an Internet connection to do so.

New §8.153, Specifications for All Temporary Tags, describes the specifications and acceptable methods for issuance of temporary tags using the specific number obtained from the state databases.

The department will no longer require temporary buyer's or converter tags to be red, blue, or orange. Information printed or completed on all tags must be in black ink. This will facilitate issuance of a tag using a computer and printer and will reduce



costs to dealers and converters who previously were required to have temporary tags printed in color.

In response to comments, the department has revised proposed §8.153(b) and (c). A number of comments suggested that temporary tag material must be cardboard and that no other substance can be contemplated under the statute. The department believes that the legislative intent of prescribing "cardboard" tags was to use a product durable enough for the necessary life of the temporary tag. The use of cardboard temporary tags was initiated in 1963. It is likely that other materials were not available at a cost-effective price at that time. As materials and printing technologies evolve, dealers are discovering low cost alternative solutions that satisfy the durability requirement established by statute. At this time, the legislature has not recognized any material other than cardboard to be of sufficient durability, nor has it allowed the department to independently set standards that might recognize modern technological solutions. The department has concluded that all temporary tags must be cardboard or have a cardboard backing to comply with the statute and be sealed in a 2 mil clear poly bag to insure durability.

The statute does not define "cardboard". "Cardboard" is a generic non-specific term for a heavy paper based product. There are many products commonly referred to as cardboard, including paperboard used in building construction, corrugated fiberboard used in shipping, and heavy paper stock generally referred to as cardstock, cover stock, or poster board. A definition used by the paper and publishing industry provides that cardboard is "a general term which usually refers to a sheet more than 0.006" in thickness."

Under the authority of Transportation Code, §§503.062(d), 503.0625(e) and 503.063(d), which authorize the department to determine the specifications and form of temporary tags, the department's current rules already limit the type of cardboard for temporary tags to be a six-ply product. The paper industry often refers to this product as "chipboard". In researching the issue, the department ascertained that the paper industry now more commonly describes products by weight rather than the number of layers. The department has revised the requirement to reflect industry standards by setting the minimal acceptable weight of the cardboard material to be 65-pound cover stock. The thickness of 65-pound cover stock falls within the industry standard.

The department has determined that "cover stock", also known as "card stock", is an acceptable cardboard material. It is a common term understood by office supply stores and the general public to mean a stiff heavyweight paper product used when durability is a concern. It is readily available from office supply stores, Internet vendors, and major retail stores that offer office supplies. Dealers in remote areas of Texas will be able to obtain it as easily as dealers in large metropolitan areas.

The department has also determined that a cardboard backing for a temporary tag is sufficient to comply with the requirements of the statute. To meet statutory requirements, §8.138(a) currently requires tags to "be printed on not less than 6-ply cardboard." Even so, the department has not taken enforcement action against dealers who print information on labels and affix them to cardboard, recognizing that materials and technology have evolved since 1975. To require that tags only be cardboard would deprive dealers of alternatives that have been in use for some time, such as using cardboard as a backing for a label. The purpose of §8.153(b)(2) and (3), as revised, is to legitimize dealers' current practices of using cardboard as a backing for

the material on which the actual tag information is printed, by printing the information on a label or paper and affixing it to or backing it with cardboard.

Another issue drawing comment was whether the various temporary tags would be durable enough to protect the lettering on the tag from the elements and more intense exposure, such as car washes. The department's Materials and Test Section conducted tests to compare the performance of ink jet and laser printer tag samples, and to compare the performance of tags in poly bags with and without cardboard backing, as well as a plastic tag. Samples were subjected to accelerated weathering, wet rub, detergent spray, solvent spray, and car wash tests. There did not seem to be a significant difference between the ink jet printer and laser printer tag samples. Unprotected ink jet printer paper tags may be a little more sensitive to water and some detergents. Unprotected laser printer tags may be more sensitive to UV degradation, but it should not be significant for their short period of use. All temporary tag samples showed a fairly good potential for performing satisfactorily under normal operating conditions. Temporary tags in bags with open ends may perform satisfactorily but moisture entrapment may be a problem and may affect visibility in some cases.

Department personnel also conducted real-life tests by placing various tag samples on their personal vehicles. While some performed better than others, all samples appeared to be durable enough for the life of the tag. However, to ensure the greatest durability of the tags the department has determined that, dealer or converter must place temporary tags in plastic bags that must be sealed to protect the tag from moisture. The rule is revised to reflect this change.

Revised §8.153(b) describes five acceptable methods for issuing temporary tags. The database will provide the specific number and other information required to be displayed on the tag via an image of a sample tag, which will demonstrate how a properly completed tag should look.

The current system of manually placing information on pre-printed cardboard stock using a black marking pen or other means remains an option. The department will also allow a licensee the option of printing the image of the sample tag onto cardboard. If a dealer or converter chooses to manually complete and issue preprinted cardboard temporary tags, those tags must comply with the standards for format and display as indicated in the applicable appendices A-1 through C-1 of §8.153(c). In addition, the department will allow a licensee the option of printing the image of the sample tag onto plain paper or a label and securing it to a piece of cardboard. Another option is that the licensee may print a plain paper image of the sample tag and seal it, along with a cardboard backing, in a clear plastic bag to protect it from the elements. All tags, regardless of which option, must be sealed in a clear poly bag.

It is reasonable to assume that some dealers may wish to use this image rather than copy the information onto a cardboard tag. Copying the required information onto the tag to make it useful to law enforcement will become tedious for many large-volume dealers who make numerous sales. Having to buy cardboard tags pre-printed with blank boxes to fill in does not decrease the dealer's cost of buying a printed tag and increases labor costs. Most importantly for law enforcement purposes, the likelihood of errors in the transference of information and numbers from the printed receipt to the cardboard tag is apt to occur too often. Therefore, it is in the best interest of law enforcement, dealers, and the department to facilitate the use of the provided sample

image in a manner that is both efficient and acceptable to all concerned. It is good public policy to acknowledge the practical business necessity by allowing the sample image to suffice for the temporary tag. To do otherwise would increase costs to consumers.

Dealers and converters must begin using the new tags on the date that the database system is made generally available for use by the department. The department will provide the dealer access to the database for review at least 60 days before the requirement to use the system for the issuance of temporary tags. The department wants to give all dealers an opportunity to study the new system if they choose, however, it is necessary to have a specific statewide implementation date. Having a specific date that all dealers must be in compliance with the new system will limit the time that dual systems for issuing temporary tags exist. This will also benefit law enforcement and consumers by allowing them to become familiar with the appearance of the new tags. The department will notify the dealers through the *Texas Register*, department's website, and dealer associations of the dates that the system is available for review and the date that all dealers must begin to use the new system.

New §8.154, Dealer Temporary Tags, describes permissible usage of dealer temporary tags in demonstrating vehicles to prospective buyers, providing loaned vehicles to charitable organizations, operating vehicles in parades, road testing, and conveying untitled vehicles to a place of service or repair, to another place of business, or from a delivery point to a dealer's place of business. Holders of wholesale motor vehicle auction general distinguishing numbers may use temporary tags in transporting vehicles to or from a licensed auction location by that licensee's employees. Prohibited usage is established for laden commercial vehicles, dealer service or work vehicles, and personal use vehicles. These permissive and prohibited usages incorporate provisions of existing §8.138(b)(1), Appendix A-2, §8.139(c), and §8.139(l) without change.

In response to comments, the department has added §8.154(f)(3) to make it clear that dealers may place dealer tags on towing and towed vehicles if both vehicles are being conveyed to or from a wholesale auction.

Existing §8.139(e) is incorporated without change by providing that dealers may use temporary tags only for the type of vehicles for which the dealer is licensed. Existing §8.139(g) provisions that temporary dealer tags are to be removed from a vehicle when an unregistered vehicle is sold to another dealer, that temporary buyer's tags may be issued, and that consigned vehicles are to display the temporary tag of the dealer to which it is consigned are also incorporated into the new rule.

New requirements are that temporary dealer tags are to have an expiration date not to exceed 60 days from the date of issuance. The temporary tag may be issued to a specific vehicle or to a specific agent of a dealer. A tag for a specific vehicle must display the vehicle-specific number from the state database, the year and make of the vehicle, the vehicle identification number, and the month, day, and year of expiration. Tags issued to dealer employees or agents must display the agent-specific number from the database and the month, day, and year of expiration. In response to comments, the department has revised proposed §8.154(k) by eliminating the requirement that agent tags bear the name of the salesperson or dealer agent, to protect the privacy of the dealer agents.

Temporary dealer tags are primarily used to demonstrate vehicles to prospective buyers or convey vehicles to and from auctions and repair shops. Dealers generally sell a vehicle within 60 days, and a longer time period is not necessary. In addition, a dealer is able to reissue the dealer temporary tag at the end of the 60-day period should a longer period be needed.

New §8.155, Buyer's Temporary Tags, sets out requirements for a temporary buyer's tag. Certain existing requirements are unchanged. A buyer's temporary tag is not to be displayed on any street-operated vehicle unless that vehicle is actually sold. Temporary buyer's tags are valid for a period not to exceed 21 calendar days from the date the vehicle is sold. Supplemental buyer's tags are authorized when a dealer is unable to obtain documents in possession of a lienholder that are necessary to transfer title. Information required to be placed on buyer's tags is unchanged, except for the addition of the vehicle-specific number obtained from the state database.

Amendments to Transportation Code, §503.063(a) now require dealers to place a temporary buyer's tag on any vehicle sold. New §8.155(b) clarifies that dealers are required to do so and sets out an exception for wholesale transactions if the purchasing dealer places its own dealer tag on the vehicle. The exception recognizes standard business practices in the industry. Buyer's tags serve as temporary authorization to operate a vehicle on the public streets until a dealer titles and registers the vehicle in the name of the retail buyer. Vehicles in dealer-to-dealer transactions are not titled or registered in the name of the purchasing dealer.

Amendments to Transportation Code, §503.063(g) now state that a supplemental buyer's tag may be issued after 20 working days after the date of the issuance of the original buyer's tag, which under Transportation Code, §503.063(b) is valid for 21 calendar days. The result is that retail customers would be without valid tags for approximately one week. To resolve the conflict, the department will require dealers to renew the vehicle-specific number previously issued for the buyer's tag, on a supplemental buyer's tag, within 20 working days of the date of sale.

New §8.156, Buyer's Temporary Tag Receipt and Notice to Buyer, implements new Transportation Code, §503.0632, requiring dealers to provide notice to buyers of the applicable law and possible penalties relating to buyer's temporary tags. Dealers must provide to each buyer a temporary tag receipt for each tag containing specific sales and tag related information and are required to instruct the buyers to keep a copy of the receipt in the vehicle. The buyer must sign a copy of the receipt and the dealer must keep a copy of the signed receipt in the dealer's records. The receipt will include an acknowledgment that the buyer received all the required buyer's notices.

New §8.157, Advance Numbers, Internet-Down Buyer's Temporary Tags, implements new Transportation Code, §503.0631(d). Dealers are entitled to obtain an advance supply of numbers from the database to use if the dealer cannot access the Internet at the time of a sale. Dealers are further required to enter required information into the database not later than the next business day after the sale.

New §8.158, Advance Numbers, Emergency Buyer's Temporary Tags, implements new Transportation Code, §503.063(f), which requires the department to ensure that a dealer may generate a one-week supply of advance numbers to use if Internet access is disrupted in the event of an emergency. The department de-

finances an emergency as a natural disaster that affects power and communications to a dealership for more than two days. Dealers must enter the required information into the database within 24 hours after the time that the power or Internet connectivity is restored.

New §8.159, General Requirements and Allocation of Internet-down and Emergency Buyer's Tag Numbers, describes general requirements for safekeeping and expiration of advance numbers and how many advance numbers a dealer may obtain for each type of number. Because advance numbers are not associated with a specific vehicle or buyer, they are more vulnerable to misuse and theft. Therefore, advance numbers are to be kept in a secure, locked place and dealers must report any loss, theft, or destruction of the numbers within 24 hours of that event.

Advance numbers will be allocated to dealers based on a percentage of their annual sales, which will be determined by the dealer's annual Vehicle Inventory Tax filings.

Advance numbers will expire 12 months after the date of issue. To ensure that dealers have an adequate supply of advance numbers, dealers may obtain additional advance numbers as they use them or the numbers expire.

If Internet access is unavailable, dealers are required to enter the information into the database not later than the next business day. The amount of advance Internet-down numbers would be one days' worth of a dealer's annual sales or approximately .002 percent (.002%). This figure is not practical for application to such a diverse dealer body as that in Texas. The department has determined that a reasonable amount of advance Internet-down numbers should be one percent (1%) of a dealer's total annual sales, with a minimum of one advance number. Since new license applicants have no sales history upon which to calculate an initial allotment of advance numbers, the department has set initial allotments and provided a means for a dealer to request more advance numbers based on monthly sales history. Dealers who purchase an existing dealership or relocate may rely on the sales history of the previous license to obtain advance numbers.

If a dealer's power or Internet connectivity is disrupted because of an emergency, the statute requires that dealers have a week's worth of emergency advance numbers. The department has determined that a reasonable amount of emergency advance numbers is 1/52 of a dealer's total annual sales, with a minimum of one advance number. To calculate an initial allotment of advance numbers, the department has set initial allotments and provided a means for a dealer to request more advance numbers based on monthly sales history. Dealers who purchase an existing dealership or relocate may rely on the sales history of the previous license to obtain advance numbers.

New §8.160, Converter's Temporary Tags, describes permissible usage of converter's temporary tags in demonstrating vehicles to prospective buyers, road testing, and conveying vehicles to a place of service or repair, to another place of business, or from a delivery point to a converter's place of business. These provisions incorporate sections of existing §8.146(c) - (f), and (h) - (i) without change. New requirements are that temporary converter's tags are to have an expiration date not to exceed 60 days from date of issuance. The temporary tag may be issued to a specific vehicle or to a specific agent of the converter. A tag for a specific vehicle must display the vehicle-specific number from the state database, the year and make of the vehicle, the vehicle identification number, and the month, day, and year of expiration. Tags issued to converter employees or agents must display the

agent-specific number from the database, and the month, day, and year of expiration. In response to comments, the department revised proposed §8.160(j) by eliminating the requirement that agent tags bear the name of the agent, to protect the privacy of converter agents.

Temporary converter tags are primarily used to demonstrate vehicles to prospective buyers or convey vehicles to and from auctions and repair shops. If a converter needs a longer time period, the converter will be able to reissue the temporary tag at the end of 60 days.

#### COMMENTS

The department conducted one statewide hearing to receive comments concerning the proposed amendments. Various oral and written comments were received from 27 individuals representing licensed franchise and independent dealers, dealer organizations, law enforcement, and concerned citizens. The department received comments from the Texas Automobile Dealers Association, Texas Independent Automobile Dealers Association, Houston Independent Automobile Dealer Association, Texas Recreational Vehicle Association, Texas Municipal Police Association, Texas Police Association, the Combined Law Enforcement Association of Texas, Texas Department of Public Safety, OpSec Security, Inc., GCS Systems, Inc., US TempTag, L.L.C., InstaTag, AA Insurance Auto Auctions, James Brothers Auto Sales, Texan Auto Sales, Vandergriff Auto Group, John Freeman, Mid-Cities Classic's, Inc., Ron Briggs Motors, Sterling Auto Sales, Cowboy Trucks, and GMC Leasing. The department also received a written comment from the Honorable Jeff Wentworth, State Senator.

Comment: The Texas Automobile Dealers Association (TADA) commented regarding proposed §8.138, Use of Metal Dealer License Plate. TADA suggests that prior language "Although not a requirement" be inserted in §8.138(a) so that it is clear that the requirement to carry a copy of the receipt for the metal dealer's plate in the vehicle is permissive rather than mandatory.

Response: The department concurs. Maintaining the receipt copy in the vehicle allows law enforcement to verify that the use of the metal dealer plate by the vehicle operator is legitimate and gives dealer employees a simple means to provide verification. However, the department has no objection to reinserting the prior language into the rule.

Comment: TADA commented regarding proposed §8.138, Use of Metal Dealer License Plate. TADA suggests that the word "dealer" be inserted in a sentence prohibiting non-franchised dealers from displaying metal plates on new motor vehicles in subsection (c).

Response: The department concurs. Even though, §8.138 is captioned "Use of Metal Dealer License Plate," and the sentence before the one in question explicitly references metal dealer plates, the department has no objection to adding the word "dealer" to the sentence in question if it will promote a clearer understanding of the section.

Comment: TADA and one independent dealer commented regarding proposed §8.140, Established and Permanent Place of Business. In reference to paragraph (3), TADA suggested that franchised dealers should be allowed to use temporary signs or banners due to the possible necessity that a franchise agreement may require a franchise dealer to order a factory-specific sign from the manufacturer or distributor that is not delivered in a timely manner.

Response: The department concurs. Current licensing policy is to accept a purchase order for a sign for purposes of license processing and approval; however, the license will not be issued until the sign is in place. This policy applies to all dealers who hold a General Distinguishing Number. Nevertheless, the department understands that franchised dealers may face particular difficulties in opening such a large business and is willing to allow temporary signs and banners until permanent factory-specific signs can be erected.

Comment: TADA commented regarding proposed §8.140, Established and Permanent Place of Business. In reference to §8.140(5)(G), TADA suggests that the restriction relating to a prohibition on licensing and dealer plates be clarified as to "metal" dealer plates and mailing of the plates be prohibited to "post office" addresses.

Response: As for the use of the word "metal" in reference to dealer plates, the only type of dealer plates the department mails to dealers are metal plates, but the department has no objection to inserting the word "metal" into the section for clarity and §8.140(5)(G) is changed accordingly.

The department does not concur with the suggestion of the prohibition of the use of post office addresses for mailing. The current prohibition is a restriction on the delivery of licenses and dealer plates to out-of-state addresses. The suggested language would literally prohibit the mailing of licenses and metal dealer plates to any address recognized by the U.S. Post Office. The department assumes that the intent of the comment was a prohibition on delivery to post office boxes. The department is not aware that delivery to a post office box poses any type of concern since licensees are required to maintain physical locations as licensed locations and may provide an alternative mailing address for official department mailings. No change is made as a result of this comment.

Comment: A representative of AA Insurance Auto Auctions commented that §8.140(12), which requires salvage dealer licensees to clearly mark with a sign that a vehicle is a salvage vehicle, should be limited to vehicles offered for sale to "consumers." In a later communication, that auction operator clarified that it wanted to exclude "salvage pool operators" from the sign requirement.

Response: The department agrees. "Consumer" is a generic word that can apply to both retail and wholesale purchasers. The addition of the word "consumer" would not add clarity to the proposed language. However, since salvage pool operators engage in business with members of the pool, the department has added an exemption for licensed salvage pool operators to §8.140(12).

Comment: The Texas Police Association, the Texas Municipal Police Association and a major with the Texas Highway Patrol support §8.151(a), requiring placement of the temporary tags in the license plate holder, and oppose any exception for dealer's temporary tags from that requirement as defeating the purpose of the legislation to enhance law enforcement's ability to detect fraudulent use of temporary tags because it restricts a law enforcement officer's ability to clearly observe the tag. Heavily tinted windows obscure temporary tags. A dealer also commented that placing the temporary tags in license plate holders will aid law enforcement because the temporary tags will be more easily seen when they are not obscured by window tinting or the angle of the rear window.

Response: The department concurs. A temporary tag displayed in a tinted rear window is difficult to see, because of tinting or the angle of the rear window. The main purpose of the new system

of temporary tags is to allow easier identification by law enforcement of counterfeit or stolen tags and to identify the owner of the vehicle. Temporary tags with unique identifying numbers serve no purpose if law enforcement cannot view them. This purpose is better served by displaying all temporary tags in the license plate holder. It is vital that law enforcement officers be able to view the tag easily now that they can access the database and obtain identifying information about the owner of a vehicle in real time.

Comment: TADA commented regarding proposed §8.151, Temporary Tags, General Use Requirements, and Prohibitions. It suggested that a dealer's temporary tag have the option of being placed in the rear window rather than just in the license plate holder. The Texas Independent Automobile Dealers Association (TIADA) agreed that window placement would prevent theft and vandalism. Five dealers opposed the placement of tags in license plate holders due to weather making the temporary tags illegible, the tags flying off the vehicles, and the temporary tags being stolen. Another dealer commented that he wanted the option to print out tags and place them on the vehicle wherever he wanted.

Response: The department does not concur. Additionally, there are many concerns expressed by law enforcement in reference to placement of temporary tags in vehicle windows. There is also a likelihood of confusion at the dealership between buyer's tags and dealer tags when placing a tag on the vehicle. One of the main purposes for the new system of temporary tags is to allow easier identification by law enforcement of counterfeit or stolen tags. This purpose is better served by locating all temporary tags in the rear license plate display area.

Temporary tags properly fastened in the rear license display area do not fly off moving vehicles or flap when the vehicle is in motion. Temporary tags in license plate holders share similar characteristics to metal license plates in rear license plate holders. The department has not received complaints of metal license plates flying off moving vehicles. Since temporary tags are secured in a similar manner to a metal license plate in the rear license display area, a thief would require the same amount of effort to steal a temporary tag as a metal license plate. In recognition that not all vehicles have license plate holders, the section is modified slightly to describe it as the rear license display area.

Temporary tags are intended to have a limited life so the effects of weather on the tag are also limited. The department conducted tests of the proposed temporary tag types. One test subjected the proposed versions of the temporary tags to real life driving conditions during a projected life of twenty working days. Another test simulated weather conditions and exposure to various solvents as well as simulated car washes. Durability of the proposed tag types as well as ink jet printing versus laser printing was examined. The tests confirmed that the proposed tag types and printing methods and the requirement that the tags be placed in plastic bags, made the tag suitable for the expected period of usage.

Comment: A representative of James Brothers Auto Sales commented that there are many quick alternatives for placing and removing dealer temporary tags in license plate holders. He identified suction cups, magnets, and easily placed temporary fasteners. He also stated that he believed that dealers oppose placing temporary tags in license plate holders because most dealers place plaques in the license plate holders that act as advertising for the dealers.

Response: The department concurs. There are a variety of commercially available products that are alternatives for placing and removing temporary dealer tags in license plate holders that are functionally as convenient as taping and removing temporary tags from back windows in situations such as demonstration drives where temporary dealer tags are frequently changed from vehicle to vehicle. The department does not speculate on the reasons for a commenter's position.

Comment: Concerning the design of tags as set out in §8.153, two representatives from OpSec Security, Inc. urged requiring use of holograms on all temporary tags to make them more secure. They pointed out that the American Association of Motor Vehicle Administrators (AAMVA) endorses the use of holograms and that holograms are in use in other jurisdictions. The additional layer of security provided by holograms will make it more difficult to counterfeit tags, combat fraud, and help law enforcement easily identify counterfeit tags. A corporate representative for a provider of a cardboard temporary tag system commented that use of a hologram on the temporary tags would make the tags more secure at this time.

Response: The department does not concur. Although the department believes that additional security features might be considered for future tag standards these new section do not require holograms on the temporary tags. The hologram was not included in the initial rule proposal and the department believes that additional study is necessary. The department also believes that requiring the hologram at this stage of the rule promulgation process eliminates the opportunity to have it fully reviewed by the regulated industry.

Comment: A representative of James Brothers Auto Sales stated he opposes holograms because of the cost involved and that holograms can be counterfeited.

Response: The use of holograms is not required under these amendments. The department will continue to study ways to provide additional security features to the temporary tag and may consider additional requirements in the future.

Comment: A representative of Texan Auto Sales, the Texas Municipal Police Association (TMPA), and the Houston Independent Dealers Association commented that counterfeiting temporary tags will always be a problem.

Response: The department concurs. The proposed rules should reduce the current level of temporary tag counterfeiting by establishing a system for law enforcement to verify the legitimacy of the temporary tag usage through vehicle-specific or user-specific tag numbers in a real time database.

Comment: A representative of James Brothers Auto Sales stated that he has concerns about the option to handwrite the tags because of bad handwriting.

Response: The department is aware that bad handwriting will occur on handwritten temporary tags, but the option is necessary for those licensees who do not maintain the necessary computer equipment or working knowledge and because of printer malfunctions.

Comment: Two corporate representatives of GSC Systems, Inc. commented that by allowing dealers to use the sample image generated by the department when issuing temporary tags, the department is issuing temporary tags in violation of Transportation Code, §503.063(e).

Response: The department does not concur. Under Transportation Code, §503.0626 and §503.0631, the dealer/converter inputs information and receives back an electronic image containing the information the dealer or converter submitted and a vehicle-specific number as authorized by those statutes. Section 8.153 authorizes dealers and converters to use the electronic image when the dealer or converter creates and issues the temporary tag. The department is not issuing a temporary tag but merely granting permission for dealers and converters to use that image in the process of issuing a temporary tag. The department supports this as a means to allow the dealers and converters to use the electronic information input into the system. This eliminates the need to duplicate the same information when the temporary tag is created and issued by the dealer or converter.

Comment: Two corporate representatives of GSC Systems, Inc. state that the tag images the department provides for dealers to verify the database information be stamped with the word "Sample" so that the department generated images cannot be used by dealers as a real tag.

Response: The department does not concur. The department does not issue tags. As noted previously, the dealer or converter creates and issues temporary tags based upon vehicle and buyer information in the licensee's possession and the unique number generated in response to the licensee's input. The summary of this combination of information is displayed in a format so that licensees can easily determine where to place required information on a temporary tag. The department has no objection to dealers and converters printing the image and using it in their process of creating the temporary tag. Requiring dealers and converters to duplicate the information they have input elsewhere when creating tags only imposes an additional cost without a corresponding benefit to the licensee, consumer, law enforcement, or the State of Texas.

Comment: Two corporate representatives GSC Systems, Inc. state that tags should be color coded and printed using PMS colors that only printing presses can produce.

Response: The department does not concur. At this time, due to the issuance of a unique number for each temporary tag, color coding temporary tags does not serve any useful purpose and would only impose an additional cost to the dealer or converter when they create and issue temporary tags without any corresponding benefit to the consumer, licensee, law enforcement, or the State of Texas.

Comment: TADA commented regarding the use of "cardboard" tags. It stated that there is nothing magical about the "cardboard" tag language contained in various statutory provisions relating to temporary tags. The products now available far exceed the usefulness of cardboard. It is most likely that the legislature desired to have a product used that would be durable for the amount of time of expected use. In 1975, that product was cardboard but there are now plastic and plastic-like products that may be more durable and less expensive. TADA supports expanding the availability of the types of products to include any product that will withstand the elements for 20 days.

A corporate representative of InsteTag commented that the use of a polyester product as an alternative should be considered, and that product has proven effective in the temporary tag system instituted by the State of Florida.

A representative of Vandergriff Auto Group commented that the use of cardboard only for temporary tags limits the ability of dealers to obtain less expensive alternatives and to drive down costs.

Response: The department agrees that cardboard is not the only available product for temporary tags, however the legislature has not recognized any other material as acceptable. The department has determined that all temporary tags must be cardboard or have a cardboard backing to comply with the statute. As it drafted the proposed rules, the department considered the costs to dealers and converters in implementation and allowed the dealers and converters options, when possible, where the dealer and converter could make choices based on costs or other needs.

Comment: The president of US TempTag, LLC. commented that he supported the authorization for the use of a label stock, laser printed and adhered to a cardboard stock.

Response: These new sections do authorize the use of a label stock, laser printed and adhered to a cardboard stock as an acceptable method under §8.153 to allow dealers and converters the flexibility to choose the best method for their business needs. The printed tag must be sealed in a 2 mil clear poly bag to ensure durability.

Comment: John Freeman commented that as a dealer all he wanted was the option to print out tags.

Response: The department's proposal allows dealers/converters to print out tags to allow them the flexibility to choose the best method for their business needs. The printed tag must be sealed in a 2 mil clear poly bag to ensure durability.

Comment: Two corporate representatives of GSC Systems, Inc. commented that temporary tags need to be durable enough to last until replaced by a metal plate.

Response: The department concurs. Use of a buyer's temporary tag is limited to 20 working days. Use of a dealer's temporary tag is limited to 60 calendar days. Expired temporary tags should not be used on any vehicle, so there is no reason for any temporary tag to have a useful life beyond 60 days. The department does not want to encourage the use of expired temporary tags by requiring the use of a product with a useful life well beyond the projected need. The department's proposed rules allow multiple options for the creation of temporary tags. All these options meet at least the minimal useful life standard for buyer's temporary tags, but some options may be a better choice for dealer's temporary tags, particularly if those tags are subject to frequent placement and removal during their projected life. In such a case, the proposed new sections allow a dealer the choice of the most cost efficient, viable option for that dealer's projected use or a more costly alternative if the dealer so chooses. The only requirement for all tag options is that the tag be sealed in a 2 mil clear poly bag.

Comment: The Combined Law Enforcement Officers of Texas (CLEAT) and Senator Wentworth commented that use of "copy paper in a plastic bag" does not meet the legislative requirement for the use of cardboard.

Response: The department has determined that a cardboard backing for a temporary tag is required to comply with the statute, and has revised proposed §8.153 to reflect the additional requirement of a cardboard backing.

Comment: One law enforcement officer commented that placing a plastic bag over a paper tag violated the prohibition against tinted coverings being placed over license plates.

Response: The department does not concur. Transportation Code, §502.409(a)(7) prohibits obscuring license plates. It does

not address temporary tags. A clear plastic bag is not a tinted covering and, properly installed in a license plate holder, would not obscure the lettering.

Comment: CLEAT and two corporate representatives of GSC Systems, Inc. state that the tag on copy paper inside a clear plastic bag will not be visible due to light reflecting off the plastic or that the bag will serve as a conduit for moisture that will eventually destroy the tag. The president of GSC Systems, Inc. commented that a system that uses an inkjet printer to print tags which are placed in a plastic bag may produce condensation problems that lead to the fading and bleeding of the tag lettering.

Response: The department does not concur. Arizona and Montana require paper temporary tags that must be placed in plastic sleeves. Both states have provided the department with information stating that the plastic sleeves are durable and withstand freezing Montana winters and Arizona rains. Arizona law enforcement actually participated in testing the plastic sleeve to ensure that visibility was not impaired. Both states advised that law enforcement approve of the plastic sleeve and that sleeves have been in use without major problems or objections from law enforcement.

The extent of condensation problems and the associated effect on inkjet print depends on the type of ink used and flaws in the plastic bags or installation. The department has conducted field and laboratory tests of the proposed temporary tag types and did not experience any significant problems associated with condensation. However, to help ensure that moisture will not degrade a temporary tag in a plastic bag, the department has revised §8.153 to require that plastic bags must be sealed. The department maintains confidence that the proposed tag types are more than adequate for the twenty-one day life of the temporary tag.

There is nothing unique about cardboard that would make it less susceptible to the manufacture of counterfeit temporary tags than copy paper. One commenter at the public hearing brought with him a counterfeit cardboard tag that had been bought at a flea market the day before the public hearing. Under the proposed rules, each temporary tag will be given a unique number which is specifically tied to a specific vehicle or a specific person. That uniqueness will make it easier for law enforcement to identify that a temporary tag does not belong to a particular vehicle or person.

Comment: Two corporate representatives of GSC Systems, Inc. provided a document entitled "Visibility Test of Temporary Tag Media Options Being Proposed," which allegedly subjected the four proposed versions of the temporary tags to various lighting and weather conditions with a result that the two temporary tag versions that the provider supplies passed their testing and the two temporary tag versions not supplied by that provider failed.

Response: The department does not concur with the conclusions reached or the methods used in arriving at the conclusions in "Visibility Test of Temporary Tag Media Options Being Proposed." The parameters and the conditions of the testing are not fully discussed, so replication of the testing or additional analysis cannot be made. However, it is clear from the photocopied photographs that the two temporary tag versions that failed this testing were not properly secured in the license plate holder.

The department has conducted tests of the proposed temporary tag types. One test subjected the proposed versions of the temporary tags to real life driving conditions during a projected life of twenty working days. Another test simulated weather conditions and exposure to various solvents as well as simulated car

washes. Durability of the proposed tag types as well as ink jet printing versus laser printing was examined. The tests confirmed that all the proposed tag types and printing methods are suitable for the expected period of usage. However, to ensure the greatest durability, all tags must be sealed in a 2 mil clear poly bag.

Comment: TIADA commented that it supported the proposal, including the provisions relating to the issuance of temporary tags, and that the provisions relating to dealer offices place no additional burdens on legitimate dealers.

One law enforcement officer commented that he supports the overall proposal and that the use of a protective baggie on paper plates has proven effective and sufficient to protect the tag for its expected life. A representative of Vandergriff Auto Group and the Texas Recreational Vehicle Association commented that each supports the rules as proposed.

Response: The department concurs with this general support and that support relating to the issuance of temporary tags, the provisions relating to dealer offices, and the use of protective baggies. The department designed these rules to best meet the needs of licensees and consumers with consideration for relative costs and the ability to make business choices. The department is aware that the plastic protective bag containing a paper tag has been used successfully in other states.

Comment: TIADA commented that due to some smaller dealers who use one vehicle to tow another vehicle from an auction that language should be added to proposed §8.154(f) that would define a vehicle with a temporary dealer's tag towing another vehicle with the same dealer's temporary tag to or from an auction from or to the dealer's place of business as not being a "laden commercial vehicle."

Response: The department agrees. Under Transportation Code, §502.001(2) a commercial vehicle is one designed or used primarily to transport property. Unless a dealer were actually using a commercial vehicle the prohibition of proposed §8.154 would not apply. However, the language is added to §8.154(f) to clarify the intent of the section.

Comment: Representatives from Mid-Cities Classic's, Inc., Ron Briggs Motors, Sterling Auto Sales, Cowboy Trucks, and GMC Leasing further commented on §8.154, Dealer Temporary Tags. The dealers interpret that rule to require them to issue temporary dealer tags for each vehicle on the lot.

Response: The department does not concur. Section 8.154(i) authorizes the issuance of dealer temporary tags for each vehicle or for any agent of the licensee. A dealer is not required to issue temporary dealer tags for each vehicle on the lot.

Comment: TADA commented regarding proposed §8.154, Dealer's Temporary Tags. In reference to subsection (k)(2), TADA suggests that the name of the authorized agent be deleted from the information on the temporary tag for the safety of dealer's employees and to prevent identity theft.

Response: The department has no objection to revising the design of the authorized agent tag by removing the name of the agent. Section 8.154(k)(2) has been revised to remove the requirement to include the agent's name on the temporary tag.

Comment: Representatives from Mid-Cities Classic's, Inc., Ron Briggs Motors, Sterling Auto Sales, Cowboy Trucks, and GMC Leasing commented regarding §8.155, stating that buyer's temporary tags should be valid for 20 working days instead of 21

calendar days since the licensee has 20 working days to apply to transfer the vehicle's title.

Response: The department does not concur. The statutory language that provides for the length of time for the temporary tag and the time the dealer has to apply for the transfer of title are not consistent. Transportation Code, §503.063(b) provides that the buyer's temporary tag be issued for 21 calendar days. The department does not have the authority to change this time period to match the length of time the dealer has to transfer title under Transportation Code, §501.0234(f).

Comment: TADA commented regarding proposed §8.156, Buyer's Temporary Tag Receipt and Notice to Buyer. TADA requests authorization for the Notice to Buyer to be printed on the buyer's receipt or on the buyer's order.

Response: The department has no objection to the Notice to Buyer being printed on the buyer's receipt or buyer's order. The rule as written does not require separate documents or prohibit the required information from being printed with the buyer's receipt or buyer's order.

Comment: The Texas Police Association comments that the requirement in §8.156 that a registration receipt be kept in the vehicle and the creation of a real time data base will aid law enforcement.

Response: The department concurs. Requiring a registration receipt be kept in the vehicle and the creation of a real time data base allows law enforcement to verify the legitimate use of a temporary tag.

Comment: Representatives from Mid-Cities Classic's, Inc., Ron Briggs Motors, Sterling Auto Sales, Cowboy Trucks, and GMC Leasing commented on §8.159 concerning the limit of advance tag numbers available for emergencies and Internet-down situations, particularly for those dealers eligible for only one tag. The dealers complained that the limit may impair the ability of the dealer to sell vehicles.

Response: The department does not concur. Transportation Code, §503.063 and §503.0631 require that dealers have a one-day supply of Internet-down and a one-week supply of emergency advance tags. The language adheres to the statute. It is anticipated that the emergencies and Internet-down situations where advance tag usage is authorized will be of very short duration, and it is unlikely that the supply of advance tag numbers will prevent a licensee from completing a sales transaction.

#### **43 TAC §§8.138 - 8.140, 8.146**

#### **STATUTORY AUTHORITY**

The repeals are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Occupations Code, §2301.005 and §2301.155, and Transportation Code, §503.002, which authorize the commission to establish rules for motor vehicle dealers.

#### **CROSS REFERENCE TO STATUTE**

Occupations Code, §2301.354 and §2301.651, and Transportation Code, §§502.451, 503.005, 503.027, 503.028, 503.032, 503.062, 503.0625, 503.0626, 503.063, 503.0631, and 503.0632.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 28, 2008.

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Bob Jackson

General Counsel

Texas Department of Transportation

Effective date: April 17, 2008

Proposal publication date: January 18, 2008

For further information, please call: (512) 463-8683



### 43 TAC §§8.138 - 8.140, 8.146, 8.150 - 8.160

#### STATUTORY AUTHORITY

The new sections are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Occupations Code, §2301.005 and §2301.155, and Transportation Code, §503.002, which authorize the commission to establish rules for motor vehicle dealers.

#### CROSS REFERENCE TO STATUTE

Occupations Code, §2301.354 and §2301.651, and Transportation Code, §§502.451, 503.005, 503.027, 503.028, 503.032, 503.062, 503.0625, 503.0626, 503.063, 503.0631, and 503.0632.

#### §8.138. *Use of Metal Dealer License Plates.*

(a) Metal dealer license plates shall be attached to the rear license plate holder of vehicles on which such plates may be displayed pursuant to Transportation Code, §503.061. Although not a requirement, a copy of the receipt for the metal dealer's plate issued by the division should be carried in the vehicle so that it can be presented to law enforcement personnel upon request.

(b) Metal dealer license plates may not be displayed on laden commercial vehicles being operated or moved upon the public streets or highways or on the dealer's service or work vehicles.

(1) Examples of vehicles considered as service or work vehicles for purposes of this subsection are:

(A) a vehicle used for towing or transporting other vehicles;

(B) a vehicle, including a light truck, used in connection with the operation of the dealer's shops or parts department;

(C) a courtesy car on which a courtesy car sign is displayed;

(D) a rental or lease vehicle; and

(E) a boat trailer owned by a dealer or manufacturer that is used to transport more than one boat.

(2) A light truck is not considered to be a laden commercial vehicle when it is:

(A) mounted with a camper unit; or

(B) towing a trailer for recreational purposes.

(3) As used in this subsection, "light truck" has the meaning assigned by Transportation Code, §541.201.

(c) Metal dealer license plates may be displayed only on the type of vehicle for which the general distinguishing number is issued and which a dealer is licensed to sell. Non-franchised dealers may not display metal dealer plates on new motor vehicles.

(d) A dealer shall maintain a record of each dealer metal plate issued to that dealer that contains:

(1) the assigned metal plate number;

(2) the year and make of the vehicle to which the plate is affixed;

(3) the vehicle identification number (VIN) of the vehicle; and

(4) the name of the person in control of the vehicle.

(e) Dealer metal plates that cannot be accounted for shall be voided in the dealer's record and reported as missing to the department within three days of the date that the discovery is made. After a plate is reported as missing it is no longer valid for use.

(f) The dealer's record required under subsections (d) and (e) of this section shall be available at the dealer's location during normal working hours for review by a representative of the department.

#### §8.140. *Established and Permanent Place of Business.*

A dealer must meet the following requirements at each location where the dealer sells or offers vehicles for sale.

(1) Business hours for retail dealers.

(A) A retail dealer's office facility shall be open at least four days per week for at least four consecutive hours per day between the hours of 8:00 a.m. and 8:00 p.m.

(B) The dealer's business hours for each day of the week must be posted at the main entrance of the dealer's office that is accessible to the public. The owner or a bona fide employee of the dealer shall be at the dealer's licensed location during the posted business hours for the purpose of buying, selling, exchanging, or leasing vehicles. If the owner or a bona fide employee is not available to conduct business during the dealer's posted business hours due to special circumstances or emergencies, a separate sign must be posted indicating the date and time the dealer will resume operations. The dealer shall notify the division in writing of any change in the dealer's standard business hours. Regardless of the retail dealer's business hours the 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 dealers. A dealer who holds only a wholesale license must post its business hours at the main entrance of the dealer's office. A wholesale dealer shall be at the dealer's licensed location for at least two weekdays per week at least two consecutive hours per day between the hours of 8:00 a.m. and 6:00 p.m. Regardless of the wholesale dealer's business hours the 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 dealer's business name, or assumed name as reflected on the dealer's license, under which the dealer conducts business. The sign may omit terms such as "Inc.," "LLC," "LP," or similar identifiers of the entity type. The sign must be permanently mounted and must be readable from the street at the address listed on the application for the dealer license. Temporary banners or signs are not acceptable; however, a franchised dealer may, for the purpose of obtaining its license, use a temporary sign or banner if the dealer can



show proof that a factory-specific sign is on order that meets the requirements set out in this paragraph.

(4) Business sign requirements for wholesale dealers. A wholesale dealer must display a conspicuous, permanent sign with letters at least six inches in height showing the dealer's business name or assumed name as reflected on the dealer's license, under which the dealer conducts business. The sign may omit terms such as "Inc.," "LLC," "LP," or similar identifiers of the entity type. The sign must be permanently mounted on the business property and shall be on the main door to the dealer's office or on the outside of the building housing the office. If the dealership 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 dealer's office with letters at least two inches in height is acceptable. Temporary banners or signs are not acceptable.

(5) Office structure for retail and wholesale dealers. Unless otherwise authorized by the Transportation Code, a dealer that files an application for a new license or a supplemental location after May 1, 2008 must conform to the requirements of this paragraph.

(A) The office of a retail or wholesale dealer must be located in a building, with connecting exterior walls on all sides, that has been assigned a separate mailing address by the U.S. Postal Service. The office structure must have at least 100 square feet of interior floor space exclusive of hallways, closets, or restrooms and have a minimum seven foot ceiling.

(B) A dealer's office must comply with all applicable local zoning ordinances and deed restrictions.

(C) A dealer's office must have electricity with adequate heating and lighting.

(D) A dealer's office may not be located within a residence, apartment house, hotel, motel, or rooming house.

(E) A storeroom, closet, stock room, or any other room that is not open to the public may not be designated as the dealer's office.

(F) A route to a dealer's office may not pass through a food preparation area.

(G) The physical address of the dealer's office must be recognized by the U.S. Postal Service or capable of receiving U.S. mail. Licenses and metal dealer plates will not be mailed to any out-of-state address.

(H) 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 retail and wholesale dealers. At a minimum, the office must be equipped with:

(A) a desk;

(B) two chairs;

(C) a file cabinet to hold records;

(D) Internet access and printer;

(E) a fax machine; and

(F) a land-based, working telephone listed in the business name or assumed name under which the dealer does 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 dealers in one office. Not more than eight wholesale dealers may be located in the same business structure.

(9) Wholesale and retail dealers office sharing prohibition. Unless otherwise authorized by the Transportation Code, a retail motor vehicle dealer and a wholesale motor vehicle dealer either of which is established 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 that of the other business, a separate telephone listing, a separate telephone and fax number, 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 meeting the requirements of paragraph (13) 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 wholesale dealer is not required to have display space at the dealer's business premises. A retail dealer must have an area designated as display space for the dealer's inventory in accordance with this subsection.

(A) The display area must be located at the dealer's business address or contiguous with the dealer's address. A non-contiguous storage lot is permissible only if there is no public access and no sales activity occurs at the storage lot. A sign stating the dealer's name and the fact the property is a storage lot is permissible.

(B) A dealer's display area must be sufficient to display at least five vehicles of the type for which the general distinguishing number is issued. Those spaces must be reserved exclusively for the dealer's inventory and may not be shared with another business or a public parking area, a driveway to the office, or another dealer's display area.

(C) 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.

(D) The display area must be used exclusively for the dealer's inventory.

(E) If the display area is in conjunction with another vehicle dealership, the display area must be separated in such a manner that the inventories of the dealers are readily discernible from each other. The inventory of each dealer must be grouped together and not intermingled and each vehicle in the inventory of a dealer must be clearly marked to identify the dealer offering the vehicle for sale.

(F) If the display area is in conjunction with another business that is not related to the sale or operation of motor vehicles, the display area for the dealer's inventory must be separated from any other parking area by a material object or barricade that is affixed to the ground in a manner that cannot be readily moved by an individual.

(G) If the display area is in conjunction with another business that is not related to the sale or operation of motor vehicles, a permanent sign must be erected that designates the area as reserved for the dealer's inventory with the dealer's name and telephone number on the sign with letters at least six inches in height. When the display area is full, additional inventory vehicles may be parked outside the display area only in an area immediately adjacent to the barricaded area. The additional inventory must be on the licensed premises and not in any restricted area such as right-of-way or public sidewalks. Any additional inventory not within the barricaded area must be identified by a sign, with the dealer's name and telephone number that clearly distinguishes the inventory from any public or employee parked vehicles.

(H) The display area must be adequately illuminated if the dealer is open after sundown so that vehicles for sale can be properly inspected by any prospective customer.

(I) The display area may be located inside a building, subject to approval by the division director or the director's designee.

(J) If the dealer's premises includes gasoline pumps or houses another business that sells gasoline, the dealer's display area may not be part of the parking area for gasoline customers and may not interfere with access to or from the gasoline pumps. The display area may not contain a fuel fill port or any fire prevention access to the fuel tanks.

(12) Dealer with salvage dealer license. If a dealer also holds a salvage dealer license, each salvage vehicle that is offered for sale on the premises of the dealer's display area must be clearly and conspicuously marked with a sign that informs the potential buyers that the vehicle is a salvage 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 that is not owned by the dealer, the dealer must maintain a lease that is continuous with the period for which the dealer's license will be issued. That lease agreement must be on a properly executed form containing at a minimum:

- (A) the names of the lessor and lessee;
- (B) the period of time for which the lease is valid; and
- (C) the street address or legal description of the property, provided that if only a legal description of the property is provided, the applicant must attach a statement that the property description in the lease agreement is the street address identified on the application.

(14) Dealer must display license. A dealer must display the dealer 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 it 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.

*§8.146. Metal Converter's License Plates.*

(a) Metal converter's license plates shall be attached to the rear license plate holder of vehicles on which the plates may be displayed pursuant to Transportation Code, §503.0618.

(b) Metal converter's license plates tags may be displayed only on the type of vehicle that the converter is engaged in the business of assembling or modifying.

(c) When an unregistered new motor vehicle is sold to a converter, the selling dealer shall remove the dealer's temporary tag. The selling dealer may attach a buyer's temporary tag to that vehicle or the

purchasing converter may display a converter's temporary tag or metal converter plate on that vehicle.

(d) A converter shall maintain a record of each converter metal plate issued to that converter that contains:

- (1) the assigned metal plate number;
  - (2) the year and make of the vehicle to which the metal plate is affixed;
  - (3) the vehicle identification number of the vehicle (VIN);
- and
- (4) the name of the person in control of the vehicle.

(e) Converter metal plates that cannot be accounted for shall be voided in the dealer's record and reported as missing to the department within three days of the date that the discovery is made. After a plate is reported as missing it is no longer valid.

(f) The converter's record, required under subsections (d) and (e) of this section, shall be available at the converter's location during normal working hours for review by a representative of the department.

*§8.151. Temporary Tags, General Use Requirements, and Prohibitions.*

(a) All temporary tags shall be displayed in the rear license plate display area of the vehicle.

(b) All printed information on a temporary tag must be visible and may not be covered or obstructed by any plate holder.

(c) Homemade tags or tags that have buyer's tag information printed on one side and dealer's tag information printed on the other side are not permitted.

(d) Each motor vehicle being transported using the full mount method, the saddle mount method, the tow bar method, or any combination of those methods in accordance with Transportation Code, §503.068(d), must have a dealer's or converter's temporary tag or a buyer's temporary tag, whichever is applicable, affixed to that vehicle. If the vehicle being transported is unable to qualify for registration because it is of a type that is prohibited from operating upon the public streets and highway (i.e., off-highway vehicle or self-propelled machine), a tag shall be displayed that states in bold letters "For Off Highway Use Only."

*§8.153. Specifications for All Temporary Tags.*

(a) Information printed or completed on all temporary tags must be in black ink.

(b) Dealers and converters may issue a temporary tag by any of the methods described in this subsection. Cardboard or cardboard backing material for temporary tags must be of a thickness and weight of no less than 65-pound cover stock. All temporary tags must be sealed in a 6 inch by 12 inch, 2 mil clear poly bag that covers the entire tag.

(1) A dealer or converter may manually copy the information provided from the database to cardboard pre-printed in accordance with the specifications of the appropriate appendix listed in subsection (c) of this section. Cardboard tags completed by hand must have the information drawn in letters and numerals with a permanent thick black marking pen.

(2) A dealer or converter may print the image of the information provided by the database on 6 inch by 11 inch cardboard.

(3) A dealer or converter may print the image of the information provided by the database on a full 8 1/2 inch by 11 inch sheet label and affix the label to a 6 inch by 11 inch cardboard.

(4) A dealer or converter may print the image of the information provided by the database on a full 8 1/2 inch by 11 inch piece of paper, affix the paper to a 6 inch by 11 inch cardboard by glue or tape so that it is completely adhered to the cardboard backing.

(5) A dealer or converter may print the image of the information provided by the database on a full 8 1/2 inch by 11 inch piece of paper and seal the tag and a cardboard backing in a 6 inch by 12 inch, 2 mil clear poly bag to protect the tag from the elements.

(c) If a dealer or converter uses the option provided by subsection (b)(1) the dealer or converter shall use the design of the respective temporary tag from the appropriate following appendices:

(1) Appendix A-1 - Dealer - Assigned to specific vehicle;  
Figure 43 TAC §8.153(c)(1)

(2) Appendix A-2 - Dealer - Assigned to Agent;  
Figure 43 TAC §8.153(c)(2)

(3) Appendix B-1 - Buyer - Initial;  
Figure 43 TAC §8.153(c)(3)

(4) Appendix B-2 - Buyer - Supplemental;  
Figure 43 TAC §8.153(c)(4)

(5) Appendix B-3 - Internet-down Tag;  
Figure 43 TAC §8.153(c)(5)

(6) Appendix B-4 - Emergency State Tag; and  
Figure 43 TAC §8.153(c)(6)

(7) Appendix C-1 - Converter.  
Figure 43 TAC §8.153(c)(7)

(d) Dealers and converters shall comply with this section on the date that the database system is made generally available for use by the department. The department will open the database at least 60 days before it becomes generally available to allow dealers an opportunity to review the system and become familiar with the database requirements. The department will publish separate notices in the *Texas Register* that provide prior notice of:

(1) the date on which the dealers may begin reviewing the database system; and

(2) the date on which compliance with this section is required.

#### §8.154. Dealer Temporary Tags.

(a) Dealer temporary tags may be displayed only on the type of vehicle for which the general distinguishing number is issued and for which a dealer is licensed to sell.

(b) Dealer temporary tags may be used by the dealer only to:

(1) demonstrate the vehicle or cause the vehicle to be demonstrated to a prospective buyer for sale purposes only;

(2) convey or cause the vehicle to be conveyed:

(A) from one of the dealer's places of business in this state to another of the dealer's places of business in this state;

(B) from the dealer's place of business to a place where the vehicle is to be repaired, reconditioned, or serviced;

(C) from the state line or a location in this state where the vehicle is unloaded to the dealer's place of business;

(D) from the dealer's place of business to a place of business of another dealer;

(E) from the point of purchase by the dealer to the dealer's place of business; or

(F) to road test the vehicle; or

(3) use the vehicle for or allow its use by a charitable organization or use the vehicle or allow its use in parades.

(c) A vehicle being conveyed under this section is exempt from the inspection requirements of Transportation Code, Chapter 548.

(d) A dealer who holds a wholesale motor vehicle auction general distinguishing number may display its dealer temporary tags on any vehicles that are transported to or from the licensed auction location by a bona fide employee or agent of the auction.

(e) When an unregistered vehicle is sold to another dealer, the selling dealer shall remove any dealer temporary tag. The selling dealer may attach a buyer's temporary tag to the vehicle or the purchasing dealer may display a dealer temporary tag or metal dealer plate on the vehicle. If a vehicle is consigned from one dealer to another, the vehicle must display the temporary tag of the dealer to which that vehicle was consigned.

(f) Dealer temporary tags may not be displayed on laden commercial vehicles being operated or moved upon the public streets or highways or on the dealer's service or work vehicles. This subsection does not apply to buyer tags or supplemental buyer tags or to dealer tags placed on a vehicle loaned to a charitable organization or school.

(1) Examples of vehicles considered as service or work vehicles for purposes of this subsection are:

(A) a vehicle used for towing or transporting other vehicles;

(B) a vehicle, including a light truck used in connection with the operation of the dealer's shops or parts department;

(C) a courtesy car on which a courtesy car sign is displayed;

(D) a rental or lease vehicle; and

(E) any boat trailer owned by a dealer or manufacturer that is used to transport more than one boat.

(2) A light truck is not considered to be a laden commercial vehicle when it is:

(A) mounted with a camper unit; or

(B) towing a trailer for recreational purposes.

(3) A vehicle bearing a dealer's temporary tag is not considered to be a laden commercial vehicle when it is:

(A) towing another vehicle bearing the same dealer's temporary tags, and

(B) both vehicles are being conveyed from the dealer's place of business to a licensed wholesale auto auction or from a licensed wholesale auto auction to the dealer's place of business.

(4) As used in this subsection, "light truck" has the same meaning assigned by Transportation Code, §541.201.

(g) A dealer temporary tag may not be used to operate a vehicle for the personal use of a dealer or a dealer's employee.

(h) A dealer temporary tag must show its expiration date which may not exceed 60 days after its date of issuance.

(i) A dealer temporary tag may be issued by a dealer to a specific vehicle or to a dealer's agent who is authorized to operate a motor vehicle owned by the dealer.

(j) A dealer who issues a dealer temporary tag to a specific vehicle must ensure that the following information is placed on the tag:

- (1) the vehicle-specific number from database;
  - (2) the year and make of vehicle;
  - (3) the vehicle identification number (VIN) of the vehicle;
- and
- (4) the month, day, and year of the tag's expiration.

(k) A dealer who issues a dealer temporary tag to an agent must ensure that the following information is placed on the tag:

- (1) the agent-specific number from the database; and
- (2) the month, day, and year of the tag's expiration.

§8.155. *Buyer's Temporary Tags.*

(a) A temporary buyer's tag or supplemental buyer's tag may be displayed only on a vehicle that may be operated upon the public streets and highways and for which a sale has been consummated.

(b) A dealer must place a temporary buyer's tag on any new or used vehicle sold by the dealer, except for a vehicle sold in a whole-sale transaction in which the purchasing dealer places its own dealer temporary tag on the vehicle.

(c) Temporary buyer's tags are valid for a period that does not exceed 21 calendar days after the date the vehicle is sold.

(d) If a dealer has been unable to obtain the necessary documents to obtain permanent metal license plates on behalf of the buyer because the documents are in the possession of a lienholder who has not complied with the terms of Transportation Code, §501.115(a), the dealer may issue a supplemental buyer's tag. Within 20 working days of the date of sale the dealer must access the database and renew the vehicle-specific number previously issued. The supplemental buyer's tag is valid for a period that does not exceed 20 working days after the date of its issuance. The dealer may not issue more than one supplemental buyer's tag for a vehicle.

(e) The dealer must ensure that the following information is placed on a buyer's or supplemental buyer's tag that the dealer issues:

- (1) the vehicle-specific number obtained from database;
  - (2) the year and make of vehicle;
  - (3) the vehicle identification number (VIN) of the vehicle;
- and
- (4) the month, day, and year of the tag's expiration.

§8.160. *Converter's Temporary Tags.*

(a) Converter's temporary tags may be used only by the converter or the converter's employees on unregistered vehicles to:

- (1) demonstrate the vehicle, or cause the vehicle to be demonstrated, to a prospective buyer who is a franchised motor vehicle dealer or an employee of a franchised motor vehicle dealer; or
- (2) convey the vehicle or cause the vehicle to be conveyed:
  - (A) from one of the converter's places of business in this state to another of the converter's places of business in this state;
  - (B) from the converter's place of business to a place where the vehicle is to be assembled, repaired, reconditioned, modified, or serviced;
  - (C) from the state line or a location in this state where the vehicle is unloaded to the converter's place of business;

(D) from the converter's place of business to a place of business of a franchised motor vehicle dealer; or

(E) to road test the vehicle.

(b) Prospective buyers who are employees of a franchised dealer or a converter may operate a vehicle displaying converter's temporary tags during a demonstration.

(c) A vehicle being conveyed while displaying a converter's temporary tag is exempt from the inspection requirements of Transportation Code, Chapter 548.

(d) Converter's temporary tags may not be used to operate a vehicle for the converter's or a converter's employee's personal use.

(e) Converter's temporary tags may be displayed only on the type of vehicle that the converter is engaged in the business of assembling or modifying.

(f) When an unregistered new motor vehicle is sold to a converter, the selling dealer shall remove a dealer's temporary tag. The selling dealer may attach a buyer's temporary tag to the vehicle or the purchasing converter may display a converter's temporary tag or metal converter plate on the vehicle.

(g) A converter temporary tag must show its expiration date which may not be more than 60 days after the date of its issuance.

(h) A converter temporary tag may be issued by a converter to a specific vehicle or to a converter's agent who is authorized to operate a motor vehicle owned by the converter.

(i) A converter who issues a temporary converter's tag to a specific vehicle shall ensure that the following information is placed on the tag:

- (1) the vehicle specific number from database;
  - (2) the year and make of vehicle;
  - (3) the vehicle identification number (VIN) of the vehicle;
- and
- (4) the month, day and year of the tag's expiration.

(j) A converter who issues a temporary converter's tag to an agent shall ensure that the following information is placed on the tag:

- (1) the agent-specific number from the database; and
- (2) the month, day, and year of the tag's expiration.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 28, 2008.

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Bob Jackson

General Counsel

Texas Department of Transportation

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For further information, please call: (512) 463-8683



## CHAPTER 18. MOTOR CARRIERS

The Texas Department of Transportation (department) adopts amendments to §18.1, Purpose, §18.2, Definitions, §18.10, Purpose, §18.11, Motor Carrier Registration, §18.13, Application

for Motor Carrier Registration, §18.14, Expiration and Renewal of Commercial Motor Vehicle Registration, §18.16, Insurance Requirements; new §18.18, Unified Carrier Registration System; amendments to §18.19, Short-term Lease and Substitute Vehicles, §18.31, Investigations and Inspections of Motor Carrier Records, §18.32, Motor Carrier Records, §18.70, Purpose, §18.71, Administrative Penalties, §18.72, Suspension and Revocation; new §18.73, Administrative Proceedings, §18.74, Settlement Agreements, §18.75, Implications for Nonpayment of Penalties, and §18.76, Registration Suspension Ordered under Family Code, all concerning motor carriers. The amendments to §§18.1, 18.2, 18.10, 18.11, 18.13, 18.14, 18.16, 18.19, 18.31, 18.32, 18.70 - 18.72, and new 18.18, and 18.73 - 18.76 are adopted without changes to the proposed text as published in the December 28, 2007, issue of the *Texas Register* (32 TexReg 9923) and will not be republished.

#### EXPLANATION OF ADOPTED AMENDMENTS AND NEW SECTIONS

The adopted amendments and new sections are necessary to implement the provisions of House Bills 2093 and 2094, 80th Legislature, Regular Session, 2007 and to clarify existing information.

House Bill 2093 provides the department additional regulatory authority over motor carriers and the issuance of overweight and oversize permits. The bill increases the department's authority to investigate, enforce, and impose administrative penalties and sanctions on motor carriers for violations of any statute, rule, or order.

The bill also authorizes the department to enter the federal Unified Carrier Registration (UCR) system. The UCR system replaced the Single State Registration System (SSRS) as of January 1, 2007. As a participant in the UCR system the department will facilitate the federal registration of interstate motor carriers.

In addition to changes to the motor carrier registration enforcement procedures, House Bill 2093 also provided for administrative enforcement of commercial motor vehicle overweight or oversize permit violations. The administrative procedures outlined in these rules will also be used for administrative actions involving violations of Transportation Code, Chapter 623.

House Bill 2094 transfers the regulatory authority for tow trucks and vehicle storage facilities from the department to the Texas Department of Licensing and Regulation (TDLR). As of January 1, 2008 TDLR will be responsible for all aspects of regulating these entities. Due to the transfer of responsibilities, §§18.1, 18.2, 18.10, 18.11, 18.13, 18.14, 18.16, 18.19, and 18.32, are amended to delete references to tow trucks and vehicle storage facilities.

Amendments to §18.2, Definitions, amend the definition of commercial motor vehicle to exclude tow trucks permitted to operate by TDLR and certain motor vehicles registered under the UCR system. Under Transportation Code, §643.002 tow trucks licensed by TDLR are excluded from the motor carrier registration requirements, therefore the provisions of 43 TAC Chapter 18 do not apply. This section also adds the definition of Unified Carrier Registration (UCR) and deletes the definitions of consent and nonconsent tows.

Amendments to §18.14, Expiration and Renewal of Commercial Motor Vehicle Registration, add clarification as to when a motor carrier registered under the federal UCR program must also renew under the state motor carrier registration system. Motor

carriers operating as charter buses, household goods movers, and recyclable material and waste carriers are also required to maintain state motor carrier registration. Other motor carriers registered under UCR only have to make an initial state registration if the carrier has never been registered in the state or if for some reason the UCR registration is not continuous. If the UCR registration lapses or is revoked or suspended for any reason the motor carrier must file a new registration packet with the state under the provisions of §18.11.

New §18.18 provides that the state, through the department, will participate in the UCR system. The department participated in the SSRS prior to the implementation of the UCR program. All interstate motor carriers operating in Texas are required to register with the UCR system. The department will provide the service necessary for the motor carriers to submit their UCR registration.

Amendments to §18.31, Investigations and Inspections of Motor Carrier Records, adds that the department can enter a motor carrier's place of business to investigate violations under Transportation Code, Chapter 645. Transportation Code, §645.003 provides the department with the authority to enforce Chapter 645 and rules adopted under that chapter. To enforce the rules and statutes the department must have access to investigate the violations.

Section 18.31 is further amended by adding a new provision to allow investigators to set appointments for records inspections by certified mail or facsimile. The current rules require the two parties to agree to a location and time if the motor carrier's normal business hours are not sufficient. By allowing investigators to set a time for inspection of records motor carriers will be unable avoid sanctions by withholding access to records.

Amendments to §18.32, Motor Carrier Records, reformat the language of subsection (a) by adding proof of registration fee payments to the list of general records that must be maintained by the motor carrier at its principal place of business. The specific language referring to registration receipts under SSRS in paragraph (4) is deleted. The deleted language is no longer necessary since SSRS is no longer operational. However, the department will still require that the motor carrier maintain proof of all registration fee payments.

Amendments to §18.70, Purpose, allow for denial of registration as an administrative sanction for violations of Transportation Code, Chapter 643 or any rule or order adopted under Transportation Code, Chapter 643, as authorized under House Bill 2093.

Amendments to §18.71(a), Definition, delete the definition of "director" as it is no longer necessary to have a specific definition for the director due to the new administrative enforcement process.

Section 18.71(b) and (c) are redesignated as subsections (a) and (b) and are amended by adding rules or orders to the list of violations in which the department can seek administrative penalties. House Bill 2093 increased the department's authority by authorizing administrative sanctions and penalties for violations of any rule adopted under Transportation Code, Chapters 643 or 645 and also any order issued under those chapters.

Section 18.71 is further amended by deleting language that referenced the current administrative enforcement process. Subsections (e) - (j) are deleted. House Bill 2093 established a new administrative hearing process which is detailed in §18.73.

Amendments to §18.72, Suspension and Revocation, address changes to the statute regarding the types of authorized admin-

istrative sanctions. In addition to suspending and revoking a motor carrier's registration the department now has the authority to deny registration to a motor carrier who fails to comply with registration requirements. The section is also amended to authorize sanctions for failing to comply with any 43 TAC Chapter 18 rule or any order issued pursuant to an action taken under that chapter.

Amendments to §18.72(b), Department of Public Safety, remove the requirement that the request for administrative action on safety violation suspension come from the executive director of the Department of Public Safety. As amended the rule requires the request to be in writing and to include evidence of the violation. This will streamline this process and allow the department to address safety violations in a timely manner.

Section 18.72(c), the subsection heading is changed from Action without hearing, to Probation. The changes to the subsection provide guidance on the issuance of probation as an administrative sanction. The language provides additional guidance the department will consider in determining whether a motor carrier is eligible for probation. This section also provides that the department will set the length of the probation by reviewing the seriousness of the offense and previous violation by the motor carrier. These guidelines will help ensure that the department is consistent in administering the probation program.

Section 18.72(d), (e), and (g), regarding the administrative process, are deleted because of the new process established by House Bill 2093 and set out in §18.73. The language in subsection (f) regarding child support suspensions is moved to §18.76. The administrative process for these types of suspensions are handled by the Office of the Attorney General. The department does not participate in the hearing process, therefore, separating this type of suspension action in its own section improves the understanding and eliminates confusion as to the department's role.

New §18.73, Administrative Proceedings, is added to provide the notice requirements for the new administrative hearing process. The language tracks Transportation Code, §643.2525 and clarifies the two types of notices mailed to the alleged violator.

New §18.74, Settlement Agreements, details the settlement agreement process. The department can enter into a compromise settlement agreement with an alleged violator any time before the issuance of a final order. This section states that the agreement shall include a clause that allows the department the authority to revoke the agreement if the alleged violator fails to abide by the terms of the agreement. This provision will ensure that the department continues to have authority to enforce future compliance.

New §18.75, Implications for Nonpayment of Penalties, is added to provide the implications for nonpayment of any penalty imposed against a violator. Under the current process the department did not have authority to take additional administrative action if the motor carrier failed to pay the imposed penalties. House Bill 2093 amended Transportation Code, §643.2525(k) to authorize the department to initiate a new administrative action to suspend, revoke, or deny motor carrier registration if the motor carrier fails to pay the penalty or any assessed costs before the 61st day after the day the decision becomes final. This section is amended to comply with the new provisions.

New §18.76, Registration Suspension Ordered under Family Code, includes the substance formerly contained in §18.73(f) regarding motor carrier registration suspensions due to orders

issued under Family Code, Chapter 232, relating to payment of child support or possession of or access to a child. The department may suspend registration under this section without following the administrative process under §18.73 of this chapter. The Office of the Attorney General oversees the administrative hearing process for these types of violation. A suspension under this section may be lifted only on receipt of an order under Family Code, §232.013. This section complies with the requirements of Family Code, Chapter 232.

#### COMMENTS

No comments on the proposed amendments and new sections were received.

### SUBCHAPTER A. GENERAL PROVISIONS

#### 43 TAC §18.1, §18.2

##### STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically Transportation Code, §643.003, which authorizes the commission to adopt rules to administer Transportation Code, Chapter 643 regarding motor carrier registration and Transportation Code, §645.003 which requires the commission to adopt rules to administer Transportation Code, Chapter 645 regarding the single state or the unified carrier registration systems.

##### CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 643, Transportation Code, Chapter 645, and 49 U.S.C. §14504a.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 28, 2008.

TRD-200801654

Bob Jackson

General Counsel

Texas Department of Transportation

Effective date: April 17, 2008

Proposal publication date: December 28, 2007

For further information, please call: (512) 463-8683



### SUBCHAPTER B. MOTOR CARRIER REGISTRATION

#### 43 TAC §§18.10, 18.11, 18.13, 18.14, 18.16, 18.18, 18.19

##### STATUTORY AUTHORITY

The amendments and new section are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically Transportation Code, §643.003, which authorizes the commission to adopt rules to administer Transportation Code, Chapter 643 regarding motor carrier registration and Transportation Code, §645.003 which requires the commission to adopt rules to administer Transportation Code, Chapter 645 regarding the single state or the unified carrier registration systems.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 643, Transportation Code, Chapter 645, and 49 U.S.C. §14504a.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 28, 2008.

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Bob Jackson

General Counsel

Texas Department of Transportation

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Proposal publication date: December 28, 2007

For further information, please call: (512) 463-8683



**SUBCHAPTER C. RECORDS AND INSPECTIONS**

**43 TAC §18.31, §18.32**

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically Transportation Code, §643.003, which authorizes the commission to adopt rules to administer Transportation Code, Chapter 643 regarding motor carrier registration and Transportation Code, §645.003 which requires the commission to adopt rules to administer Transportation Code, Chapter 645 regarding the single state or the unified carrier registration systems.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 643, Transportation Code, Chapter 645, and 49 U.S.C. §14504a.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 28, 2008.

TRD-200801656

Bob Jackson

General Counsel

Texas Department of Transportation

Effective date: April 17, 2008

Proposal publication date: December 28, 2007

For further information, please call: (512) 463-8683



**SUBCHAPTER F. ENFORCEMENT**

**43 TAC §§18.70 - 18.76**

STATUTORY AUTHORITY

The amendments and new sections are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically Transportation Code, §643.003, which authorizes the commission to adopt rules to administer Transportation Code, Chapter 643 regarding motor carrier registration and Transportation Code, §645.003 which requires the commission to adopt rules to administer Transportation Code, Chapter 645 regarding the single state or the unified carrier registration systems.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 643, Transportation Code, Chapter 645, and 49 U.S.C. §14504a.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 28, 2008.

TRD-200801657

Bob Jackson

General Counsel

Texas Department of Transportation

Effective date: April 17, 2008

Proposal publication date: December 28, 2007

For further information, please call: (512) 463-8683



# 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.

## Agency Rule Review Plan

Texas Commission on Law Enforcement Officer Standards and Education

### Title 37, Part 7

TRD-200801691

Filed: March 31, 2008

Melinda Hoyle Bozarth  
General Counsel  
Texas Department of Criminal Justice  
Filed: March 28, 2008



## Proposed Rule Reviews

Texas Department of Criminal Justice

### Title 37, Part 6

The Texas Board of Criminal Justice (TBCJ or Board) files this notice of intent to review §152.51, concerning Authorized Witnesses to the Execution of an Inmate Sentenced to Death. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four (4) years.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, [Melinda.Bozarth@tdcj.state.tx.us](mailto:Melinda.Bozarth@tdcj.state.tx.us). Written comments from the general public should be received within 30 days of the publication of this proposal.

TRD-200801634

Melinda Hoyle Bozarth  
General Counsel

Texas Department of Criminal Justice  
Filed: March 28, 2008

Texas Education Agency

### Title 19, Part 2

The State Board of Education (SBOE) proposes the review of 19 TAC Chapter 100, Charters, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the SBOE in 19 TAC Chapter 100 are organized under the following subchapters: Subchapter A, Open-Enrollment Charter Schools, and Subchapter B, Home-Rule School District Charters.

As required by the Texas Government Code, §2001.039, the SBOE will accept comments as to whether the reasons for adopting 19 TAC Chapter 100, Subchapters A and B, continue to exist. The comment period begins with the publication of this notice and must last a minimum of 30 days.

Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 463-0028.

TRD-200801696

Cristina De La Fuente-Valadez  
Director, Policy Coordination  
Texas Education Agency  
Filed: April 1, 2008



The Texas Board of Criminal Justice (TBCJ or Board) files this notice of intent to review §159.1, concerning Substance Abuse Felony Punishment Facilities (SAFPF) Eligibility Criteria. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four (4) years.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, [Melinda.Bozarth@tdcj.state.tx.us](mailto:Melinda.Bozarth@tdcj.state.tx.us). Written comments from the general public should be received within 30 days of the publication of this proposal.

TRD-200801635

The Texas Education Agency (TEA) proposes the review of rules in 19 TAC Chapter 100, Charters, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the TEA in 19 TAC Chapter 100 are organized under the following subchapter: Subchapter AA, Commissioner's Rules Concerning Open-Enrollment Charter Schools.

As required by the Texas Government Code, §2001.039, the TEA will accept comments as to whether the reasons for adopting 19 TAC Chapter 100, Subchapter AA, continue to exist.

The public comment period on the review of 19 TAC Chapter 100, Subchapter AA, begins April 11, 2008, and ends May 11, 2008. Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494,



(512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-0028.

TRD-200801698

Cristina De La Fuente-Valadez  
Director, Policy Coordination  
Texas Education Agency  
Filed: April 1, 2008



The State Board of Education (SBOE) proposes the review of 19 TAC Chapter 129, Student Attendance, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the SBOE in 19 TAC Chapter 129 are organized under the following subchapters: Subchapter A, Student Attendance Allowed, and Subchapter B, Student Attendance Accounting.

As required by the Texas Government Code, §2001.039, the SBOE will accept comments as to whether the reasons for adopting 19 TAC Chapter 129, Subchapters A and B, continue to exist. The comment period begins with the publication of this notice and must last a minimum of 30 days.

Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-0028.

TRD-200801697

Cristina De La Fuente-Valadez  
Director, Policy Coordination  
Texas Education Agency  
Filed: April 1, 2008



The Texas Education Agency (TEA) proposes the review of rules in 19 TAC Chapter 129, Student Attendance, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the TEA in 19 TAC Chapter 129 are organized under the following subchapter: Subchapter AA, Commissioner's Rules.

As required by the Texas Government Code, §2001.039, the TEA will accept comments as to whether the reasons for adopting 19 TAC Chapter 129, Subchapter AA, continue to exist.

The public comment period on the review of 19 TAC Chapter 129, Subchapter AA, begins April 11, 2008, and ends May 11, 2008. Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-0028.

TRD-200801695

Cristina De La Fuente-Valadez  
Director, Policy Coordination  
Texas Education Agency  
Filed: April 1, 2008



Texas Board of Nursing

#### **Title 22, Part 11**

The Texas Board of Nursing will review and consider whether to re-adopt, re-adopt with amendments, or repeal Chapters 213 (Practice and

Procedure), 216 (Continuing Education), and 221 (Advanced Practice Nurses). This review is done pursuant to Texas Government Code §2001.039.

The Board will assess whether the reason(s) for adopting or re-adopting these chapters continue to exist. Each section of these chapters will be reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current general provisions in the governance of the Board, and/or whether it is in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act).

Comments on the review may be submitted in writing within 30 days following the publication of this rule review in the *Texas Register* to E. Joy Sparks, Assistant General Counsel, 333 Guadalupe St., Suite 3-460, Austin, Texas 78701; Fax: (512) 305-8101; or joy.sparks@bon.state.tx.us. Any proposed changes to the sections of these chapters as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption of any repeal, amendment, or new section.

TRD-200801694

Katherine Thomas  
Executive Director  
Texas Board of Nursing  
Filed: April 1, 2008



### **Adopted Rule Reviews**

Texas Department of Criminal Justice

#### **Title 37, Part 6**

The Texas Board of Criminal Justice (TBCJ or Board) has completed its review of §151.6, concerning Petition for the Adoption of a Rule, in accordance with the requirements of Texas Government Code §2001.039. The Board has determined the reasons for initially adopting §151.6 continue to exist, and it readopts the section.

Notice of the review was published in the February 8, 2008, issue of the *Texas Register* (33 TexReg 1153). No comments were received as a result of that notice.

As a result of the rule review, the TDCJ published proposed amendments to §151.6 in the February 8, 2008, issue of the *Texas Register* (33 TexReg 1076). The Board adopted the amended rule on March 27, 2008, and the adoption notice is published in this issue of the *Texas Register*.

TRD-200801637

Melinda Hoyle Bozarth  
General Counsel  
Texas Department of Criminal Justice  
Filed: March 28, 2008



The Texas Board of Criminal Justice (TBCJ or Board) has completed its review of §159.13, concerning Educational Services to Released Offenders/Memorandum of Understanding, in accordance with the requirements of Texas Government Code §2001.039. The Board has determined the reasons for initially adopting §159.13 continue to exist, and it readopts the section.

Notice of the review was published in the February 8, 2008, issue of the *Texas Register* (33 TexReg 1153). No comments were received as a result of that notice.

As a result of the rule review, the TDCJ published proposed amendments to §159.13 in the February 8, 2008, issue of the *Texas Register* (33 TexReg 1077). The Board adopted the amended rule on March 27, 2008, and the adoption notice is published in this issue of the *Texas Register*.

TRD-200801638  
Melinda Hoyle Bozarth  
General Counsel  
Texas Department of Criminal Justice  
Filed: March 28, 2008



The Texas Board of Criminal Justice (TBCJ or Board) has completed its review of §163.5, concerning Waiver to Standards, in accordance with the requirements of Texas Government Code §2001.039. The Board has determined the reasons for initially adopting §163.5 continue to exist, and it readopts the section.

Notice of the review was published in the February 8, 2008, issue of the *Texas Register* (33 TexReg 1153). No comments were received as a result of that notice.

As a result of the rule review, the TDCJ published proposed amendments to §163.5 in the February 8, 2008, issue of the *Texas Register* (33 TexReg 1078). The Board adopted the amended rule on March 27, 2008, and the adoption notice is published in this issue of the *Texas Register*.

TRD-200801639  
Melinda Hoyle Bozarth  
General Counsel  
Texas Department of Criminal Justice  
Filed: March 28, 2008



The Texas Board of Criminal Justice (TBCJ or Board) has completed its review of §163.33, concerning Community Supervision Officers, in accordance with the requirements of Texas Government Code §2001.039. The Board has determined the reasons for initially adopting §163.33 continue to exist, and it readopts the section.

Notice of the review was published in the February 8, 2008, issue of the *Texas Register* (33 TexReg 1153). No comments were received as a result of that notice.

As a result of the rule review, the TDCJ published proposed amendments to §163.33 in the February 8, 2008, issue of the *Texas Register* (33 TexReg 1078). The Board adopted the amended rule on March 27, 2008, and the adoption notice is published in this issue of the *Texas Register*.

TRD-200801640  
Melinda Hoyle Bozarth  
General Counsel  
Texas Department of Criminal Justice  
Filed: March 28, 2008



The Texas Board of Criminal Justice (TBCJ or Board) has completed its review of §163.38, concerning Sex Offender Supervision, in accordance with the requirements of Texas Government Code §2001.039. The Board has determined the reasons for initially adopting §163.38 continue to exist, and it readopts the section.

Notice of the review was published in the February 8, 2008, issue of the *Texas Register* (33 TexReg 1153). No comments were received as a result of that notice.

As a result of the rule review, the TDCJ published proposed amendments to §163.38 in the February 8, 2008, issue of the *Texas Register* (33 TexReg 1081). The Board adopted the amended rule on March 27, 2008, and the adoption notice is published in this issue of the *Texas Register*.

TRD-200801641  
Melinda Hoyle Bozarth  
General Counsel  
Texas Department of Criminal Justice  
Filed: March 28, 2008



The Texas Board of Criminal Justice (TBCJ or Board) has completed its review of §163.41, concerning Medical and Psychological Information, in accordance with the requirements of Texas Government Code §2001.039. The Board has determined the reasons for initially adopting §163.41 continue to exist, and it readopts the section.

Notice of the review was published in the February 8, 2008, issue of the *Texas Register* (33 TexReg 1153). No comments were received as a result of that notice.

As a result of the rule review, the TDCJ published proposed amendments to §163.41 in the February 8, 2008, issue of the *Texas Register* (33 TexReg 1082). The Board adopted the amended rule on March 27, 2008, and the adoption notice is published in this issue of the *Texas Register*.

TRD-200801642  
Melinda Hoyle Bozarth  
General Counsel  
Texas Department of Criminal Justice  
Filed: March 28, 2008



The Texas Board of Criminal Justice (TBCJ or Board) has completed its review of §163.43, concerning Funding and Financial Management, in accordance with the requirements of Texas Government Code §2001.039. The Board has determined the reasons for initially adopting §163.43 continue to exist, and it readopts the section.

Notice of the review was published in the February 8, 2008, issue of the *Texas Register* (33 TexReg 1154). No comments were received as a result of that notice.

As a result of the rule review, the TDCJ published proposed amendments to §163.43 in the February 8, 2008, issue of the *Texas Register* (33 TexReg 1083). The Board adopted the amended rule on March 27, 2008, and the adoption notice is published in this issue of the *Texas Register*.

TRD-200801643  
Melinda Hoyle Bozarth  
General Counsel  
Texas Department of Criminal Justice  
Filed: March 28, 2008



Public Utility Commission of Texas

**Title 16, Part 2**

The Public Utility Commission of Texas (commission) has completed the review of Chapter 21, Interconnection Agreements (ICAs) for Telecommunications Service Providers, pursuant to Texas Government Code §2001.039, *Agency Review of Existing Rules*, as noticed in the August 31, 2007 issue of the *Texas Register* (32 TexReg 5711). The text of the rules may be found in the Texas Administrative Code, Title 16, Economic Regulation, Part 2, or through the commission's website at [www.puc.state.tx.us](http://www.puc.state.tx.us). Project Number 34575, *Agency Review of Chapter 21 - Interconnection Agreements for Telecommunications Service Providers, Pursuant to Texas Government Code §2001.039*, is assigned to this rule review project.

Texas Government Code §2001.039 requires that each state agency review and readopt, readopt with amendments, or repeal the rules adopted by that agency pursuant to Texas Government Code, Chapter 2001, Subchapter B, Rulemaking. As required by §2001.039(e), this review is to assess whether the reason for adopting or readopting the rules continues to exist. The commission requested specific comments from interested persons on whether the reasons for adopting each section in Chapter 21 continue to exist. The commission's Chapter 21 rules (Texas Administrative Code, Title 16, Part 2) establish procedures for approving ICAs and resolving open issues pursuant to the Federal Telecommunications Act of 1996 (FTA) §252.

The commission finds that the reasons for adopting Chapter 21, Interconnection Agreements for Telecommunications Service Providers, continues to exist and readopts these rules without amendments. Interconnection agreements continue to be important in governing the relationship between telecommunications providers, and the commission continues to have a role in adjudicating disputes relating to such agreements.

The commission received comments from Southwestern Bell Telephone Company d/b/a AT&T Texas (AT&T), and Texas Statewide Telephone Cooperative, Inc. (TSTCI). While there were some suggestions for modifications to the rules, neither AT&T nor TSTCI questioned the continued need for the rules. The parties' comments are summarized in order by rule section number and the commission response addressing these comments is set forth at the end of the summaries.

#### *Section 21.5, Representative Appearances*

Section 21.5 permits a person to appear before the commission in a hearing in person or through an authorized representative. The presiding officer may require the representative to provide proof of authority to appear on behalf of another person.

AT&T contended that because FTA proceedings involved complex legal as well as technical issues which require a participant to be able to interpret rules and decisions rendered by the Federal Communications Commission (FCC) and the commission as well as court interpretation of such rules and decisions, the authorized representative should be limited to an officer or senior management level employee of the represented party, an attorney licensed to practice in the State of Texas, or an attorney licensed to practice in one of the fifty states. AT&T suggested that the second sentence in §21.5(a) be revised to include the phrase "On request of the presiding officer or any party to the proceeding" so that the amended sentence would read "On request of the presiding officer or any party to the proceeding, the presiding officer may require a representative to submit proof of authority to appear on behalf of another person."

TSTCI, however, contended that AT&T's proposals would pose a hardship to small incumbent local exchange companies (ILECs) by preventing them from using any independent professionals, like consultants, CPAs, or engineers, for representation before the commission. TSTCI commented that if only a licensed attorney or company officer

could represent a party, as AT&T suggests, it would severely limit a small company's options for handling its regulatory proceedings and will likely increase the cost of regulation for small companies in interconnection proceedings. TSTCI noted a similar proposal restricting representation before the commission to licensed attorneys during the 79th legislature failed. TSTCI urged the commission not to adopt AT&T's suggestions to restrict a company's options for representation before the commission in these rules.

AT&T also recommended that Chapter 21 should be amended to bring the commission's rules in line with the rules of the State Bar of Texas regarding the prohibition of the unauthorized practice of law, a prohibition that applies to all representatives, including those making appearances before the commission pursuant to §21.5.

#### *Section 21.7(a), Standards for conduct for parties*

Section 21.7(a) delineates the standards for conduct for parties appearing in any proceeding and provides for sanctions if the standards are violated. AT&T commented that §21.7(a) should apply the standards imposed upon attorneys under the Texas Disciplinary Rules of Professional Conduct to all representatives making an appearance in any proceeding to ensure fairness in adjudicatory proceedings, by ensuring that consistent standards apply to all representatives appearing before the commission.

#### *Subchapter B. Pleadings, Documents and Other Materials*

##### *Section 21.31(c), Number of items to be filed*

Section 21.31(c) lists the number of copies that are required to be filed for various types of pleadings and documents. AT&T proposed that the commission's rules provide an option for parties to file only an electronic copy of pleadings in accordance with commission-standard formatting, instead of paper copies, to promote efficiency and avoid administrative burdens on parties and the commission. AT&T argued that the costs and administrative burdens to finalize and copy voluminous documents are significant. Filing and serving a single copy in an electronic format would better ensure consistency and reduce the costs and administrative burdens. Should the commission continue to require hard copies, AT&T recommended that the current filing requirement of three copies of applications under §§21.97, 21.101, and 21.103 and two copies of the final approved ICA be maintained. AT&T, however, urged the commission to reduce the number of copies required under §21.31(c) from ten copies to four copies for all petitions and responses, discovery requests, and for testimony and briefs. For hearings presided over by commissioners, AT&T recommended a reduction from 19 to ten copies for testimony and briefs, and a reduction from ten to four copies for all other pleadings and documents.

##### *Section 21.31(g), Filing a Copy or Facsimile Copy in Lieu of an Original*

Section 21.31(g) permits a copy of an original document or pleading or a facsimile copy to be filed in lieu of the original so long as the party or the attorney filing such copy maintains the original for inspection by the commission or any party to the proceeding. AT&T recommended that subsection (g) be amended to permit a party to file the electronic filing of the copy of the original document or pleading, in accordance with commission-standard formatting, such as a portable document file (pdf), so long as the party or attorney maintains the original for inspection by the commission or any party to the proceeding.

##### *Section 21.35 (b), Methods of Service*

Section 21.35 (b) describes the methods of service for pleadings and documents which includes delivery in person; by agent; by courier; by first class mail; by certified mail, return receipt requested; or, by registered mail. AT&T requested the commission to amend this subsection

to allow service by electronic mail. Electronic service is the prevalent practice based upon agreements among parties in most proceedings. AT&T noted that while §21.35(b)(4), makes explicit reference to service via electronic mail, the option is not explicitly included in §21.35(b).

#### *Subchapter D, Dispute Resolution*

##### *Section 21.95, Compulsory Arbitration*

Section 21.95(t) describes the components of a proposal for award and the arbitration award. Section 21.95(t)(1)(G) and (t)(3)(G) require that if the proposal for award and the arbitration award include a ruling establishing a new or different price for an unbundled network element, combination of unbundled network elements, or resold service, the proposal and the arbitration award should include a statement requiring all certificated carriers to be notified of such price either through web posting, mass mailing, or electronic mail within ten days of the date the ruling becomes final.

AT&T recommended that §21.95 (t)(1)(g) and (t)(3)(g) be clarified to state that the ILEC is the only party required to file the verified statement regarding notification of price changes. AT&T also requested that a similar clarification be made in §§ 21.97(a), 21.99(a)(3) and 21.101(a)(4) which also requires a verified statement to be filed regarding notification to all certificated carriers of price changes for unbundled network elements, combination of unbundled network elements or resold services.

##### *Section 21.97, Approval of Negotiated Agreements*

Section 21.97(b) sets forth the notice requirements for an application for approval of a negotiated agreement. Under §21.97(b), the presiding officer may require the parties to the agreement to provide reasonable notice of the filing of the agreement. The presiding officer may require publication of the notice in addition to direct notice to affected persons. At the presiding officer's discretion, the parties may provide direct notice or notice via electronic mail or a web posting. Under §21.97(g), within 15 working days of the approval of the ICA, the ILEC is required to post notice of the approved ICA on its website in a separate, easily identifiable area of the website. AT&T suggested that subsection (b) relating to notice requirements for a negotiated agreement filing be deleted in its entirety because subsection (g) already requires AT&T to post notice of approved ICAs, which is sufficient to provide carriers with notice of new ICAs.

##### *Section 21.101, Approval of Amendments to Existing Interconnection Agreements*

Section 21.101(i) sets forth the filing requirements for an approved amended agreement. AT&T requested that the language relating to filing requirements of the amended agreement be eliminated. Specifically, AT&T suggested that the following sentences be eliminated:

"If the presiding officer approves the amendments to the agreement, the parties to the agreement shall file two copies, one unbound, of the complete filing clerk within ten working days of the presiding officer's decision. The copies shall be clearly marked with the control number assigned to the proceeding and the language 'Amended interconnection as approved (or modified and approved) on (insert date).'"

AT&T commented that of the 22 states where it currently operates, only Texas mandates the filing of an amended fully conformed agreement, imposing great administrative and cost burdens for copying and filing often voluminous conformed agreements. AT&T noted that it currently files such conformed agreements electronically and such agreements are publicly available through the commission's website and AT&T's website.

##### *Section 21.103, Approval of Agreements Adopting Terms and Conditions Pursuant to Federal Telecommunications Act of 1996 (FTA) §252(i)*

Section 21.103(a) requires an ILEC to make available any interconnection, service, or network element provided under a previously approved ICA to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement. The filing and processing are also delineated in subsections (a) and (b) of §21.103. AT&T suggested several modifications to these subsections. AT&T contended that §21.103 needs to be amended to bring it into conformity with FCC rules, which require carriers to opt into entire ICAs only, and require approved ICAs to be made available for opt-in for a reasonable period of time. In addition, AT&T argued that in conformity with current law and industry practice, the commission should clarify that a carrier may not replace a valid existing ICA with another agreement under Federal Telecommunications Act §252(i).

Regarding the most-favored-nation (MFN) clause, AT&T noted that the MFN Short Form into successor agreements worked extremely well and streamlined the process in P.U.C. Docket Number 28821. AT&T recommended a similar MFN Short Form for MFNs into non-successor agreements. AT&T asserted that Texas is the only state in AT&T's 22 state operating area, where a MFN Short Form into non-successor agreements is not available. According to AT&T, the MFN Short Form will eliminate administrative and cost burdens associated with conforming the MFN with approved amendments. Under AT&T's proposal, the MFN Short Form would be executed by both parties and placed on top of the underlying agreement and approved agreements. All documents would be filed with commission including a Joint Petition, AT&T's Affidavit and a Carrier's Affidavit. The Joint Petition would identify the approved amendments. AT&T attached a draft of its proposed MFN Short Form for MFNs into non-successor agreements to its comments.

#### *Subchapter E, Post-Interconnection Agreement Dispute Resolution*

##### *Section 21.125, Formal Dispute Resolution Proceeding*

Section 21.125(k) and (l) address the procedural requirements for issuance of an arbitration award, and obligations of the parties following the issuance of the arbitration award. AT&T objected to the language in subsections (k) and (l) permitting the presiding officer to render a decision that may involve modifications to the ICA. AT&T contended that under federal law, ICAs approved in accordance with 47 U.S.C. §252(a)(1) are binding, and thus the commission is preempted from modifying ICAs in a post-interconnection dispute proceeding. Supporting its contentions, AT&T argued that under *Pacific Bell v. Pac-West Telecomm, Inc.*, actions by a state commission that effectively change the terms of applicable ICAs contravene the Act's mandate that ICAs have the binding force of law. AT&T recommended that the commission modify subsections (k) and (l) to clarify that the commission may not modify or amend a binding approved ICA as part of a post-interconnection dispute proceeding. AT&T suggested that, at a minimum, the commission should delete the phrase "where modifications are approved" from subsection (l).

##### *Section 21.129, Request for Interim Ruling Pending Dispute Resolution*

Section 21.129 establishes the procedural requirements applicable to a request by a party for interim ruling pending dispute resolution when the dispute compromises the ability of a party to provide uninterrupted service or precludes the provisioning of any service, functionality or network element. AT&T commented that this section should be amended to allow a responding party to cross-examine a witness submitting an affidavit in support of a request for interim ruling, and

to provide an opportunity for the responding party to request some type of security when a party is seeking an interim ruling.

Section 21.129(g) sets forth the factors to be considered in deciding whether good cause exists to grant a request for interim relief. AT&T recommended amendment of §21.129(g)(3) to include a review of how the relief requested may impact the telecommunications industry in Texas in ascertaining whether the threatened injury to the movant outweighs any harm that the other party might suffer if interim relief is granted.

AT&T also suggested an amendment to §21.129 to state that a party may not use the interim ruling to circumvent or avoid pay-and-dispute or escrow provisions contained in the ICA. With respect to billing disputes, AT&T seeks amendments to §21.129 that would require a party to raise any billing dispute under the terms of the ICA prior to seeking interim relief pursuant to this section.

#### *Commission response*

The commission appreciates the thoughtful comments on this chapter. Some of the ideas suggested in the comments might improve these procedural rules, but require further consideration, including additional public input, before adoption. In addition, some of the suggestions affect rules for which there are similar rules in Chapter 22, Procedural Rules. In order to maintain uniformity of practice before the commission, it may be appropriate to amend both sets of rules at the same time. The commission will consider initiating a separate proceeding to amend this chapter and similar provisions of its other procedural rules, based on the benefits that could be derived from the amendments and other relevant factors.

The commission has completed the review of Chapter 21 pursuant to APA §2001.039 and has determined that the reason for initially adopting the rules in Chapter 21 continues to exist. Therefore, the commission readopts Chapter 21, Interconnection Agreements for Telecommunications Service Providers, pursuant to the Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 2007 and Supp. 2007) which provide the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; and pursuant to Texas Government Code §2001.039 (Vernon 2000 and Supp. 2007), which requires each state agency to review and readopt its rules every four years.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §14.052; Texas Government Code §2001.039.

## CHAPTER 21. INTERCONNECTION AGREEMENTS FOR TELECOMMUNICATIONS SERVICE PROVIDERS.

### SUBCHAPTER A. GENERAL PROVISIONS AND DEFINITIONS.

§21.1. Purpose and Scope.

§21.3. Definitions.

§21.5. Representative Appearances.

§21.7. Standards of Conduct.

§21.9. Computation of Time.

§21.11. Suspension of Rules and Good Cause Exceptions.

### SUBCHAPTER B. PLEADINGS, DOCUMENTS, AND OTHER MATERIALS.

§21.31. Filings of Pleadings, Documents, and Other Materials.

§21.33. Formal Requisites of Pleadings and Documents to be filed with the Commission.

§21.35. Service of Pleadings and Documents.

§21.37. Examination and Correction of Pleadings and Documents.

§21.39. Amended Pleadings.

§21.41. Motions.

### SUBCHAPTER C. PRELIMINARY ISSUES, ORDERS, AND PROCEEDINGS.

§21.61. Threshold Issues and Certification of Issues to the Commission.

§21.63. Interim Issues and Orders.

§21.65. Interlocutory Appeals.

§21.67. Dismissal of a Proceeding.

§21.69. Summary Decision.

§21.71. Sanctions.

§21.73. Consolidation of Dockets, Consolidation of Issues, and Joint Filings.

§21.75. Motions for Clarification and Motions for Reconsideration.

§21.77. Confidential Material.

### SUBCHAPTER D. DISPUTE RESOLUTION.

§21.91. Mediation.

§21.93. Voluntary Alternative Dispute Resolution.

§21.95. Compulsory Arbitration.

§21.97. Approval of Negotiated Agreements.

§21.99. Approval of Arbitrated Agreements.

§21.101. Approval of Amendments to Existing Interconnection Agreements.

§21.103. Approval of Agreements Adopting Terms and Conditions Pursuant to Federal Telecommunications Act of 1996 (FTA) §252(i).

### SUBCHAPTER E. POST-INTERCONNECTION AGREEMENT DISPUTE RESOLUTION.

§21.121. Purpose.

§21.123. Informal Settlement Conference.

§21.125. Formal Dispute Resolution Proceeding.

§21.127. Request for Expedited Ruling.

§21.129. Request for Interim Ruling Pending Dispute Resolution.

TRD-200801644

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: March 28, 2008



Texas Department of Transportation

#### **Title 43, Part 1**

The Texas Department of Transportation (department) files notice of the completion of review and, subject to the contemporaneous amendment of certain sections as specified in this notice, the readoption of Title 43 Texas Administrative Code, Part 1, Chapter 5, Finance; Chapter 15, Transportation Planning and Programming; and Chapter 27, Toll Projects.

This review and readoption has been conducted in accordance with Government Code, §2001.039. The Texas Transportation Commission (commission) has reviewed these rules and determined that the reasons for adopting them continue to exist. The department received no comments on the proposed rule review, which was published in the February 1, 2008 issue of the *Texas Register* (33 TexReg 953).

This concludes the review of Chapters 5, 15, and 27.

Comment or questions regarding this rule review may be submitted in writing to Bob Jackson, General Counsel, Texas Department of Trans-

portation, 125 East 11th Street, Austin, Texas 78701-2483, or by phone at (512) 463-8630.

TRD-200801650

Bob Jackson

General Counsel

Texas Department of Transportation

Filed: March 28, 2008



# 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: 1 TAC §55.116(a)

CAUSE NUMBER \_\_\_\_\_

IN THE INTEREST OF

§ IN THE \_\_\_\_\_ JUDICIAL COURT

§

OF

§

CHILDREN

§ \_\_\_\_\_ COUNTY, TEXAS

**NOTICE OF ADMINISTRATIVE WRIT OF WITHHOLDING**

\_\_\_\_\_, Obligor, is hereby given notice pursuant to Texas Family Code Chapter 158, Subchapter F, that his/her employer is immediately required to withhold the amounts specified below for payment of his/her current support and periodic medical support obligation, and for any overdue support arrearage, as follows:

OBLIGOR:

OBLIGEE:

Obligor's Employer:

**CHILDREN**

Current Support Due: \$ \_\_\_\_\_ monthly

Periodic Medical Support Due: \$ \_\_\_\_\_ monthly

Total Arrearage, including  
\$ \_\_\_\_\_ accrued interest: \$ \_\_\_\_\_

As of:

Amounts to be withheld from Obligor's wages upon service of writ:

On Current Support: \$ \_\_\_\_\_ monthly

On Periodic Medical Support: \$ \_\_\_\_\_ monthly

On Arrearage Owed: \$ \_\_\_\_\_ monthly

NOTICE OF ADMINISTRATIVE WRIT OF WITHHOLDING



**RIGHTS AND PROCEDURES**

Attached to this notice is a copy of the Administrative Writ of Withholding issued in this matter. \_\_\_\_\_ may contest withholding on the grounds that the identity of the Obligor or the existence or amount of arrearages is incorrect by requesting a review by the Title IV-D agency, by telephonic conference or in person, at the telephone number and address below:

After a review, the Title IV-D agency may continue the attached writ in effect or may issue a new administrative writ modifying the amount to be withheld or terminating withholding.

If a review fails to resolve any issue in dispute, the obligor may file a motion with the court to withdraw the administrative writ and request a hearing with the court not later than the 30th day after receiving notice of the agency's determination. Income withholding may not be interrupted pending a hearing by the court.

Should a Motion to Withdraw be filed, and a hearing conducted, the court will be requested to confirm all arrearage amounts then due.

If this is a reissuance of an existing withholding order on file with the court of continuing jurisdiction and the amount to be withheld for an arrearage is not being adjusted, pursuant to Texas Family Code § 158.502, the preceding rights and procedures regarding contests, reviews and judicial intervention into this administrative withholding process do not apply.

Child Support Officer  
Child Support Division  
Address  
City, State Zip  
Telephone No. \_\_\_\_\_  
Fax No. \_\_\_\_\_

**CERTIFICATE OF NOTICE**

I certify a copy of this Notice of Administrative Writ of Withholding was mailed by first class mail to Obligor and Obligee on \_\_\_\_\_ pursuant to Texas Family Code § 158.505.

\_\_\_\_\_

NOTICE OF ADMINISTRATIVE WRIT OF WITHHOLDING

ORDER/NOTICE TO WITHHOLD INCOME FOR CHILD SUPPORT  
ADMINISTRATIVE WRIT OF WITHHOLDING  
 NOTICE OF AN ORDER TO WITHHOLD INCOME FOR CHILD SUPPORT

Original  Amended  Termination Date: \_\_\_\_\_  
 State/Tribe/Territory Texas  
City/Co./Dist./Reservation \_\_\_\_\_  
 Non-governmental entity or Individual \_\_\_\_\_  
Case Number \_\_\_\_\_

Employer's /Withholder's Name \_\_\_\_\_  
Employer's /Withholder's Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Employer's/Withholder's Federal EIN Number (if known) \_\_\_\_\_

RE: \_\_\_\_\_  
Employee's/Obligor's Name (Last, First, MI) \_\_\_\_\_  
Employee's/Obligor's Social Security Number \_\_\_\_\_  
Employee's/Obligor's Case Identifier \_\_\_\_\_  
Obligee's Name (Last, First, MI) \_\_\_\_\_

**ORDER INFORMATION:** This document is based on the support or withholding order from \_\_\_\_\_.  
You are required by law to deduct these amounts from the employee's/obligor's income until further notice.

\$ \_\_\_\_\_ Per \_\_\_\_\_ current child support  
\$ \_\_\_\_\_ Per \_\_\_\_\_ past-due child support - Arrears 12 weeks or greater?  yes  no  
\$ \_\_\_\_\_ Per \_\_\_\_\_ current cash medical support  
\$ \_\_\_\_\_ Per \_\_\_\_\_ past-due cash medical support  
\$ \_\_\_\_\_ Per \_\_\_\_\_ spousal support  
\$ \_\_\_\_\_ Per \_\_\_\_\_ past-due spousal support  
\$ \_\_\_\_\_ Per \_\_\_\_\_ other (specify) \_\_\_\_\_  
for a total of \$ \_\_\_\_\_ Per \_\_\_\_\_ to be forwarded to the payee below.

You do not have to vary your pay cycle to be in compliance with the support order. If your pay cycle does not match the ordered payment cycle, withhold one of the following amounts:

\$ \_\_\_\_\_ per weekly pay period. \$ \_\_\_\_\_ per semimonthly pay period (twice a month).  
\$ \_\_\_\_\_ per biweekly pay period (every two weeks). \$ \_\_\_\_\_ per monthly pay period.

**REMITTANCE INFORMATION:** When remitting payment, provide the pay date/date of withholding and the case identifier. If the employee's/obligor's principal place of employment is Texas, begin withholding no later than the first pay period following the date on which this Order/Notice was delivered to the employer. Send payment on the same day of the pay date/date of withholding. The total withheld amount, including your fee, cannot exceed the lesser of the applicable CCPA % or, for a Texas employee, the state limit of 50% of the employee's/obligor's aggregate disposable weekly earnings.

If the employee's/obligor's principal place of employment is not Texas, for limitations on withholding, applicable time requirements, and any allowable employer fees, follow the laws and procedures of the employee's/obligor's principal place of employment (see #3 and #9, ADDITIONAL INFORMATION TO EMPLOYERS AND OTHER WITHHOLDERS).

Make check payable to (Payee and Case Identifier):  
OFFICE OF THE ATTORNEY GENERAL  
AG Case #  
Cause #

Send check to:

If remitting payment by EFT/EDI, call 1-877-474-4463 before first submission. Use this FIPS code: \_\_\_\_\_  
Bank routing number: \_\_\_\_\_ Bank account number: \_\_\_\_\_

**If this is an Order/Notice to Withhold:**

**If this is a Notice of an Order to Withhold:**

Print Name: \_\_\_\_\_  
Title of Issuing Official: \_\_\_\_\_

Print Name: \_\_\_\_\_  
Title (if appropriate) \_\_\_\_\_

Signature and Date \_\_\_\_\_

Signature and Date \_\_\_\_\_

IV-D Agency  Court  Attorney  Individual  Private Entity  
 Attorney with authority under state law to issue order/notice.

NOTE: Non-IV-D Attorneys, individuals, and non-governmental entities must submit a Notice of an Order to Withhold and include a copy of the income withholding order unless, under a state's law, an attorney in that state may issue an income withholding order. In that case, the attorney may submit an Order/Notice to Withhold and include a copy of the state law authorizing the attorney to issue an income withholding order/notice.

**ADDITIONAL INFORMATION TO EMPLOYERS AND OTHER WITHOLDERS**

If checked, you are required to provide a copy of this form to your employee/obligor. If your employee works in a state that is different from the state that issued this order, a copy must be provided to your employee/obligor even if the box is not checked.

- 1. **Priority:** Withholding under this Order or Notice has priority over any other legal process under state law (or tribal law, if applicable) against the same income. If there are federal tax levies in effect, please notify the contact person listed below. (See 10 below.)
- 2. **Combining Payments:** You may combine withheld amounts from more than one employee's/obligor's income in a single payment to each agency/party requesting withholding. You must, however, separately identify the portion of the single payment that is attributable to each employee/obligor.
- 3. **Reporting the Paydate/Date of Withholding:** You must report the paydate/date of withholding when sending the payment. The paydate/date of withholding is the date on which the amount was withheld from the employee's wages. You must comply with the law of the state of employee's/obligor/s principal place of employment with respect to the time periods within which you must implement the withholding and forward the support payments.
- 4. **Employee/Obligor with Multiple Support Withholdings:** If there is more than one Order or Notice against this employee/obligor and you are unable to honor all support Orders or Notices due to federal, state, or tribal withholding limits, you must follow the state or tribal law/procedure of the employee's/obligor/s principal place of employment. You must honor all Orders or Notices to the greatest extent possible. (See 9 below.)
- 5. **Termination Notification:** You must promptly notify the Child Support Enforcement (IV-D) Agency and/or the contact person listed below when the employee/obligor no longer works for you. Please provide the information requested and return a complete copy of this Order or Notice to the Office of the Attorney General, Child Support Division, Central File Maintenance, P O Box 12048, Austin, TX 78711-2048; and/or the contact person listed below. (See 10 below.) You may submit the termination online via the Internet at <http://employer.oag.state.tx.us>.

**THE EMPLOYEE/OBLIGOR NO LONGER WORKS FOR:**

EMPLOYEE'S/OBLIGOR'S NAME: \_\_\_\_\_ CASE IDENTIFIER: AG # \_\_\_\_\_  
 DATE OF SEPARATION FROM EMPLOYMENT: \_\_\_\_\_  
 LAST KNOWN ADDRESS: \_\_\_\_\_  
 NEW EMPLOYER/ADDRESS: \_\_\_\_\_

- 6. **Lump Sum Payments:** You may be required to report and withhold from lump sum payments such as bonuses, commissions, or severance pay. If you have any questions about lump sum payments, contact the Child Support Enforcement (IV-D) Agency.
- 7. **Liability:** If you have any doubts about the validity of the Order or Notice, contact the agency or person listed below under 10. If you fail to withhold income as the Order or Notice directs, you are liable for both the accumulated amount you should have withheld from the employee's/obligor's income and any other penalties set by state or tribal law/procedure.  
 \_\_\_\_\_  
 \_\_\_\_\_
- 8. **Anti-discrimination:** You are subject to a fine determined under state or tribal law for discharging an employee/obligor from employment, refusing to employ, or taking disciplinary action against any employee/obligor because of a child support withholding.  
 \_\_\_\_\_  
 \_\_\_\_\_
- 9. **Withholding Limits:** For state orders, you may not withhold more than the lesser of: 1) the amounts allowed by the Federal Consumer Credit Protection Act (15 U.S.C. §1673 (b)); or 2) the amounts allowed by the state of the employee's/obligor's principal place of employment. The federal limit applies to the aggregate disposable weekly earnings (ADWE). ADWE is the net income left after making mandatory deductions such as: state, federal, local taxes, Social Security taxes, statutory pension contributions, and Medicare taxes. The Federal CCPA limit is 50% of the ADWE for child support and alimony, which is increased by 1) 10% if the employee does not support a second family; and/or 2) 5% if arrears greater than 12 weeks.  
 For tribal orders, you may not withhold more than the amounts allowed under the law of the issuing tribe. For tribal employers who receive a state order, you may not withhold more than the amounts allowed under the law of the state that issued the order.

**Child(ren)'s Name(s)**

- 10. If you or your employee/obligor have any questions, contact \_\_\_\_\_ at \_\_\_\_\_, by telephone at \_\_\_\_\_, by Fax at \_\_\_\_\_ or by internet for employees at <http://childsupport.oag.state.tx.us> or for employers at <http://employer.oag.state.tx.us>.

**IMPORTANT:** The person completing this form is advised that the information on this form may be shared with the obligor.  
April 2007

OMB 0970-0154  
Form 3N001

**Figure: 10 TAC §80.93(b)**

**Texas Department of Housing and Community Affairs  
Tax Lien File Layout**

<b>MUST be ASCII Fixed Record Layout (Text Format)</b>			
<b>ITEM</b>	<b>PICTURE</b>	<b>OFFSET</b>	<b>Additional Information for Accurate Filing</b>
<b>516 bytes total per each record</b>			
<b>All text fields, addresses, names, etc should be left justified.</b>			
Home Identification Label-No	Alpha 10	1-10	The label number must be exactly 10 characters - anything more or less will be invalid. Also, additional text (i.e., "Lab#" before the label or "A" or "A/B" after the number) will invalidate the field.
Serial-No	Alpha 26	11-36	If there is no label number, LEAVE SPACES BLANK – DO NOT enter ZEROS, UNKNOWN, NONE or anything else in this field. Serial numbers must only include the number of the first section - and not be prefixed with anything else (i.e., SER#, #, S#, or using both section letters as A/B).
FILLER (blank spaces)	Alpha 20	37-56	The chances of recording a lien with only a serial number are very slim. Having a label number is the best chance for a successful recording. If there is no serial number, LEAVE SPACES BLANK – DO NOT enter ZEROS, UNKNOWN, NONE or anything else in this field.
<b>Taxpayer Identification</b>			
Taxpayer-Name	Left Justified Alpha 40	57-96	Model name is no longer required, so leave the 20-spaces originally allocated for this blank.
Taxpayer-Name2	Left Justified Alpha 40	97-136	
Taxpayer-Addr1	Left Justified Alpha 30	137-166	
Taxpayer-Addr2	Left Justified Alpha 30	167-196	
Taxpayer-City	Left Justified Alpha 20	197-216	
Taxpayer-State	Left Justified Alpha 2	217-218	
Taxpayer-Zipcode	Alpha 10	219-228	

ITEM	PICTURE	OFFSET	Additional Information for Accurate Filing
<b>Collector Identification</b>			
Collector-Tax-Entity-ID or Central Tax Collector Number	Alpha 10	229-238	The taxing entity id or the Dept. assigned Central Tax Collector number MUST be 10 characters and in the following format XXX-XXX-XX.
Collector-Name	Left Justified Alpha 40	239-278	Enter the name of the taxing jurisdiction.
Collector-Name2	Left Justified Alpha 40	279-318	Enter the name of the collector.
Collector-Addr1	Left Justified Alpha 30	319-348	
Collector-Addr2	Left Justified Alpha 30	349-378	
Collector-City	Left Justified Alpha 20	379-398	
Collector-State	Left Justified Alpha 2	399-400	
Collector-Zipcode	Alpha 10	401-410	
<b>Lien Information</b>			
Tax-Roll-Account-No	Alpha 26	411-436	
FILLER (blank spaces)	Alpha 8	437-444	Lien date is the date the lien is received by TDHCA and will be inserted when recorded; so leave the 8-spaces originally allocated for this blank.
Tax-Year - YYYY	Alpha 4	445-448	
Tax Amount	Alpha 8	449-456	The tax amount is required and must be entered without a decimal point (Example: if tax amount is \$300.25, please entered as 00030025).
Release-Date -- YYYYMMDD	Alpha 8	457-464	The date MUST be formatted as YYYYMMDD and have no slashes or spaces.
FILLER (blank spaces)	Alpha 49	465-513	
County Code	Alpha 3	514-516	A carriage return after entering the 3-digit County Code is needed after each record for proper formatting.

Figure: 10 TAC §80.100(b)(1)

Texas Department of Housing and Community Affairs  
**MANUFACTURED HOUSING DIVISION**  
 P. O. BOX 12489 Austin, Texas 78711-2489  
 (800) 500-7074, (512) 475-2200 FAX (512) 475-3506  
 Internet Address: [www.tdhca.state.tx.us/mh/index.htm](http://www.tdhca.state.tx.us/mh/index.htm)

APPLICATION FOR MANUFACTURER'S LICENSE				
(Please type or print clearly.)				
Check one: <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Other				
1. Legal Business Name:				
2. Have you ever been licensed by TDHCA?		<input type="checkbox"/> YES <input type="checkbox"/> NO   If yes, provide license number:		
3. Physical Location Address:		City, State, ZIP and County		
4. Phone:		Fax:		
5. Mailing Address:		City, State, ZIP and County		
6. Date applicant became owner, operator (or date incorporated):				
7. Provide list of all trade names and the names of all other business organizations subject to this chapter and the name and address of any such business organization registered with the secretary of state (additional may be listed on a separate sheet).				
Trade Name	Physical Address, City, State, and ZIP			
8. Provide complete information on ALL owners, principals, partners and/or corporate officers (additional may be listed on a separate sheet). <small>NOTE: Providing your social security number is optional, HOWEVER, the processing of your application may be delayed without it.</small>				
Legal Name and Title	Mailing Address, City, State & ZIP	Phone	Date of Birth	SSN
9. Provide complete list of all persons (other than the principals listed above), who directly or indirectly participate in management or policy decisions for this applicant.				
Legal Name and Title	Mailing Address, City, State and ZIP	Phone		
10. Have you, or a corporate officer or partner, been convicted of any felony or misdemeanor offense, OTHER than a Class C misdemeanor for traffic violations, within the five years PRECEDING this application?		<input type="checkbox"/> YES <input type="checkbox"/> NO   If YES, complete the required Criminal Conviction Questionnaire ensuring that you provide accurate and thorough details sufficient to persuade the Department that you conviction does not pose a threat to the consumer or the industry. <b>A DPS criminal check will be performed.</b>		

<b>11. Plant Certification</b>			
Date:			
<b>12. Production Inspection Primary Inspection Agency Label Prefix:</b>			
<b>13. Design Approval Primary Inspection Agency:</b>			
<b>14. Provide physical address, city, state and ZIP, where records will be kept (this can be the principal location or an alternate in-state location):</b>			
<b>15. Will you have a manufacturing plant or service facility in Texas?   <input type="checkbox"/> YES   <input type="checkbox"/> NO</b>			
If NO, to assure the availability of prompt and satisfactory warranty service, a manufacturer which does not have a licensed manufacturing plant or other facility in Texas from which warranty service and repairs can be provided and made, shall be bonded or post other security in an additional amount of \$100,000.			
Or, to be exempt from the additional security, you must have a bona fide service facility in Texas, pursuant to Section 80.40(d) of the Administrative Rules.			
Name of Facility:			
Address:			
City/State/ZIP:			
Phone:			
<b>Certification</b>			
License is subject to revocation, if the Department is <b>NOT</b> notified in writing of any changes in the information given on this application or if there is a violation of the law.			
With knowledge of penalties for false statements, I certify that to the best of my knowledge all information submitted on this application and on all attached documents is true and correct.			
(Signature of Applicant or President, if incorporated)		(Date)	(Signature of Secretary, if incorporated)
			(Date)
<b>Department Use Only</b>			
<b>Education:</b>	<b>Fees:</b>	<b>Additional Requirements:</b>	
<input type="checkbox"/> 20 hours of Department Education in Austin, Texas	<input type="checkbox"/> \$250.00 Education Fee	<input type="checkbox"/> \$50,000 BOND/CD	
	<input type="checkbox"/> \$550.00 Retailer Licensing Fee	<input type="checkbox"/> Public Liability Insurance	
	<input type="checkbox"/> \$900.00 Retailer/Broker Licensing Fee	<input type="checkbox"/> *Motor Vehicle Liability Insurance	
	<input type="checkbox"/> \$900.00 Ret./Installer Licensing Fee	<input type="checkbox"/> *Cargo Insurance (*if transporting homes)	
	<input type="checkbox"/> \$1250.00 Ret./Brok./Inst. Licensing Fee	<input type="checkbox"/> Retailer's Physical Damage	

Figure: 10 TAC §80.100(b)(2)

Texas Department of Housing and Community Affairs

MANUFACTURED HOUSING DIVISION

P. O. BOX 12489 Austin, Texas 78711-2489  
 (800) 500-7074, (512) 475-2200 FAX (512) 475-3506  
 Internet Address: [www.tdhca.state.tx.us/mh/index.htm](http://www.tdhca.state.tx.us/mh/index.htm)

APPLICATION FOR LICENSE (FOR A RETAILER, BROKER, INSTALLER AND/OR REBUILDER) <i>(Please type or print clearly.)</i>				
Check one: <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Other				
1. Legal Business Name: _____				
2. Have you ever been licensed by TDHCA? <input type="checkbox"/> YES <input type="checkbox"/> NO    If yes, provide license number: _____				
3. Physical Location Address: _____ City, State, ZIP and County				
4. Phone: _____ Fax: _____				
5. Mailing Address: _____ City, State, ZIP and County				
6. Date applicant became owner, operator (or date incorporated): _____				
7. Provide list of all trade names and the names of all other business organizations subject to this chapter and the name and address of any such business organization registered with the secretary of state (additional may be listed on a separate sheet).				
Trade Name	Physical Address, City, State, and ZIP			
8. Provide complete information on ALL owners, principals, partners and/or corporate officers (additional may be listed on a separate sheet). <i>NOTE: Providing your social security number is optional, HOWEVER, the processing of your application may be delayed without it.</i>				
Legal Name and Title	Mailing Address, City, State & ZIP	Phone	Date of Birth	SSN
9. Provide complete list of all persons (other than the principals listed above), who directly or indirectly participate in management or policy decisions for this applicant.				
Legal Name and Title	Mailing Address, City, State and ZIP	Phone		
10. Have you, or a corporate officer or partner, been convicted of any felony or misdemeanor offense, OTHER than a Class C misdemeanor for traffic violations, within the five years PRECEDING this application?		<input type="checkbox"/> YES <input type="checkbox"/> NO    If YES, complete the required Criminal Conviction Questionnaire ensuring that you provide accurate and thorough details sufficient to persuade the Department that you conviction does not pose a threat to the consumer or the industry. <b>A DPS criminal check will be performed.</b>		
11. Indicate which type of license you are applying for:				
<input type="checkbox"/> R= Retailer <input type="checkbox"/> RB= Retailer/Broker <input type="checkbox"/> RI=Retailer/Installer <input type="checkbox"/> RBI=Retailer/Broker/Installer <input type="checkbox"/> B= Broker <input type="checkbox"/> I= Installer <input type="checkbox"/> RB=Rebuilder				



12. As applicable, indicate what function(s) you will be performing:		<input type="checkbox"/> Transporting	<input type="checkbox"/> Installation
13. Are you in arrears on any taxes owed to the State of Texas? Are you in arrears on a guaranteed student loan?		<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO	If you answered YES to either question, provide proof that you are in good standing with them or that you have made payment arrangements.
Provide physical address, city, state and ZIP, where records will be kept (this can be the principal location or an alternate in-state location):			
<b>Certification</b>			
License is subject to revocation, if the Department is <b>NOT</b> notified in writing of any changes in the information given on this application or if there is a violation of the law.			
With knowledge of penalties for false statements, I certify that to the best of my knowledge all information submitted on this application and on all attached documents is true and correct.			
<i>(Signature of Applicant or President, if incorporated)</i>		<i>(Signature of Secretary, if incorporated)</i>	
<i>(Date)</i>		<i>(Date)</i>	
<b>Department Use Only</b>			
<b>Education:</b> <input type="checkbox"/> 20 hours of Department Education in Austin, Texas	<b>Fees:</b> <input type="checkbox"/> \$250.00 Education Fee <input type="checkbox"/> \$550.00 Retailer Licensing Fee <input type="checkbox"/> \$350.00 Broker Licensing Fee <input type="checkbox"/> \$350.00 Installer Licensing Fee <input type="checkbox"/> \$900.00 Retailer/Broker Licensing Fee <input type="checkbox"/> \$900.00 Ret./Installer Licensing Fee <input type="checkbox"/> \$1250.00 Ret./Brok./Inst. Licensing Fee	<b>Additional Requirements:</b> <input type="checkbox"/> \$50,000 BOND/CD <input type="checkbox"/> Public Liability Insurance <input type="checkbox"/> *Motor Vehicle Liability Insurance <input type="checkbox"/> *Cargo Insurance (*if transporting homes) <input type="checkbox"/> Retailer's Physical Damage	

Figure: 10 TAC §80.100(b)(4)

Texas Department of Housing and Community Affairs

MANUFACTURED HOUSING DIVISION  
 P. O. BOX 12489 Austin, Texas 78711-2489  
 (800) 500-7074, (512) 475-2200 FAX (512) 475-3506  
 Internet Address: [www.tdhca.state.tx.us/mh/index.htm](http://www.tdhca.state.tx.us/mh/index.htm)

<b>APPLICATION FOR SALESPERSON'S LICENSE</b> <i>(Please type or print clearly.)</i>		
<b>1. Name of Salesperson:</b>	<b>2. Date of Birth:</b>	/ /
<b>3. Home Address:</b> City: _____ State: _____ Zip: _____	<b>4. Social Security #:</b>	- -
<b>5. Telephone:</b> Home ( ) _____ Telephone: _____ Fax: _____ Work ( ) _____ Work ( ) _____ ( ) _____		
<b>6. Sponsoring Retailer:</b>	<b>Sponsoring Retailer's Lic. #:</b>	
<b>7. Business Address:</b> City: _____ State: _____ Zip: _____		
<b>8. List dates, employer and address for each job or position at which you have worked for the past three years. All gaps in employment must be explained.</b>		
(Dates)	(Employer)	(Address)
(Dates)	(Employer)	(Address)
(Dates)	(Employer)	(Address)
<b>9. Have you ever been licensed by TDHCA? YES / NO If so, please provide license number:</b>		
<b>10. Have you been convicted of any felony or misdemeanor offense, other than a Class C misdemeanor for a traffic violation, within the five years PRECEDING this application?</b> [ ] YES [ ] NO <i>If YES, complete the enclosed Criminal Conviction Questionnaire.</i>		
Are you in arrears on any taxes owed to the State of Texas? [ ] YES [ ] NO		
Are you in arrears on a guaranteed student loan? [ ] YES [ ] NO		
<b>Certification</b>		
License is subject to revocation, if the Department is <b>NOT</b> notified in writing of any changes in the information given on this application or if there is a violation of the law. License will be suspended if the education requirements of §1201.104(c) are not successfully completed by the next scheduled course offered after the date the license is issued. With knowledge of penalties for false statements, I certify that to the best of my knowledge all information submitted on this application and on all attached documents is true and correct.		
(Signature of Applicant)	(Date)	(Signature of Sponsoring Retailer) (Date)
<b>Payment</b>		
Attach the required license fee of \$200.00 (two hundred dollars) to this application. Payment may be made by company or business firm check, money order or cashier's check. Please make payable to: <b>Texas Department of Housing and Community Affairs</b> . Mail to the address listed at the top of this form.		
<b>Department Use Only</b>		
Fees [ ] \$200.00 License Fee	Date Received:	/ /

**Figure: 10 TAC §80.100(b)(16)**

Texas Department of Housing and Community Affairs

MANUFACTURED HOUSING DIVISION  
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 Internet Address: [www.tdhca.state.tx.us/mh/index.htm](http://www.tdhca.state.tx.us/mh/index.htm)

**NOTICE OF INSTALLATION (FORM T)**

HUD Label or Texas Seal # (s): \_\_\_\_\_ Serial # (s): \_\_\_\_\_

Manufacturer Name: \_\_\_\_\_ License No. \_\_\_\_\_

Home Size - Width / Length: \_\_\_\_\_ X \_\_\_\_\_ Weight \_\_\_\_\_ Date of Manufacture: \_\_\_\_/\_\_\_\_/\_\_\_\_ Model / Name: \_\_\_\_\_

**Draw A Map To Provide Directions To Home On Page 2**

Consumer: \_\_\_\_\_ Phone Numbers: Home: (\_\_\_\_) \_\_\_\_\_ Work: (\_\_\_\_) \_\_\_\_\_

Mailing Address: \_\_\_\_\_ City \_\_\_\_\_ ZIP: \_\_\_\_\_

Site Address: \_\_\_\_\_ City \_\_\_\_\_ ZIP: \_\_\_\_\_

County Where Home is Installed: \_\_\_\_\_

Actual Installation Date: \_\_\_\_/\_\_\_\_/\_\_\_\_ Wind Zone on Data Plate: I (\_\_\_\_) II (\_\_\_\_) III (\_\_\_\_)

Is the home installed in a Humid & Fringe Climate Yes (\_\_\_\_) No (\_\_\_\_) Was the home labeled for alternate construction. Yes (\_\_\_\_) No (\_\_\_\_)

	Name	Address	License #	Expiration Date	Phone #
Retailer					
Installer					

(\_\_\_\_) New (\_\_\_\_) Used Does retailer or installer provide skirting? Yes (\_\_\_\_) No (\_\_\_\_)

Is installation part of sales contract of used home? Yes (\_\_\_\_) No (\_\_\_\_) Not Applicable (\_\_\_\_)

The home has been installed in accordance with:

- (\_\_\_\_) 1. Manufacturer's Home Installation Instructions (provide page number or option \_\_\_\_\_).
- (\_\_\_\_) 2. State Generic Standards - Title 10 Texas Administrative Code (10 TAC) §§80.22, 80.23, 80.24, and 80.25.
- (\_\_\_\_) 3. A stabilization system registered with the Department in accordance with 10 TAC §80.26 - provide name of system or reference to MHD Approval Letter or registration \_\_\_\_\_.
- (\_\_\_\_) 4. A Special Foundation System (attach a copy of the drawing for this system and provide a reference, if applicable, to any drawing previously submitted).

**IF NO METHOD IS CHECKED, IT WILL BE PRESUMED THAT OPTION 2  
 (STATE GENERIC STANDARDS) WAS USED.**

To be submitted to the Department along with the required fee no later than the 7<sup>th</sup> day after which the installation is completed. The Installation Report (Form T) should no longer be submitted with the title documents.

**Per §1201.206(f):** On secondary moves the notice must be accompanied by either the original notice of installation or a certification that a true and correct copy of the notice of installation has been provided to the chief appraiser of the county where the home is installed. The delivery of the copy of the notice to the chief appraiser may be accomplished by either certified mail or by electronic mailing of the electronically reproduced document in a commonly readable format.

I verify that I am a licensed installer, that I am responsible for the installation described, and that the information supplied is true and correct. Executed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Signature (Retailer/Installer) Name (print or type)

Department Use Only	
<input type="checkbox"/> Inspected Without Violations <input type="checkbox"/> Inspected With Violations <input type="checkbox"/> Not Inspected, Unit Skirted	<input type="checkbox"/> Not Inspected, Unable to Locate <input type="checkbox"/> Not Inspected, No Unit At Location <input type="checkbox"/> Not Inspected, Unit Not Accessible
Inspection Date: _____ HUD/Seal #: _____	
<i>I hereby certify on this _____ day of _____, 20____ that the above inspection results are true and correct to the best of my knowledge and belief.</i>	
Inspector Signature: _____ Printed Name: _____	

**DRAW MAP BELOW**



Figure: 10 TAC §80.100(b)(19)

Texas Department of Housing and Community Affairs

MANUFACTURED HOUSING DIVISION

P. O. BOX 12489 Austin, Texas 78711-2489  
 (800) 500-7074, (512) 475-2200 FAX (512) 475-1109  
 Internet Address: [www.tdhca.state.tx.us/mh/index.htm](http://www.tdhca.state.tx.us/mh/index.htm)

**APPLICATION FOR STATEMENT OF OWNERSHIP AND LOCATION**

The filing of an application for the issuance of a Statement of Ownership and Location, later than sixty (60) days after the date of a sale to a consumer for residential use, may result in a fee of up to one hundred dollars (\$100). Any such application that is submitted late may be delayed until the fee is paid in full.

BLOCK 1: Transaction Identification					
This application is for: <input type="checkbox"/> New home application <input type="checkbox"/> Used home application <input type="checkbox"/> Other			(For Department Use Only) Coding: Lien on file: Y / N      Lienholder Code County Code:              Right of Surv.: Y / N Retailer #:                  Manufacturer #:		
BLOCK 2(a): Home Information (required)					
Manufacturer Name: Address: City, State, Zip: License Number:				Model: Date of Manufacture: Total Square Feet: Wind Zone:	
	<i>Label/Seal Number</i>	<i>Complete Serial Number</i>	<i>Weight</i>	<i>Size *</i>	<i>*NOTE: Size must be reported as the outside dimensions (length and width) of the home as measured to the nearest 1/2 foot at the base of the home, exclusive of the tongue or other towing device.</i>
Section 1:				X	
Section 2:				X	
Section 3:				X	
Section 4:				X	
2(b) <input type="checkbox"/>	Is home being sold? <input type="checkbox"/> No <input type="checkbox"/> Yes If yes, and if there is/are no HUD Label(s) or Texas Seal(s) on your home, a Texas Seal will be need to be purchased and will be issued to each section of your home at an additional cost of \$35.00 per section. <i>Single - \$35 Double - \$70 Triple - \$105</i>				
BLOCK 3: Home Location (required)					
Physical Location of Home: (or 911 address)		Physical Address (cannot be a Rt. or P. O. Box)      City      State      ZIP      County			
Was home moved for this sale? <input type="checkbox"/> No <input type="checkbox"/> Yes Was Home Installed for this sale? <input type="checkbox"/> No <input type="checkbox"/> Yes If yes, provide installer information below, if known					
Installer Name, address and phone:					
BLOCK 4: Ownership Information (required)					
4(a) Seller(s) or Transferor(s)			4(b) Purchaser(s), Transferee(s), or Owner(s)		
Name	License # if Retailer:	Name	License # if Retailer:		
Name		Name			
Mailing Address			Mailing Address		
City/State/Zip			City/State/Zip		
Daytime Phone Number ( ) -			Daytime Phone Number ( ) -		
4(c)	Date of sale, transfer or ownership change:				
4(d)	Did the buyer trade-in a home to purchase this home? <input type="checkbox"/> No <input type="checkbox"/> Yes If yes, provide the following: HUD Label _____, Serial No. _____				

<b>HUD Label #:</b>	<b>Serial #:</b>	<b>GF# (for title co.):</b>
<b>BLOCK 5: Right of Survivorship (if no box is checked, joint owners will NOT have right of survivorship)</b>		
<p><i>If joint owners desire right of survivorship, check the applicable box below:</i></p> <p><input type="checkbox"/> <b>Husband and wife</b> will be the only owners and agree that the ownership of the above described manufactured home shall, from this day forward, be held jointly and in the event of death, shall pass to the surviving owner.</p> <p><input type="checkbox"/> Joint owners are <u>other than</u> husband and wife, desire right of survivorship, and have attached a completed Affidavit of Fact for Right of Survivorship or other affidavits as necessary to meet the requirements of §1201.213 of the Standards Act.</p>		
<b>BLOCK 6: Personal/Real Property Election - Purchaser(s)/Transferee(s)/Owner(s) check one election type:</b>		
<p><input type="checkbox"/> Personal Property – Applicant elects to treat this home as personal property. All documents affecting title to the home will be filed in the records of the Department.</p> <p><input type="checkbox"/> Real Property – I (we) elect to treat this home as real property and certify that I am (we are) entitled to make this election in accordance with Section 1201.2055 of the Occupations Code because <b>(one box must be checked)</b>:</p> <p><input type="checkbox"/> I (we) own the real property that the home is attached to.    <input type="checkbox"/> I (we) have a qualifying long-term lease for the land that the home is attached to.</p> <p>I (We) understand that the home will not be considered to be real property until a certified copy of the SOL has been filed in the real property records of the county in which the home is located AND a copy stamped "Filed" has been submitted to the Department.</p> <p><b>Legal description must be provided for real property:</b> _____</p> <p>If a title company, list your file or GF #: _____</p> <p><input type="checkbox"/> <b>Inventory – (FOR RETAILER USE ONLY)</b> Retailer number must be provided in Block 4b if this election is checked.</p>		
<b>BLOCK 7: Designated Use - to be designated by purchaser(s), transferee(s), or owner(s)</b>		
<p><input type="checkbox"/> Residential Use (as a dwelling) OR</p> <p><input type="checkbox"/> Non-Residential - Check <b>one</b> of the following:    <input type="checkbox"/> <i>Business Use</i>    <input type="checkbox"/> <i>Salvage</i></p>		
<b>BLOCK 8: Liens – To specify any liens on the SOL the NOTICE OF LIEN FORM must be completed and submitted with the application. To prevent an SOL from being issued without a lien, in the event the Notice of Lien is detached, indicate name and phone number of lienholder's contact person and phone number.</b>		
<p><b>Lienholder's Representative:</b> _____ <b>Phone:</b> _____</p>		
<b>BLOCK 9: Special Mailing Instructions.</b>		
<p><b>IF</b> a copy of an SOL is to be mailed to anyone other than the owner or lienholder of record (such as a closing agent), please provide that mailing address here and enclose the additional fee.</p>	Name:	
	Company:	
	Street Address:	
	City, State, Zip:	
	Area Code/Phone:	
<b>BLOCK 10: Certification and Notarization - The statements set forth herein are made under oath and are true and correct.</b>		
<p><input type="checkbox"/> Seller certifies that any required habitability warranty has been delivered (consumer to consumer sales are exempt).</p> <p><input type="checkbox"/> Seller certifies that the purchaser has been given a written disclosure on a form prescribed by the Department describing the condition of the home and of any appliances that are included in the home.</p>		
<b>10(a) Notarized signature of each seller/transferrer</b>	<b>10(b) Notarized signature of each purchaser/transferee or owner</b>	
<p>_____ <i>Signature of owner or authorized seller</i></p> <p>Sworn and subscribed before me this ____ day of _____, 20__</p> <p>_____ <i>Signature of Notary</i></p> <p>SEAL</p>	<p>_____ <i>Signature of purchaser/transferee or owner</i></p> <p>Sworn and subscribed before me this ____ day of _____, 20__</p> <p>_____ <i>Signature of Notary</i></p> <p>SEAL</p>	
<p>_____ <i>Signature of owner or authorized seller</i></p> <p>Sworn and subscribed before me this ____ day of _____, 20__</p> <p>_____ <i>Signature of Notary</i></p> <p>SEAL</p>	<p>_____ <i>Signature of purchaser/transferee or owner</i></p> <p>Sworn and subscribed before me this ____ day of _____, 20__</p> <p>_____ <i>Signature of Notary</i></p> <p>SEAL</p>	

Figure: 10 TAC §80.100(b)(20)

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
MANUFACTURED HOUSING DIVISION  
P. O. BOX 12489 Austin, Texas 78711-2489  
(800) 500-7074, (512) 475-2200 FAX (512) 475-1109  
Internet Address: [www.tdhca.state.tx.us/mh/index.htm](http://www.tdhca.state.tx.us/mh/index.htm)

<b>AFFIDAVIT OF FACT FOR REAL PROPERTY</b> <i>(Sworn Statement)</i>	
<b>BLOCK 1: Home Information</b>	
Manufacturer: _____	Model: _____
Serial Number: _____	Label # and/or Seal #: _____
Square Footage: _____	Size: _____
<b>BLOCK 2: Statement of Facts</b>	
<p>The undersigned hereby certifies that the closing of a mortgage loan to be secured by real property including the manufactured home identified herein was held, the loan was funded, and a deed of trust covering the real property and all improvements on the property was recorded (copy attached) and the licensed title company or attorney who closed the loan failed to complete the conversion to real property in accordance with Chapter 1201 of the Occupations Code. In connection with an Application for a Statement of Ownership and Location electing real property status for the purpose of obtaining a certified copy of the Statement of Ownership and Location and making the necessary filings and notifications to complete such conversion, I hereby certify the following:</p> <ul style="list-style-type: none"> <li>(1) the record owner of the home, as reflected on the department's records, has been given at least 60 days' prior written notice by certified mail at:               <ul style="list-style-type: none"> <li>(A) the location of the home and, if it is different, the mailing address of the owner as specified in the department records; and</li> <li>(B) any other location the holder or servicer knows or believes, after a reasonable inquiry, to be an address where the owner may have been or is receiving mail or is an address of record.</li> </ul> </li> </ul>	
<b>BLOCK 3: Signature (Notarization is REQUIRED)</b>	
<p>_____</p> <p style="text-align: center;"><i>(Signature of holder's or servicer's authorized representative)</i></p> <p>_____</p> <p style="text-align: center;"><i>(Printed name and title of authorized representative)</i></p> <p>Before me personally appeared the person (s) whose signature (s) appear above, who by being sworn, upon oath, say that the statements set forth hereinabove are true and correct. Subscribed and sworn before me this ____ day of _____ 20 ____.</p> <p>_____</p> <p style="text-align: center;"><i>(Name of Notary)</i></p> <p>_____</p> <p style="text-align: center;"><i>(Notary Public)</i></p> <p>_____</p> <p style="text-align: center;"><i>(Commission Expires)</i></p> <p style="text-align: right; margin-right: 50px;"><i>SEAL</i></p> <p style="text-align: right;"><i>Notary Public State of Texas</i></p>	

Figure: 10 TAC §80.100(b)(24)

Texas Department of Housing and Community Affairs

MANUFACTURED HOUSING DIVISION

P. O. BOX 12489 Austin, Texas 78711-2489

(800) 500-7074, (512) 475-2200 FAX (512) 475-1109

Internet Address: www.tdhca.state.tx.us/mh/index.htm

Addendum to Application for Statement of Ownership and Location

BLOCK 1: Home Information

HUD Label: \_\_\_\_\_ Serial Number: \_\_\_\_\_

BLOCK 2: Statement of Facts

(Provide the information checked below.)

1. Physical address is: \_\_\_\_\_ (cannot be a Rt. or P.O. Box) Address City State ZIP County

2. Purchaser's mailing address is: \_\_\_\_\_ Address City State ZIP County

3. Seller's mailing address is: \_\_\_\_\_ Address City State ZIP County

4. Date of Sale: \_\_\_\_\_

5. Designated Use is: [ ] Residential Use (as a dwelling) OR [ ] Non-Residential If non-residential, specify: [ ] Business Use or [ ] Salvage

6. HUD Label number(s): Section 1 \_\_\_\_\_ Section 2 \_\_\_\_\_ Section 3 \_\_\_\_\_

Home has no label number(s). I have enclosed \$35 per seal, per section (Singlewide \$35 Double \$70, Triple \$105)

Home has no label OR serial number anywhere on the home. I have stated so under oath, in a sworn statement, on the back of this form.

7. Legal Description: \_\_\_\_\_

Block 3: Signature(s)

I hereby state to the Manufactured Housing Division of the Texas Department of Housing and Community Affairs as follows:

In connection with my application for a Statement of Ownership and Location for the above-described manufactured home, I hereby provide the following information as an addendum to my application:

(Seller's Signature)

(Purchaser's Signature)

(Seller's Signature)

(Purchaser's Signature)



Figure: 10 TAC §80.100(b)(31)

Texas Department of Housing and Community Affairs

MANUFACTURED HOUSING DIVISION

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**NOTICE OF LIEN  
 TO PERFECT A LIEN (OTHER THAN TAX LIEN)**

BLOCK 1: Home Information (required)	
	<i>Label/Seal Number</i>
Section 1:	<i>Complete Serial Number</i>
Section 2:	
Section 3:	
Section 4:	

BLOCK 2: Liens - Specify any liens (other than tax liens), charges, or other encumbrances to be recorded on the SOL			
Effective Date of Lien:		Effective Date of Lien:	
Name of First Lienholder:		Name of Second Lienholder:	
Mailing Address:		Mailing Address:	
City/State/ZIP:		City/State/ZIP:	
Daytime Phone Number:	(     )	Daytime Phone Number:	(     )
Dollar amount of Lien:	\$	Dollar Amount of Lien:	\$

BLOCK 3: Signature of owner/borrower	
<p>_____</p> <p><i>Signature of purchaser/transferee or owner</i></p>	<p>_____</p> <p><i>Signature of purchaser/transferee or owner</i></p>

BLOCK 4: For Lien Assignments	
<p>_____</p> <p>Name of Former Lienholder</p> <p>_____</p> <p>Signature of Authorized Representative</p> <p>Sworn and subscribed before me this ____ day of _____, 20__</p> <p>_____</p> <p>Signature of Notary</p> <p style="text-align: center;">SEAL</p>	<p>_____</p> <p>Name of New Lienholder</p> <p>_____</p> <p>Signature of Authorized Representative</p> <p>Sworn and subscribed before me this ____ day of _____, 20__</p> <p>_____</p> <p>Signature of Notary</p> <p style="text-align: center;">SEAL</p>

**Figure: 10 TAC §80.100(b)(32)**

Texas Department of Housing and Community Affairs

MANUFACTURED HOUSING DIVISION

P. O. BOX 12489 Austin, Texas 78711-2489

(800) 500-7074, (512) 475-2200 FAX (512) 475-1109

Internet Address: [www.tdhca.state.tx.us/mh/index.htm](http://www.tdhca.state.tx.us/mh/index.htm)

**NOTIFICATION OF FILING STATUS AS A CENTRAL TAX COLLECTOR**

*Please type or print clearly.*

**BLOCK 1: Central Tax Collector Information**

Central Collector Name: \_\_\_\_\_

Central Collector's Address: \_\_\_\_\_

(Address)

(City)

(State) (Zip Code)

Phone #: ( ) ( )

FAX #: ( ) ( )

Email: \_\_\_\_\_

**BLOCK 2: Assignment of Central Tax Collector Number**

*(Department Use Only. The Department will notify taxing entity of the assigned number.)*

Central Tax Collector Number: CTC- \_\_\_\_\_

**BLOCK 3: Taxing Jurisdiction Information**

County Name: \_\_\_\_\_ County Code (3 digits): \_\_\_\_\_

Complete 8-Digit Taxing Entity ID #

Name of Taxing Entity



Additional taxing entities may be listed on the reverse side of this form.

**BLOCK 4: Notarized Signature Required**

Until revoked by written notice to the Department, the undersigned will be the sole agent of each taxing entity listed herein for the recordation and release of tax liens on manufactured homes within the county specified herein. The undersigned represents and warrants that it is acting as a centralized collector and that it has legal authority to record and release such liens under the Central Tax Collector number designated herein. A lien filed for a particular year under the designated Central Tax Collector number may be for taxes due to one or more of the entities for which the Central Collection Agent collects, whereas a lien release filed for that year under that same number indicates that ALL taxes due to each entity for which the Agent collects have been discharged. In the event that any of the information provided herein changes, the undersigned agrees and undertakes to provide the Department with written notice of such change at least ten (10) days prior to its taking effect, and until and unless such written notice has been actually received by the Department at least ten (10) days prior to its taking effect, the Department will not be bound by it.

\_\_\_\_\_  
(Central Collector's Signature)

\_\_\_\_\_  
(Date)

Before me personally appeared the person(s) whose signature(s) appear above, who by being sworn, upon oath, say that the statements set forth hereinabove are true and correct. Subscribed and sworn before me this \_\_\_\_ day of 20\_\_\_\_.

\_\_\_\_\_  
(Name of Notary)

\_\_\_\_\_  
(Notary Public)

\_\_\_\_\_  
(Commission Expires)

Notary Public State of Texas

SEAL



Figure: 10 TAC §80.100(b)(35)

Texas Department of Housing and Community Affairs

MANUFACTURED HOUSING DIVISION

P. O. BOX 12489 Austin, Texas 78711-2489
(800) 500-7074, (512) 475-2200 FAX (512) 475-3506
Internet Address: www.tdhca.state.tx.us/mh/index.htm

APPLICATION FOR LICENSE RENEWAL (OTHER THAN SALESPERSONS)

Renew your license in one of 3 ways:

- NEW! Renew online using a credit card or electronic check. For eligibility requirements and other information, visit us on the web at www.tdhca.state.tx.us/mh/industry-info.htm. Please help us improve by completing the survey afterward.
Complete this application and mail it with the renewal fee and proof that you completed the continuing education to: TDHCA, P.O. Box 12489, Austin, Texas 78711-2489
Deliver in person this completed application with the fee to MHD on the 1st floor at: 221 East 11th Street, Austin, Texas

BLOCK 1: Applicant Information (Please type or print clearly.)

License Number: Current Business Name:
Expiration Date: / / Current Mailing Address:
City/State/ZIP:

Has there been a business name change that you have not yet reported to TDHCA? [ ] Yes [ ] No
If yes, you must submit acceptable evidence that your bond covers the changes.

Has there been any change in location that you have not yet reported to TDHCA? [ ] Yes [ ] No
If yes, you must submit acceptable evidence that your bond covers the changes.

Has there been any change in corporate officers that you have not yet reported to TDHCA? [ ] Yes [ ] No
If yes, please list name(s) and date(s) of birth on the back of this page.

Have you, or a corporate officer or partner, been convicted in Texas or any other state of any felony or misdemeanor offense, other than a class c misdemeanor for a traffic violation, in the last 12 months? [ ] Yes [ ] No
If yes, please visit our website or contact our office to obtain a Criminal Conviction Affidavit, which you must complete and submit with this application.

Are you in arrears on any taxes owed the State of Texas? [ ] Yes [ ] No
If yes, please call Tax Assistance at (512) 463-4600 or 1-800-252-5555.

Are you in arrears on a guaranteed student loan? [ ] Yes [ ] No
If yes, please call the Guaranteed Student Loan Corporation at (512) 835-1900.

Attach a list of all related persons to this application as required by §1201.103 of the Standards Act.

BLOCK 2: License Type and Fees

Table with 4 columns: License Type, Fee, License Type, Fee. Includes options like Retailer (R) \$550, Retailer/Installer (RI)\* \$900, etc.

\* Installers must have a current certificate of insurance on file or submit it with this notice.

BLOCK 3: Certification

With knowledge of the penalties for false statements, I certify that to the best of my knowledge all information submitted on this application and on all attached documents is true and correct.

Printed Name and Title ( ) Phone Number Signature of Owner or Corporate Officer Date

Department Use Only: [ ] License Renewal Fee Received Date Received: / /

**PROBATIONARY  
INSTALLATION**

Texas Department of Housing and Community Affairs  
**MANUFACTURED HOUSING DIVISION**  
 P. O. BOX 12489 Austin, Texas 78711-2489  
 (800) 500-7074, (512) 475-2200 FAX (512) 475-3506  
 Internet Address: [www.tdhca.state.tx.us/mlh/index.htm](http://www.tdhca.state.tx.us/mlh/index.htm)

Fax this report within 3 working days from the date of installation to your assigned field office. Mail the original and fee by regular mail to the address on the letterhead.

**NOTICE OF INSTALLATION (FORM T)**

HUD Label or Texas Seal # (s): \_\_\_\_\_ Serial # (s): \_\_\_\_\_

Manufacturer Name: \_\_\_\_\_ License No. \_\_\_\_\_

Home Size - Width / Length: \_\_\_\_\_ X \_\_\_\_\_ Weight \_\_\_\_\_ Date of Manufacture: \_\_\_\_/\_\_\_\_/\_\_\_\_ Model / Name: \_\_\_\_\_

**Draw A Map To Provide Directions To Home On Page 2**

Consumer: \_\_\_\_\_ Phone Numbers: Home: (\_\_\_\_) \_\_\_\_\_ Work: (\_\_\_\_) \_\_\_\_\_

Mailing Address: \_\_\_\_\_ City \_\_\_\_\_ ZIP: \_\_\_\_\_

Site Address: \_\_\_\_\_ City \_\_\_\_\_ ZIP: \_\_\_\_\_

County Where Home is Installed: \_\_\_\_\_

Actual Installation Date: \_\_\_\_/\_\_\_\_/\_\_\_\_ Wind Zone on Data Plate: I (\_\_\_\_) II (\_\_\_\_) III (\_\_\_\_)

Is the home installed in a Humid & Fringe Climate Yes (\_\_\_\_) No (\_\_\_\_) Was the home labeled for alternate construction. Yes (\_\_\_\_) No (\_\_\_\_)

	Name	Address	License #	Expiration Date	Phone #
Retailer					
Installer					

(\_\_\_\_) New (\_\_\_\_) Used Does retailer or installer provide skirting? Yes (\_\_\_\_) No (\_\_\_\_)

Is installation part of sales contract of used home? Yes (\_\_\_\_) No (\_\_\_\_) Not Applicable (\_\_\_\_)

The home has been installed in accordance with:

- (\_\_\_\_) 1. Manufacturer's Home Installation Instructions (provide page number or option \_\_\_\_\_).
- (\_\_\_\_) 2. State Generic Standards - Title 10 Texas Administrative Code (10 TAC) §§80.22, 80.23, 80.24, and 80.25.
- (\_\_\_\_) 3. A stabilization system registered with the Department in accordance with 10 TAC §80.26 - provide name of system or reference to MHD Approval Letter or registration \_\_\_\_\_.
- (\_\_\_\_) 4. A Special Foundation System (attach a copy of the drawing for this system and provide a reference, if applicable, to any drawing previously submitted).

**IF NO METHOD IS CHECKED, IT WILL BE PRESUMED THAT OPTION 2 (STATE GENERIC STANDARDS) WAS USED.**

To be submitted to the Department along with the required fee no later than the 7<sup>th</sup> day after which the installation is completed. The Installation Report (Form T) should no longer be submitted with the title documents.

Per §1201.206(f): On secondary moves the notice must be accompanied by either the original notice of installation or a certification that a true and correct copy of the notice of installation has been provided to the chief appraiser of the county where the home is installed. The delivery of the copy of the notice to the chief appraiser may be accomplished by either certified mail or by electronic mailing of the electronically reproduced document in a commonly readable format.

I verify that I am a licensed installer, that I am responsible for the installation described, and that the information supplied is true and correct. Executed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Signature (Retailer/Installer)

\_\_\_\_\_  
Name (print or type)

**NOTE:** A minimum of five (5) probationary installations must be inspected without violations for a probationary installer's license to become a full installer's license.

Department Use Only	
<input type="checkbox"/> Inspected Without Violations	<input type="checkbox"/> Not Inspected, Unable to Locate
<input type="checkbox"/> Inspected With Violations	<input type="checkbox"/> Not Inspected, No Unit At Location
<input type="checkbox"/> Not Inspected, Unit Skirted	<input type="checkbox"/> Not Inspected, Unit Not Accessible
Inspection Date: _____ HUD/Seal #: _____	
<i>I hereby certify on this _____ day of _____, 20_____ that the above inspection results are true and correct to the best of my knowledge and belief.</i>	
Inspector Signature: _____	Printed Name: _____

**DRAW MAP BELOW**



Figure: 10 TAC §80.100(b)(39)

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
MANUFACTURED HOUSING DIVISION  
P. O. BOX 12489 Austin, Texas 78711-2489  
(800) 500-7074, (512) 475-2200 FAX (512) 475-1109  
Internet Address: [www.idhca.state.tx.us/mh/index.htm](http://www.idhca.state.tx.us/mh/index.htm)

<b>STATEMENT FROM TAX ASSESSOR-COLLECTOR</b> <i>To meet the requirements of Texas Occupations Code 1201.206(g)</i>	
<b>BLOCK 1: Home Information</b>	
Manufacturer: _____	Model: _____
Serial Number: _____	Label # and/or Seal #: _____
Tax Roll Account No.: _____	Physical Address: _____
<b>BLOCK 2: Statement of Facts</b>	
Date of Sale: ____ / ____ / ____	
<input type="checkbox"/> There are NO PERSONAL PROPERTY TAXES DUE on the manufactured home that may have accrued on each January 1 that falls within the 18 months before the date of sale specified above.	
<input type="checkbox"/> This home is not on the tax roll for this county.	
<b>BLOCK 3: Signature (Notarization is optional)</b>	
_____ <i>(Signature of tax assessor-collector's authorized representative)</i>	_____ <i>(County making this statement)</i>
_____ <i>(Printed name and title of authorized representative)</i>	
Before me personally appeared the person (s) whose signature (s) appear above, who by being sworn, upon oath, say that the statements set forth hereinabove are true and correct. Subscribed and sworn before me this ____ day of _____ 20 ____.	
_____ <i>(Name of Notary)</i>	<b>SEAL</b>
_____ <i>(Notary Public)</i>	
_____ <i>(Commission Expires)</i>	
<i>Notary Public State of Texas</i>	

Figure: 10 TAC §80.100(b)(40)

This notice must be sent by certified mail, return receipt requested, to the owner of record of the manufactured home described below and each lien holder, including any holder of a tax lien, reflected in the official records of the Texas Department of Housing and Community Affairs, Manufactured Housing Division, as of the date that this notice is sent.

**IMPORTANT NOTICE OF INTENT  
TO ACQUIRE OWNERSHIP OF AN ABANDONED MANUFACTURED  
HOME**

RE: **Manufactured Home with HUD label, Texas Seal and/or Serial Number(s)** \_\_\_\_\_  
\_\_\_\_\_ (the "Home")

**Name and address of owner(s) of record:**  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Name and address of 1<sup>st</sup> lienholder of record:**  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Name and address of 2<sup>nd</sup> lienholder of record:**  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Name and address of Tax Assessor-Collector  
where home is located:**  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear \_\_\_\_\_:

The above-referenced Home is on my real property located at \_\_\_\_\_  
\_\_\_\_\_ and appears to have been abandoned. It has  
been continuously unoccupied for at least four months, and the following indebtedness, secured by the  
Home, is delinquent (insert description of indebtedness including holder/payee):  
\_\_\_\_\_  
\_\_\_\_\_

**It is my INTENT TO DECLARE THE HOME ABDANDONED. It is my intent forty-five (45)  
days from the date of this letter, to declare the Home to be abandoned and fo apply to the Texas  
Department of Housing and Community Affairs, Manufactured Housing Division, for a Statement of  
Ownership and Location with respect to the Home, reflecting me to be the owner of the Home, free  
and clear of any liens, all in accordance with Tex. Occ. Code, §1201.217.**

\_\_\_\_\_  
(Printed Name of Real Property Owner)

\_\_\_\_\_  
(Signature of Real Property Owner)



Figure: 10 TAC §80.100(b)(41)

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

MANUFACTURED HOUSING DIVISION  
P. O. BOX 12489 Austin, Texas 78711-2489  
(800) 500-7074, (512) 475-2200 FAX (512) 475-1109  
Internet Address: [www.tdhca.state.tx.us/mh/index.htm](http://www.tdhca.state.tx.us/mh/index.htm)

<b>AFFIDAVIT OF FACT FOR ABANDONMENT</b> <i>(Sworn Statement)</i>	
<b>BLOCK 1: Home Information</b>	
Manufacturer: _____	Model: _____
Serial Number: _____	Label # and/or Seal #: _____
<b>BLOCK 2: Statement of Facts</b>	
<p>I own the real property on which the manufactured home identified above is located. Such manufactured home has been continuously unoccupied for at least four (4) months. Any indebtedness secured by the manufactured home is delinquent. I have made reasonable efforts to locate and give notice to all owners and lienholders of record with the Department that I am seeking to acquire ownership of this manufactured home pursuant to Tex. Occ. Code, Section 1201.217, Manufactured Home Abandoned. The manufactured home has remained on the real property for at least forty-five (45) days after the date that each such notice was postmarked. As evidence that all notice requirements have been fulfilled and that I am entitled to a statement of ownership and location reflecting me as the owner of the manufactured home, I have attached a true and correct copy of each of the following documents:</p> <ul style="list-style-type: none"><li>• Each notice <u>and</u> the return receipt for certified mail that was sent to the following:<ul style="list-style-type: none"><li>○ Each owner of the home at the address(es) on the statement of ownership and location records of the Department.</li><li>○ Each lienholder, including the county in which the home is located, and each holder of a recorded tax lien, on the statement of ownership and location records of the Department.</li></ul></li><li>• Evidence that any indebtedness secured by the manufactured home is delinquent.</li></ul> <p>For any certified mail for which the return receipt indicated that such mail was unclaimed or undeliverable, I have made a reasonable effort to determine the location of the party to whom such mail was addressed and, if I could locate an alternative address, I sent them the same notice at the alternative address by certified mail, and copies of the return receipts for such certified mail are attached.</p> <p>I certify that my ownership of the above-described real property is duly recorded in the deed or real property records for the county where such property is located.</p>	
<b>BLOCK 3: Signatures (Notarization is REQUIRED)</b>	
_____	_____
(Signature)	(Signature)
<p>Before me personally appeared the person(s) whose signature(s) appear above, who by being sworn, upon oath, say that the statements set forth hereinabove are true and correct. Subscribed and sworn before me this ____ day of _____ 20 ____.</p>	
_____	
(Name of Notary)	
_____	
(Notary Public)	
_____	
(Commission Expires)	
	SEAL
	Notary Public State of Texas

Figure: 10 TAC §80.100(b)(42)

Texas Department of Housing and Community Affairs  
MANUFACTURED HOUSING DIVISION  
P. O. BOX 12489 Austin, Texas 78711-2489  
(800) 500-7074, (512) 475-2200 FAX (512) 475-1109  
Internet Address: [www.tdhca.state.tx.us/mh/index.htm](http://www.tdhca.state.tx.us/mh/index.htm)

**Disclosure to Consumer**  
**(Possible Need to Vacate Home if Financing does not Close)**

**BLOCK 1: Home Information**

Manufacturer: \_\_\_\_\_ Model: \_\_\_\_\_  
Serial Number: \_\_\_\_\_ Label No. and/or Seal No: \_\_\_\_\_  
Square Footage: \_\_\_\_\_ Size: \_\_\_\_\_

**BLOCK 2: Occupancy of a Manufactured Home Before Closing**

A retailer must provide this disclosure prior to allowing a consumer to occupy a manufactured home before financing is complete, pursuant to Tex. Occ. Code, Section 1201.513(b).

- (b) A retailer may not knowingly permit a consumer to occupy a manufactured home that is the subject of a sale, exchange, or lease-purchase to that consumer before the closing of any required financing unless the consumer is first given a form adopted by the board disclosing that if for any reason the financing does not close, the consumer may be required to vacate the home.

**BLOCK 3: Signatures**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

**Figure: 10 TAC §80.100(b)(43)**

**Texas Department of Housing and Community Affairs**

**MANUFACTURED HOUSING DIVISION**  
 P. O. BOX 12489 Austin, Texas 78711-2489  
 (800) 500-7074, (512) 475-2200 FAX (512) 475-3506  
 Internet Address: [www.tdhca.state.tx.us/mh/index.htm](http://www.tdhca.state.tx.us/mh/index.htm)

**SALESPERSON'S APPLICATION FOR LICENSE RENEWAL**

Renew your license in one of 3 ways:

- Renew online using a credit card or electronic check. For eligibility requirements and other information, visit us on the web at [www.tdhca.state.tx.us/mh/industry-info.htm](http://www.tdhca.state.tx.us/mh/industry-info.htm). Please help us improve by completing the survey afterward.
- Complete this application and mail it with the renewal fee to: TDHCA, P.O. Box 12489, Austin, Texas 78711-2489
- Deliver in person this completed application with the fee to MHD on the 1<sup>st</sup> floor at: 221 East 11<sup>th</sup> Street, Austin, Texas

Type	Renewal Fee	1 to 90 days late (1 ½ times the renewal)	90 to 364 days late (2 times the renewal fee)
Salesperson	\$200	\$300	\$400

**BLOCK 1: Salesperson Information (Please type or print clearly.)**

License Number: \_\_\_\_\_ Expiration Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

Name: \_\_\_\_\_

Current Mailing Address: \_\_\_\_\_

City/State/ZIP: \_\_\_\_\_

Home Phone: \_\_\_\_\_

Work Phone: \_\_\_\_\_

Have you been convicted in Texas or any other state of a felony or misdemeanor offense, other than a Class C misdemeanor for a traffic violation, in the last 24 months?     Yes     No

**If yes, please visit our website or contact our office to obtain a *Criminal Conviction Affidavit*.**

**BLOCK 2: Employer Information**

Name of Sponsoring Retailer: \_\_\_\_\_

Sponsoring Retailer's Address: \_\_\_\_\_

City/State/ZIP: \_\_\_\_\_

Sponsoring Retailer's License#: \_\_\_\_\_

**BLOCK 3: Certification**

License is subject to revocation, if the Department is **NOT** notified in writing of any changes in the information given on this application or if there is a violation of the law. Evidence that the continuing education requirements of §1201.113 have been completed must be received by the Department before the license can be renewed.

With knowledge of penalties for false statements, I certify that to the best of my knowledge all information submitted on this application and on all attached documents is true and correct.

\_\_\_\_\_ (Signature of Applicant)      \_\_\_\_\_ (Date)      \_\_\_\_\_ (Signature of Sponsoring Retailer)      \_\_\_\_\_ (Date)

**Department Use Only:**     License Renewal Fee Received      Date Received: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

**Figure: 10 TAC §80.100(b)(44)**

**Texas Department of Housing and Community Affairs**

**MANUFACTURED HOUSING DIVISION**  
 P. O. BOX 12489 Austin, Texas 78711-2489  
 (800) 500-7074, (512) 475-2200 FAX (512) 475-3506  
 Internet Address: [www.tdhca.state.tx.us/mh/index.htm](http://www.tdhca.state.tx.us/mh/index.htm)

<b>APPLICATION FOR LICENSE INSTRUCTION PROVIDER</b>		
<i>(Please type or print clearly.)</i>		
Check one: <input type="checkbox"/> 20 Hour Initial Licensing Class <input type="checkbox"/> 8 Hour Continuing Education Class		
<b>1. Legal Business Name:</b>		
<b>2. Have you ever been an approved License Instruction Provider by TDHCA?</b>		<input type="checkbox"/> YES <input type="checkbox"/> NO   If yes, provide dates:
<b>3. Physical Location Address:</b>		<b>City, State, ZIP and County</b>
<b>4. Phone:</b>		<b>Fax:</b>
<b>5. Mailing Address:</b>		<b>City, State, ZIP and County</b>
<b>6. Email Address:</b>		
<b>7. Provide complete list of all instructors (additional instructors may be listed on a separate sheet). Attach biographies and credentials for each instructor.</b>		
Legal Name and Title	Mailing Address, City, State and ZIP	Phone
<b>Certification</b>		
License Instruction Provider is subject to revocation, if the Department is <b>NOT</b> notified in writing of any changes in the information given on this application or if there is a violation of the law.		
Included with this application is a true and correct copy of the course material to be used for said course.		
With knowledge of penalties for false statements, I certify that to the best of my knowledge all information submitted on this application and on all attached documents are true and correct.		
<i>(Signature of Applicant or President, if incorporated)</i> _____		<i>(Signature of Secretary, if incorporated)</i> _____
<i>(Date)</i> _____		<i>(Date)</i> _____
<b>Department Use Only</b>		
<b>Education:</b> <input type="checkbox"/> Copy of Course Material	<b>Fees:</b> <input type="checkbox"/> \$300.00 Fee	<b>Additional Requirements:</b> <input type="checkbox"/> Biography for each instructor <input type="checkbox"/> Credentials for each instructor <input type="checkbox"/> Schedule of fees to be charged for the course

Figure: 43 TAC Chapter 8 - Preamble

License Type	Fee	x 3%
Manufacturer	\$900	\$27.00
Manufacturer Dealer Fee	\$20 per dealer	\$0.60
Franchised Dealer – A	\$175.00	\$5.25
Franchised Dealer – B	\$275	\$8.25
Franchised Dealer – C	\$400	\$12.00
Franchised Dealer – D	\$500	\$15.00
Franchised Dealer – E	\$625	\$18.75
Franchised Dealer – F	\$750	\$22.50
Service Only Franchised Dealer	\$100	\$3.00
Converter	\$375	\$11.25
Lessor – A	\$175	\$5.25
Lessor – B	\$275	\$8.25
Lessor – C	\$400	\$12.00
Lessor – D	\$500	\$15.00
Lessor – E	\$625	\$18.75
Lessor – F	\$750	\$22.50
Lease Facilitator	\$375	\$11.25
Original GDN	\$500	\$15.00
Renewal GDN	\$200	\$6.00
Dealer Plates	\$45.30 each	\$1.36
Manufacturer Plates	\$40.30 each	\$1.21
Converter Plates	\$20.30 each	\$0.61

Figure: 43 TAC §8.153(c)(1)  
APPENDIX A-1

<b>TEXAS DEALER</b>									
<b>VEHICLE OWNED BY JOHN DOE AUTO SALES</b>									
THIS VEHICLE TEMPORARILY REGISTERED WITH STATE UNDER TAG #									
<b>EXPIRES</b>									
				-					
VIN _____									
FOR INTRANSIT, ROAD TESTING, DEMONSTRATION AND USE BY CHARITABLE ORGANIZATIONS									

DEALER TAG - ASSIGNED TO SPECIFIC VEHICLE

Figure: 43 TAC §8.153(c)(2)  
APPENDIX A-2

<p>● TEXAS DEALER ●</p> <p><b>VEHICLE OWNED BY JOHN DOE AUTO SALES</b></p> <p>THIS VEHICLE TEMPORARILY REGISTERED WITH STATE UNDER TAG #</p> <table border="1" style="margin: auto;"><tr><td style="width: 20px; height: 40px;"></td><td style="width: 20px; height: 40px;"></td><td style="width: 20px; height: 40px;"></td><td style="width: 20px; height: 40px;"></td><td style="width: 20px; height: 40px;"></td><td style="width: 20px; height: 40px;"></td><td style="width: 20px; height: 40px;"></td><td style="width: 20px; height: 40px;"></td><td style="width: 20px; height: 40px;"></td><td style="width: 20px; height: 40px;"></td></tr></table> <p><b>EXPIRES</b></p> <table border="1" style="margin: auto;"><tr><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td></tr></table> <p>Authorized Agent Tag</p> <p><b>FOR INTRANSIT, ROAD TESTING, DEMONSTRATION AND USE</b></p> <p>● BY CHARITABLE ORGANIZATIONS ●</p>																													

Dealer Tag – Assigned to Specific Salesperson

Figure: 43 TAC §8.153(c)(3)  
APPENDIX B-1

<b>TEXAS BUYER</b>									
THIS VEHICLE TEMPORARILY REGISTERED WITH STATE UNDER TAG #									
<b>EXPIRES</b>									
VIN _____					SELLER: ABC FANTASTIC FABULOUS AUTO SALES				

BUYERS TAG - INITIAL



Figure: 43 TAC §8.153(c)(4)  
APPENDIX B-2

**TEXAS BUYER SUPPLEMENTAL**  
THIS VEHICLE TEMPORARILY REGISTERED WITH STATE UNDER TAG #

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**EXPIRES**

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VIN \_\_\_\_\_ SELLER: ABC FANTASTIC FABULOUS AUTO SALES

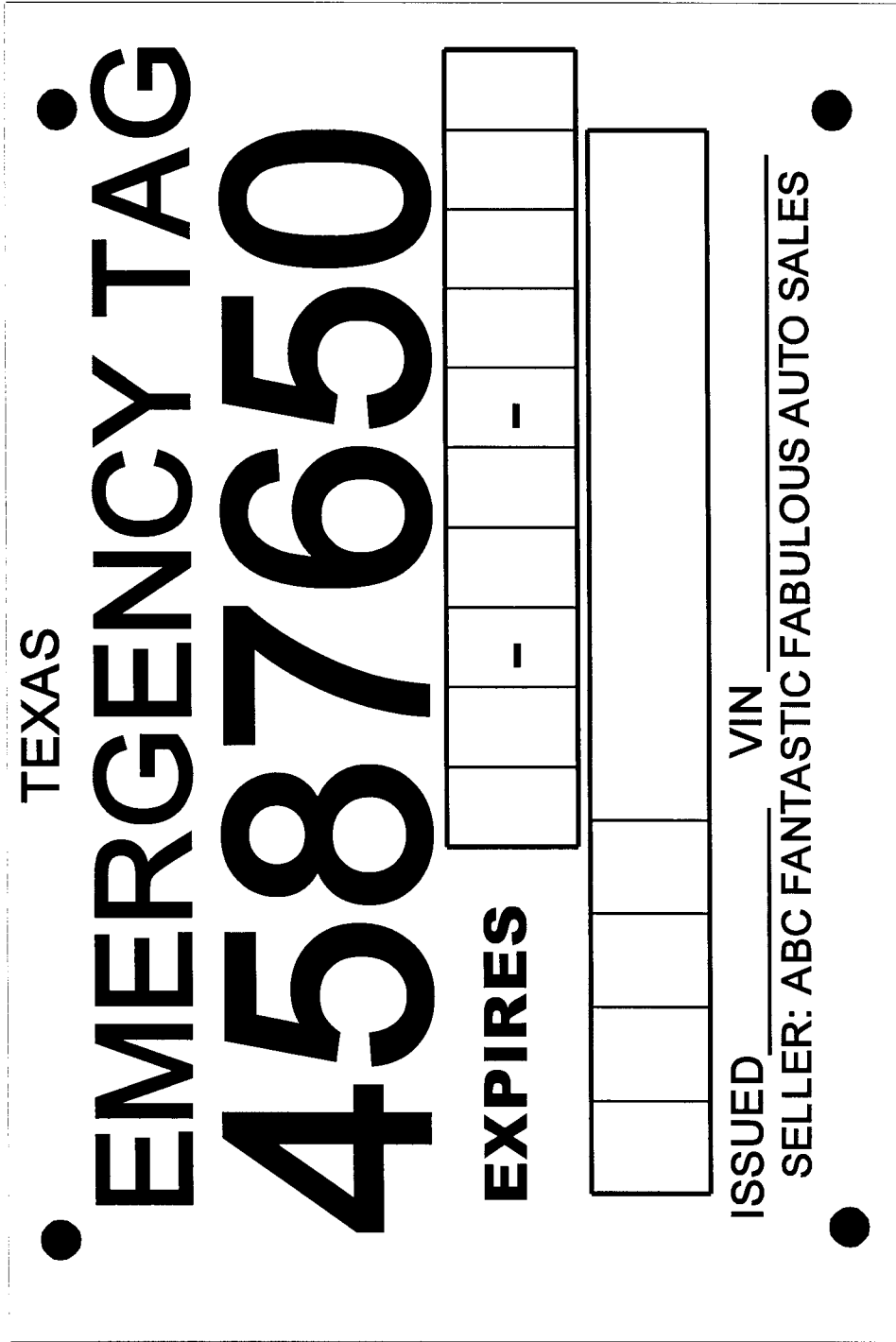
BUYERS TAG - SUPPLEMENTAL

Figure: 43 TAC §8.153(c)(5)  
APPENDIX B-3

<b>TEXAS BUYER – INTERNET</b>									
THIS VEHICLE TEMPORARILY REGISTERED WITH STATE UNDER TAG #									
<b>4587650</b>									
<b>EXPIRES</b>									
VIN _____									
SELLER: ABC FANTASTIC FABULOUS AUTO SALES									

INTERNET DOWN BUYERS TAG

Figure: 43 TAC §8.153(c)(6)  
APPENDIX B-4



EMERGENCY STATE BUYERS TAG

Figure: 43 TAC §8.153(c)(7)  
APPENDIX C -1

**TEXAS CONVERTER**

**VEHICLE OWNED BY JOHN DOE CONVERSIONS**

THIS VEHICLE TEMPORARILY REGISTERED WITH STATE UNDER PERMIT #

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**EXPIRES**

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VIN \_\_\_\_\_

FOR INTRANSIT, ROAD TESTING, DEMONSTRATION

CONVERTERS TAG

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# 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.

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## Texas Department of Agriculture

### Request for Proposals: Urban Schools Grants Program

Pursuant to the Texas Agriculture Code, §§48.001 - 48.005 and the Texas Administrative Code, Title 4, Part 1, Chapter 1, §§1.800 - 1.804, the Texas Department of Agriculture (TDA) hereby requests proposals for agricultural projects designed to foster an understanding and awareness of agriculture in elementary and middle school students for the period of September 1, 2008, through August 31, 2009, from certain Texas urban school districts. A total amount of up to \$2,500 may be awarded to an eligible elementary and middle school in a single grant cycle.

**Eligibility.** Proposals must be submitted by a Texas public elementary school from an urban school district with an enrollment of at least 49,000 students. According to Texas Education Agency's (TEA) October 2007 records, the eligible school districts are:

Aldine Independent School District;  
Arlington Independent School District;  
Austin Independent School District;  
Cypress-Fairbanks Independent School District;  
Dallas Independent School District;  
El Paso Independent School District;  
Fort Bend Independent School District;  
Fort Worth Independent School District;  
Garland Independent School District;  
Houston Independent School District;  
Katy Independent School District;  
Lewisville Independent School District;  
North East Independent School District;  
Northside Independent School District;  
Pasadena Independent School District;  
Plano Independent School District; and  
San Antonio Independent School District.

If your school district is not listed above and you feel it meets the minimum student enrollment of 49,000, you will need to attach TEA verification of enrollment in addition to your application.

**Proposal Requirements.** Each proposal may not exceed six pages and must include the following:

1. A cover page with the project title, name of the school district and elementary or middle school, both the principal's and project coordinator's names along with their contact information (school address, e-mail, telephone and fax numbers);
2. A detailed project description including the role of each grade level that will participate in the project;

3. A statement of the educational benefits of the project, including how the project will improve the students' understanding of agriculture;
4. A project budget including a detailed schedule of anticipated costs for the project.

**Deadline and Submission Information.** Proposals should be submitted to Lindsay Dickens, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. The street address is 1700 N. Congress Avenue, 11th Floor, Austin, Texas 78701.

Proposals must be received no later than 5:00 p.m. on June 13, 2008. One original and ten copies must be submitted. Fax copies will not be accepted.

Please contact Lindsay Dickens at (512) 463-6695 or by e-mail at grants@tda.state.tx.state.us with any questions you may have.

**Proposal Evaluations.** Proposals will be evaluated based on the requirements set forth above by a panel appointed by the Commissioner of the Texas Department of Agriculture. The panel shall review the proposals and make funding recommendations to the Commissioner. The panel shall consist of representatives from the following: Texas Department of Agriculture, education, livestock industry, specialty crop industry, row crop industry, horticulture industry and the Texas AgriLife Extension Service.

**Approved Projects.** The announcement of the grant awards will be made by August, 2008. All approved projects will have a start date of September 1, 2008, and must be completed by August 31, 2009. Project Coordinators will be required to submit quarterly progress reports and budget reports. Upon completion of the project, a Final Compliance Report of the educational results of the project and photographs to document such results will be due within 30 days. All awards will be subject to audit.

**Reporting Requirements.** Approved projects are required to submit the following reports:

1. Project Progress Reports. These reports are due on a quarterly basis from one to three pages in length detailing accomplishment of project objectives for the time periods specified in the award document.
2. Final Compliance Report due either 30 days after completion of the project or upon termination of the contract. The final report shall be submitted in a hard copy format and an electronic format should be e-mailed to the department. The final report shall contain:
  - a. A project summary-history of the project, its objectives, importance, effort, results, and commercial applications of the project;
  - b. A description of the successes, challenges, and any limitations of the program; and
  - c. A description of future plans, including how the project will continue after the grant is expended and how additional funding might address expansion efforts; and
  - d. Photographs to document results.
3. Project Budget Reports. Budget reports are due on a quarterly basis for the time periods specified in the award document that details the grant award spent to date.

4. Final Budget report is due 30 days after the completion of the project or the termination of the contract.

#### **General Compliance Information.**

All grant awards are subject to the availability of appropriations and authorizations by the Texas Legislature.

Any information or documentation submitted to TDA is subject to disclosure under the Texas Public Information Act.

Awarded grant projects must remain in full compliance with state and federal laws and regulations or be subject to termination at the discretion of TDA.

Upon grant award, TDA and the Texas State Auditor's Office shall have access to and the right to examine all books, accounts, records, files and other papers or property belonging to or in use by the grantee and pertaining to the grant award. Additionally, these records must remain available and accessible no less than three years after the termination of the grant project.

If the Grantee has a financial audit performed in any year during which Grantee receives funds from Grantor, and if the Grantor requests information about the audit, the Grantee shall provide such information to TDA or provide information as to where the audit report can be publicly viewed, including the audit transmittal letter, management letter, and any schedules in which the Grantee's funds are included.

In accordance with Texas Government Code Annotated, §783.007, grant awards shall comply in all respects with the Uniform Grant Management Standards (UGMS). Upon grant award, grantees can be provided a copy or it may be downloaded from <http://www.governor.state.tx.us/divisions/stategrants/guidelines/files/UGMS062004.doc>.

**Texas Public Information Act.** All proposals shall be deemed, once submitted, to be the property of the TDA and are subject to the Texas Public Information Act, Texas Government Code, Chapter 552.

TRD-200801716

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Filed: April 2, 2008

## **Texas Bond Review Board**

### **Request for Proposals - Interest Rate Management**

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Texas Bond Review Board announces its Request for Proposals (RFP No. 352-2008-001) for an advisor to assist the Board with state issuers' use of interest rate management agreements (derivatives) and the development of a state interest rate management policy.

**Term of Agreement:** The contract term is to be for an initial term from date of award, and ending August 31, 2008 with an option to renew by mutual agreement, for one additional term of up to three months.

**Contact:** Parties interested in submitting a proposal should contact Dana Edwards, Purchaser, Texas Procurement and Support Services Division (TPASS) at [dana.edwards@cpa.state.tx.us](mailto:dana.edwards@cpa.state.tx.us) or (512) 463-2563, to obtain a complete copy of the RFP. The entire RFP will also be made available electronically on the Electronic State Business Daily (ESBD) on Wednesday, April, 2, 2008. The website is <http://esbd.cpa.state.tx.us>.

**Inquiries:** Questions regarding this RFP should be submitted by electronic mail to Dana Edwards at [dana.edwards@cpa.state.tx.us](mailto:dana.edwards@cpa.state.tx.us). Questions

must be submitted by 5:00 p.m. (CT), April 15, 2008 and answers will be posted to the ESBD by Wednesday, April 16, 2008. Questions submitted later than April 15, 2008 may not be answered. All inquiries will result in written responses with copies posted to the ESBD. If a respondent does not have internet access, a copy of all written responses may be obtained through the point of contact listed above. Respondents are strongly encouraged to submit written questions during the official question and answer period regarding any term or condition of this RFP and whether the Texas Bond Review Board may negotiate that provision under this particular RFP.

**Proposal Submission:** Proposals are due no later than 4:00 p.m. on May 12, 2008 and must be executed by a duly authorized representative of the firm. Respondents shall submit one original of Exhibit F: Fee Proposal, and one original Exhibit G: Execution of Proposal, along with one original and six copies of the Proposal.

**Delivery of Proposals:** Proposals shall be submitted to TPASS by one of the following methods: U.S. Postal Service: TPASS Bid Services, Comptroller of Public Accounts, P.O. Box 13186, Austin, Texas 78711-3186; Overnight/Express Mail: TPASS-Mail Room #176, Central Services Building, 1711 San Jacinto Boulevard, Austin, Texas 78701, Hours--7:45 a.m. to 4:45 p.m. (CT); or Hand Deliver: TPASS-Bid Services, 1711 San Jacinto Boulevard 1st Floor (Lobby) Room #100 - Central Services Building, Austin, Texas 78701, Hours--8:00 a.m. to 5:00 p.m. (CT).

The anticipated schedule of events pertaining to this solicitation is as follows: Issue RFP--April 2, 2008; Deadline for Submission of Questions--April 15, 2008; Answers Posted to the ESBD--April 16, 2008; Pre-Proposal Conference--April 18, 2008; Deadline for Submission of Proposals--May 12, 2008.

TRD-200801722

Melissa Robbins

Financial Analyst

Texas Bond Review Board

Filed: April 2, 2008

## **Brazos Valley Council of Governments**

### **Request for Proposals**

Purchasing Solutions Alliance (PSA), acting on behalf of the Brazos Valley Council of Governments (BVCOG) and its Members, is soliciting proposals for E-procurement Solutions. Sealed proposals for RFP #08-102 will be accepted until 2:00 p.m., Friday, April 18, 2008. Any proposal received after the above closing time will be returned unopened. Sealed proposals must be delivered to:

Roger D. Dempsey, C.P.M., A.P.P., Program Manager

Purchasing Solutions Alliance

3991 East 29th St.

Bryan, Texas 77802

(979) 595-2801, Ext. 2034

[rdempsey@bvco.org](mailto:rdempsey@bvco.org)

[www.psabuy.org](http://www.psabuy.org)

Specifications, Scope of Services and Information for Offerors is on file and may be examined at the address listed above. These documents are also available online at: [http://www.psabuy.org/index.php?option=com\\_content&task=view&id=33&Itemid=45](http://www.psabuy.org/index.php?option=com_content&task=view&id=33&Itemid=45).

A non-mandatory pre-proposal conference is scheduled at 10:00 a.m. C.S.T., Tuesday, April 8, 2008 in the Burluson Conference Room located in the Purchasing Solutions Alliance Office at 3991 East 29th St., Bryan, Texas. All potential offerors are invited to attend.

PSA believes that the data contained in these specifications is sufficient for the preparation of proposals. Requests for additional information will be considered depending on the RFP time frame and the availability of the requested information. Such information will be submitted to all known Offerors simultaneously. All questions related to this RFP shall be addressed in writing. Questions must be submitted in writing (via e-mail) to the individual identified above prior to 5:00 p.m., C.S.T., Monday, April 14, 2008.

TRD-200801612

Roger Dempsey  
Program Manager  
Brazos Valley Council of Governments  
Filed: March 27, 2008

## Office of Consumer Credit Commissioner

### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/07/08 - 04/13/08 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup>/credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/07/08 - 04/13/08 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005<sup>3</sup> for the period of 04/01/08 - 04/30/08 is 18% for Consumer/Agricultural/Commercial/credit through \$250,000.

The monthly ceiling as prescribed by §303.005 for the period of 04/01/08 - 04/30/08 is 18% for Commercial over \$250,000.

<sup>1</sup>Credit for personal, family or household use.

<sup>2</sup>Credit for business, commercial, investment or other similar purpose.

<sup>3</sup>For variable rate commercial transactions only.

TRD-200801713

Leslie L. Pettijohn  
Commissioner  
Office of Consumer Credit Commissioner  
Filed: April 2, 2008

## Credit Union Department

### Application for a Merger or Consolidation

Notice is given that the following application has been filed with the Credit Union Department and is under consideration:

An application was received from BMA Credit Union (Mesquite) seeking approval to merge with Neighborhood Credit Union (Dallas), the latter will be the surviving credit union. In accordance with Texas Finance Code §122.005(b) and 7 TAC §91.104(b), the Commissioner has the authority to waive or delay public notice of an action.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from

the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200801710

Harold E. Feeney  
Commissioner  
Credit Union Department  
Filed: April 2, 2008

### Application to Amend Articles of Incorporation

Notice is given that the following application has been filed with the Credit Union Department and is under consideration:

An application for a new charter was received for NCI Community Development Credit Union, Houston, Texas. The proposed new credit union will serve any person who resides, works, worships, or attends school in the following zip codes in Houston, Texas: 77036, 77074, and 77081. NCI Community Development Credit Union will also allow its employees to join the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200801709

Harold E. Feeney  
Commissioner  
Credit Union Department  
Filed: April 2, 2008

## Texas Education Agency

### Request for Applications Concerning Migrant Special Project - Distance Learning for Secondary Migrant Students, 2008-2009

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-08-112 from colleges or universities in Texas with credit-granting high school distance learning or correspondence coursework that meets Texas graduation plan requirements. Courses must already be in place and be approved by TEA. The successful applicant must serve at least 1,100 Texas home-based students on both a statewide and a nationwide basis with distance learning or correspondence coursework already approved by TEA as an option for secondary migrant students to earn partial or full credit toward graduation.

Description. The purpose of the Distance Learning for Secondary Migrant Students program is to provide, on an intrastate and interstate basis, alternative credit options for migrant secondary students through distance learning offered through a variety of accessible delivery systems to include print, electronic, and Internet formats. The targeted population to be served must include identified eligible migrant students residing in the state of Texas who are enrolled in Texas local educational agencies that operate migrant education projects or are served by any of the 20 regional education service centers, as well as Texas

migrant students who are temporarily residing out of Texas. On an intrastate and interstate basis, applicants must: (1) provide alternative credit options for Texas migrant secondary students through distance learning offered through a variety of accessible delivery systems to include print, electronic, and Internet formats; (2) provide bilingual instructional support through a toll-free 800 number for participating students; (3) offer a variety of grading options to include on-site and mail-in grading; (4) issue credit as a credit-granting institution for all coursework completed; (5) implement multiple strategies that result in at least a 75 percent credit completion rate for participating students; (6) record coursework information on the state's migrant student database; (7) provide preparation materials for the exit-level Texas Assessment of Knowledge and Skills (TAKS) test for participating students; (8) provide promotional materials for the Distance Learning for Secondary Migrant Students program among Texas districts, states that receive Texas migrant students, and migrant students and their parents that result in 1,100 migrant student enrollments; (9) maintain communication with participating migrant students and educators inside and outside of Texas; and (10) provide a recognition ceremony for migrant students who complete coursework.

**Dates of Project.** The Distance Learning for Secondary Migrant Students program will be implemented during the 2008-2009 school year. Applicants should plan for a starting date of no earlier than September 1, 2008, and an ending date of no later than August 31, 2009.

**Project Amount.** Funding will be provided for one project. The project will receive a maximum of \$350,000 for the 2008-2009 school year. This project is funded 100 percent from P.L. 107-110, Title I, Part C, federal funds.

**Selection Criteria.** Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. The TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

**Requesting the Application.** A complete copy of the RFA may be obtained by writing the Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701; by calling (512) 463-9304; by faxing (512) 463-9811; or by e-mailing dcc@tea.state.tx.us. Please refer to the RFA number and title in your request. Provide your name, complete mailing address, and phone number including area code. The announcement letter and complete RFA will also be posted on the TEA website at <http://burlleson.tea.state.tx.us/GrantOpportunities/forms>. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

**Further Information.** For clarifying information about the RFA, contact Amy Werst, Division of Discretionary Grants, Texas Education Agency, (512) 936-9269. In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants, any information that is different from or in addition to information provided in the RFA will be provided only in response to written inquiries. Copies of all

such inquiries and the written answers thereto will be posted on the TEA website in the format of Frequently Asked Questions (FAQs) at <http://burlleson.tea.state.tx.us/GrantOpportunities/forms>. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

**Deadline for Receipt of Applications.** Applications must be received in the TEA Document Control Center by 5:00 p.m. (Central Time), Thursday, May 29, 2008, to be eligible to be considered for funding.

TRD-200801723

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Filed: April 2, 2008



### Request for Applications Concerning Migrant Special Project - Texas Migrant Interstate Program (TMIP), 2008-2009

**Eligible Applicants.** The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-08-111 from public school districts, including open-enrollment charter schools; education service centers (ESCs); and colleges or universities in Texas. The eligible applicant must demonstrate a full understanding of the needs of migrant students and must demonstrate the capacity and ability to implement, operate, and manage the project, which includes intrastate and interstate coordination on behalf of the Texas Migrant Education Program (MEP), its MEP-funded ESCs, and local education agencies. This statewide project requires coordination with states that receive Texas migrant students. One applicant will be selected to implement, operate, and manage the project on a statewide, as well as nationwide, basis.

**Description.** The purpose of the Texas Migrant Interstate Program (TMIP) is to facilitate intrastate and interstate coordination of information, resources, and services for Texas migrant students, with an emphasis on serving students identified by the Texas MEP as "Priority for Services" (PFS). PFS children are defined by P.L. 107-110, §1304(6), as ". . . migratory children who are failing or most at risk of failing, to meet the State's challenging State academic content standards and challenging State student academic achievement standards, and whose education has been interrupted during the regular school year." The grant recipient must: (1) operate and manage a toll-free 800 telephone number with certified, bilingual school counselors; (2) provide training and technical assistance to high school counselors and other MEP stakeholders to assist in meeting the needs of mobile migrant students, especially those identified as PFS; (3) host an annual Secondary Credit Accrual Workshop in Texas for migrant education personnel from states that receive Texas migrant students; (4) coordinate the Texas Assessment of Knowledge and Skills (TAKS) tests related to grade level promotion and graduation in states that receive Texas home-based students; and (5) assist state MEP efforts with state and national MEP initiatives.

**Dates of Project.** The TMIP will be implemented during the 2008-2009 school year. Applicants should plan for a starting date of no earlier than September 1, 2008, and an ending date of no later than August 31, 2009.

**Project Amount.** Funding will be provided for one project. The project will receive a maximum of \$500,000 for the 2008-2009 school year. This project is funded 100 percent from P.L. 107-110, Title I, Part C, federal funds.

**Selection Criteria.** Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA.



Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. The TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

**Requesting the Application.** A complete copy of the RFA may be obtained by writing the Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701; by calling (512) 463-9304; by faxing (512) 463-9811; or by e-mailing dcc@tea.state.tx.us. Please refer to the RFA number and title in your request. Provide your name, complete mailing address, and phone number including area code. The announcement letter and complete RFA will also be posted on the TEA website at <http://burlleson.tea.state.tx.us/GrantOpportunities/forms>. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

**Further Information.** For clarifying information about the RFA, contact Amy Werst, Division of Discretionary Grants, Texas Education Agency, (512) 936-9269. In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants, any information that is different from or in addition to information provided in the RFA will be provided only in response to written inquiries. Copies of all such inquiries and the written answers thereto will be posted on the TEA website in the format of Frequently Asked Questions (FAQs) at <http://burlleson.tea.state.tx.us/GrantOpportunities/forms>. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

**Deadline for Receipt of Applications.** Applications must be received in the TEA Document Control Center by 5:00 p.m. (Central Time), Thursday, May 29, 2008, to be eligible to be considered for funding.

TRD-200801724

Cristina De La Fuente-Valadez  
Director, Policy Coordination  
Texas Education Agency  
Filed: April 2, 2008



## Texas Commission on Environmental Quality

### Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 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. Section 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 **May 12, 2008**. Section 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) 239-1864 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 May 12, 2008**. 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, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: AAA Sanitation, Inc.; DOCKET NUMBER: 2008-0137-SLG-E; IDENTIFIER: RN100632249; LOCATION: Tyler, Smith County, Texas; TYPE OF FACILITY: sludge/sewage hauling business; RULE VIOLATED: 30 Texas Administrative Code (TAC) §312.143 and the Code, §26.121, by failing to prevent an unauthorized discharge of sewage; PENALTY: \$750; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(2) COMPANY: Alegre Energy, Inc.; DOCKET NUMBER: 2007-1943-AIR-E; IDENTIFIER: RN101926475; LOCATION: Coke County, Texas; TYPE OF FACILITY: oil storage; RULE VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code (THSC), §382.085(b) and §382.0518(a), by failing to obtain authorization before operation of facilities which may emit air contaminants into the air of the state; PENALTY: \$2,000; ENFORCEMENT COORDINATOR: Libby Hogue, (512) 239-1165; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(3) COMPANY: Amarillo Road Company, L.P.; DOCKET NUMBER: 2007-1882-AIR-E; IDENTIFIER: RN105366181; LOCATION: Hereford, Parmer County, Texas; TYPE OF FACILITY: hot mix asphalt; RULE VIOLATED: 30 TAC §116.110(a) and THSC, §382.085(b) and §382.0518(a), by failing to obtain authorization to construct and operate a hot mix asphalt plant before operation began; PENALTY: \$2,000; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(4) COMPANY: Amy Investments, Inc. dba Corner Stop; DOCKET NUMBER: 2007-1870-PST-E; IDENTIFIER: RN102278793; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.246(7)(A) and THSC, §382.085(b), by failing to maintain Stage II records at the station and make them immediately available for review; and 30 TAC §115.242(3)(A) and THSC, §382.085(b), by failing to maintain the Stage II Vapor Recovery System (VRS) in proper operating condition and free of defects; PENALTY: \$1,940; ENFORCEMENT COORDINATOR: Wallace Myers, (512) 239-6580; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(5) COMPANY: Archer City; DOCKET NUMBER: 2007-1999-MWD-E; IDENTIFIER: RN101721587; LOCATION: Archer County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIO-

LATED: 30 TAC §305.125(4), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010393002, Permit Conditions Number 2.g., and the Code, §26.121(a), by failing to prevent four unauthorized discharges of wastewater; 30 TAC §305.125(5) and TPDES Permit Number WQ0010393002, Operational Requirements Number 1, by failing to properly operate and maintain the wastewater treatment ponds; 30 TAC §305.125(4) and (5) and TPDES Permit Number WQ0010393002, Permit Conditions Number 2.g and Operational Requirements Number 1, by failing to properly operate and maintain the sludge drying beds; and 30 TAC §305.125(1), TPDES Permit Number WQ0010393002, Effluent Limitations and Monitoring Requirements Number 6, and the Code, §26.121(a), by failing to comply with the minimum dissolved oxygen permitted effluent concentration of five milligrams per liter; PENALTY: \$16,575; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(6) COMPANY: Avis Rent A Car System, LLC; DOCKET NUMBER: 2007-1925-AIR-E; IDENTIFIER: RN100814912; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: fuel distribution station; RULE VIOLATED: 30 TAC §114.100(a) and THSC, §382.085(b), by failing to comply with the minimum oxygen content of 2.7% by weight; PENALTY: \$1,170; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(7) COMPANY: Hershel W. Conner; DOCKET NUMBER: 2008-0133-MSW-E; IDENTIFIER: RN105170435; LOCATION: Walnut Springs, Bosque County, Texas; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULE VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of MSW; PENALTY: \$1,070; ENFORCEMENT COORDINATOR: Marlin Bullard, (254) 761-3035; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(8) COMPANY: Deer Park Refining Limited Partnership; DOCKET NUMBER: 2007-2001-AIR-E; IDENTIFIER: RN100211879; LOCATION: Deer Park, Harris County, Texas; TYPE OF FACILITY: refinery; RULE VIOLATED: 30 TAC §116.715(a), Air Flexible Permit Number 21262, Special Condition (SC) Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$10,000; Supplemental Environmental Project (SEP) offset amount of \$4,000 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Tom Jecha, (512) 239-2576; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: Frank De Los Santos; DOCKET NUMBER: 2007-1131-PST-E; IDENTIFIER: RN101741296; LOCATION: Cuero, DeWitt County, Texas; TYPE OF FACILITY: property with an underground storage tank (UST); RULE VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, one UST; PENALTY: \$5,250; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(10) COMPANY: Farmersville Texaco, Inc. dba Farmersville Shell; DOCKET NUMBER: 2007-2038-PST-E; IDENTIFIER: RN102224474; LOCATION: Farmersville, Collin County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.246(7)(A) and THSC, §382.085(b), by failing to maintain records at the station and make them immediately available for review upon request; 30 TAC §115.244(3) and

THSC, §382.085(b), by failing to conduct monthly inspections of the Stage II VRS; and 30 TAC §115.242(9) and THSC, §382.085(b), by failing to post operating instructions conspicuously on the front of each gasoline dispensing pump equipped with a Stage II VRS; PENALTY: \$3,200; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: City of Gustine; DOCKET NUMBER: 2005-1455-MWD-E; IDENTIFIER: RN102178654; LOCATION: Comanche County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §317.4(a)(8), by failing to annually test the backflow prevention assembly; 30 TAC §305.125(5) and TPDES Permit Number WQ0010841001, Operational Requirements Number 1, by failing to ensure that the wastewater treatment facility and its systems of collection, treatment, and disposal are properly operated and maintained; and 30 TAC §305.125(1) and (9)(a) and TPDES Permit Number WQ0010814001, Monitoring and Reporting Requirements Number 7(c), by failing to submit noncompliance notifications for effluent violations; PENALTY: \$10,575; Supplemental Environmental Project (SEP) offset amount of \$8,460 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Unauthorized Trash Dump Clean-Up; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(12) COMPANY: HCNRC Real Estate, Ltd.; DOCKET NUMBER: 2007-1852-WQ-E; IDENTIFIER: RN105087712; LOCATION: Gonzales County, Texas; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to develop and implement a storm water pollution prevention plan and obtain permit coverage to discharge storm water at a construction site; PENALTY: \$2,100; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(13) COMPANY: KOODALOR CORPORATION dba Sunny Food Store 3; DOCKET NUMBER: 2008-0075-PST-E; IDENTIFIER: RN101786259; LOCATION: Missouri City, Fort Bend County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor USTs for releases; 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records; 30 TAC §334.8(c)(5)(C), by failing to ensure that all USTs are properly identified; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of Stage II equipment; and 30 TAC §334.49(c)(4) and the Code, §26.3475(d), by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years; PENALTY: \$9,650; ENFORCEMENT COORDINATOR: Shontay Wilcher, (512) 239-2136; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: LaPorte Business, Inc. dba Quick Stop; DOCKET NUMBER: 2007-1785-PST-E; IDENTIFIER: RN102257359; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor USTs for releases; 30 TAC §334.50(b)(2)(A)(i)(III) and the Code, §26.3475(a), by failing to test the line leak detectors at least once per year for performance and operational reliability; and 30 TAC §334.10(b)(1)(A), by failing to maintain UST records and make them immediately available for inspection; PENALTY: \$4,815; ENFORCEMENT COORDINATOR: Wallace Myers, (512) 239-6580;

REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: Manuel Garcia III dba Last Chance Drive In; DOCKET NUMBER: 2006-0927-PST-E; IDENTIFIER: RN102370806; LOCATION: Zapata, Zapata County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A), by failing to provide release detection; PENALTY: \$1,750; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(16) COMPANY: Ogre, Inc. dba Mur-Tex Company; DOCKET NUMBER: 2008-0068-AIR-E; IDENTIFIER: RN100216340; LOCATION: Amarillo, Randall County, Texas; TYPE OF FACILITY: fiberglass manufacturing plant; RULE VIOLATED: 30 TAC §122.143(4), Federal Operating Permit (FOP) Number O-02664, Special Terms and Conditions Number 1, and THSC, §382.085(b), by failing to submit a revision application to amend the FOP to codify 40 Code of Federal Regulations (CFR) Part 63, Subpart WWWW in the permit; PENALTY: \$2,425; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 767-3500; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(17) COMPANY: City of Plano; DOCKET NUMBER: 2007-0889-WQ-E; IDENTIFIER: RN103099156; LOCATION: Plano, Collin County, Texas; TYPE OF FACILITY: collection system; RULE VIOLATED: the Code, § 26.121(a), by failing to prevent the unauthorized discharge of wastewater into waters in the state; 30 TAC §319.302(c) and (d) and the Code, §26.039(b), by failing to provide notification of a spill to local governmental officials, the news media, and the TCEQ regional office; PENALTY: \$27,000; Supplemental Environmental Project (SEP) offset amount of \$27,000 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: Point Aquarius Municipal Utility District; DOCKET NUMBER: 2008-0126-MWD-E; IDENTIFIER: RN102078474; LOCATION: Montgomery County, Texas; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0011219001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a)(1), by failing to comply with permit effluent limits for five-day biochemical oxygen demand; PENALTY: \$2,980; ENFORCEMENT COORDINATOR: Heather Brister, (254) 751-0335; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19) COMPANY: Primarily Primates; DOCKET NUMBER: 2007-1859-WQ-E; IDENTIFIER: RN104507074; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: confined animal care; RULE VIOLATED: the Code, §26.121(a)(1), by failing to prevent the unauthorized discharge of wastewater and wash water from the facility; PENALTY: \$1,050; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(20) COMPANY: Renaissance Stone Works, LLC; DOCKET NUMBER: 2007-1988-WQ-E; IDENTIFIER: RN105148647; LOCATION: Spicewood, Travis County, Texas; TYPE OF FACILITY: cut stone; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 CFR §122.26(c), by failing to obtain authorization to discharge storm water associated with industrial activities; PENALTY: \$800; ENFORCEMENT COORDINATOR: Andrew Hunt, (512) 239-1203; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(21) COMPANY: Safety Railway Service, L.P.; DOCKET NUMBER: 2007-1662-AIR-E; IDENTIFIER: RN100214535; LOCATION: Victoria, Victoria County, Texas; TYPE OF FACILITY: railcar service and maintenance; RULE VIOLATED: 30 TAC §122.241(b) and THSC, §382.085(b), by failing to operate emission units at the plant with an issued or granted FOP; PENALTY: \$12,000; Supplemental Environmental Project (SEP) offset amount of \$4,800 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Clean School Buses; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(22) COMPANY: Shell Chemical LP; DOCKET NUMBER: 2008-0079-AIR-E; IDENTIFIER: RN100211879; LOCATION: Deer Park, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 3179, SC Number 6, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$10,000; Supplemental Environmental Project (SEP) offset amount of \$4,000 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Roshondra Lowe, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(23) COMPANY: Shell Chemical LP; DOCKET NUMBER: 2007-1472-AIR-E; IDENTIFIER: RN100211879; LOCATION: Deer Park, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c), New Source Review (NSR) Permit Number 3214, SC Number 1, and THSC, §382.085(b), by failing to comply with permitted emissions limits; 30 TAC §101.201(a)(2)(F) and (b)(1)(G) and THSC, §382.085(b), by failing to list the compound descriptive type for an emissions event; 30 TAC §101.20(3) and §116.115(b)(2)(F), NSR Permit Number 3219/PSD-TX-974, General Condition Number 8, and THSC, §382.085(b), by failing to comply with permitted emissions limits; and 30 TAC §116.115(c), NSR Permit Number 3173 and 1968, SC Number 1, and THSC, §382.085(b), by failing to comply with permitted emissions limits; PENALTY: \$70,415; Supplemental Environmental Project (SEP) offset amount of \$35,207 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Bryan Elliott, (512) 239-6162; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(24) COMPANY: Southwest Convenience Stores, LLC; DOCKET NUMBER: 2008-0024-AIR-E; IDENTIFIER: RN102017068, RN102017241, RN102023058, RN102034436, RN102053402, RN102390507, RN102396173, RN102387396, RN102393170, RN102384666, RN102384260, RN100823913, RN102389228, RN102388816, RN102390960, RN101463321, RN100942085, RN102209822; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: convenience stores with retail sales of gasoline; RULE VIOLATED: 30 TAC §114.100(a) and THSC, §382.085(b), by failing to comply with the minimum oxygen content of 2.7% by weight of gasoline; PENALTY: \$24,860; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(25) COMPANY: Texas Petrochemicals LP; DOCKET NUMBER: 2008-0131-AIR-E; IDENTIFIER: RN100219526; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 46307, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$35,375; Supplemental Environmental Project (SEP) offset amount of \$14,150 applied to

Harris County Public Health and Environmental Services-Pollution Control Division's Fourier Transform Infra Red (FTIR) Project; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(26) COMPANY: TOTAL PETROCHEMICALS USA, INC.; DOCKET NUMBER: 2007-1427-AIR-E; IDENTIFIER: RN102457520; LOCATION: Port Arthur, Jefferson County, Texas; TYPE OF FACILITY: petrochemical refinery; RULE VIOLATED: 30 TAC §§101.20(3), 116.115(b) and (b)(2)(F) and 122.143(4), FOP Number O-01267, General Terms and Conditions (GTC) and SC 27, Air Permit 18936/PSD-TX-762M2, General Condition 8, and THSC, §382.085(b), by failing to maintain an emission rate below the allowable emission limits for carbon monoxide (CO); 30 TAC §116.115(c) and §122.143(4), FOP Number O-01267, GTC and SC 27, Air Permit 2347, SC 10, and THSC, §382.085(b), by failing to conduct compliance testing; 30 TAC §§106.6(b), 116.115(b)(2)(F) and (c), and 122.143(4), FOP Number O-01267, GTC and SC 27, Air Permit 56385, SC 1, and THSC, §382.085(b), by failing to maintain volatile organic compound (VOC) emissions; 30 TAC §§106.472, 115.112(a)(1), and 122.143(4), FOP Number O-01267, GTC and SC 4, and THSC, §382.085(b), by failing to operate spent acid tanks 688 and 923 in accordance with permit by rule requirements; 30 TAC §§101.20(3), 116.115(b) and (b)(2)(F), and 122.143(4), FOP Number O-01267, GTC and SC 27, Air Permit Number 18936 and PSD-TX-762M2, General Condition 8, and THSC, §382.085(b), by failing to comply with the nitrogen oxide (NO<sub>x</sub>) maximum allowable emissions rate of 9.93 pounds per hour; 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), FOP Number O-01267, GTC and SC 27, Air Permit Number 234, SC 1, and THSC, §382.085(b), by failing to maintain NO<sub>x</sub> emissions below the allowable emission rates; 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), FOP Number O-01267, GTC and SC 27, Air Permit Number 9195A and PSD-TX-453M6, SC 1, and THSC, §382.085(b), by failing to maintain CO emissions below the allowable emissions limit; 30 TAC §§101.20(1) and (3), 113.780, 116.115(c), and 122.143(4), 40 CFR §60.104(a)(2)(i), FOP Number O-01267, GTC, SC 1A and 27, Air Permit Number 9195A and PSD-TX-453M6, SC 3, and THSC, §382.085(b), by failing to limit the discharge of sulfur dioxide into the atmosphere to 250 part per million by volume; 30 TAC §§113.340, 115.352(4), 116.155(c), and 122.143(4), FOP Number O-01267, GTC, SC 1A and 27, Air Permit Number 56385, SC 12E, and THSC, §382.085(b), by failing to equip three open-ended lines and valves with a cap, blind flange, plug or second valve; 30 TAC §116.115(c) and §122.143(4), FOP Number O-01267, GTC and SC 27, Air Permit Number 56385, SC 4 and 5, and THSC, §382.085(b), by failing to prevent venting of VOC emissions; 30 TAC §116.115(c) and §122.143(4), FOP Number O-01267, GTC and SC 27, Air Permit Number 46396, SC 8F, and THSC, §382.085(b), by failing to maintain the exterior surface of the tank as white or aluminum; 30 TAC §116.115(c) and §122.143(4), FOP Number O-01267, GTC and SC 27, Air Permit Number 49743, SC 8, and THSC, §382.085(b), by failing to maintain the permitted loading limit of 500,050 barrels per year of gas oil; 30 TAC §§113.340, 115.354(2), 116.115(c), and 122.143(4), FOP Number O-01267, GTC and SC 1A and 27, Air Permit Number 56385, SC 12F and 15, and THSC, §382.085(b), by failing to conduct fugitive monitoring using hydrocarbon gas analyzer; 30 TAC §101.20(2) and §122.143(4), 40 CFR §61.354(d), FOP Number O-01267, GTC and SC 1A, and THSC, §382.085(b), by failing to replace immediately with fresh carbon when carbon breakthrough was indicated by monitoring; 30 TAC §§101.20(1), 116.115(c), and 122.143(4), 40 CFR §60.695(a)(3)(ii), FOP Number O-01267, GTC and SC 1A and 27, Air Permit Number 56385, SC 13, and THSC, §382.085(b), by failing to replace immediately with

fresh carbon when carbon breakthrough was indicated by monitoring; 30 TAC §116.110(a) and §122.143(4), FOP Number O-01267, GTC, and THSC, §382.085(b), by failing to obtain permit authorization for four carbon canister series; 30 TAC §§101.20(1), 113.340, 115.352(2), 116.115(c), and 122.143(4), 40 CFR §60.592(a), FOP Number O-01267, GTC and SC 1A, Air Permit Number 19965, SC 2 and 5H, and THSC, §382.085(b), by failing to repair twelve leaking fugitive components in the liquefied petroleum gas loading area; 30 TAC §115.114(a)(4) and §122.143(4), FOP Number O-01267, GTC and SC 1A, and THSC, §382.085(b), by failing to perform visual inspection on the secondary seal of external floating roof tank 453; 30 TAC §§122.143(4), 122.145(2)(A), and 122.146(5)(D), FOP Number O-01267, GTC, and THSC, §382.085(b), by failing to report the occurrence of deviations in semi-annual deviation reports and accurately certify an annual compliance certification; 30 TAC §101.201(a)(1)(B) and §122.143(4), FOP Number O-01267, GTC and SC 2F, and THSC, §382.085(b), by failing to submit the initial notification of a reportable emissions event; and 30 TAC §§101.20(3), 116.115(b) and (b)(2)(F), and 122.143(4), FOP Number O-01267, GTC and SC 27, Air Permit Number 16840 and PSD-TX-688M2, General Condition 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions of 216.64 pounds of NO<sub>x</sub>; PENALTY: \$529,300; Supplemental Environmental Project (SEP) offset amount of \$211,720 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Clean School Buses; ENFORCEMENT COORDINATOR: Daniel Siringi, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(27) COMPANY: TOTAL PETROCHEMICALS USA, INC.; DOCKET NUMBER: 2007-1879-IWD-E; IDENTIFIER: RN100212109; LOCATION: Deer Park, Harris County, Texas; TYPE OF FACILITY: wastewater treatment system; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0001000000, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations for total suspended solids and flow; PENALTY: \$37,800; ENFORCEMENT COORDINATOR: Andrew Hunt, (512) 239-1203; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(28) COMPANY: Valero Refining-Texas, L.P.; DOCKET NUMBER: 2008-0014-AIR-E; IDENTIFIER: RN100219310; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 71281, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §101.201(c) and THSC, §382.085(b), by failing to submit the final record for the November 26, 2007, emissions event; PENALTY: \$10,270; Supplemental Environmental Project (SEP) offset amount of \$4,108 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(29) COMPANY: Valero Refining-Texas, L.P.; DOCKET NUMBER: 2007-2039-AIR-E; IDENTIFIER: RN100238385; LOCATION: Texas City, Galveston County, Texas; TYPE OF FACILITY: oil and gas refining operation; RULE VIOLATED: 30 TAC §116.715(a), Permit Number 39142, SC Number 1, and THSC, §382.085(b), by failing to maintain an emission rate below the maximum allowable emission limits; PENALTY: \$10,000; Supplemental Environmental Project (SEP) offset amount of \$4,000 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(30) COMPANY: Ofelia Bosquez dba Wencho's Gas and Food Mart; DOCKET NUMBER: 2007-1277-AIR-E; IDENTIFIER: RN101652691; LOCATION: Tornillo, El Paso County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.252(2) and THSC, §382.085(b), by failing to ensure the gasoline sold as motor vehicle fuel contained no greater than seven pounds per square inch absolute of Reid vapor pressure; PENALTY: \$1,120; ENFORCEMENT COORDINATOR: Libby Hogue, (512) 239-1165; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

TRD-200801699

Mary R. Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: April 1, 2008



### Enforcement Orders

An agreed order was entered regarding Brookeland Independent School District, Docket No. 2005-0051-MWD-E on March 21, 2008 assessing \$4,500 in administrative penalties with \$900 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Eastman Chemical Company, Docket No. 2005-0168-AIR-E on March 21, 2008 assessing \$16,338 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting James Sallans, Staff Attorney, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Lott, Docket No. 2005-0838-MWD-E on March 21, 2008 assessing \$10,350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Shawn Slack, Staff Attorney (512) 239-1877, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Hico, Docket No. 2005-0871-MWD-E on March 21, 2008 assessing \$41,170 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Crockett, Docket No. 2005-1265-MWD-E on March 21, 2008 assessing \$7,865 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Stericycle, Inc., Docket No. 2005-1987-MSW-E on March 21, 2008 assessing \$8,400 in administrative penalties with \$1,680 deferred.

Information concerning any aspect of this order may be obtained by contacting Cynthia McKaughan, Enforcement Coordinator at (512)

239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CSA Limited, Inc., Docket No. 2006-0018-IHW-E on March 21, 2008 assessing \$65,392 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathleen Decker, Staff Attorney (512) 239-6500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BASF Corporation, Docket No. 2006-0735-AIR-E on March 21, 2008 assessing \$87,120 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney (713) 422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Mark Squires dba Royal Landscapes, Docket No. 2006-0985-LII-E on March 21, 2008 assessing \$263 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mary Hammer, Staff Attorney (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding S. J. & Sons, Inc. dba Country Cleaners, Professional Cleaners, and Ultra Fine Cleaners, Docket No. 2006-1082-DCL-E on March 21, 2008 assessing \$2,844 in administrative penalties with \$569 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Classic Press, Inc. dba Nation Cleaners, Docket No. 2006-1187-DCL-E on March 21, 2008 assessing \$1,185 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Benjamin O. Thompson, Staff Attorney (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ABZZ Corporation dba Ritz Cleaner, dba American Cleaners, and dba 2000 Dry Clean, Docket No. 2006-1273-DCL-E on March 21, 2008 assessing \$3,437 in administrative penalties with \$687 deferred.

Information concerning any aspect of this order may be obtained by contacting Marlin Bullard, Enforcement Coordinator at (254) 751-0335, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Mohammad Haroon Memon dba Exclusive Cleaners, Docket No. 2006-1295-DCL-E on March 21, 2008 assessing \$1,185 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mary Hammer, Staff Attorney (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jimmy N. Tu dba Del Monte Washateria and Cleaners, Docket No. 2006-1585-DCL-E on March 21, 2008 assessing \$1,185 in administrative penalties with \$237 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Avinger, Docket No. 2006-1589-MWD-E on March 21, 2008 assessing \$13,734 in administrative penalties with \$2,747 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrew Hunt, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding R.S. Parker Construction, LLC, Docket No. 2006-1590-PST-E on March 21, 2008 assessing \$10,890 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tracy Chandler, Staff Attorney (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Kevin G. Love, Docket No. 2006-1859-LII-E on March 21, 2008 assessing \$250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Benjamin O. Thompson, Staff Attorney (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Petro Stopping Centers, L.P. dba Petro Stopping Center 4, Docket No. 2007-0025-MLM-E on March 21, 2008 assessing \$41,242 in administrative penalties with \$8,248 deferred.

Information concerning any aspect of this order may be obtained by contacting Colin Barth, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Phillip Mercado, Docket No. 2007-0224-MSW-E on March 21, 2008 assessing \$22,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Clinton Sims, Enforcement Coordinator at (512) 239-6933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mohammad Amin dba ZP Mart, Docket No. 2007-0333-PWS-E on March 21, 2008 assessing \$825 in administrative penalties with \$165 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson-Mgbeoduru, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ISP Synthetic Elastomers LP, Docket No. 2007-0377-AIR-E on March 21, 2008 assessing \$13,025 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Shawn Slack, Staff Attorney (512) 239-1877, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Harrison County, Docket No. 2007-0485-MSW-E on March 21, 2008 assessing \$8,800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tracy Chandler, Staff Attorney (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Dow Chemical Company, Docket No. 2007-0573-AIR-E on March 21, 2008 assessing \$34,670 in administrative penalties with \$6,934 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Environmental Recycle Inc., Docket No. 2007-0746-MLM-E on March 21, 2008 assessing \$3,640 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Shawn Slack, Staff Attorney (512) 239-1877, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Caddo Lake Water Supply Corporation, Docket No. 2007-0797-PWS-E on March 21, 2008 assessing \$760 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Lone Oak, Docket No. 2007-0839-MWD-E on March 21, 2008 assessing \$13,020 in administrative penalties with \$2,604 deferred.

Information concerning any aspect of this order may be obtained by contacting Pamela Campbell, Enforcement Coordinator at (512) 239-4493, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding INEOS Polyethylene North America, Docket No. 2007-0907-IWD-E on March 21, 2008 assessing \$49,750 in administrative penalties with \$9,950 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Coastal Chemical Co., L.L.C., Docket No. 2007-0928-IWD-E on March 21, 2008 assessing \$4,509 in administrative penalties with \$901 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Equistar Chemicals, LP, Docket No. 2007-0938-AIR-E on March 21, 2008 assessing \$50,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kinder Morgan Production Company LP, Docket No. 2007-0988-AIR-E on March 21, 2008 assessing \$6,200 in administrative penalties with \$1,240 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Leggett Water Supply Corporation, Docket No. 2007-1113-PWS-E on March 21, 2008 assessing \$4,830 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (210) 490-3095, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DCP Midstream, LP, Docket No. 2007-1171-AIR-E on March 21, 2008 assessing \$4,500 in administrative penalties with \$900 deferred.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hector Guzman, Docket No. 2007-1179-MWD-E on March 21, 2008 assessing \$6,420 in administrative penalties with \$1,284 deferred.

Information concerning any aspect of this order may be obtained by contacting Wallace Myers, Enforcement Coordinator at (512) 239-6580, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Is Zen Center, Docket No. 2007-1186-MWD-E on March 21, 2008 assessing \$1,700 in administrative penalties with \$340 deferred.

Information concerning any aspect of this order may be obtained by contacting Daniel Siringi, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Anarkali Enterprises, Inc. dba Sack N Snack 2, Docket No. 2007-1200-PST-E on March 21, 2008 assessing \$7,200 in administrative penalties with \$1,440 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ysleta Independent School District, Docket No. 2007-1225-AIR-E on March 21, 2008 assessing \$1,340 in administrative penalties with \$268 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Archer City, Docket No. 2007-1233-MSW-E on March 21, 2008 assessing \$1,100 in administrative penalties with \$220 deferred.

Information concerning any aspect of this order may be obtained by contacting Cynthia McKaughan, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Griffin Industries, Inc., Docket No. 2007-1235-AIR-E on March 21, 2008 assessing \$5,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding United States Aluminum Corporation - Texas, Docket No. 2007-1266-AIR-E on March 21, 2008 assessing \$27,900 in administrative penalties with \$5,580 deferred.

Information concerning any aspect of this order may be obtained by contacting Bryan Elliott, Enforcement Coordinator at (512) 239-6162, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Stagecoach Properties, Inc. dba Stagecoach Inn, Docket No. 2007-1269-MLM-E on March 21, 2008 assessing \$1,050 in administrative penalties with \$210 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding S.L.C. Water Supply Corporation, Docket No. 2007-1275-PWS-E on March 21, 2008 assessing \$5,182 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sanya Investments, Inc. dba Fina Food Mart, Docket No. 2007-1304-PST-E on March 21, 2008 assessing \$13,700 in administrative penalties with \$2,740 deferred.

Information concerning any aspect of this order may be obtained by contacting Shontay Wilcher, Enforcement Coordinator at (512) 239-2136, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding INEOS USA LLC, Docket No. 2007-1325-PWS-E on March 21, 2008 assessing \$632 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Christopher Keffer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Murpaks, Inc., Docket No. 2007-1336-MLM-E on March 21, 2008 assessing \$3,690 in administrative penalties with \$738 deferred.

Information concerning any aspect of this order may be obtained by contacting Cynthia McKaughan, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding First County, Inc. dba Texan Food Mart, Docket No. 2007-1351-PST-E on March 21, 2008 assessing \$4,470 in administrative penalties with \$894 deferred.

Information concerning any aspect of this order may be obtained by contacting Phillip DeFrancesco, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas-American Water Company, Docket No. 2007-1356-PWS-E on March 21, 2008 assessing \$372 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Dana Shuler, Enforcement Coordinator at (512) 239-2505, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sunoco, Inc. (R&M), Docket No. 2007-1365-AIR-E on March 21, 2008 assessing \$20,400 in administrative penalties with \$4,080 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Graford, Docket No. 2007-1368-MWD-E on March 21, 2008 assessing \$11,840 in administrative penalties with \$2,368 deferred.

Information concerning any aspect of this order may be obtained by contacting Pamela Campbell, Enforcement Coordinator at (512) 239-4493, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Victoria County Water Control and Improvement District No. 1, Docket No. 2007-1375-MWD-E on March 21, 2008 assessing \$8,280 in administrative penalties with \$1,656 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Thurman Black dba Slo Pitch City, Docket No. 2007-1418-PWS-E on March 21, 2008 assessing \$1,370 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Christopher Keffer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding E. I. du Pont de Nemours and Company, Docket No. 2007-1435-IWD-E on March 21, 2008 assessing \$20,400 in administrative penalties with \$4,080 deferred.

Information concerning any aspect of this order may be obtained by contacting Lynley Doyen, Enforcement Coordinator at (512) 239-1364, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of San Juan, Docket No. 2007-1439-MLM-E on March 21, 2008 assessing \$3,600 in administrative penalties with \$720 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Jecha, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Petroleum Wholesale, L.P. dba Sunmart 401, Docket No. 2007-1447-PST-E on March 21, 2008 assessing \$4,150 in administrative penalties with \$830 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RFK Enterprises, Inc. dba Food Spot 4, Docket No. 2007-1452-PST-E on March 21, 2008 assessing \$1,940 in administrative penalties with \$388 deferred.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding George Stebens, Jr. dba Little Creek Acres Water System, Docket No. 2007-1467-PWS-E on March 21, 2008 assessing \$545 in administrative penalties with \$109 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson-Mgbeoduru, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Valero Refining-Texas L.P., Docket No. 2007-1483-AIR-E on March 21, 2008 assessing \$34,125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Roger Bufler dba B & S Construction, Docket No. 2007-1485-WQ-E on March 21, 2008 assessing \$950 in administrative penalties with \$190 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrew Hunt, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding INEOS Polymers Inc., Docket No. 2007-1486-AIR-E on March 21, 2008 assessing \$3,725 in administrative penalties with \$745 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SOHO Retail, Ltd., Docket No. 2007-1505-EAQ-E on March 21, 2008 assessing \$3,900 in administrative penalties with \$780 deferred.

Information concerning any aspect of this order may be obtained by contacting Lynley Doyen, Enforcement Coordinator at (512) 239-1364, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding George Ted Devries dba Devries Dairy, Docket No. 2007-1572-AGR-E on March 21, 2008 assessing \$5,200 in administrative penalties with \$1,040 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding United Structures of America, Inc., Docket No. 2007-1575-AIR-E on March 21, 2008 assessing \$2,475 in administrative penalties with \$495 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TOTAL PETROCHEMICALS USA, INC., Docket No. 2007-1593-AIR-E on March 21, 2008 assessing \$8,525 in administrative penalties with \$1,705 deferred.



Information concerning any aspect of this order may be obtained by contacting Aaron Houston, Enforcement Coordinator at (409) 899-8784, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Petrochemicals LP, Docket No. 2007-1628-AIR-E on March 21, 2008 assessing \$13,566 in administrative penalties with \$2,713 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (713) 422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ISP Synthetic Elastomers LP, Docket No. 2007-1668-AIR-E on March 21, 2008 assessing \$5,122 in administrative penalties with \$1,024 deferred.

Information concerning any aspect of this order may be obtained by contacting Daniel Siringi, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Russell Wayne Carpenter dba Russell Carpenter Dairy, Docket No. 2007-1677-AGR-E on March 21, 2008 assessing \$790 in administrative penalties with \$158 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Delta Tubular Processing, L.P., Docket No. 2007-1767-IWD-E on March 21, 2008 assessing \$18,200 in administrative penalties with \$3,640 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrew Hunt, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation order was entered regarding Brazoria County, Docket No. 2007-1949-PST-E on March 21, 2008 assessing \$875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding La Noria Convenience Store, Inc., Docket No. 2007-1904-PST-E on March 21, 2008 assessing \$875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding C & L Services, LP, Docket No. 2007-1950-PST-E on March 21, 2008 assessing \$875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding Brandy Carter dba Carter's Cleaners, Docket No. 2006-0772-DCL-E on March 6, 2008 assessing \$1,067 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Libby Hogue, Enforcement Coordinator at (512) 239-1165, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding Doris Bullock dba Bullock's Mobile Home Park, Docket No. 2005-1042-OSS-E on March 6, 2008 assessing \$4,575 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087

TRD-200801727

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 2, 2008



### Notice of Opportunity to Comment on Agreed Orders 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 Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 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. Section 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 **May 12, 2008**. Section 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 May 12, 2008**. 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, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Cullen Texaco, Inc. dba Cullen Texaco; DOCKET NUMBER: 2006-1517-PST-E; TCEQ ID NUMBER: RN100875145; LOCATION: 7401 Cullen Boulevard, Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.246(3) and (1) and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain Stage II records; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months or upon major system replacements or modifications; 30 TAC §115.242(3)(A) and THSC, §382.085(b), by failing to maintain the

Stage II vapor recovery system in proper operating condition and free of defects that would impair the effectiveness of the system; 30 TAC §334.50(a)(1)(A), (b)(1)(A), (b)(2) and (2)(A)(i)(III), and (d)(1)(B)(ii) and TWC, §26.3475(a) and (c), by failing to provide a method, or combination of methods, of release detection capable of detecting a release from any portion of the underground storage tank (UST) system which contains regulated substances including the tanks, piping, and other underground ancillary equipment; 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube; 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; and 30 TAC §334.8(c)(5)(B)(ii), by failing to timely 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 of the delivery certificate; PENALTY: \$22,000; STAFF ATTORNEY: Becky Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(2) COMPANY: James M. Knowles; DOCKET NUMBER: 2006-0150-MSW-E; TCEQ ID NUMBER: RN102830742; LOCATION: 26823 Farm-to-Market (FM) Road 2978, Magnolia, Montgomery County, Texas; TYPE OF FACILITY: property; RULES VIOLATED: 30 TAC §330.15(c) (formerly 30 TAC §330.5(c)), by failing to prevent the collection, storage, and/or disposal of municipal solid waste; PENALTY: \$1,050; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(3) COMPANY: Shell Chemical LP and Shell Oil Company; DOCKET NUMBER: 2006-0328-MLM-E; TCEQ ID NUMBER: RN100211879; LOCATION: 5900 Highway 225, Deer Park, Harris County, Texas; TYPE OF FACILITIES: petroleum refinery and chemical plant; RULES VIOLATED: 30 TAC §116.715(a), THSC, §382.085(b), and Air Permit Number 21262, Special Condition 1, by failing to prevent unauthorized emissions that resulted in the unauthorized release of 0.15 pounds (lbs) of 1,3 butadiene, 6.18 lbs of butene, 2.14 lbs of 2-methyl-1-butene, 4.61 lbs of benzene, 2.16 lbs of butane, 2.22 lbs of ethylene, 1.39 lbs of hydrogen sulfide (H<sub>2</sub>S), 5.63 lbs of isobutene, 3.63 lbs of isobutylene, 6.48 lbs of isopentane, 89,380 lbs of particulate matter (PM), 1.1 lbs of pentane, 1.12 lbs of pentene, 3.48 lbs of propane, 11.65 lbs of propylene, 1.10 lbs of trans-1,3-pentadiene, 3.94 lbs of trans-2-butene, and 85.36 lbs of volatile organic compounds (VOCs) to the atmosphere; 30 TAC §116.715(a), THSC, §382.085(b), and Air Permit Number 21262, Special Condition 1, by failing to prevent unauthorized emissions; 30 TAC §112.3(b) and §116.715(a), THSC, §382.085(b), and Air Permit Number 21262, Special Condition Number 1, by failing to prevent an avoidable emissions event that resulted in the unauthorized release of 210 lbs of ethylene, 1,317 lbs of nitrogen dioxide, 9,515 lbs of carbon monoxide, 5,603 lbs of H<sub>2</sub>S, 1,153 lbs of isobutylene, 712 lbs of PM, 814 lbs of propylene, and 516,068 lbs of sulfur dioxide emissions into the atmosphere; 30 TAC §101.20(1) and (2), 40 Code of Federal Regulations (CFR) §60.482-6(a)(2) and THSC, §382.085(b), by failing to properly seal open-ended lines; 30 TAC §101.20(1), 40 CFR §60.482-7(a), and THSC, §382.085(b), by failing to monitor new valves, which were put into service at the OP-3 unit, on a monthly basis; 30 TAC §101.20(3) and §116.715(a), 40 CFR §60.482-7(a), THSC, §382.085(b), and Flexible Air Permit Number 21262/PSDTX 928, Special Condition Number 1, by failing to prevent unauthorized emissions; 30 TAC §335.221(a)(6), 40 CFR §266.102(e)(3)(i) and

(7)(ii), and Hazardous Waste Permit Number 50099, Permit Provision V.1.2.b, by failing to comply with Boiler and Industrial Furnace operating parameters for the total ash feed rate, by not revising the data in the Distributed Control Systems for the correct level of ash being fed into the unit; 30 TAC §116.715(a), THSC, §382.085(b), and Air Permit Number 21262, Special Condition Number 1, by failing to prevent unauthorized emissions; 30 TAC §101.201(b)(8) and THSC, §382.085(b), by failing to identify the preconstruction authorization number in the final report submitted to the agency for the facility involved in the emissions event, which occurred on June 15, 2005, in the catalytic cracking unit; 30 TAC §116.115(b)(2)(F) and §116.715(a), THSC, §382.085(b), Air Permit Number 3219 and PST-TX-974, General Condition Number 8, Air Flexible Permit Number 21262, and PSD-TX-928, Special Condition Number 1, by failing to prevent the unauthorized release of air contaminants into the atmosphere; 30 TAC §101.201(a)(1)(B) and (b)(1)(G) and THSC, §382.085(b), by failing to comply with emissions event reporting requirements; 30 TAC §116.115(b)(2)(F), THSC, §382.085(b), and Air Permit Number 3179, General Condition 8, by failing to prevent unauthorized emissions; 30 TAC §116.115(b)(2)(F) and §116.715(a), THSC, §382.085(b), Air Permit Number 3219, General Condition 8, and Air Permit Number 21262, Special Condition 1, by failing to prevent unauthorized emissions; 30 TAC §116.115(b)(2)(F), THSC §382.085(b), and Air Permit Number 3219, General Condition 8, by failing to prevent unauthorized emissions; 30 TAC §101.201(c) and THSC, §382.085(b), by failing to submit an emissions event report within two weeks after the end of the event; 30 TAC §116.715(a), THSC, §382.085(b), and Air Permit Number 21262, Special Condition 1, by failing to prevent unauthorized emissions; 30 TAC §116.115(b)(2)(F), THSC, §382.085(b), and Air Permit Number 3219, General Condition 8, by failing to prevent unauthorized emissions; 30 TAC §101.20(3) and §116.115(b)(2)(F), THSC, §382.085(b), Air Permit Number 3219, and PSD-TX-974, General Condition 8, by failing to prevent unauthorized emissions; 30 TAC §116.115(b)(2)(F), THSC, §382.085(b), and Air Permit Number 3179, General Condition 8, by failing to prevent unauthorized emissions; 30 TAC §116.715(a), THSC, §382.085(b), and Flexible Air Permit Number 21262, Special Condition Number 1, by failing to prevent unauthorized emissions; 30 TAC §101.20(3) and §116.115(b)(2)(F), THSC, §382.085(b), and Permit Number 3219/PSD-TX-974, General Condition Number 8, by failing to comply with the permitted emission limits; 30 TAC §116.115(c), THSC, §382.085(b), and Permit Number 3173, Special Condition Number 13, by failing to comply with the permitted emission limits; 30 TAC §101.201(a)(1) and THSC, §382.085(b), by failing to submit an initial notification of an emissions event within the 24-hour period for the emissions event that occurred on June 28, 2006 at Tank T-75A; 30 TAC §116.715(a), THSC, §382.085(b), and Flexible Air Permit Number 21262, Special Condition 1, by failing to prevent unauthorized emissions; 30 TAC §116.115(c), THSC, §382.085(b), and Permit Number 3178, Special Condition Number 1, by failing to comply with the permitted emission limits; 30 TAC §101.20(3) and §116.715(a), THSC, §382.085(b), and Flexible Air Permit Number 21262/PSD-TX-928, Special Condition Number 1, by failing to prevent unauthorized emissions; 30 TAC §101.20(3) and §116.715(a), THSC, §382.085(b), and Flexible Air Permit Number 21262/PSD-TX-928, Special Condition Number 1, by failing to prevent unauthorized emissions; and 30 TAC §101.20(3) and §116.115(b)(2)(F), THSC, §382.085(b), and Permit Number 3219/PSD-TX-974, General Condition Number 8, by failing to prevent unauthorized emissions; PENALTY: \$345,744; Supplemental Environmental Project (SEP) offset amount of \$172,872 applied to Houston-Galveston Area Emission Reduction Credit Organization Clean Cities/Clean Vehicles Program; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL

OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(4) COMPANY: South Hampton Resources, Inc. formerly known as South Hampton Refining Company; DOCKET NUMBERS: 1997-0180-AIR-E, 1997-0222-AIR-E, 1997-0440-IHW-E, 1998-0114-AIR-E, and 2000-0543-AIR-E; TCEQ ID NUMBERS: RN101995611 and RN102591955; LOCATIONS: FM 418 West, west of Silsbee and Highway 92, Silsbee, Hardin County, Texas; TYPES OF FACILITIES: petroleum product refinery and bulk loading terminal; RULES VIOLATED: 30 TAC §§335.2 and §335.43 and 40 CFR §268.4(a)(3) and §270.1(b) and (c), by storing, processing, and/or disposing of hazardous waste in the Surface Impoundment without a permit or other authorization from the TCEQ; 30 TAC §§335.6, by failing to notify the TCEQ of its storage, processing, and disposal of hazardous waste in the Surface Impoundment; 30 TAC §§335.62 and TCEQ Agreed Order Docket Number 1994-0578-IHW-E, Ordering Provision Number 1.a., by failing to properly determine whether contaminated groundwater was hazardous; 30 TAC §§335.9(a)(1), by failing to keep records of all hazardous and industrial solid waste activities regarding the quantities generated, stored, processed, and disposed of on-site or shipped offsite for storage, processing, or disposal; 30 TAC §§335.62 and §335.503(a) and (b) and Agreed Order Docket Number 1994-0578-IHW-E, Ordering Provision Number 1.e., by failing to conduct hazardous waste determinations and further classify the effluent from Tank Number 7 that was conveyed and placed in the Surface Impoundment; 30 TAC §335.431 (which incorporates 40 CFR §268.7(a)(1)), by failing to provide the required land disposal restriction notice for a shipment of hazardous waste sent on July 19, 1996 to Pure Solve, Inc. in Port Allan, Louisiana; 30 TAC §115.112(a)(2)(F) and §116.115(c) (formerly 30 TAC §116.115(a)), THSC, §382.085(b), and TCEQ Permit Number 3295, Special Condition Number 10, by failing to equip floating roof tank Numbers 1, 4, 40, 41, 48, 64, 65, and 66 with an approved seal system prior to storing material with a vapor pressure at or above 0.5 pounds per square inch absolute (psia) at maximum storage temperature; 30 TAC §101.20(1) (which incorporates 40 CFR §60.482-6(a)(1)) and 30 TAC §115.352(4) (formerly 30 TAC §115.322(a)(4)) and THSC, §382.085(b), by operating eight open-ended valves on VOC lines (Valve Numbers 4155, 4153, 4154 on the slop oil tank; Valve Number 2403 near Heater H103; and Valve Numbers XV-069, 1823, 1830, and 1286A) that were not sealed with a second valve, a blind flange, a cap, or a plug and by failing to properly seal all valves in VOC service; 30 TAC §115.354(1)(A) (formerly 30 TAC §115.324(a)(1)(A)) and THSC, §382.085(b), by failing to monitor emissions from the T-8 Unit process drain with an hydrocarbon gas analyzer (HGA); 30 TAC §116.115(c) (formerly 30 TAC §116.115(a)), THSC, §382.085(b), and TCEQ Permit Number 3295, Special Condition Number 1, by exceeding the VOC emissions limits from Tank Number 41, 48, and 66, as specified in the Maximum Allowable Emission Table; 30 TAC §116.115(c) (formerly 30 TAC §116.115(a)), THSC, §382.085(b), 40 CFR §60.105(a)(4)(iii), and TCEQ Permit Number 3295, Special Condition Number 9.A., by failing to properly certify its continuous emission monitoring system (CEMS) for the H<sub>2</sub>S concentration of the refinery fuel gas; 30 TAC §116.115(c) (formerly 30 TAC §116.115(a)), THSC, §382.085(b), and TCEQ Permit 3295, Special Condition Number 13, by storing material with a vapor pressure greater than 11.0 psia (later reported by South Hampton to be mostly a mixed aldehyde and alcohol stream) in pressurized tanks (Tank Numbers 72, 74, 75, 76, and 77) that did not have pressure gauges between the relief valves and rupture discs; 30 TAC §116.115(c) (formerly 30 TAC §116.115(a)), THSC, §382.085(b), and TCEQ Permit 3295, Special Condition Numbers 13 and 20, by storing material with a vapor pressure greater than 11.0 psia in pressurized tanks (Tank Numbers 72, 74, 75, 76, and 77), and the relief valves were not vented to a flare; 30 TAC §101.20(1)

(incorporating 40 CFR §60.105(a)(11)) and THSC, §382.085(b), by failing to properly operate and record CEMS data on January 3, 11, and 30, 1996; February 3, 15, and 16, 1996; March 15, 16, and 31, 1996; and April 6, 9, 17, 23, and 30, 1996; 30 TAC §101.20(1) (incorporating 40 CFR §60.482-6(a)(1)) and 30 TAC §115.352(4) (formerly 30 TAC §115.322(a)(4)) and THSC, §382.085(b), by failing to properly seal valves in VOC service and operated eight open-ended valves on VOC lines that were not sealed with a second valve, a blind flange, a cap, or a plug; 30 TAC §115.112(a)(1) and THSC, §382.085(b), by storing VOCs in tanks and reservoirs that did not have proper control equipment and that were incapable of preventing vapor or gas loss to the atmosphere; 30 TAC §§101.20(1), 115.114(a)(1), 115.116(a)(2), and 116.115(c) (formerly 30 TAC §116.115(a) and (b)), 40 CFR §60.110b, THSC, §382.085(b), and TCEQ Permit Number 3102, General Provision Number 5, by failing to conduct the required inspections and maintain records for the internal floating roof storage tanks to document whether these inspections did occur; 30 TAC §116.115(c) (formerly 30 TAC §116.115(a)), THSC, §382.085(b), 40 CFR §60.18, and TCEQ Permit Number 3102, Special Condition Number 4, by failing to operate its flare in a manner that ensures adequate combustion and by failing to monitor the flare during operation; 30 TAC §115.112(a)(1) and THSC, §382.085(b), by storing VOCs in tanks and reservoirs that did not have control equipment and that were incapable of preventing vapor or gas loss to the atmosphere; 30 TAC §115.112(a)(1) - (3) and THSC, §382.085(b), by failing to have emission controls on Tank Number 7; 30 TAC §115.212(a)(3)(A)(i) and (ii) and THSC, §382.085(b), by failing to conduct all VOC loading and unloading in such a manner that all liquid and vapor lines were either equipped with fittings which made vapor-tight connections that closed automatically when disconnected or equipped to permit the discharge of residual VOC into a vapor recovery or vapor balance system; 30 TAC §101.20(1) (incorporating 40 CFR §60.104(a)(1)) and 30 TAC §116.115(c) (formerly 30 TAC §116.115(a)), THSC, §382.085(b), and TCEQ Permit 3295, Special Condition Numbers 2, 4, and 9C, by combusting fuel gas that contained H<sub>2</sub>S in excess of 0.1 grams per dry standard cubic feet (230 milligrams per dry standard cubic meter) in the facility heaters; 30 TAC §116.115(c), THSC, §382.085(b), and TCEQ Permit Number 3295, Special Condition Number 10, by failing to equip Tank Numbers 1, 4, and 66 with secondary seals, or otherwise meet the requirements of Special Condition Number 10; 30 TAC §101.20(1) (incorporating 40 CFR §60.112b(a)(1)(ii)(B) and 30 TAC §115.112(a)(1)), and THSC, §382.085(b), by storing a volatile organic liquid with a vapor pressure in excess of 5.2 kilopascals in Tank Number 66 which did not have double vapor-mounted seals; 30 TAC §115.354(1)(A) (formerly 30 TAC §115.324(a)(1)(A)) and THSC, §382.085(b), by failing to monitor emissions from 11 separate process drains with an HGA; 30 TAC §§101.20(1) (incorporating 40 CFR §61.242-7(d)(1)), 115.352(2) (formerly 30 TAC §115.322(a)(2)), and 116.115(c) (formerly 30 TAC §116.115(a)), THSC, §382.085(b), and TCEQ Permit Number 3295, Special Condition Number 5, by failing to repair a leak from valves (Valve Numbers 1578 and 275) as soon as practicable after it detected the leaks, but not later than 15 calendar days after the leak was discovered, except in the case of an allowable repair delay; 30 TAC §101.201(b) (formerly 30 TAC §101.6(b)(5) and (6)) and THSC, §382.085(b), by failing to create, within two weeks of an incident, complete records of the emissions released during an upset that occurred on February 23, 1997 when Tank Number 71 was over-pressurized; 30 TAC §115.352(2) and (3) and THSC, §382.085(b), by failing to properly tag and attempt to repair and/or repair two leading valves (Valve Numbers 2166 and 266) in VOC service; 30 TAC §§101.20(1) (incorporating 40 CFR §60.112b(a)(2)(iii)), 115.541(a), and 115.542(a) and THSC, §382.085(b), by failing to properly empty and degas Tank Number 57 when it was taken out of service; 30 TAC §115.546(1)(A) - (C) and THSC, §382.085(b),

by failing to maintain records of the chemical name and estimated liquid quantity contained in and removed from each transport vessel which was degassed or cleaned; 30 TAC §116.115(c) (formerly 30 TAC §116.115(a)), THSC, §382.085(b), 40 CFR Part 60, Appendix F, §5.12, and TCEQ Permit Number 3295, Special Condition Numbers 2 and 9B, by failing to conduct a cylinder gas audit for the first quarter of 1998 on the CEMS used to measure and record the H2S concentration of the refinery fuel gas; 30 TAC §101.201(b) (formerly 30 TAC §101.6(b)) and §101.211(b) (formerly 30 TAC §101.7(c)) and THSC, §382.085(b), by failing to create complete records of all non-reportable upsets, maintenance, start-ups, and shutdowns with unauthorized emissions as soon as practicable, but no later than two weeks after upset/events occurred; 30 TAC §101.201 (formerly 30 TAC §101.6(a)) and THSC, §382.085(b), by failing to report the upset emissions from the flare (Emission Point Number (EPN) F-2) and/or flare area on May 28, 1999 and June 29, 1999; 30 TAC §101.211(a) (formerly 30 TAC §101.7(a)) and THSC, §382.085(b), by failing to properly report unauthorized emissions from a maintenance, start-up, and/or shut down activities; 30 TAC §101.211(a) (formerly 30 TAC §101.7(a)) and §116.115(c), THSC, §382.085(b), TCEQ Permit Number 3295, Special Condition Number 1, by failing to properly report the unauthorized emissions from the flare (EPN-2) from 0600 hours on October 19, 1999 to 2400 hours on October 20, 1999 that occurred due to a maintenance event on Boiler EPN B-1; 30 TAC §115.352(1)(B), (2), and (3) and THSC, §382.085(b), by failing to repair VOC leaks greater than 10,000 pounds per minute on four pumps (3944-P-139A, 3945-P-139B, 3947-P-7B, and 3965-P-204A) in the Penhex Unit within 15 calendar days after the leaks were found, or tagged and repaired during a unit shutdown if repair would create more emissions than the repair would eliminate. On November 30, 1999 the pumps were found to be leaking but were not tagged and were not repaired during the next unit shut down during the first week in January 2000; THSC, §382.085(b), by failing to prevent the unauthorized emission of 64 pounds of a tetralin (70%) naphthalene (30%) mixture over an eight-hour period on April 23, 2001; and 30 TAC §116.115(c), THSC, §382.085(b), and TCEQ Permit Number 3295, Special Condition Number 1, by failing to maintain an emission rate below the allowable emission limit. Special Condition Number 1 of Permit Number 3295 limits the VOC emission rate at tank 41 (EPN TK-41) to 0.36 pounds/hour; PENALTY: \$274,433; SEP offset amount of \$137,216 applied to Texas Association of Resource Conservation & Development Areas, Inc. Water or Wastewater Assistance; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-200801700

Mary R. Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: April 1, 2008



### Notice of Opportunity to Comment on Default Orders 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 Orders (DOs). 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; and 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 **May 12, 2008**. 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 each 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 May 12, 2008**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Lawrence Jackson; DOCKET NUMBER: 2007-1245-MLM-E; TCEQ ID NUMBER: RN105146674; LOCATION: 9445 County Road 343, Caldwell, Burleson County, Texas; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULES VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of MSW; and 30 TAC §111.201 and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with the general prohibition on outdoor burning; PENALTY: \$5,840; STAFF ATTORNEY: Gary Shiu, Litigation Division, MC R-12, (713) 422-8916; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(2) COMPANY: Mohammad K. Aroud dba Jones Mart Shell; DOCKET NUMBER: 2004-0089-PST-E; TCEQ ID NUMBER: RN102834223; LOCATION: 11702 Jones Road, Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (d)(1)(B)(ii) and TWC, §26.3475(c)(1), by failing to monitor underground storage tanks (USTs) in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.7(a)(1) and §334.8(c)(4)(B) and TWC, §26.346(a), by failing to ensure that the UST registration and self-certification form is fully and accurately completed, and that it is submitted to the agency in a timely manner and by failing to register the USTs with the agency on authorized agency forms; 30 TAC §37.815(a)(1) and (b)(1), by failing to demonstrate financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; 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 delivery certificate before delivery of a regulated substance into the USTs is accepted; 30 TAC §334.48(c), by failing to conduct inventory control at a retail facility, regardless of the chosen method of release detection; 30 TAC §334.73 and §334.74, by failing to conduct a site check upon the request of the TCEQ when environmental contamination is the basis for suspecting a release; 30 TAC §334.22(a), by failing to pay annual UST registration and associated

late fees for Financial Administration Account Number 0060690U, UST Identification Number 33010, for Fiscal Years 2001 - 2004; 30 TAC §115.246(7)(A) and THSC, §382.085(b), by failing to maintain all required Stage II records at the station and make them immediately available for review upon request by authorized representatives of the TCEQ; and 30 TAC §334.50(b)(2) and (2)(A)(i)(III) and TWC, §26.3475(a), by failing to monitor pressurized piping associated with the UST system in a manner designed to detect releases from any portion of the piping system; PENALTY: \$136,070; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(3) COMPANY: P Johnston Ventures, Inc.; DOCKET NUMBER: 2005-1141-MSW-E; TCEQ ID NUMBER: RN100869254; LOCATION: 860 Rayford Road, Montgomery County, Texas; TYPE OF FACILITY: unauthorized MSW site; RULES VIOLATED: 30 TAC §330.15(c) (formerly 30 TAC §330.5(c)), by causing, suffering, allowing, or permitting the dumping or disposal of MSW without the written authorization of the commission; PENALTY: \$7,125; STAFF ATTORNEY: Alfred Oloko, Litigation Division, MC R-12, (713) 422-8918; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(4) COMPANY: Texas Industrial Scrap Iron & Metal Company, Inc.; DOCKET NUMBER: 2007-0641-MLM-E; TCEQ ID NUMBER: RN100944313; LOCATION: 3800 North Commerce Street, Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: scrap metal recycling facility; RULES VIOLATED: 30 TAC §328.60(a) and THSC, §361.112(a), by failing to obtain a registration for storing more than 500 used or scrap tires (or weight equivalent tire pieces or any combination thereof) on the ground; 30 TAC §330.15(c) and §335.4, by failing to dispose of MSW and to prevent spills of industrial solid waste; 30 TAC §335.62 and 40 Code of Federal Regulations (CFR) §262.11, by failing to conduct a hazardous waste determination and waste classification; 30 TAC §281.25(a)(4) and Texas Pollutant Discharge Elimination System Storm Water Permit Number TXR05O242, Part III, Section A.5. (a) and (e), by failing to develop and implement good housekeeping practices or procedures to reduce or eliminate exposure of garbage and rubbish to storm water runoff and to develop Best Management Practices to reduce the discharge and potential discharge of pollutants in storm water; and 30 TAC §324.6 and 40 CFR §279.22(c)(1), by failing to clearly label containers storing used oil; PENALTY: \$26,775; STAFF ATTORNEY: Gary Shiu, Litigation Division, MC R-12, (713) 422-8916; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200801701

Mary R. Risner  
Director, Litigation Division  
Texas Commission on Environmental Quality  
Filed: April 1, 2008



### Notice of Water Quality Applications

The following notices were issued during the period of March 20, 2008 through March 27, 2008.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

### INFORMATION SECTION

CITY OF GOODLOW has applied for a renewal of TPDES Permit No. WQ0012616001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day. The facility is located approximately two miles south of the intersection of State Highway 31 and State Highway 309 on the west side of State Highway 309 in Navarro County, Texas.

DURK ZWART has applied for a renewal of Texas Pollution Discharge Elimination System (TPDES) Permit No. WQ00033500000, for a Concentrated Animal Feeding Operation (CAFO), to authorize the applicant to operate an existing dairy cattle facility at a maximum capacity of 850 of which all are milking cows. The facility is located on the east side of Farm-to-Market Road 219 at the intersection of Farm-to-Market Road 219 and Private Road 1482 in Erath County, Texas.

GRANDY RANCH LTD has applied for a renewal of Permit No. WQ0004458000, which authorizes the land application of sewage sludge, water treatment plant sludge and domestic septage for beneficial use. The current permit authorizes land application of sewage sludge water treatment plant sludge and domestic septage for beneficial use on 368 acres. The anticipated date of the first application of sludge, subject to the issuance of the permit, is May 23, 2008. This permit will not authorize a discharge of pollutants into waters in the State. The land application site is located on Paddy Hamilton Road, 1.2 miles east of the intersection of U.S. Highway 190 and Paddy Hamilton Road in Bell County, Texas.

HUDSON LIVESTOCK SUPPLEMENTS INC which proposes to operate a livestock feed supplement manufacturing plant, has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit, Proposed Permit No. WQ0004801000 which would propose the disposal of treated wastewater at a daily flow rate not to exceed 8,000 gallons per day via evaporation. This permit will not authorize a discharge of pollutants into water in the State. The facility and disposal site are located adjacent to North U.S. Highway 67 and North Thompson Road in Tom Green County, Texas.

HURRSHELL RAY WHITEFIELD AND B&J CATTLE LLC has applied for a new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004831000, for a Concentrated Animal Feeding Operation (CAFO), to authorize the applicant to operate a dairy heifer replacement facility at a maximum capacity of 2,000 head. The facility is located on the north side of County Road 128, approximately 1 mile northwest of the intersection of County Road 128 and State Highway 108, said intersection is located approximately 1 mile north of Huckabay in Erath County, Texas.

LTR UTILITY LLC a private developer, has applied for a new permit, Proposed Permit No. WQ0014848001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day via a public access subsurface drip irrigation system with a minimum area of 34.5 acres. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site will be located approximately 1,940 feet northeast of the intersection of Rod and Gun Club Road and Siesta Shores Drive, on the west side of Siesta Shores Drive. The disposal site will include multiple areas located approximately 4,400 feet east of the intersection of Bee Creek Road and Siesta Shores Drive and 2,100 feet northeast of the intersection of Bee Creek Road and Siesta Shores Drive in Travis County, Texas.

MERISOL USA LLC which operates Greens Bayou Industrial Chemicals Plant, has applied for a renewal of TPDES Permit No. WQ0000485000, which authorizes the discharge of storm water, impounded process area storm water, and previously monitored effluents

(boiler blowdown and cooling tower blowdown) on an intermittent and flow variable basis via Outfall 001 and the discharge of storm water and impounded process area storm water on an intermittent and flow variable basis via Outfalls 002, 003, 004, and 005. The facility is located at 1914 Haden Road on the east side of Greens Bayou, Harris County, Texas.

OIL STATES INDUSTRIES INC has applied for a renewal of TPDES Permit No. WQ0012314001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 7,500 gallons per day. The facility is located in the southwest corner of a company-owned tract in the eastern part of the Jacintoport Industrial District and approximately 7500 feet east of the intersection of Sheldon Road and Jacintoport Boulevard in the City of Channelview in Harris County, Texas.

TM DEER PARK SERVICES LIMITED PARTNERSHIP which proposes to operate TM Deer Park Services, a commercial RCRA permitted hazardous waste treatment, storage, and disposal facility that also conducts organic chemical recycling operations and treats on-site and off-site sanitary wastewaters, has applied for a renewal of TPDES Permit No. WQ0003937000, which authorizes the discharge of treated cooling tower blowdown, boiler blowdown, sanitary wastewater (on-site and off-site), and filter back wash at a daily average flow not to exceed 150,000 gallons per day via Outfall 001. The facility is located at 2525 Battleground Road, adjacent to the west side of State Highway 134, approximately two miles north of the intersection of State Highway 134 and State Highway 225 in the City of Deer Park, Harris County, Texas.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us). Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200801725

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 2, 2008



## Notice of Water Rights Application

Notices issued March 27, 2008.

APPLICATION NO. 12154; Luminant Mining Company LLC, Applicant, 1601 Bryan Street, Dallas, TX 75201-3411, has applied for a Water Use Permit to construct and maintain two dams and reservoirs and to divert and use not to exceed 1,000 acre-feet of water per year from two diversion areas for mining purposes in Limestone County. Diversion Area One is located on unnamed tributaries of Cox Creek and Cox Creek and Diversion Area Two is located on Owens Creek, Brazos River Basin. More information on the application and how to participate in the permitting process is given below. The application and fees were received on January 3, 2007 Additional information was received on May 23, July 6, and August 15, 2007. The application was declared administratively complete and accepted for filing on August 23, 2007. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

### 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](http://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.

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 in the information section 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 Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us). Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200801726

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 2, 2008



## General Land Office

### Notice of Approval of Coastal Boundary Survey

Pursuant to §33.136 of the Texas Natural Resources Code, notice is hereby given that Jerry Patterson, Commissioner of the General Land Office, approved a coastal boundary survey filed as Aransas County NRC §33.136 sketch no. 8, submitted by J. L. Brundrette, Jr., Aransas County Surveyor, surveyed on the ground January 17, 2007, locating the following shoreline boundary:

A portion of the Mean High Water line that separates a called 72.212 acre tract that embraces portions of Farm Lots 3 and 4, Land Block 243, Burton and Danforth Subdivision from state submerged tract 222, Redfish Bay. The called 72.212 acre tract is within the John H. Phillips Survey, Abstract No. 175. This coastal boundary survey is located northeastwardly of City-by-the-Sea and southwesterly of Palm Harbor.

The line depicted on the survey fixes the shoreline for purposes of locating a shoreline boundary, subject to movement landward of that line. This survey is intended to provide pre-project baseline information related to an erosion response activity on coastal public lands. An owner of uplands adjoining the project area is entitled to continue to exercise littoral rights possessed prior to the commencement of the erosion response activity, but may not claim any additional land as a result of

accretion, reliction, or avulsion resulting from the erosion response activity.

For a copy of this survey or more information on this matter, contact Bill O'Hara, Director of the Survey Division, Texas General Land Office by phone at (512) 463-5212, email bill.ohara@glo.state.tx.us, or fax (512) 463-5223.

TRD-200801708

Larry L. Laine

Chief Clerk, Deputy Land Commissioner

General Land Office

Filed: April 2, 2008

## Texas Health and Human Services Commission

### Notice of Hearing on Proposed Nursing Facility Payment Rates

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on May 6, 2008, at 9:00 a.m., to receive public comment on proposed payment rates for the state-owned veterans nursing facilities. These nursing facilities are in the nursing facility program operated by Texas Department of Aging and Disabilities. These payment rates are proposed to be effective September 1, 2007.

The public hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code (TAC) §355.105(g), which require public notice and hearings on proposed payment rates. The public hearing will be held in the Permian Basin Room of the HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. Persons requiring American with Disabilities Act (ADA) accommodation or auxiliary aids or services should contact Irene Cantu by calling (512) 491-1358, at least 72 hours prior to the hearing so appropriate arrangements can be made.

**Proposal.** HHSC proposes the following per day payment rates for the state-owned veterans nursing facilities effective September 1, 2007: Big Spring, \$133.00; Bonham, \$133.00; Floresville, \$133.00; Temple, \$133.00; McAllen, \$133.00; El Paso, \$133.00; and Amarillo, \$133.00. The proposed rates for each home are based upon the state veterans home semi-private basic daily rate in effect on the first day of the rate period in accordance with the rate setting methodologies listed below under Methodology and Justification. These rates will be reconciled retrospectively based on actual costs in accordance with 1 TAC §355.311(j).

**Methodology and Justification.** The proposed rates were determined in accordance with the rate reimbursement setting methodology at 1 TAC §355.511(d).

**Briefing Package.** A briefing package describing the proposed payment rates will be available April 25, 2008. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Irene Cantu by telephone at (512) 491-1358, by fax at (512) 491-1998; or by e-mail at irene.cantu@hhsc.state.tx.us. The briefing package will also be available at the public hearing.

**Written and Oral Comments.** Written comments regarding the payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Irene Cantu, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Irene Cantu at (512) 491-1998; or by e-mail to irene.cantu@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Irene Cantu, HHSC, Rate

Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

TRD-200801611

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: March 26, 2008

### Notice of Hearing on Proposed Provider Payment Rate Methodology

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public rate hearing to receive public comment on proposed Medicaid payment rates for Freestanding Psychiatric Facilities. These programs are operated by HHSC. The rate hearing will be held on Wednesday, April 23, 2008, at 9:00 a.m. in the Lone Star Conference Room of the Braker Center, Building H, at 11209 Metric Boulevard, Austin, Texas 78758-4021. Entry is through Security at the entrance facing Metric Boulevard. The hearing will be held in compliance with Title 1 Texas Administrative Code §355.105(g) and §355.201(e) - (f), and Texas Human Resources Code §32.0282, which require public hearings on proposed payment rates for medical assistance programs.

**Proposal.** The reimbursement methodology for freestanding psychiatric facilities was recently updated and approved by Centers for Medicare and Medicaid (CMS) on March 5, 2008. HHSC adopted the state reimbursement rule at 1 Texas Administrative Code §355.8063(w) in the April 4, 2008, issue of the *Texas Register*. The proposed rates are based on the Medicare federal base rate from rate year 2007 with adjustments for wages, rural location, and length of stay. The proposed rates will be effective January 1, 2008.

**Methodology and justification.** The proposed rates were determined in accordance with the rate setting methodology at 1 Texas Administrative Code §355.8063(w) that was published as adopted in the April 4, 2008, issue of the *Texas Register*, and in compliance with Title XIX Social Security Act, as amended. The per diem rate will be determined based upon the Medicare federal base per diem for inpatient psychiatric facilities with facility-based adjustments for wages, rural location, and length of stay as determined by Medicare, to the extent possible within available funds.

**Written Comments.** Written comments regarding the proposed reimbursement methodology may be submitted in lieu of testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Amber Lovett, HHSC Rate Analysis, MC H-400, P.O. Box 85200, Austin, Texas 78708-5200 or by email to amber.lovett@hhsc.state.tx.us. Express mail can be sent, or written comments can be hand-delivered, to Ms. Lovett, HHSC Rate Analysis, MC H-400, Braker Center Building H, at 11209 Metric Boulevard, Austin, Texas 78758-4021. Alternatively, written comments may be sent via facsimile to Ms. Lovett at (512) 491-1998.

**Briefing Package.** Interested parties may request to have mailed to them or may pick up a briefing package concerning the proposed payment rates by contacting Ms. Lovett at (512) 491-1371, or by email to amber.lovett@hhsc.state.tx.us, or HHSC Rate Analysis, MC H-400 P.O. Box 85200, Austin, Texas 78708-5200. Briefing packages also will be available at the hearing.

People with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Kimbra Rawlings at (512) 491-1174 by April 21, 2008, so appropriate arrangements can be made.

TRD-200801728

Steve Aragón  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: April 2, 2008



#### Public Notice

The Texas Health and Human Services Commission announces its intent to submit Transmittal Number 08-001, Amendment Number 805, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. This amendment will be effective January 1, 2008.

The purpose of this amendment is to initiate a process by which the State will pay managed care organizations who have entered into a Medicare Risk Product Agreement with the Centers for Medicare and Medicaid Services (CMS), referred to as a "Medicare Advantage Health Plan," or "MA Health Plan," a monthly capitated payment in exchange for the MA Health Plan's payment of the cost sharing obligations to health care service providers attributable to dual eligible members enrolled in the MA Health Plan's Medicare risk product. The State Agreement will be the only vehicle for recovery of the cost sharing obligations attributable to dual eligible members.

The proposed amendment will have no fiscal impact to the state or federal budgets.

Interested parties may obtain copies of the proposed amendment by contacting DJ Johnson, by mail at, Health and Human Services Commission, 11209 Metric Boulevard, H-320, Austin, Texas 78758; by telephone at (512) 491-1301; by facsimile at (512) 491-1969; or by e-mail at david.johnson@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200801607  
Steve Aragón  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: March 26, 2008



### Department of State Health Services

#### Notice of Agreed Orders

QC Laboratories, Inc. (License Number L04750) of Houston. A total penalty of \$500 shall be paid by registrant for violation of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

Austin Bone and Joint Clinic (Registration Number R02379) of Austin. A total penalty of \$1,000 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

West Texas Orthopedics, LLP (Registration Number R10503) of Midland. A total penalty of \$6,500 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

Midwest Dental Equipment and Supply Company (Registration Number R17773) of Wichita Falls. A total penalty of \$3,000 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

Team Industrial Services, Inc. (License Number L00087) of Alvin. A total penalty of \$2,500 shall be paid by registration for violation of

25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

Baker Atlas (License Number L00446) of Houston. A total penalty of \$3,250 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

Coburn Chiropractic Center (Registration Number R26823) of West Columbia. A total penalty of \$2,000 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

Halliburton Energy Services (License Number L02113) of Houston. A total penalty of \$2,500 shall be paid by registrant for violation of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, press "1" then press "0", Monday - Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200801693  
Lisa Hernandez  
General Counsel  
Department of State Health Services  
Filed: April 1, 2008



#### Notice of Public Hearing and Extension of the Public Comment Period on Proposed Rules Concerning the Regulation of Bedding Products

The Department of State Health Services (DSHS) will hold a public hearing in response to a stakeholder request, to accept public comments on the proposed rules to amend 25 Texas Administrative Code Chapter 205, Subchapter A, §§205.1 - 205.9 and §§205.11 - 205.17, including repeal of §205.10 and new §205.10, concerning the regulation of bedding products.

The hearing will be conducted from 9:00 a.m. to 11:30 a.m. on April 30, 2008, in the Moreton Building, Room M-739, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing. Comment time for each individual will be determined by the total number of persons registered to speak.

DSHS is extending the public comment period for these proposed rules, which were published in the Proposed Rules section of the March 14, 2008, issue of the *Texas Register* (33 TexReg 2111). The new deadline for submission of comments is extended 26 days, through May 9, 2008, to allow stakeholders additional time in the review and comment process. Any draft changes to the proposed rule language will appear on the DSHS website at <http://www.dshs.state.tx.us/bedding/draft.shtm> and copies of the draft changes will be available at the public hearing.

Further information may be obtained from, and comment may be addressed to Paula Anderson, Public Health Sanitation and Consumer Product Safety Group, Division for Regulatory Services, MC 1987, Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347; telephone (512) 834-6773, extension 3600 or (800) 292-9152; fax (512) 834-6707; or electronic mail at Paula.Anderson@dshs.state.tx.us.

TRD-200801712



Lisa Hernandez  
General Counsel  
Department of State Health Services  
Filed: April 2, 2008



## Texas Department of Insurance

### Company Licensing

Application to change the name of SAN ANTONIO REINSURANCE COMPANY to SAN ANTONIO INDEMNITY COMPANY, a domestic fire and/or casualty company. The home office is in San Antonio, Texas.

Application for admission to the State of Texas by CENSTAT CASUALTY COMPANY, a foreign fire and/or casualty company. The home office is in Omaha, Nebraska.

Application for incorporation to the State of Texas by BLUEBONNET INSURANCE GROUP, a domestic fire and/or casualty company. The home office is in Huntsville, 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 Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200801703  
Gene C. Jarmon  
Chief Clerk and General Counsel  
Texas Department of Insurance  
Filed: April 1, 2008



### Notice of Proposed Restated Texas Health Insurance Risk Pool Plan of Operation

Notice is given to the public of the proposed restatement of the Texas Health Insurance Risk Pool (Pool) Plan of Operation pursuant to Insurance Code §1506.201.

The Pool was created in 1989 by the Texas Legislature to provide health insurance to eligible Texas residents who, due to medical conditions, are unable to obtain coverage from commercial insurers. The Pool became operational when the Texas Legislature provided start-up funding in 1997 to ensure that Texas complied with the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) that reformed the marketplace for health insurance. Accordingly, the Pool also serves as the Texas alternative mechanism for individual health insurance coverage, guaranteeing portability of coverage to qualified individuals who lose coverage under an employer group plan, church plan or state plan, as mandated by HIPAA. The Commissioner approved the original Plan of Operation on October 28, 1997. Section 1506.201 provides that proposed amendments to the Plan of Operation be approved by the Commissioner before becoming part of the Plan.

The Pool Board of Directors considered a number of changes to the Plan of Operation at its October 26, 2007 meeting. The Board voted to recommend approval by the Commissioner of amendments restating the Plan of Operation. The proposed restated Plan of Operation favorably recommended to the Commissioner by the Board includes both substantive changes to various operational activities of the Pool set out in the Plan document, as well as a number of nonsubstantive but necessary conforming changes to Insurance Code references, and to certain defined terms and references, based on the enactment of the nonsubstantive code revision by the 78th Legislature, Regular Session.

A full text copy of the proposed restated Plan of Operation is available by electronic mail, facsimile transmission, or USPS, from the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 463-6326. A copy of the full text of the proposed restated Plan of Operation is available for viewing at <http://www.tdi.state.tx.us> or at <http://www.txhealthpool.org>.

The Commissioner will consider written comments on the proposal, provided they are submitted in writing no later than 5:00 p.m. on April 28, 2008 to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment shall be simultaneously submitted to Betty DeLargy, Counsel for the Pool, Long, Burner, Parks & DeLargy, P.C., 106 E. Sixth Street, Suite 300, Austin, Texas 78701-3665.

TRD-200801608  
Gene C. Jarmon  
Chief Clerk and General Counsel  
Texas Department of Insurance  
Filed: March 26, 2008



## Texas Department of Insurance, Division of Workers' Compensation

### Notice of Public Hearing

The Texas Department of Insurance, Division of Workers' Compensation (TDI) will hold a public hearing on Tuesday, April 22, 2008 in the Tippy Foster Room at the Metro Building, 7551 Metro Center Drive in Austin.

The public hearing will begin at 9:00 a.m. and TDI will take testimony on the following rule repeal:

Chapter 134. Benefits--Guidelines for Medical Services, Charges, and Payments.

Subchapter E. Health Facility Fees.

§134.401. Acute Care Inpatient Hospital Fee Guideline.

The proposed rule repeal was published in the *Texas Register* on February 22, 2008 (33 TexReg 1487), and may be viewed on the TDI website at <http://www.tdi.state.tx.us/wc/rules/proposedrules/toc.html>. Although the comment period for the proposal closed on March 24, 2008 at 5:00 p.m., commenters may present additional comments at the hearing.

TDI offers reasonable accommodations for persons attending meetings, hearings, or educational events, as required by the Americans with Disabilities Act. If you require special accommodations, contact Idalia Cantu at (512) 804-4403 at least two days prior to the hearing date.

For further information regarding this notice, contact Blanca Guardiola of the Division's Legal Services Section at (512) 804-4716.

TRD-200801729  
Norma Garcia  
General Counsel  
Texas Department of Insurance, Division of Workers' Compensation  
Filed: April 2, 2008



## Texas Lottery Commission

Instant Game Number 1053 "Giant Jumbo Bucks"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1053 is "GIANT JUMBO BUCKS". The play style is "key number match with auto win (5X)".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1053 shall be \$5.00 per ticket.

1.2 Definitions in Instant Game No. 1053.

A. Display Printing--That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint--The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol--The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play

Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, JUMBO SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$40.00, \$50.00, \$100, \$500, \$1,000, and \$50,000.

D. Play Symbol Caption--The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1053 - 1.2D

<b>PLAY SYMBOL</b>	<b>CAPTION</b>
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
<b>JUMBO SYMBOL</b>	<b>WINX5</b>
\$5.00	FIVE\$
\$10.00	TEN\$
\$15.00	FIFTN
\$20.00	TWENTY
\$25.00	TWY FIV

\$40.00	FORTY
\$50.00	FIFTY
\$100	ONE HUND
\$500	FIV HUND
\$1,000	ONE THOU
\$50,000	50 THOU

E. Serial Number--A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize--A prize of \$5.00, \$10.00, \$15.00, or \$20.00.

G. Mid-Tier Prize--A prize of \$50.00, \$100 or \$500.

H. High-Tier Prize--A prize of \$1,000, \$5,000 or \$50,000.

I. 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 ticket number, and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number--A 14 (fourteen) digit number consisting of the four (4) digit game number (1053), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1053-0000001-001.

K. Pack--A pack of "GIANT JUMBO BUCKS" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

L. Non-Winning Ticket--A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket--A Texas Lottery "GIANT JUMBO BUCKS" Instant Game No. 1053 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "GIANT JUMBO BUCKS" Instant Game is determined once the latex on the ticket is scratched off to expose 44 (forty-four) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any SERIAL NUMBER play symbol, the player wins PRIZE shown for that number. If a player reveals a "JUMBO" play symbol, the player wins 5 TIMES the PRIZE shown for that symbol. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

- Exactly 44 (forty-four) Play Symbols must appear under the latex overprint on the front portion of the ticket;
- 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;
- Each of the Play Symbols must be present in its entirety and be fully legible;
- Each of the Play Symbols must be printed in black ink except for dual image games;
- The ticket shall be intact;
- The Serial Number, Retailer Validation Code, and Pack-Ticket Number must be present in their entirety and be fully legible;
- The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
- The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;
- The ticket must not be counterfeit in whole or in part;
- The ticket must have been issued by the Texas Lottery in an authorized manner;
- The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
- The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;
- The ticket must be complete and not miscut and have exactly 44 (forty-four) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
- The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
- The ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;
- Each of the 44 (forty-four) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
- Each of the 44 (forty four) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. The "JUMBO" (win x 5) play symbol will only appear on intended winning tickets and only as dictated by the prize structure.

C. No more than three (3) duplicate non-winning prize symbols will appear on a ticket.

D. No duplicate SERIAL NUMBERS play symbols on a ticket.

E. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

F. Non-winning prize symbols will never be the same as the winning prize symbol(s).

G. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e., 5 and \$5).

H. The top prize symbol will appear on every ticket unless otherwise restricted.

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "GIANT JUMBO BUCKS" Instant Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100, or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a \$50.00, \$100 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "GIANT JUMBO BUCKS" Instant Game prize of \$1,000, \$5,000 or \$50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation

of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "GIANT JUMBO BUCKS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller of Public Accounts, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Office of the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "GIANT JUMBO BUCKS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "GIANT JUMBO BUCKS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not

claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled

to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 tickets in the Instant Game No. 1053. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1053 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	640,000	9.38
\$10	560,000	10.71
\$15	180,000	33.33
\$20	160,000	37.50
\$50	80,000	75.00
\$100	6,900	869.57
\$500	750	8,000.00
\$1,000	150	40,000.00
\$5,000	17	352,941.18
\$50,000	8	750,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.69. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1053 without advance notice; at which point, no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1053, 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-200801613  
 Kimberly L. Kiplin  
 General Counsel  
 Texas Lottery Commission  
 Filed: March 27, 2008

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Instant Game Number 1054 "Mega Jumbo Bucks"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1054 is "MEGA JUMBO BUCKS". The play style is "key number match with auto win (10X)".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1054 shall be \$10.00 per ticket.

1.2 Definitions in Instant Game No. 1054.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for

dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, JUMBO SYMBOL, \$10.00, \$20.00, \$50.00, \$100, \$200, \$500, \$1,000, \$2,500 and \$100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears

under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1054 - 1.2D

<b>PLAY SYMBOL</b>	<b>CAPTION</b>
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
<b>JUMBO SYMBOL</b>	<b>WINX10</b>
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$200	TWO HUND



\$500	FIV HUND
\$1,000	ONE THOU
\$2,500	25 HUND
\$100,000	HUN THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$10.00, or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100, \$200 or \$500.

H. High-Tier Prize - A prize of \$1,000, \$2,500 or \$100,000.

I. 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 ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1054), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 050 within each pack. The format will be: 1054-0000001-001.

K Pack - A pack of "MEGA JUMBO BUCKS" Instant Game tickets contains 050 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 050 while the other fold will show the back of 001 and front 050.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "MEGA JUMBO BUCKS" Instant Game No. 1054 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "MEGA JUMBO BUCKS" Instant Game is determined once the latex on the ticket is scratched off to expose 54 (fifty-four) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any SERIAL NUMBER play symbol, the player wins PRIZE shown for that number. If a player reveals a "JUMBO" play symbol, the player wins 10 TIMES the PRIZE shown for that symbol. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 54 (fifty-four) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 54 (fifty-four) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 54 (fifty-four) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 54 (fifty-four) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. The "JUMBO" (win x 10) play symbol will only appear on intended winning tickets and only as dictated by the prize structure.

C. No more than four (4) duplicate non-winning prize symbols will appear on a ticket.

D. No duplicate SERIAL NUMBERS play symbols on a ticket.

E. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

F. Non-winning prize symbols will never be the same as the winning prize symbol(s).

G. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 10 and \$10).

H. The top prize symbol will appear on every ticket unless otherwise restricted.

## 2.3 Procedure for Claiming Prizes.

A. To claim a "MEGA JUMBO BUCKS" Instant Game prize of \$10.00, \$20.00, \$50.00, \$100, \$200, or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a \$50.00, \$100, \$200 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MEGA JUMBO BUCKS" Instant Game prize of \$1,000, \$2,500 or \$100,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "MEGA JUMBO BUCKS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

- B. if there is any question regarding the identity of the claimant;

- C. if there is any question regarding the validity of the ticket presented for payment; or

- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "MEGA JUMBO BUCKS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "MEGA JUMBO BUCKS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game

ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the

ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 3,000,000 tickets in the Instant Game No. 1054. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1054 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$10	300,000	10.00
\$20	420,000	7.14
\$50	60,000	50.00
\$100	42,875	69.97
\$200	6,500	461.54
\$500	975	3,076.92
\$1,000	100	30,000.00
\$2,500	50	60,000.00
\$100,000	3	1,000,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.61. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1054 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1054, 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-200801614  
 Kimberly L. Kiplin  
 General Counsel  
 Texas Lottery Commission  
 Filed: March 27, 2008



Instant Game Number 1064 "Numero Uno"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1064 is "NUMERO UNO". The play style is "row/column/diagonal with doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1064 shall be \$1.00 per ticket.

1.2 Definitions in Instant Game No. 1064.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$40.00, \$100 and \$1,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1064 - 1.2D

PLAY SYMBOL	CAPTION
1	
2	
3	
4	
5	
6	
7	
8	
9	
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$40.00	FORTY
\$100	ONE HUND
\$1,000	ONE THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, or \$20.00.

G. Mid-Tier Prize - A prize of \$40.00 or \$100.

H. High-Tier Prize - A prize of \$1,000.

I. 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 ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1064), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 150 within each pack. The format will be: 1064-0000001-001.

K Pack - A pack of "NUMERO UNO" Instant Game tickets contains 150 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements

of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "NUMERO UNO" Instant Game No. 1064 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "NUMERO UNO" Instant Game is determined once the latex on the ticket is scratched off to expose 10 (ten) Play Symbols. If a player reveals 3 matching symbols in any one row, column or diagonal line, the player wins the PRIZE shown. If a player reveals 3 "1" symbols in any one row, column or diagonal line, the player wins DOUBLE the PRIZE shown. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 10 (ten) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;
  5. The ticket shall be intact;
  6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
  7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
  8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
  9. The ticket must not be counterfeit in whole or in part;
  10. The ticket must have been issued by the Texas Lottery in an authorized manner;
  11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
  12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
  13. The ticket must be complete and not miscut, and have exactly 10 (ten) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
  14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
  15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
  16. Each of the 10 (ten) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
  17. Each of the 10 (ten) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
  18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
  19. The ticket must have been received by the Texas Lottery by applicable deadlines.
- B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.
- C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

- A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.
- B. No four or more matching play symbols on a ticket.
- C. There will be only one occurrence of 3 matching play symbols appearing in a row, column or diagonal.
- D. There will be at least one 1 (double) play symbol on every ticket.
- E. There will be a predominance of \$10 and above prize symbols on non-winning tickets.

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "NUMERO UNO" Instant Game prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$40.00, or \$100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a \$40.00 or \$100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "NUMERO UNO" Instant Game prize of \$1,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "NUMERO UNO" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "NUMERO UNO" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "NUMERO UNO" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not

claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 9,120,000 tickets in the Instant Game No. 1064. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1064 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$1	912,000	10.00
\$2	516,800	17.65
\$4	212,800	42.86
\$5	91,200	100.00
\$10	45,600	200.00
\$20	60,800	150.00
\$40	7,030	1,297.30
\$100	760	12,000.00
\$1,000	190	48,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.94. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1064 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1064, 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-200801664  
Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission  
Filed: March 28, 2008



### Instant Game Number 1067 "Hot Streak!"

#### 1.0 Name and Style of Game.

A. The name of Instant Game No. 1067 is "HOT STREAK!". The play style is "multiple games".

#### 1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1067 shall be \$7.00 per ticket.

#### 1.2 Definitions in Instant Game No. 1067.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, CHERRY SYMBOL, MELON SYMBOL, BANANA SYMBOL, STAR SYMBOL, LEMON SYMBOL, HORSESHOE SYMBOL, GOLD BAR SYMBOL, SEVEN SYMBOL, CROWN SYMBOL, 1 DICE SYMBOL, 2 DICE SYMBOL, 3 DICE SYMBOL, 4 DICE SYMBOL, 5 DICE SYMBOL, 6 DICE SYMBOL, \$10.00, \$15.00, \$20.00, \$40.00, \$50.00, \$100, \$500, \$2,000 and \$70,000.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1067 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
CHERRY SYMBOL	CHR
MELON SYMBOL	MEL
BANANA SYMBOL	BNA
STAR SYMBOL	STR
LEMON SYMBOL	LEM
HORSESHOE SYMBOL	HSH
GOLD BAR SYMBOL	BAR
SEVEN SYMBOL	SVN
CROWN SYMBOL	CRN
1 DICE SYMBOL	ONE
2 DICE SYMBOL	TWO
3 DICE SYMBOL	THR
4 DICE SYMBOL	FOR
5 DICE SYMBOL	FIV
6 DICE SYMBOL	SIX
\$10.00	TEN\$
\$15.00	FIFTN
\$20.00	TWENTY
\$40.00	FORTY
\$50.00	FIFTY
\$100	ONE HUND
\$500	FIV HUND
\$2,000	TWO THOU
\$70,000	70 THOU



E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$10.00, \$15.00 or \$20.

G. Mid-Tier Prize - A prize of \$50.00, \$100 or \$500.

H. High-Tier Prize - A prize of \$2,000 or \$70,000.

I. 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 ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1067), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1067-0000001-001.

K. Pack - A pack of "HOT STREAK!" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "HOT STREAK!" Instant Game No. 1067 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "HOT STREAK!" Instant Game is determined once the latex on the ticket is scratched off to expose 63 (sixty-three) Play symbols. In BEAT THE DEALER, if YOUR CARD play symbol beats the DEALER'S CARD play symbol within the same GAME, the player wins PRIZE shown for that GAME. In LUCKY SPINS, if a player reveals 3 matching symbols in the same SPIN across, the player wins PRIZE shown in the legend. In DICE, if any ROLL adds up to 7 or 11, the player wins PRIZE for that ROLL. In ROULETTE, if a player matches any of YOUR NUMBERS to the WHEEL NUMBER within the same WHEEL, the player wins PRIZE shown for that NUMBER. No portion of the display printing or any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 63 (sixty-three) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 63 (sixty-three) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 63 (sixty-three) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 63 (sixty-three) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

- A. Consecutive non-winning tickets will not have identical play data, spot for spot.
- B. The top prize symbol will appear on every ticket unless otherwise restricted.
- C. BEAT THE DEALER: No ties between YOUR CARD and the DEALER'S CARD.
- D. BEAT THE DEALER: No duplicate non-winning prize symbols.
- E. BEAT THE DEALER: No duplicate non-winning YOUR CARD play symbols.
- F. BEAT THE DEALER: No duplicate non-winning DEALER'S CARD play symbols.
- G. BEAT THE DEALER: Non-winning prize symbols will not match winning prize symbols.
- H. LUCKY SPINS: No duplicate non-winning SPINS in any order.
- I. LUCKY SPINS: There will be many near wins on non-winning SPINS. A near win is a SPIN containing 2 matching play symbols.
- J. LUCKY SPINS: Non-winning LUCKY SPINS tickets will contain no more than 4 of the same play symbol.
- K. DICE: Non-winning prize symbols will not match winning prize symbols.
- L. DICE: No duplicate non-winning prize symbols.
- M. DICE: No duplicate non-winning ROLLS.
- N. ROULETTE: No duplicate non-winning YOUR NUMBERS.
- O. ROULETTE: No duplicate WHEEL NUMBERS.
- P. ROULETTE: No 3 or more non-winning prize symbols between the 3 roulette wheels.
- Q. ROULETTE: Non-winning prize symbols will not match winning prize symbols.
- R. ROULETTE: No YOUR NUMBER play symbol will match a WHEEL NUMBER play symbol located in another WHEEL.
- S. ROULETTE: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 10 and \$10).

## 2.3 Procedure for Claiming Prizes.

- A. To claim a "HOT STREAK!" Instant Game prize of \$10.00, \$15.00, \$20.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, required to pay a \$50.00, \$100 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.
- B. To claim a "HOT STREAK!" Instant Game prize of \$2,000 or \$70,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by

the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "HOT STREAK!" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General; or
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "HOT STREAK!" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "HOT STREAK!" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or

within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature

appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 5,040,000 tickets in the Instant Game No. 1067. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1067 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$10	672,000	7.50
\$15	268,800	18.75
\$20	218,400	23.08
\$50	71,820	70.18
\$100	33,600	150.00
\$500	1,932	2,608.70
\$2,000	93	54,193.55
\$70,000	11	458,181.82

\*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 3.98. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1067 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1067, 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-200801615  
 Kimberly L. Kiplin  
 General Counsel  
 Texas Lottery Commission  
 Filed: March 27, 2008



Instant Game Number 1086 "Match for Cash"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1086 is "MATCH FOR CASH". The play style is "key symbol match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1086 shall be \$10.00 per ticket.

1.2 Definitions in Instant Game No. 1086.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: STAR SYMBOL, DOLLAR SIGN SYMBOL, GRAPES SYMBOL, CENTS SYMBOL, ROLL OF BILLS SYMBOL, FIST OF MONEY SYMBOL, POT OF GOLD SYMBOL, PEARL NECKLACE SYMBOL, DIAMOND SYMBOL, CLOVER SYMBOL, BOWTIE SYMBOL,

DOLLAR BILL SYMBOL, BELL SYMBOL, 7 SYMBOL, LEMON SYMBOL, BAG SYMBOL, GOLD BAR SYMBOL, STACK OF COINS SYMBOL, STACK OF BILLS SYMBOL, RING SYMBOL, JEWEL SYMBOL, HORSESHOE SYMBOL, WATERMELON SYMBOL, APPLE SYMBOL, STRAWBERRIES SYMBOL, CHEST SYMBOL, PIGGY BANK SYMBOL, CROWN SYMBOL, COWBOY HAT SYMBOL, SPURS SYMBOL, SAFE SYMBOL, 2X SYMBOL, 10X SYMBOL, \$10.00, \$20.00, \$25.00, \$50.00, \$100, \$200, \$500, \$1,000, \$10,000 and \$100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1086 - 1.2D

PLAY SYMBOL	CAPTION
STAR SYMBOL	
DOLLAR SIGN SYMBOL	
GRAPES SYMBOL	
CENTS SYMBOL	
ROLL OF BILLS SYMBOL	
FIST OF MONEY SYMBOL	
POT OF GOLD SYMBOL	
PEARL NECKLACE SYMBOL	
DIAMOND SYMBOL	
CLOVER SYMBOL	
BOWTIE SYMBOL	
DOLLAR BILL SYMBOL	
BELL SYMBOL	
7 SYMBOL	
LEMON SYMBOL	
BAG SYMBOL	
GOLD BAR SYMBOL	
STACK OF COINS SYMBOL	
STACK OF BILLS SYMBOL	
RING SYMBOL	
JEWEL SYMBOL	
HORSESHOE SYMBOL	
WATERMELON SYMBOL	
APPLE SYMBOL	
STRAWBERRIES SYMBOL	
CHEST SYMBOL	
PIGGY BANK SYMBOL	
CROWN SYMBOL	
COWBOY HAT SYMBOL	
SPURS SYMBOL	
SAFE SYMBOL	
2X SYMBOL	
10X SYMBOL	
\$10.00	TEN\$
\$20.00	TWENTY
\$25.00	TWY FIV
\$50.00	FIFTY
\$100	ONE HUND
\$200	TWO HUND
\$500	FIV HUND
\$1,000	ONE THOU
\$10,000	10 THOU
\$100,000	HUN THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100, \$200 or \$500.

H. High-Tier Prize - A prize of \$1,000, \$10,000 or \$100,000.

I. 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 ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1086), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 050 within each pack. The format will be: 1086-0000001-001.

K. Pack - A pack of "MATCH FOR CASH" Instant Game tickets contains 050 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 050 will be exposed on one side of the pack and ticket 001 on the other side.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "MATCH FOR CASH" Instant Game No. 1086 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "MATCH FOR CASH" Instant Game is determined once the latex on the ticket is scratched off to expose 36 (thirty-six) Play Symbols. If a player reveals 2 matching symbols in the same game, the player wins PRIZE shown for that GAME. If a player reveals a "2X" play symbol, the player wins DOUBLE the PRIZE shown for that GAME. If a player reveals a "10X" play symbol, the player wins 10 (ten) TIMES the PRIZE shown for that GAME. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 36 (thirty-six) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 36 (thirty-six) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 36 (thirty-six) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 36 (thirty-six) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. The top prize symbol will appear on every ticket unless otherwise restricted.

C. Non-winning prize symbols will not match winning prize symbols on a ticket.

D. No 3 or more duplicate non-winning prize symbols on a ticket.

E. No duplicate non-winning play symbols on a ticket.

F. The 2X (win x 2) and 10X (win x 10) play symbols will only appear on intended winning tickets as dictated by the prize structure .

### 2.3 Procedure for Claiming Prizes.

A. To claim a "MATCH FOR CASH" Instant Game prize of \$10.00, \$20.00, \$50.00, \$100, \$200 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a \$50.00, \$100, \$200 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MATCH FOR CASH" Instant Game prize of \$1,000, \$10,000 or \$100,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "MATCH FOR CASH" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "MATCH FOR CASH" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "MATCH FOR CASH" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

### 3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 3,000,000 tickets in the Instant Game No. 1086. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1086 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$10	420,000	7.14
\$20	360,000	8.33
\$50	60,000	50.00
\$100	41,250	72.73
\$200	3,875	774.19
\$500	1,525	1,967.21
\$1,000	150	20,000.00
\$10,000	20	150,000.00
\$100,000	6	500,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.38. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1086 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1086, 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-200801665  
 Kimberly L. Kiplin  
 General Counsel  
 Texas Lottery Commission  
 Filed: March 28, 2008



**North Central Texas Council of Governments**

Notice of Consultant Contract Award

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of consultant contract award. The consultant proposal request appeared in the January 25, 2008, issue of the *Texas Register* (33 TexReg 802). The selected consultant will perform technical and professional work to manage air quality public awareness campaign messages during traffic reports on television and radio, and as part of traffic messages sent through interactive media such as the internet, Personal Digital Assistants (PDAs), text messages, and e-mail.

The consultant selected for this project is Jackson Communications, 4101 W. Green Oaks Blvd, Suite 305200, Arlington, Texas 76016. The maximum amount of this contract is \$120,000.

TRD-200801717  
 R. Michael Eastland  
 Executive Director  
 North Central Texas Council of Governments  
 Filed: April 2, 2008



Notice of Consultant Contract Award

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of consultant contract award. The consultant proposal request appeared in the January 18, 2008, issue of the *Texas Register* (33 TexReg 627). The selected consultant will perform technical and professional work to develop improvements to the North Central Texas Council of Governments' Dallas/Fort Worth Regional Travel Model (DFWRTM).

The consultant selected for this project is Cambridge Systematics Inc., 9015 Mountain Ridge, Suite 210, Austin, Texas 78759. The maximum amount of this contract is \$135,000.

TRD-200801718  
 R. Michael Eastland  
 Executive Director  
 North Central Texas Council of Governments  
 Filed: April 2, 2008



Notice of Consultant Contract Award

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of consultant contract award. The consultant proposal request appeared in the February 8, 2008, issue of the *Texas Register* (33 TexReg 1185). The selected consultant will perform technical and professional work for the Evans & Rosedale Urban Village Project.



The consultant selected for this project is Civic Design Associates, 4621 Montrose Blvd., Suite B240, Houston, Texas 77006. The maximum amount of this contract is \$81,250.

TRD-200801719

R. Michael Eastland  
Executive Director  
North Central Texas Council of Governments  
Filed: April 2, 2008



### Request for Proposals for the Hurst-Eules-Bedford Transit Project

This request by the North Central Texas Council of Governments (NCTCOG) for contractor services is filed under the provisions of Government Code, Chapter 2254.

The North Central Texas Council of Governments (NCTCOG) is requesting written proposals from transportation providers to manage and operate the Hurst-Eules-Bedford (HEB) Transit Project, a demand-responsive service within the Cities of Hurst, Eules and Bedford. In 2001, the Federal Transit Administration (FTA) awarded NCTCOG \$1.5 million (federal) in Job Access/Reverse Commute funds for the Northeast Tarrant County Job Access Program. The purpose of the funding is to provide new or expanded transportation services to employment and employment related opportunities. The HEB Transit Project has been in operation since August 2006 and provides transportation disadvantaged individuals trips to and from work and work-related appointments within the Cities of Hurst, Eules and Bedford. The provider will be responsible for scheduling, dispatch, and general operation of the service. The contract will terminate after a period of fourteen (14) months; however, three (3) optional one-year renewals are available at NCTCOG's sole discretion. The budget for this project is approximately \$120,000 per year.

#### Due Date

Proposals must be received no later than 5 p.m., Central Daylight Time, on Friday, May 9, 2008, to James Powell, Transportation Planner III, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011 or P.O. Box 5888, Arlington, Texas 76005-5888. For copies of the RFP, contact Therese Bergeon, at (817) 695-9267.

#### Contract Award Procedures

The firm or individual selected to perform these activities will be recommended by a Contractor Selection Committee (CSC). The CSC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The NCTCOG Executive Board will review the CSC's recommendations and, if found acceptable, will issue a contract award.

#### Regulations

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-200801720

R. Michael Eastland  
Executive Director  
North Central Texas Council of Governments  
Filed: April 2, 2008



### Public Utility Commission of Texas

#### Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on March 28, 2008, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Cebridge Acquisition, L.P. d/b/a Suddenlink Communications for an Amendment to a State-Issued Certificate of Franchise Authority, Project Number 35496 before the Public Utility Commission of Texas.

The requested amended CFA service area includes the City Limits of Warren City and Nacogdoches, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 35496.

TRD-200801705

Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 1, 2008



#### Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on March 28, 2008, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Time Warner Cable for an Amendment to a State-Issued Certificate of Franchise Authority, Project Number 35503 before the Public Utility Commission of Texas.

The requested amended CFA service area includes the City Limits of Horseshoe Bay, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 35503.

TRD-200801706

Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 1, 2008



### Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on March 26, 2008, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of ALEC, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 35491 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, T1-Private Line, and long distance services.

Applicant's requested SPCOA geographic area includes the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than April 16, 2008. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 35491.

TRD-200801704

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: April 1, 2008



### Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on March 27, 2008, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of insideMyCity, LLC for a Service Provider Certificate of Operating Authority, Docket Number 35494 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, ISDN, T1-Private Line, long distance, wireless, and integrated Internet and VOIP services.

Applicant's requested SPCOA geographic area includes geographic area of the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than April 16, 2008. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 35494.

TRD-200801707

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: April 1, 2008



### Notice of Application to Relinquish a Service Provider Certificate of Operating Authority

On March 24, 2008, Network PTS, Inc. filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60755. Applicant intends to relinquish its certificate.

The Application: Application of Network PTS, Inc. to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 35483.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than April 16, 2008. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 35483.

TRD-200801617

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: March 27, 2008



### Request for Approval of Certificate of Convenience and Necessity Allocation

Notice is given to the public of a request for approval of a certificate of convenience and necessity (CCN) allocation filed with the Public Utility Commission of Texas on March 31, 2008, pursuant to the Public Utility Regulatory Act, TEXAS UTILITY CODE ANNOTATED §14.001 and §37.154 (Vernon 2007 & Supplement 2007) (PURA).

Docket Style and Number: Request of Entergy Texas, Inc. for Approval of CCN Allocation, Docket Number 35519.

The Petition: Entergy Texas, Inc. (ETI) filed a request for approval of CCN Allocation pursuant to §14.001 and §37.154 of PURA. On December 31, 2007, Entergy Gulf States, Inc. (EGSI) completed jurisdictional separation to establish two vertically integrated utilities, one of which (ETI) is subject solely to the retail jurisdiction of the commission and one of which (Entergy Gulf States, Louisiana LLC) is subject solely to the retail jurisdiction of the Louisiana Public Service Commission. EGSI's assets were allocated between ETI and the Louisiana utility in such a manner to enable both companies to meet their statutory service obligations. Utility service is being provided to Texas customers using the same facilities, personnel, and operational procedures as were utilized prior to the jurisdictional separation. The allocation of assets to ETI that resulted from the jurisdictional separation included the CCN covering EGSI's former Texas service territory. One business day before the jurisdictional separation was completed, Texas Industrial Energy Consumers (TIEC) filed a petition in *Petition of Texas Industrial Energy Consumers for Declaratory Ruling*, Docket Number 35183 (pending), which seeks a declaratory ruling that prior review of the CCN was required because the CCN would be "transferred" from EGSI to ETI under the jurisdictional separation. Currently, ETI submits that the filing of this request provides the best opportunity to expeditiously resolve any outstanding related issues within the scope of PURA §37.154. Accordingly, ETI requests that the commission, to the extent it determines that PURA §37.154 is applicable, undertake an expedited review of the petition and issue an order consistent with applicable law approving the allocation of EGSI's CCN to ETI.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call 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 at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All correspondence should refer to Docket Number 35519.

TRD-200801711  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 2, 2008



## Texas Residential Construction Commission

### Notice of Application for Designation as a "Texas Star Builder"

The Texas Residential Construction Commission (commission) adopted rules regarding the procedures for designation as a "Texas Star Builder" at 10 TAC §303.300. The rules were adopted pursuant to §416.011, Property Code (Act effective Sept. 1, 2003), which provides that the commission shall establish rules and procedures through which a builder can be designated as a "Texas Star Builder." The commission rules for application for designation can be found on the commission's website at [www.trcc.state.tx.us](http://www.trcc.state.tx.us)

10 TAC §303.300(i)(2) requires the commission to publish in the *Texas Register* notice of the application of each person seeking to become designated as a "Texas Star Builder" registered under this subchapter. The commission will accept public comment on each application for twenty-one (21) days after the date of publication of the notice. Information provided in response to this notice will be utilized in evaluating the applicants for approval. The Texas Star Builder designation requires that a builder or remodeler demonstrate that its education, experience and commitment to professionalism sets the builder or remodeler apart from its peers and offers some assurance to its customers that its quality of service and construction will be above average.

Pursuant to 10 TAC §303.300(i)(2) the commission hereby notices the application for designation as a "Texas Star Builder" of:

Highsmith Builders, Inc., 305 N. College, Weimar, Texas 78962. Highsmith Builders, Inc. holds TRCC builder registration #7083. The applicant's registered agent is Steve C. Highsmith.

Interested persons may send written comments regarding this application to Susan K. Durso, General Counsel, The Texas Residential Construction Commission, P.O. Box 13509, Austin, TX 78711-3509. Comments regarding this application will be accepted for twenty-one (21) days following the date of publication of this notice in the *Texas Register*. Thereafter, the comments will not be considered as timely filed.

TRD-200801692  
Susan K. Durso  
General Counsel  
Texas Residential Construction Commission  
Filed: April 1, 2008



## Texas A&M University System Board of Regents

### Public Notice

Announcement of Finalist for the Position of President of Texas A&M University - Commerce.

Pursuant to §552.123, Texas Government Code, the following candidate is the finalist for the president of Texas A&M University - Com-

merce. Upon the expiration of twenty-one days, final action is to be taken by the Board of Regents of The Texas A&M University System.

Dr. Dan R. Jones  
TRD-200801658  
Vickie Burt Spillers  
Executive Secretary to the Board  
Texas A&M University System Board of Regents  
Filed: March 28, 2008



### Public Notice

Announcement of Finalist for the Position of President of Texas A&M University - Texarkana.

Pursuant to §552.123, Texas Government Code, the following candidate is the finalist for the president of Texas A&M University - Texarkana. Upon the expiration of twenty-one days, final action is to be taken by the Board of Regents of The Texas A&M University System.

Dr. Carlisle B. Rathburn  
TRD-200801659  
Vickie Burt Spillers  
Executive Secretary to the Board  
Texas A&M University System Board of Regents  
Filed: March 28, 2008



### Public Notice

Announcement of Finalist for the Position of President of Tarleton State University.

Pursuant to §552.123, Texas Government Code, the following candidate is the finalist for the president of Tarleton State University. Upon the expiration of twenty-one days, final action is to be taken by the Board of Regents of The Texas A&M University System.

Dr. Dominic Dottavio  
TRD-200801660  
Vickie Burt Spillers  
Executive Secretary to the Board  
Texas A&M University System Board of Regents  
Filed: March 28, 2008



### Public Notice

Announcement of Finalist for the Position of Director of the Texas Veterinary Medical Diagnostic Laboratory.

Pursuant to §552.123, Texas Government Code, the following candidate is the finalist for the director of the Texas Veterinary Medical Diagnostic Laboratory. Upon the expiration of twenty-one days, final action is to be taken by the Board of Regents of The Texas A&M University System.

Dr. Tammy Beckham  
TRD-200801661  
Vickie Burt Spillers  
Executive Secretary to the Board  
Texas A&M University System Board of Regents  
Filed: March 28, 2008

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**The Texas A&M University System**

**Request for Proposal**

RFP - TEEEX 08-0024 Consulting Services: Assessment of Agency Strategic Proposal Capabilities and Capacity.

Texas Engineering Extension Service (TEEX) is accepting proposals and intends to enter into an Agreement with a consultant to assess the existing state of the Agency's capabilities and capacity to successfully pursue, capture, and win strategic (i.e., seven and eight figures) grants and contracts in both the public and private sectors. One of the expected outcomes of this engagement is to identify the gaps that exist between the current TEEX proposal capabilities and capacity and the resources necessary to successfully compete for and win strategic proposals.

Information may be obtained by contacting:

Clyde Oberg

Buyer

Dept of Strategic Sourcing & Purchasing Services

Texas A&M University

P.O. Box 30013

College Station, Texas 77842-3013

or e-mail at [co@tamu.edu](mailto:co@tamu.edu)

Selection criteria will include methodology, qualifications, references, and cost. Proposals must be received on or before 2:00 p.m. CDT on May 16, 2008.

TRD-200801688

Vickie Burt Spillers

Executive Secretary to the Board

The Texas A&M University System

Filed: March 31, 2008

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**Texas Department of Transportation**

**Aviation Division - Request for Proposal for Aviation Architectural/Engineering Services**

The City of Arlington, Texas intends to engage an aviation professional architectural/engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A and Local Government Code, Chapter 271, Subchapter H, Alternative Project Delivery Methods for Certain Projects. For the City of Arlington, TxDOT Aviation Division will solicit and receive proposals for professional aviation architectural/engineering design-build services described below:

Current Project: TxDOT CSJ No. 08TBARLNG. Scope: Provide design-build services to design and build a new airport terminal building, construct entrance road, auto parking, and demolish the existing terminal building.

The HUB goal is set at 5%.

To assist in your proposal preparation the most recent Airport Layout Plan and 5010 drawing are available online at [www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm](http://www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm) by selecting Arlington Municipal Airport. Additionally, there will be a pre-proposal meeting held on April 18 at 2:30 p.m. in the Airport Conference Room at the Arlington Municipal Airport, 5000 S. Collins St., Arlington, Texas 76018. Proposing firms are encouraged to attend but attendance is not mandatory.

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Architectural/Engineering Services Proposal". The form may be requested from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at [www.dot.state.tx.us/services/aviation/consultant.htm](http://www.dot.state.tx.us/services/aviation/consultant.htm). The form may not be altered in any way. All printing on the form must be in black on white paper, except for the optional illustration page and bound supplement. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals forms shall be stapled but not bound in any other fashion. Additionally, a bound supplement, not to exceed 10 pages exclusive of dividers, may be included with photos, architectural renderings, a conceptual sketch of the terminal building and/or information firms consider pertinent to this project or their past design-build projects. PROPOSALS 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.

**Please note:**

Seven completed, unfolded copies of Form AVN-550 and the bound supplement **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than May 2, 2008, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope to the attention of Edie Stimach.

The consultant selection committee will be composed of local government members. The final selection by the committee will be made following the completion of review of proposals and interviews. The committee will review all proposals and rate and rank each. Interviews will be conducted with the short-listed firms only. The criteria for evaluating architectural/engineering design-build proposals for this project are attached below. All proposing firms will receive notification of the short listed firms. The top rated firm following interviews will be contacted to begin fee negotiations.

If there are any procedural questions, please contact Edie Stimach, Grant Manager at 1-800-68-PILOT at extension 4518. For technical questions, please contact Robert Porter, Airport Manager, at 817-459-5990.

**CRITERIA FOR EVALUATING DESIGN-BUILD ARCHITECT PROPOSALS**

**Arlington Municipal Airport Terminal Building**

1. Recent experience of the project team with comparable building projects within the last five years. (20 points)

Does the proposal indicate that the project team has recent direct experience on other design-build projects? Were any at general aviation airports designing similar improvements to those proposed at this location? [Sources of information: Aviation Project Design Team Form, Recent Relevant Airport Experience Form, and possibly the Proposal Summary.]

2. Proposed technical approach (15 points)

Does the proposal provide evidence of understanding of the project? Do they address any unique architectural, engineering or construction aspects associated with the proposed project and how to address them?

[Sources of information: Proposed Technical Approach to Project, and possibly the Proposal Summary.]

3. Ability to meet schedules and deadlines (10 points)

Does the proposed design-build team have sufficient time to work on this project? Has the firm demonstrated an ability to meet design schedules in the past? How are construction timelines or phases addressed to meet deadlines? [Sources of information: Aviation Project Design Team Form, Recent Relevant Airport Experience Form, and possibly the Proposal Summary.]

4. Project design schedule (10 points)

Reasonableness of proposed schedule [Sources of information: Project Design Schedule Form and possibly the Proposal Summary.]

5. Construction Management Experience (15 points)

It is critical that the architect/engineer be involved in construction activities. What evidence does the proposal provide as to the architect's/engineer's commitment to proactive and consistent attention to the project during construction? Do they address coordination with the team for the construction phase? [Source of information: Relevant Airport Experience form; proposed Technical Approach to Project; and possibly the Proposal Summary]

6. Pertinence and Quality of Supplemental Data (20 points)

Does the supplemental data show exceptional or outstanding abilities of the firm and provide examples of creativity in design? Does the data show an ability to meet the specific needs of the client's project? [Source of information: Supplement and possibly the proposal summary]

TRD-200801616

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: March 27, 2008



Public Hearing Notice - Statewide Transportation Improvement Program

The Texas Department of Transportation (department) will hold a public hearing on Wednesday, April 30, 2008, at 11:00 a.m. at the Texas Department of Transportation, 200 East Riverside Drive, Room 1A-2, Austin, Texas to receive public comments on the February/March 2008 Revisions to the Statewide Transportation Improvement Program (STIP) for FY 2008-2011. The STIP reflects the federally funded transportation projects in the FY 2008-2011 Transportation Improvement Programs (TIPs) for each Metropolitan Planning Organization (MPO) in the state. The STIP includes both state and federally funded projects for the nonattainment areas of Beaumont, Dallas-Fort Worth, El Paso, and Houston. The STIP also contains information on federally funded projects in rural areas that are not included in any MPO area, and other statewide programs as listed.

Title 23, United States Code, §134 and §135 require each designated MPO and the state, respectively, to develop a TIP as a condition to securing federal funds for transportation projects under Title 23 or the Federal Transit Act (49 USC §5301, et seq.).

Section 134(j) requires an MPO to develop its TIP in cooperation with the state and affected transportation operators, to provide an opportu-

nity for interested parties to participate in the development of the program, and further requires the TIP to be updated at least once every four years and approved by the MPO and the Governor or Governor's designee. Section 135(g) requires the state to develop a STIP for all areas of the state in cooperation with the designated MPOs and, with respect to non-metropolitan areas, in consultation with affected local officials, and further requires an opportunity for participation by interested parties as well as approval by the Governor or the Governor's designee.

In accordance with 43 TAC §15.8(d), a copy of the proposed February/March 2008 Revisions to the FY 2008-2011 STIP will be available for review, at the time the notice of hearing is published, at each of the department's district offices, at the department's Transportation Planning and Programming Division offices located in Building 118, Second Floor, 118 East Riverside Drive, Austin, Texas, and on the department's website at:

[www.dot.state.tx.us](http://www.dot.state.tx.us).

Persons wishing to review the February/March 2008 Revisions to the FY 2008-2011 STIP may do so online or contact the Transportation Planning and Programming Division at (512) 486-5033.

Persons wishing to speak at the hearing may register in advance by notifying Lori Morel, Transportation Planning and Programming Division, at (512) 486-5033 not later than Tuesday, April 29, 2008, or they may register at the hearing location beginning at 10:00 a.m. on the day of the hearing. Speakers will be taken in the order registered. Any interested person may appear and offer comments or testimony, either orally or in writing; however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any persons with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time or repetitive content. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony. Persons with disabilities who have special communication or accommodation needs or who plan to attend the hearing may contact Randall Dillard, Government and Public Affairs Division, at 125 East 11th Street, Austin, Texas 78701-2483, (512) 305-9137. Requests should be made no later than three days prior to the hearing. Every reasonable effort will be made to accommodate the needs.

Further information on the FY 2008-2011 STIP may be obtained from Lori Morel, Transportation Planning and Programming Division, 118 East Riverside Drive, Austin, Texas 78704, (512) 486-5033. Interested parties who are unable to attend the hearing may submit comments to James L. Randall, P.E., Director, Transportation Planning and Programming Division, 118 East Riverside Drive, Austin, Texas 78704. In order to be considered, all written comments must be received at the Transportation Planning and Programming office by Monday, May 12, 2008, at 4:00 p.m.

TRD-200801714

Jack Ingram

Associate General Counsel

Texas Department of Transportation

Filed: April 2, 2008



### How to Use the Texas Register

**Information Available:** The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Secretary of State** - opinions based on the election laws.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules**- sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Texas Department of Banking** - opinions and exempt rules filed by the Texas Department of Banking.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules**- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

**Review of Agency Rules** - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 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 "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html

version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

### Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the *TAC*: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

*Part I. Texas Department of Human Services*

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).