TEXAS REGISTER

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Diego Rodriguez

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

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

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IN THIS ISSUE

WITHDRAWN RULES

ADOPTED RULES

RULE REVIEW

TABLES AND GRAPHICS

IN ADDITION

THE ATTORNEY GENERAL

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

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

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

Request for Opinions

RQ-0835-GA

Requestor:

Dr. Carl A. Montoya

Chairman of the Texas School Safety Center Board

Brownsville Independent School District

1900 Price Road

Brownsville, Texas 78521-2417

Re: Authority of the board of directors of the Texas School Safety Center under various provisions of subchapter G, chapter 37, Texas Education Code (RQ-0835-GA)

Briefs requested by December 9, 2009

RQ-0836-GA

Requestor:

The Honorable Geoffrey I. Barr

Comal County Criminal District Attorney

150 North Seguin Avenue, Suite 307

New Braunfels, Texas 78130

Re: Whether a county commissioner, by virtue of article XVI, section 65, Texas Constitution, automatically resigns his seat under particular circumstances (RQ-0836-GA)

Briefs requested by December 9, 2009

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

TRD-200905182
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: November 9, 2009

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TEXAS ETHICS COMMISSION

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

Advisory Opinion Request

AOR-551. The Texas Ethics Commission has been asked to consider whether a communication that a city is considering placing on its website complies with §255.003 of the Election Code.

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

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

TRD-200905206
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Filed: November 10, 2009

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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).

TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 180. TEXAS PHYSICIAN HEALTH PROGRAM AND REHABILITATION ORDERS

22 TAC §180.4

The Texas Medical Board (Board) adopts on an emergency basis new §180.4, concerning Operation of Program.

The addition of new §180.4 is proposed as an emergency rule under §2001.034 of the Government Code due to the requirements of state law, specifically, passage of Senate Bill 292 of the 81st Legislative Session that went into effect September 1, 2009.

New §180.4 establishes the requirements for eligibility, referrals, drug-testing, and fees for the Physician Health Program.

Elsewhere in this issue of the *Texas Register,* the Board contemporaneously proposes new §180.4 on a permanent basis.

The new rule is adopted on an emergency basis under §2001.034 of the Government Code.

§180.4. Operation of Program.

(a) Referrals.

(1) The program shall accept a self-referral from a licensure applicant or licensee, or a referral from an individual, a physician health and rehabilitation committee, a physician assistant organization, a state physician health program, a state acupuncture program, a hospital or hospital system licensed in this state, a residency program, the medical board, physician assistant board, or the acupuncture board.

(2) In addition to confidential referrals to the program, the medical board, physician assistant board, and acupuncture board may publicly refer an applicant or licensee to the program after a contested case hearing or through an agreed order. Unless good cause is found, an applicant or licensee that has been subject to disciplinary action in another state based on alcohol or substance abuse related violations shall be referred to the program through a public referral.

(b) Eligible Program Participants. An individual who has or may have mental or physical impairment or an alcohol/substance use disorder is eligible to participate in the program unless the person:

(1) has violated the standard of care as a result of drugs or alcohol;

(2) committed a boundary violation with a patient or a patient's family; or

(3) has been convicted of, placed on deferred adjudication community supervision or deferred disposition for a felony.

(c) Drug Testing.

(1) The program's drug testing shall be provided under contract for services with the vendor used by the Texas Medical Board.

(2) The program shall adopt policies and protocols for drug-testing that are consistent with those of the agency in effect on December 31, 2009.

(3) The agency may monitor the test results for all program participants, provided that the identities of the program participants are not disclosed to the agency.

(d) Reports to the Agency.

(1) If an individual who has been referred by the agency or a third party to the program and does not enter into an agreement for services or is found to have committed a substantive violation of an agreement, the governing board shall report that individual to the agency for possible disciplinary action.

(2) A positive drug screen that is not attributed to a prescription by a physician, shall be determined to be substantive violation of an agreement by the program participant.

(3) After receiving the report, the agency may refer the individual back to the program or may pursue disciplinary action through the agency's disciplinary process.

(e) Fees.

(1) Program participants shall pay an annual fee of $1,200. This fee is in addition costs owed by program participants for medical care, primary treatment, continuing care, and required evaluations to include costs for drug testing associated with a program participant's Physician Health Program agreement.

(2) The governing board may waive the annual fee for an applicant upon a showing of good cause.

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 November 9, 2009.

TRD-200905137
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Effective Date: November 9, 2009
Expiration Date: March 8, 2010
For further information, please call: (512) 305-7016

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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 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 352. QUALITY ASSURANCE FEE

1 TAC §§352.1 - 352.9

(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 Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Health and Human Services Commission (HHSC) proposes the repeal of Chapter 352, §§352.1 - 352.9, concerning Quality Assurance Fee.

Background and Justification

This chapter includes rules regarding the assessment and collection of a provider tax, also known as a quality assurance fee (QAF), from Intermediate Care Facilities for Persons with Mental Retardation (ICF-MR). This chapter is being repealed so that these rules can be transferred from Health and Human Services Commission (HHSC) agency rules to Department of Aging and Disability Services (DADS) agency rules. HHSC is responsible for determining Medicaid payment rates. These QAF rules do not determine payment rates, but instead describe the assessment and collection of the QAF, which is the responsibility of DADS. Therefore, these rules will be transferred to DADS. DADS is proposing the QAF rules simultaneously with this repeal in Title 40, Part 1, Chapter 11.

Section-by-Section Summary

This chapter and the rules contained in this chapter are repealed.

Fiscal Note

Gordon E. Taylor, Chief Financial Officer for DADS, has determined that during the first five-year period the repeal is in effect there will be no additional cost to the state for each state fiscal year the repeal of these rules is implemented. The proposed repeal will not result in any fiscal implications for local health and human services agencies. Local governments will incur no additional costs.

Small Business and Micro-business Impact Analysis

HHSC has determined that there is no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the repeal of these rules. The repeal of these rules and the subsequent proposal of these same rules by DADS do not result in any fiscal impact and will not require any changes in practice or any additional cost to any small businesses.

HHSC does not anticipate that there will be any economic cost to persons who are required to comply with the repeal. The repeal will not affect local employment.

Public Benefit

Kevin Nolting, Interim Director of Rate Analysis, has determined that, for each year of the first five years the repeal is in effect, the expected public benefit is that these rules will be appropriately assigned as DADS agency rules since DADS has the responsibility for the implementation and enforcement of the requirements in the rules.

Takings Impact Assessment

HHSC has determined that this 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 Texas Government Code, §2007.043.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "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.

Public Comment

Questions about the content of this proposal may be directed to Sarah Hambrick in the HHSC Rate Analysis Department by telephone at (512) 491-1431 or by facsimile at (512) 491-1998. Written comments on the proposal may be submitted to Ms. Hambrick by facsimile, by e-mail to sarah.hambrick@hhsc.state.tx.us, or by mail to HHSC Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200, within 30 days of publication of this proposal in the *Texas Register.*

Statutory Authority

The repeal is proposed under Texas Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties; Texas Human Resources Code, §32.021 and Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code, §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under Texas Human Resources Code, Chapter 32.

The proposed repeal affects Texas Government Code, Chapter 531 and Texas Human Resources Code, Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§352.1. Purpose of Chapter.

§352.2. Definitions.

§352.3. Quality Assurance Fee Determination Methodology.

§352.4. Required reports.

§352.5. Payment and Collection of Quality Assurance Fee.

§352.6. Enforcement.

§352.7. Penalty.

§352.8. Informal review.

§352.9. Appeal of an Informal Review Decision.

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

Filed with the Office of the Secretary of State on November 5, 2009.

TRD-200905049
Steve Aragon
General Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: December 20, 2009
For further information, please call: (512) 424-6576

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CHAPTER 353. MEDICAID MANAGED CARE
SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §353.4

The Texas Health and Human Services Commission (HHSC) proposes to amend §353.4, in Title 1, Part 15, Chapter 353, Subchapter A, General Provisions, concerning Managed Care Organization Requirements Concerning Out-of-Network providers.

Background and Justification

Sections 2.203 and 2.35 of H.B. 2292, 78th Legislature, Regular Session, 2003, directed HHSC to take a number of steps to increase the participation of providers in Medicaid managed care. H.B. 2292 included a requirement that HHSC establish a reasonable reimbursement methodology for Medicaid managed care organizations (MCOs) to use when paying for services rendered by out-of-network, in area providers. The rule containing this provision, 1 TAC §353.4, became effective January 22, 2006.

The rule requires that Medicaid MCOs reimburse out-of-network, in area providers no less than the Medicaid fee-for-service rate minus three (3) percent. This requirement encourages provider participation in Medicaid managed care since the in-network reimbursement rate is generally higher than the out-of-network rate. The rule also encourages Medicaid MCOs to increase access to network providers by tightening out-of-network utilization standards.

In the 2010-11 General Appropriations Act (Article II, Health and Human Services Commission, Rider 59, S.B. 1, 81st Legislature, Regular Session, 2009), the Legislature directed HHSC to achieve $107.1 million General Revenue cost savings in Medicaid. Rider 59 outlined a number of strategies for HHSC to consider in order to achieve these savings, including efforts to increase provider participation in managed care networks. Reducing the minimum MCO rate for out-of-network, in area providers is one way to achieve some of the required cost savings while encouraging provider participation in Medicaid managed care.

Section-by-Section Summary

This proposed rule makes technical corrections to the title and to subsection (h) to clarify applicability.

Proposed subsection (c) changes the minimum out-of-network, in area provider reimbursement rate to be used by Medicaid MCOs from the fee-for-service rate minus three (3) percent to the fee-for-service rate minus five (5) percent.

Proposed subsection (e) reduces the out-of-network utilization standards with which MCOs must comply as follows: out-of-network inpatient admissions are reduced from no more than 25 percent of total admissions to no more than 15 percent; out-of-network emergency room visits are reduced from no more than 30 percent of total emergency room visits to no more 20 percent; and other out-of-network outpatient services are reduced from no more than 30 percent of total dollars billed for such services to no more than 20 percent.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first 5-year period the amended rule is in effect there will be a cost savings to state government. The reimbursement rate reduction will result in savings to state government of $937,440 for State Fiscal Year (SFY) 2010; $1,159,710 for SFY 2011; and $1,272,240 each year for SFY 2012, 2013, 2014, and 2015. The proposed rule will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Small and Micro-business Impact Analysis

This rule change may adversely impact small or micro-businesses that provide out-of-network services in Medicaid managed care areas. For various reasons, these providers have opted to provide services out-of-network instead of contracting with the Medicaid MCO(s) in their area. HHSC does not collect data regarding the number of out-of-network providers who are small or micro-businesses, and does not have a way to estimate how many small or micro-businesses may be impacted.

Medicaid MCOs reimburse out-of-network providers for emergency services and, in some cases, for medically necessary non-emergency services that are not available through the MCO's network. Most out-of-network services are related to emergencies. Out-of-network providers include hospital emergency departments, hospital-affiliated physicians, individual physicians and physician groups, laboratories, and related ancillary services.

HHSC considered three alternatives to the proposed rule: (1) no change; (2) imposing a ten percent discount on MCO out-of-network, in area reimbursements; and (3) an across the board provider rate decrease. The first alternative was rejected inasmuch as the Legislature's savings goal could not be realized absent some adjustment to the out-of-network reimbursement rule. The second alternative was deemed as unnecessary in light of

estimated additional savings that could be realized through the combination of other Rider 59 initiatives. The third alternative would not encourage provider participation in Texas Medicaid and may cause some providers to withdraw from the program. Retaining a robust statewide Medicaid provider network is a priority of the Legislature and the Texas Medicaid program.

Adopting a Medicaid managed care out-of-network reimbursement rule that requires that rates paid be no less than the prevailing fee-for-service rate minus five percent is the only approach of the three considered above that complies with the Legislature's dual purposes of creating an incentive for providers to contract with MCOs while achieving savings.

Public Benefit

Chris Traylor, Associate Commissioner for Medicaid/CHIP, has determined that for each year of the first five years the section is in effect, the public will benefit from the adoption of the section. The anticipated public benefit, as a result of enforcing the section, will be the increased participation of providers in Texas Medicaid managed care programs.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "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

HHSC has determined that this 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 §2007.043 of the Government Code.

Public Comment

Written comments on the proposal may be submitted to Gary Young, Texas Health and Human Services Commission, Health Plan Operations, P.O. Box 85200, Mail Code H-320, Austin, Texas 78708-5200; by fax to (512) 491-1972; or by e-mail to gary.young@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

Public Hearing

A public hearing is scheduled for December 16, 2009 from 2:30 p.m. to 3:30 p.m. (central time) in the John H. Winters Building, Public Hearing Room, 125-E, located at 701 W. 51st Street, Austin, Texas. Persons requiring further information, special assistance, or accommodations should contact Leigh Van Kirk at (512) 491-2813.

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

The proposed amendment affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§353.4. Managed Care Organization Requirements [~~of STAR and STAR+PLUS Programs~~] Concerning Out-of-Network Providers.

(a) Network adequacy. The Health and Human Services Commission (HHSC) is the state agency responsible for overseeing and monitoring the Medicaid managed care program. The managed care organizations (MCOs) participating in the Medicaid managed care program must offer a network of providers that is sufficient to meet the needs of the Medicaid population who are MCO members. HHSC will monitor MCO members' access to an adequate provider network through reports from the MCOs and complaints received from providers and members. The reporting requirements are discussed in paragraph (d) of this section.

(b) MCO requirements concerning treatment of members by out-of-network providers.

(1) The MCO shall allow referral of its member(s) to an out-of-network provider, shall timely issue the proper authorization for such referral, and shall timely reimburse the out-of-network provider for authorized services provided when:

(A) Medicaid covered services are medically necessary and these services are not available through an in-network provider;

(B) A provider currently providing authorized services to the member requests authorization for such services to be provided to the member by an out-of-network provider; and

(C) The authorized services are provided within the time period specified in the MCO's authorization. If the services are not provided within the required time period, a new request for referral from the requesting provider must be submitted to the MCO prior to the provision of services.

(2) An MCO may not refuse to reimburse an out-of-network provider for emergency or post-stabilization services provided as a result of the MCO's failure to arrange for and authorize a timely transfer of a member.

(3) MCO requirements concerning emergency services.

(A) The MCO shall allow its members to be treated by any emergency services provider for emergency services and/or for services to determine if an emergency condition exists.

(B) The MCO is prohibited from requiring an authorization for emergency services or for services to determine if an emergency condition exists.

(4) MCOs may be required by contract with HHSC to allow members to obtain services from out-of-network providers in circumstances other than those described above.

(c) Reasonable Reimbursement Methodology

(1) The MCO shall reimburse an out-of-network, in area service provider no less than the prevailing Medicaid Fee-For-Service (FFS) rate less 5 [~~3~~] percent. The Medicaid Fee-For-Service rates are defined as those rates for providers of services in the Texas Medicaid Program for which reimbursement methodologies are specified in the Texas Administrative Code (TAC) at Title 1, Part 15, Chapter 355, exclusive of the rates and payment structures in Medicaid Managed Care.

(2) The MCO shall reimburse an out-of-network, out-of-area service provider at no less than 100 percent of the Medicaid Fee-For-Service rate.

(3) In accordance with Subsections 533.005 (a)(12) and (b) of the Government Code, all post stabilization services provided to a member by an out-of-network provider must be reimbursed by the MCO at the rates for providers of services in the Texas Medicaid Program for which reimbursement methodologies are specified in the Texas Administrative Code (TAC) at Title 1, Part 15, Chapter 355 until the MCO arranges for the timely transfer of the member, as determined by the member's attending physician, to a provider in the MCO's network.

(d) Reporting requirements

(1) Each MCO that contracts with HHSC to provide health care services to members in a health care service region must submit quarterly information in its Out-of-Network quarterly report to HHSC.

(2) Each report submitted by an MCO must contain information about members enrolled in each HHSC Medicaid managed care program provided by the MCO. The report shall include the following information:

(A) The types of services provided by out-of-network providers for members of the MCO's Medicaid managed care plan.

(B) The scope of services provided by out-of-network providers to members of the MCO's Medicaid managed care plan.

(C) Total number of hospital admissions, as well as number of admissions that occur at each out-of-network hospital. Each out-of-network hospital must be identified.

(D) Total number of emergency room visits, as well as total number of emergency room visits that occur at each out-of-network hospital. Each out-of-network hospital must be identified.

(E) Total dollars billed for other outpatient services, as well as total dollars billed by out-of-network providers for other outpatient services.

(F) Any additional information required by HHSC.

(3) HHSC will determine the specific form of the report described above and will include the report form as part of the Medicaid managed care contract between HHSC and the MCOs.

(e) Utilization

(1) Upon review of the reports described in paragraph (d) of this section that are submitted to HHSC by the MCOs, HHSC may determine that an MCO exceeded maximum Out-of-Network usage standards set by HHSC for out-of-network access to health care services during the reporting period.

(2) Out-of-Network Usage Standards

(A) Inpatient Admissions: No more than 15 [~~25~~] percent of an MCO's total hospital admissions, by service delivery area, may occur in out-of-network facilities.

(B) Emergency Room Visits: No more than 20 [~~30~~] percent of an MCO's total emergency room visits, by service delivery area, may occur in out-of-network facilities.

(C) Other Outpatient Services: No more than 20 [~~30~~] percent of total dollars billed to an MCO for "other outpatient services" may be billed by out-of-network providers.

(3) Special Considerations in Calculating MCO Out-of-Network Usage of Inpatient Admissions and Emergency Room Visits.

(A) In the event that an MCO exceeds the maximum Out-of-Network usage standard set by HHSC for Inpatient Admissions or Emergency Room Visits, HHSC may modify the calculation of that MCO's Out-of-Network usage for that standard if:

(i) The admissions or visits to a single out-of-network facility account for 25% or more of the MCO's admissions or visits in a reporting period; and

(ii) HHSC determines that the MCO has made all reasonable efforts to contract with that out-of-network facility as a network provider without success.

(B) In determining whether the MCO has made all reasonable efforts to contract with the single out-of-network facility described above in Subparagraph (A) of this paragraph, HHSC will consider at least the following information:

(i) How long the MCO has been trying to negotiate a contract with the out-of-network facility;

(ii) The in-network payment rates the MCO has offered to the out-of-network facility;

(iii) The other, non-financial contractual terms the MCO has offered to the out-of-network facility, particularly those relating to prior authorization and other utilization management policies and procedures;

(iv) The MCO's history with respect to claims payment timeliness, overturned claims denials, and provider complaints;

(v) The MCO's solvency status; and

(vi) The out-of-network facility's reasons for not contracting with the MCO.

(C) If the conditions described in subparagraph (A) of this paragraph are met, HHSC may modify the calculation of the MCO's Out-of-Network usage for the relevant reporting period and standard by excluding from the calculation the Inpatient Admissions or Emergency Room Visits to that single out-of-network facility.

(f) Provider Complaints.

(1) HHSC will accept provider complaints regarding reimbursement for or overuse of out-of-network providers and will conduct investigations into any such complaints.

(2) When a provider files a complaint regarding out-of-network payment, HHSC will require the relevant MCO to submit data to support its position on the adequacy of the payment to the provider. The data will include at a minimum a copy of the claim for services rendered and an explanation of the amount paid and of any amounts denied.

(3) Not later than the 60th day after HHSC receives a provider complaint, HHSC shall notify the provider who initiated the complaint of the conclusions of HHSC's investigation regarding the complaint. The notification to the complaining provider will include:

(A) A description of the corrective actions, if any, required of the MCO in order to resolve the complaint; and

(B) If applicable, a conclusion regarding the amount of reimbursement owed to an out-of-network provider.

(4) If HHSC determines through investigation that an MCO did not reimburse an out-of-network provider based on a rea-

sonable reimbursement methodology as described within subsection (c) of this section, HHSC shall initiate a corrective action plan. Refer to subsection (g) of this section for information about the contents of the corrective action plan.

(5) If, after an investigation, HHSC determines that additional reimbursement is owed to an out-of-network provider, the MCO must:

(A) Pay the additional reimbursement owed to the out-of-network provider within 90 days from the date the complaint was received by HHSC or 30 days from the date the clean claim, or information required that makes the claim clean, is received by the MCO, whichever comes first; or,

(B) Submit a reimbursement payment plan to the out-of-network provider within 90 days from the date the complaint was received by HHSC. The reimbursement payment plan provided by the MCO must provide for the entire amount of the additional reimbursement to be paid within 120 days from the date the complaint was received by HHSC.

(6) If the MCO does not pay the entire amount of the additional reimbursement within 90 days from the date the complaint was received by HHSC, HHSC may require the MCO to pay interest on the unpaid amount. If required by HHSC, interest accrues at a rate of 18 percent simple interest per year on the unpaid amount from the 90th day after the date the complaint was received by HHSC, until the date the entire amount of the additional reimbursement is paid.

(7) HHSC will pursue any appropriate remedy authorized in the contract between the MCO and HHSC if the MCO fails to comply with a corrective action plan under subsection (g) of this section.

(g) Corrective Action Plan.

(1) A corrective action plan is required by HHSC in the following situations:

(A) The MCO exceeds a maximum standard established by HHSC for out-of-network access to health care services described in subsection (e) of this section; or

(B) The MCO does not reimburse an out-of-network provider based on a reasonable reimbursement methodology as described within subsection (c) of this section.

(2) A corrective action plan imposed by HHSC will require one of the following:

(A) Reimbursements by the MCO to out-of-network providers at rates that equal the allowable rates for the health care services as determined under Sections 32.028 and 32.0281, Human Resources Code, for all health care services provided during the period:

(i) the MCO is not in compliance with a utilization standard established by HHSC; or

(ii) the MCO is not reimbursing out-of-network providers based on a reasonable reimbursement methodology, as described in subsection (c) of this section.

(B) Initiation of an immediate freeze by HHSC on the enrollment of additional recipients in the MCO's managed care plan until HHSC determines that the provider network under the managed care plan can adequately meet the needs of the additional recipients;

(C) Education by the MCO of recipients enrolled in the managed care plan regarding the proper use of the provider network under the health care plan; or

(D) Any other actions HHSC determines are necessary to ensure that Medicaid recipients enrolled in managed care plans provided by the MCO have access to appropriate health care services and that providers are properly reimbursed by the MCO for providing medically necessary health care services to those recipients.

(h) The requirements of this rule apply to an MCO contract with HHSC that is in effect on or after September 1, 2006.

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

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Steve Aragon
General Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 2. MEDICAID VISION CARE PROGRAM

1 TAC §354.1015, §354.1017

The Texas Health and Human Services Commission (HHSC) proposes to amend Title 1, Part 15, Chapter 354, Subchapter A, Division 2, §354.1015, Benefits and Limitations and §354.1017, Specifications for Eyewear, relating to the Medicaid Vision Care Program.

Background and Justification

HHSC proposes to amend the non-surgical vision policy for adults to mirror the Medicaid state plan for certain vision services provided to the under 21 population and align with current standard of care practices.

The Health and Human Services Commission, in conjunction with the Department of State Health Services and the Texas Medicaid & Healthcare Partnership, periodically assesses benefits provided by the Medicaid program in Texas. As a result of this assessment, recommendations were made to update the vision care program benefits for recipients 21 years old or older.

Section-by-Section Summary

Section 354.1015(c)(2)(A) is amended to allow recipients age 21 and older more than one eye exam within a 24-month period if medically necessary for diagnostic purposes and/or treatment of the eye for medical conditions.

Section 354.1015(c)(2)(B) is amended to specify that recipients are eligible for prosthetic eyewear if prescribed for a congenital abnormality or defect, or an acquired condition as a result of trauma or cataract removal.

Sections 354.1015(c)(2)(B)(v) and (c)(2)(C)(iii) are amended to clarify that minor repairs on prosthetic and non-prosthetic eyewear for which the cost of materials is $2 or less are the responsibility of the provider, are not separately reimbursable, and the provider may not bill the recipient for these repairs. The cost of these repairs is included in the rate for the eyewear.

Section 354.1017(2) is amended to include metal frames or metal/zylonite combination frames as a benefit.

Section 354.1017(3) is amended to include metal frames or metal/zylonite combination frames in the selection of frames providers are required to show eligible recipients.

Section 354.1017(8) is amended to correct a typographical error by changing 7%6125 to 7/25.

Section 354.1017(10) is amended to clarify the language for when repair materials can be billed to Texas Medicaid.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first 5-year period the proposed rule amendments are in effect, there will be no fiscal impact to state government. The proposed amended rules will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Small and Micro-business Impact Analysis

Ms. Rymal has also determined that there will be no effect on small businesses or micro businesses that are Medicaid providers. Providers will not be required to alter their business practices as a result of the amendments. There are no significant other costs to persons who are required to comply with the proposed amendments. There is no anticipated negative impact on local employment.

Public Benefit

Chris Traylor, Associate Commissioner for Medicaid and CHIP, has determined that for each year of the first five years the proposed amendments are in effect, the public will benefit from the adoption of the rules. The anticipated public benefit of enforcing the proposed amendments will be improved vision care services for Medicaid-eligible adults.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "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

HHSC has determined that this 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 §2007.043 of the Government Code.

Public Comment

Written comments on the proposal may be submitted to JoAnne Talavera, Senior Policy Analyst, Medicaid/CHIP Division, Health and Human Services Commission, at P.O. Box 13247, Mail Code H-390, Austin, Texas 78711; by fax to (512) 249-3725; or by e-mail to joanne.talavera@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

Public Hearing

A public hearing is scheduled for December 16, 2009 from 1:30 p.m. to 2:30 p.m. (central time) in the John H. Winters Building, Public Hearing Room, 125-E, located at 701 W. 51st Street, Austin, Texas. Persons requiring further information, special assistance, or accommodations should contact Leigh A. Van Kirk at (512) 491-2813.

Statutory Authority

The amendments are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The proposed amendments affect Texas Human Resources Code Chapter 32, and Texas Government Code Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§354.1015. Benefits and Limitations.

(a) Except as specified in §354.1023, Optometric Services Provider, the services addressed in this subchapter are those optometric services available to Medicaid recipients who are 21 years old or older. Services are available to Medicaid recipients under 21 years old through the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program, Benefits and Limitations, described in 1 TAC [~~T.A.C.~~] §363.502.

(b) The amount, duration, and scope of optometric services available through the Texas Medicaid Program are established according to applicable federal regulations, the Texas state plan for medical assistance under Title XIX of the Social Security Act, state law, and Commission rules. Information regarding benefits and limitations is available to providers of these services through the Texas Medicaid Provider Procedures Manual issued to each provider upon enrollment in the Texas Medicaid Program.

(c) The benefits and limitations applicable to optometric services available through the Texas Medicaid Program to eligible recipients who are 21 years old or older are as follows:

(1) Provider eligibility. A provider must be a physician or optometrist and enrolled in the Texas Medicaid Program at the time the service is provided in order to be eligible for reimbursement by the program.

(2) Reimbursable services.

(A) Examination. One examination of the eyes by refraction may be provided to each eligible recipient every 24 months. This limit does not apply to diagnostic or other treatment of the eye for medical conditions.

(B) Prosthetic eyewear. Prosthetic eyewear, including contact lenses and glass or plastic lenses in frames, is a program benefit provided to an eligible recipient if the eyewear is prescribed for a congenital abnormality or defect, or an acquired condition as a result of trauma or cataract removal [~~post-cataract surgery, congenital absence~~

~~of the eye lens, or loss of an eye lens because of trauma~~]. The following benefits and limitations apply to prosthetic eyewear:

(i) Medically necessary temporary lenses are reimbursed during post-surgical cataract convalescence. The convalescence period is considered to be the four-month period following the date of cataract surgery.

(ii) Only one pair of permanent prosthetic lenses may be dispensed as a program benefit.

(iii) Replacement of prosthetic eyewear is reimbursed when the eyewear is lost, stolen, or damaged beyond repair.

(iv) Prosthetic eyewear is reimbursed when the eyewear is required due to a change in visual acuity of .5 diopters or more.

(v) Repairs to prosthetic eyewear are reimbursable if the cost of materials exceeds $2.00. Repairs for which the cost of materials is $2.00 or less [~~costing less than $2.00~~] are not separately reimbursable, but are the responsibility of the provider and are included in the rate for eyewear. The [~~and the~~] provider may not bill the recipient for these services.

(C) Non-prosthetic eyewear. Non-prosthetic eyewear includes contact lenses and glass or plastic lenses in frames. Non-prosthetic eyewear is a program benefit when the eyewear is medically necessary to correct defects in vision. This eyewear is provided to an eligible recipient only once every 24 months unless the recipient experiences a visual acuity change of .5 diopters or more. A new 24-month benefit period for eyewear begins with the replacement of non-prosthetic eyewear due to a change in visual acuity of .5 diopters or more.

(i) Contact lenses require prior authorization by the Commission or its designee. Prior authorization decisions are based on the provider's written documentation supporting the need for contact lenses as the only means of correcting the vision defect.

(ii) Non-prosthetic eyewear that is lost or stolen is not reimbursed by the program.

(iii) Repairs to non-prosthetic eyewear for which the cost of materials exceeds $2.00 are not reimbursable [~~by the Texas Medicaid Program~~]. Repairs for which the cost of materials is $2.00 or less are not separately reimbursable, but are the responsibility of the provider and are included in the rate for eyewear. The provider may not bill the recipient for repairs for which the cost of materials is $2.00 or less.

§354.1017. Specifications for Eyewear.

The provider must ensure that eyewear meets the following specifications.

(1) Lenses are clear glass or plastic, meet federal and state specifications, and meet all standards of the American standard prescription requirements for first quality glass and plastic lenses dress eyewear.

(2) Frames are zylonite, metal, or combination metal/zylonite.

(3) Standard sizes of the frames are dispensed at no cost to the eligible recipient. An eyeglass supplier must show each eligible recipient a choice of: three styles of zylonite, metal, or a combination of zylonite/metal frames appropriate for male and female in a choice of three colors.

(4) Frames are only those manufactured in the United States of America, unless foreign-made frames are comparable in quality to and less expensive than American made-frames. Lenses are only those manufactured in the United States of America, unless foreign-made lenses are comparable in quality to and less expensive than American-made lenses.

(5) Frames are serviceable and meet prescription quality standards.

(6) Lenses and frame materials are new.

(7) Bifocal lenses are a minimum kryptoc 22 MM flat top lens or equivalent.

(8) Trifocal lenses are a minimum flat top 7/25 [~~7%6125~~] lens or equivalent.

(9) Supplies are at least equivalent in quality to program eyewear provided under this chapter at no cost to the eligible recipients.

(10) All repair materials billed to Texas Medicaid must be [~~Repair materials for which a charge is made are~~] new and at least equivalent to the original item and meet the specifications for prosthetic eyewear cited in these provisions.

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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Steve Aragon
General Counsel
Texas Health and Human Services Commission
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CHAPTER 354. MEDICAID HEALTH SERVICES

The Health and Human Services Commission (HHSC) proposes the repeal of Subchapter D, §§354.1530, 354.1531, and 354.1533, concerning Presumptive Medicaid for Pregnant Women; Subchapter E, Medically Needy and Children and Pregnant Women Programs, consisting of Division 1, §354.1550, concerning definitions; Division 2, §§354.1555 - 354.1563, concerning Medically Needy Program requirements; and Division 3, §§354.1574 - 354.1582, concerning Children and Pregnant Women Program requirements; Subchapter G, §354.2101 and §354.2103, concerning emergency Medicaid for aliens ineligible for regular Medicaid; Subchapter H, §354.2120 and §354.2125, concerning medical assistance for breast and cervical cancer; and Subchapter L, Medicaid for Transitioning Foster Care Youth, consisting of Division 1, §§354.2451 - 354.2453, concerning overview and purpose; Division 2, §§354.2461 - 354.2466, concerning eligibility requirements; Division 3, §354.2481 and §354.2482, concerning certification and coverage; and Division 4, §354.2491, concerning appeals, in Chapter 354, Medicaid Health Services.

Background and Purpose

The purpose of the repeals is to remove the existing rules governing Medicaid programs for women, children, youth, and needy families from Chapter 354 and place them in their own chapter. Repeal of the existing rules will allow the simultaneous adoption of new rules in Chapter 366 that are updated with

correct agency names and rule cross-references and are easier to find and use.

HHSC is proposing the new rules governing these Medicaid programs in Chapter 366 elsewhere in this issue of the *Texas Register*.

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 (the Administrative Procedure Act). HHSC has reviewed all sections in Subchapters D, E, G, H, and L of Chapter 354 and has determined that, although the reasons for adopting rules continue to exist, the rules need updating and would be better located in another chapter of the Texas Administrative Code with similar rules. As a result of this review, HHSC is proposing these repeals.

Section-by-Section Summary

The proposed repeals delete Subchapters D, E, G, H, and L in their entirety.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that, for the first five years after the repeals, there are no foreseeable implications relating to costs or revenues of state or local governments.

Small Business and Micro-Business Impact Analysis

Ms. Rymal has also determined that the proposed repeals will have no adverse economic effect on small businesses or micro-businesses, because the repeals do not require them to alter their business practices. There are no anticipated economic costs to persons who are required to comply with the proposed rules. There is no anticipated negative impact on local employment.

Public Benefit

Joanne Molina, Deputy Executive Commissioner for Social Services, has determined that, for each year of the first five years after the repeals, the public benefit expected as a result of repealing the sections is that the repealed sections will be replaced with new rules that provide the public with current information and are easier to use.

Regulatory Analysis

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

HHSC has determined that this 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 §2007.043 of the Texas Government Code.

Public Comment

Written comments on the proposal may be submitted to Regina Perez, Health and Human Services Commission, Office of Family Services, MC 2039, 909 West 45th Street, Austin, TX 78751, or by e-mail to gina.perez@hhsc.state.tx.us, within 30 days after publication of this proposal in the *Texas Register*.

Public Hearing

HHSC will hold a public hearing on December 11, 2009, at 2:00 p.m. (Central Time) to receive public comment on the proposal. The hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. Persons requiring Americans with Disabilities Act (ADA) accommodation or auxiliary aids or services should contact Graciela Reyna by calling (512) 206-4778, at least 72 hours prior to the hearing so appropriate arrangements can be made.

SUBCHAPTER D. PRESUMPTIVE MEDICAID FOR PREGNANT WOMEN PROGRAM

1 TAC §§354.1530, 354.1531, 354.1533

(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 Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

Legal Authority

The repeals are proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and §531.021, which authorizes HHSC to administer the federal medical assistance (Medicaid) program in Texas.

The repeals affect Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§354.1530. Client Eligibility Requirements.

§354.1531. Eligibility Requirements for Medical Providers.

§354.1533. Monitoring Medical Providers.

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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Steve Aragon
General Counsel
Texas Health and Human Services Commission
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SUBCHAPTER E. MEDICALLY NEEDY AND CHILDREN AND PREGNANT WOMEN PROGRAMS
DIVISION 1. DEFINITIONS

1 TAC §354.1550

(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 Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

Legal Authority

The repeals are proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and §531.021, which authorizes HHSC to administer the federal medical assistance (Medicaid) program in Texas.

The repeals affect Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§354.1550. Definitions.

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

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DIVISION 2. MEDICALLY NEEDY PROGRAM REQUIREMENTS

1 TAC §§354.1555 - 354.1563

(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 Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

Legal Authority

The repeals are proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and §531.021, which authorizes HHSC to administer the federal medical assistance (Medicaid) program in Texas.

The repeals affect Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§354.1555. Eligible Groups.

§354.1556. Application Procedures.

§354.1557. Income Eligibility Requirements.

§354.1558. Eligibility Requirements Other Than Income.

§354.1559. Medicaid Eligibility Dates.

§354.1560. Information from Other Agencies.

§354.1561. Requirement to Report Changes.

§354.1562. Right to Appeal.

§354.1563. Availability of Funding.

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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DIVISION 3. CHILDREN AND PREGNANT WOMEN PROGRAM REQUIREMENTS

1 TAC §§354.1574 - 354.1582

(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 Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

Legal Authority

The repeals are proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and §531.021, which authorizes HHSC to administer the federal medical assistance (Medicaid) program in Texas.

The repeals affect Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§354.1574. Eligible Groups.

§354.1575. Application Procedures.

§354.1576. Income Eligibility Requirements.

§354.1577. Eligibility Requirements Other Than Income.

§354.1578. Medicaid Eligibility Dates.

§354.1579. Information from Other Agencies.

§354.1580. Requirement to Report Changes.

§354.1581. Right to Appeal.

§354.1582. Availability of Funding.

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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Steve Aragon
General Counsel
Texas Health and Human Services Commission
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SUBCHAPTER G. EMERGENCY MEDICAID FOR ALIENS INELIGIBLE FOR REGULAR MEDICAID

1 TAC §354.2101, §354.2103

(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 Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

Legal Authority

The repeals are proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and §531.021, which authorizes HHSC to administer the federal medical assistance (Medicaid) program in Texas.

The repeals affect Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§354.2101. Legal Basis.

§354.2103. Eligibility Requirements.

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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General Counsel
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SUBCHAPTER H. MEDICAL ASSISTANCE FOR BREAST AND CERVICAL CANCER

1 TAC §354.2120, §354.2125

(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 Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

Legal Authority

The repeals are proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and §531.021, which authorizes HHSC to administer the federal medical assistance (Medicaid) program in Texas.

The repeals affect Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§354.2120. Client Eligibility Requirements.

§354.2125. Right to Appeal.

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

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SUBCHAPTER L. MEDICAID FOR TRANSITIONING FOSTER CARE YOUTH
DIVISION 1. OVERVIEW AND PURPOSE

1 TAC §§354.2451 - 354.2453

(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 Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

Legal Authority

The repeals are proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and §531.021, which authorizes HHSC to administer the federal medical assistance (Medicaid) program in Texas.

The repeals affect Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§354.2451. Purpose.

§354.2452. Program Administration.

§354.2453. Legal Basis.

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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Steve Aragon
General Counsel
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DIVISION 2. ELIGIBILITY REQUIREMENTS

1 TAC §§354.2461 - 354.2466

(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 Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

Legal Authority

The repeals are proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of

HHSC with rulemaking authority; and §531.021, which authorizes HHSC to administer the federal medical assistance (Medicaid) program in Texas.

The repeals affect Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§354.2461. Eligible Group.

§354.2462. Age Requirement.

§354.2463. Citizenship Requirement.

§354.2464. Resource Requirements.

§354.2465. Income Eligibility.

§354.2466. Residency Requirements.

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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DIVISION 3. CERTIFICATION AND COVERAGE

1 TAC §354.2481, §354.2482

(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 Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

Legal Authority

The repeals are proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and §531.021, which authorizes HHSC to administer the federal medical assistance (Medicaid) program in Texas.

The repeals affect Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§354.2481. Initial Certification.

§354.2482. Medicaid Eligibility Dates.

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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DIVISION 4. APPEALS

1 TAC §354.2491

(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 Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

Legal Authority

The repeals are proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and §531.021, which authorizes HHSC to administer the federal medical assistance (Medicaid) program in Texas.

The repeals affect Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§354.2491. Right to Appeal.

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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CHAPTER 366. MEDICAID ELIGIBILITY FOR WOMEN, CHILDREN, YOUTH, AND NEEDY FAMILIES

The Health and Human Services Commission (HHSC) proposes new Subchapter B, concerning the Presumptive Medicaid for Pregnant Women Program, consisting of Division 1, General, §366.201 and §366.203; Division 2, Eligibility Requirements, §§366.211, 366.213, 366.215, 366.217, 366.219, 366.221, 366.223, 366.225, 366.227, 366.229, 366.231, 366.233, 366.235, 366.237, 366.239, 366.241, 366.243, and 366.245; and Division 3, Provider Requirements, §366.251 and §366.253; Subchapter C, concerning Pregnant Women's Medicaid, consisting of §§366.301, 366.303, 366.305, 366.307, 366.309, 366.311, 366.313, 366.315, 366.317, 366.319, 366.321, 366.323, 366.325, 366.327, 366.329, 366.331, 366.333, 366.335, 366.337, 366.339, 366.341, and 366.343; Subchapter D, concerning Medicaid for Breast and Cervical Cancer, consisting of §§366.401, 366.403, 366.405, 366.407, 366.409, 366.411, 366.413, 366.415, 366.417, 366.419, and 366.421; Subchapter E, concerning Children's Medicaid, consisting of §§366.501, 366.503, 366.505, 366.507, 366.509, 366.511, 366.513, 366.515, 366.517, 366.519, 366.521, 366.523, 366.525, 366.527, 366.529, 366.531, 366.533, 366.535, 366.537, 366.539, 366.541, 366.543, 366.545, 366.547, 366.549, 366.551, and 366.553; Subchapter F, concerning Medicaid for Transitioning Foster Care Youth, consisting of

§§366.601, 366.603, 366.605, 366.607, 366.609, 366.611, 366.613, 366.615, 366.617, 366.619, 366.621, 366.623, 366.625, 366.627, 366.629, 366.631, 366.633, 366.635, 366.637, 366.639, 366.641, 366.643, 366.645, and 366.647; Subchapter G, concerning TANF-level medical assistance, consisting of §§366.701, 366.703, 366.705, 366.707, 366.709, 366.711, 366.713, 366.715, 366.717, 366.719, 366.721, 366.723, 366.725, 366.727, 366.729, 366.731, 366.733, 366.735, 366.737, 366.739, 366.741, 366.743, 366.745, 366.747, 366.749, 366.751, 366.753, 366.755, 366.757, 366.759, and 366.761; Subchapter H, concerning the Medically Needy Program, consisting of §§366.801, 366.803, 366.805, 366.807, 366.809, 366.811, 366.813, 366.815, 366.817, 366.819, 366.821, 366.823, 366.825, 366.827, 366.829, 366.831, 366.833, 366.835, 366.837, 366.839, 366.841, 366.843, 366.845, 366.847, 366.849, 366.851, 366.853, 366.855, and 366.857; and Subchapter I, concerning emergency medical services for aliens ineligible for regular Medicaid, consisting of §366.901 and §366.903, in new Chapter 366, Medicaid Eligibility for Women, Children, Youth, and Needy Families.

Background and Justification

The existing rules that govern the criteria HHSC uses to determine a person eligible for various Medicaid programs for women, children, youth, and needy families are currently found in Title 1 of the Texas Administrative Code (TAC), Chapters 354 and 374. Many of the eligibility requirements in Chapter 354 and Chapter 374 cite to requirements of the Temporary Assistance for Needy Families Program (TANF), which now are found in Chapter 372.

Proposals to repeal the existing rules governing Medicaid programs for women, children, youth, and needy families in Chapter 354 and Chapter 374 appear elsewhere in this issue of the *Texas Register.* Repeal of the existing rules will allow the simultaneous adoption of new rules in Chapter 366.

The new rules are proposed to update agency names made obsolete during the consolidation of health and human services agencies in 2004, incorporate current policies, and de-link the Medicaid program rules from the TANF rules. Having the specific eligibility requirements for each program in each program's rules, rather than citing to another program's rules, will make the requirements for the Medicaid programs for women, children, youth, and needy families easier to find and use.

The new rules are also proposed to implement provisions of the federal Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA 2009), specifically those provisions concerning continuous Medicaid eligibility for newborns and allowing Medicaid coverage for additional qualified aliens 18 years of age and under.

Further, the new rules incorporate a revised income exclusion regarding payments under the Workforce Investment Act of 1998 (WIA), so that HHSC will exclude all income a person receives under WIA, in accordance with 29 U.S.C. §2931(a)(2).

Unless otherwise indicated in this proposal, the new rules do not impose any new requirements that are not already in policy and in use.

Section-by-Section Summary

Subchapter B is entitled Presumptive Medicaid for Pregnant Women Program and is further divided into three divisions. Division 1 is entitled General and contains §366.201 and §366.203. These sections set out the purpose and scope of the subchapter and the definitions of words and terms used in the subchapter. Division 2 is entitled Eligibility Requirements and contains §§366.211, 366.213, 366.215, 366.217, 366.219, 366.221, 366.223, 366.225, 366.227, 366.229, 366.231, 366.233, 366.235, 366.237, 366.239, 366.241, 366.243, and 366.245. These sections set out HHSC's rules governing eligibility for the Presumptive Medicaid for Pregnant Women Program, which provides limited medical coverage, for a limited time, to pregnant women presumed to be eligible by a qualified provider to ensure early access to prenatal care. Proposed new §366.217 provides coverage under this program for a qualified alien 18 years of age and under, as allowed under Section 214 of CHIPRA 2009 (§1903(v)(4) of the Social Security Act (42 U.S.C. §1396b(v)(4)). Proposed new §366.233(6) removes the specific income exclusion for on-the-job training payments made to children under WIA, so that HHSC can exclude all payments under WIA. Division 3 is entitled Provider Requirements and contains §366.251 and §366.253. These sections set out HHSC's rules governing the requirements medical providers must follow to provide services under the program.

Subchapter C is entitled Pregnant Women's Medicaid and contains §§366.301, 366.303, 366.305, 366.307, 366.309, 366.311, 366.313, 366.315, 366.317, 366.319, 366.321, 366.323, 366.325, 366.327, 366.329, 366.331, 366.333, 366.335, 366.337, 366.339, 366.341, and 366.343. These sections set out HHSC's eligibility requirements for pregnant women who have income equal to or less than 185% of the Federal Poverty Income Limit to receive services under Medicaid. Proposed new §366.313 provides coverage under this program for a qualified alien 18 years of age and under, as allowed under Section 214 of CHIPRA 2009 (§1903(v)(4) of the Social Security Act (42 U.S.C. §1396b(v)(4)). Proposed new §366.329(6) removes the specific income exclusion for on-the-job training payments made to children under WIA, so that HHSC can exclude all payments under WIA.

Subchapter D is entitled Medicaid for Breast and Cervical Cancer and contains §§366.401, 366.403, 366.405, 366.407, 366.409, 366.411, 366.413, 366.415, 366.417, 366.419, and 366.421. These sections set out HHSC's eligibility requirements for a woman to receive medical assistance for treatment of breast and cervical cancer, a program that is operated cooperatively with the Texas Department of State Health Services. Proposed new §366.407(2) provides coverage under this program for a qualified alien 18 years of age and under, as allowed under Section 214 of CHIPRA 2009 (§1903(v)(4) of the Social Security Act (42 U.S.C. §1396b(v)(4)).

Subchapter E is entitled Children's Medicaid and contains §§366.501, 366.503, 366.505, 366.507, 366.509, 366.511, 366.513, 366.515, 366.517, 366.519, 366.521, 366.523, 366.525, 366.527, 366.529, 366.531, 366.533, 366.535, 366.537, 366.539, 366.541, 366.543, 366.545, 366.547, 366.549, 366.551, and 366.553. These sections set out HHSC's eligibility criteria and participation requirements for Children's Medicaid, which provides medical assistance to eligible children 18 years of age and under. Proposed new §366.513 provides coverage under this program for a qualified alien 18 years of age and under, as allowed under Section 214 of CHIPRA 2009 (§1903(v)(4) of the Social Security Act (42 U.S.C. §1396b(v)(4)). Proposed new §366.535(6) removes the specific income exclusion for on-the-job training payments made to children under WIA, so that HHSC can exclude all payments under WIA. Proposed new §366.539 provides continuous eligibility for a

newborn through the month of the newborn's first birthday, as allowed under Section 2112 of CHIPRA 2009.

Subchapter F is entitled Medicaid for Transitioning Foster Care Youth and contains §§366.601, 366.603, 366.605, 366.607, 366.609, 366.611, 366.613, 366.615, 366.617, 366.619, 366.621, 366.623, 366.625, 366.627, 366.629, 366.631, 366.633, 366.635, 366.637, 366.639, 366.641, 366.643, 366.645, and 366.647. These sections set out HHSC's eligibility criteria for the Medicaid for Transitioning Foster Care Youth Program, which provides medical assistance to eligible youths as they leave foster care and transition into the community. Proposed new §366.617 provides coverage under this program for a qualified alien 18 years of age and under, as allowed under Section 214 of CHIPRA 2009 (§1903(v)(4) of the Social Security Act (42 U.S.C. §1396b(v)(4)). Proposed new §366.633(6) removes the specific income exclusion for on-the-job training payments made to children under WIA, so that HHSC can exclude all payments under WIA.

Subchapter G is entitled TANF-level Medical Assistance and contains §§366.701, 366.703, 366.705, 366.707, 366.709, 366.711, 366.713, 366.715, 366.717, 366.719, 366.721, 366.723, 366.725, 366.727, 366.729, 366.731, 366.733, 366.735, 366.737, 366.739, 366.741, 366.743, 366.745, 366.747, 366.749, 366.751, 366.753, 366.755, 366.757, 366.759, and 366.761. These sections set out HHSC's eligibility criteria and participation requirements for TANF-level medical assistance, which provides Medicaid coverage to households eligible for TANF. Proposed new §366.713 provides coverage under this program for a qualified alien 18 years of age and under, as allowed under Section 214 of CHIPRA 2009 (§1903(v)(4) of the Social Security Act (42 U.S.C. §1396b(v)(4)). Proposed new §366.737(6) removes the specific income exclusion for on-the-job training payments made to children under WIA, so that HHSC can exclude all payments under WIA.

Subchapter H is entitled Medically Needy Program and contains §§366.801, 366.803, 366.805, 366.807, 366.809, 366.811, 366.813, 366.815, 366.817, 366.819, 366.821, 366.823, 366.825, 366.827, 366.829, 366.831, 366.833, 366.835, 366.837, 366.839, 366.841, 366.843, 366.845, 366.847, 366.849, 366.851, 366.853, 366.855, and 366.857. These sections set out HHSC's eligibility criteria and participation requirements for the Medically Needy Program, which provides Medicaid benefits to eligible persons with high medical bills whose family income is too high to qualify for other Medicaid programs and who use their excess income to help pay unpaid medical bills. Proposed new §366.813 provides coverage under this program for a qualified alien 18 years of age and under, as allowed under Section 214 of CHIPRA 2009 (§1903(v)(4) of the Social Security Act (42 U.S.C. §1396b(v)(4)). Proposed new §366.835(6) removes the specific income exclusion for on-the-job training payments made to children under WIA, so that HHSC can exclude all payments under WIA.

Subchapter I is entitled Emergency Medical Services for Aliens Ineligible for Regular Medicaid and consists of §366.901 and §366.903. These sections set out HHSC's rules governing the program administered under Title XIX of the Social Security Act (42 U.S.C. §1396 et seq.) and 42 CFR §435.139, which require the state to provide medical services for the treatment of an emergency medical condition to an alien who is ineligible for regular Medicaid due to immigration status.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that, for the first five years the rule changes are in effect, the proposed changes would have a cost to state government of $10.8 million General Revenue ($36.8 million All Funds) in year one, $36.1 million General Revenue ($129.3 million All Funds) in year two, $35.9 million General Revenue ($129.3 million All Funds) in years three, four and five. The changes do not have foreseeable implications relating to costs or revenues of local governments or local human service agencies except that those agencies that provide services to qualified alien children will now be eligible to receive Medicaid reimbursement for covered services. This rule only shows the Medicaid impact for the implementation of legal permanent residents and not the CHIP impact, which is anticipated to use federal funds instead of only general revenue. Those rules have not been finalized for consideration.

Small Business and Micro-business Impact Analysis

Ms. Rymal has determined that there will be no effect on small businesses or micro-businesses to comply with the proposal, because the rules do not require them to alter their business practices. There are no anticipated economic costs to persons who are required to comply with the proposed rules. There is no anticipated negative impact on local employment.

Public Benefit

Joanne Molina, Deputy Executive Commissioner for Social Services, has determined that, for each year of the first five years the new sections are in effect, the anticipated public benefit expected as a result of enforcing the new sections is that HHSC's rules governing Medicaid eligibility for women, children, youth, and needy families will be easier for the public to find and use. The new provisions resulting from CHIPRA 2009 will allow more children in Texas to receive needed medical services.

Regulatory Analysis

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

HHSC has determined that this 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 §2007.043 of the Texas Government Code.

Public Comment

Written comments on the proposal may be submitted to Regina Perez, Health and Human Services Commission, Office of Family Services, MC 2039, 909 West 45th Street, Austin, TX 78751, or by e-mail to gina.perez@hhsc.state.tx.us, within 30 days after publication of this proposal in the *Texas Register*.

Public Hearing

HHSC will hold a public hearing on December 11, 2009, at 2:00 p.m. (Central Time) to receive public comment on the proposal.

The hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. Persons requiring Americans with Disabilities Act (ADA) accommodation or auxiliary aids or services should contact Graciela Reyna by calling (512) 206-4778, at least 72 hours prior to the hearing so appropriate arrangements can be made.

SUBCHAPTER B. PRESUMPTIVE MEDICAID FOR PREGNANT WOMEN PROGRAM

DIVISION 1. GENERAL

1 TAC §366.201, §366.203

Statutory Authority

The new sections are proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and §531.021, which authorizes HHSC to administer the federal medical assistance (Medicaid) program in Texas.

The new sections affect Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§366.201. Purpose and Scope.

(a) This subchapter establishes the criteria:

(1) for a pregnant woman to receive medical care under the Presumptive Medicaid for Pregnant Women Program; and

(2) for a medical provider to provide services under the Presumptive Medicaid for Pregnant Women Program.

(b) In accordance with 42 U.S.C. §1396r-1, the Presumptive Medicaid for Pregnant Women Program provides medical coverage as described in subsection (c) of this section, for a limited time, to ensure early access to prenatal care to pregnant women presumed to be eligible by a qualified provider. The Texas Health and Human Services Commission administers the program through contracts with third-party medical providers, as provided in §366.251 of this subchapter (relating to Eligibility Requirements for Medical Providers).

(c) Medicaid coverage for presumptive eligibility covers, for a limited time, medically necessary services, except labor, delivery, inpatient services, and Texas Health Steps services.

(d) Nothing in these rules shall be construed to violate the maintenance of eligibility requirements of section 5001 of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) and make eligibility standards, methodologies, or procedures under the Texas State Plan for Medical Assistance (or any waiver under section 1115 of the Social Security Act (42 U.S.C. §1315)) more restrictive than the eligibility standards, methodologies, or procedures, respectively, under such plan (or waiver) that were in effect on July 1, 2008.

§366.203. Definitions.

In this subchapter, the following words and terms have the following meanings, unless the context clearly indicates otherwise.

(1) Applicant--A person seeking assistance under the Presumptive Medicaid for Pregnant Women Program who:

(A) has never received Medicaid and is not currently receiving Medicaid; or

(B) previously received Medicaid but subsequently was denied and reapplies for Medicaid.

(2) Authorized representative--A person whom a budget group authorizes to apply for Medicaid benefits on behalf of a certified group but who is not included in the certified group.

(3) Budget group--Members of a household whose needs, income, resources, and medical expenses are considered in determining eligibility for Medicaid. The budget group may include both members who are eligible for Medicaid and those who are not.

(4) Certified group--Members of a budget group who are eligible for and receiving Medicaid.

(5) Child--A household member under 19 years of age.

(6) CFR--Code of Federal Regulations.

(7) Countable income--The receipt of cash or its equivalent, either earned or unearned, that a person may directly or indirectly use to meet basic needs (such as food, clothing, and shelter), including TANF cash payments.

(8) Earned income--Compensation received from employment or job training, including military and flight pay, allowances for housing and food, and receipts from self-employment (but not receipts from ownership of property involving less than 20 hours of work per week, which are unearned income).

(9) Eligible group--A category of people who are eligible for the Presumptive Medicaid for Pregnant Women Program. In other Medicaid programs, an eligible group may be called a coverage group.

(10) Federal Poverty Income Limit (FPIL)--The household income guidelines issued annually and published in the *Federal Register* by the U.S. Department of Health and Human Services. Percentages of these guidelines are used to determine income eligibility for the Presumptive Medicaid for Pregnant Women Program and certain other public assistance programs. In other programs, the FPIL may be referred to as the Federal Poverty Level or the Federal Poverty Guidelines.

(11) Medicaid--A state and federal cooperative program, authorized under Title XIX of the Social Security Act and the Texas Human Resources Code, that pays for certain medical and health care costs for people who qualify. Also known as the medical assistance program.

(12) Person acting responsibly--A person, other than a provider, who may apply for Medicaid on behalf of an individual who is incompetent or incapacitated if the person is determined by the Texas Health and Human Services Commission (HHSC) to be acting responsibly on behalf of the applicant.

(13) Qualified provider--A health care practitioner, institution, or other entity enrolled in the medical assistance program and authorized to submit claims for payment or reimbursement of medical assistance.

(14) Recipient--A person receiving Presumptive Medicaid for Pregnant Women Program services.

(15) *Texas Works Handbook*--An HHSC manual containing policies and procedures used to determine eligibility for SNAP food benefits, TANF, and Medicaid programs for children and families. The *Texas Works Handbook* is found on the Internet at www.hhsc.state.tx.us/Programs/Programs.shtml#handbooks.

(16) Third-party resource--A person or organization, other than HHSC or a person living with the applicant, who may be liable as a source of payment of the applicant's medical expenses (for example, a health insurance company).

(17) Unearned income--Income that is not earned income.

(18) U.S.C.--United States Code.

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

Filed with the Office of the Secretary of State on November 6, 2009.

TRD-200905103
Steve Aragon
General Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: December 20, 2009
For further information, please call: (512) 424-6576

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DIVISION 2. ELIGIBILITY REQUIREMENTS

1 TAC §§366.211, 366.213, 366.215, 366.217, 366.219, 366.221, 366.223, 366.225, 366.227, 366.229, 366.231, 366.233, 366.235, 366.237, 366.239, 366.241, 366.243, 366.245

Statutory Authority

The new sections are proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and §531.021, which authorizes HHSC to administer the federal medical assistance (Medicaid) program in Texas.

The new sections affect Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§366.211. General Eligibility Requirements.

To be eligible for benefits under the Presumptive Medicaid for Pregnant Women Program, a person must:

(1) meet the criteria for an eligible group as described in §366.213 of this division (relating to Eligible Group);

(2) comply with the application requirements in this division; and

(3) meet all other eligibility and participation requirements in this subchapter.

§366.213. Eligible Group.

To qualify for the Presumptive Medicaid for Pregnant Women Program, an applicant must be a pregnant woman with countable income less than or equal to 185% of the Federal Poverty Income Limit.

§366.215. Application Requirements and Processing.

(a) An applicant, authorized representative, or someone acting responsibly for the applicant (if the applicant is incompetent or incapacitated) applies at a qualified provider site.

(b) A qualified provider certifies an eligible applicant for the month of determination and the following month, as required by §1920(b)(1) of the Social Security Act (42 U.S.C. §1396r-1(b)(1)).

(c) The qualified provider then submits the application for assistance to the Texas Health and Human Services Commission for an eligibility determination for regular Medicaid.

(d) A recipient is limited to one eligibility period per pregnancy.

§366.217. Citizenship.

In accordance with 42 CFR §435.406, to be eligible for the Presumptive Medicaid for Pregnant Women Program, a person must be:

(1) a citizen of the U.S.;

(2) an alien who legally entered the U.S. before August 22, 1996, and who meets the eligibility criteria in 8 U.S.C. §1641(b) or (c);

(3) an alien who legally entered the U.S. on or after August 22, 1996, and who meets the eligibility criteria in 8 U.S.C. §1612(b) and §1613, except that a legal permanent resident alien is eligible after residing in the U.S. for five years only if the alien meets one of the following eligibility requirements:

(A) the alien is an honorably discharged veteran or active duty military personnel;

(B) the alien is a spouse, unmarried surviving spouse, or minor unmarried child of an honorably discharged veteran or active duty military personnel (if a surviving spouse of a deceased veteran or active duty military person, the surviving spouse must not have remarried);

(C) the alien entered the U.S. before August 22, 1996, and remained continuously present in the U.S. (a single absence from the U.S. of more than 30 days or a combined absence of more than 90 days interrupts the "continuous presence") since at least August 21, 1996, until obtaining qualifying immigrant status (an alien who entered the U.S. without proper documents or overstayed his or her visa, is treated the same as an alien who entered and remained in the U.S. with valid immigration documents);

(D) the alien entered the U.S. with a status described in the *Texas Works Handbook,* Item A-342, Chart C and meets those eligibility criteria, or meets the criteria in the *Texas Works Handbook,* Item A-343, How to Determine Eligibility for Battered Aliens; or

(E) the alien meets the 40 qualifying quarters requirements in the *Texas Works Handbook,* Item A-354, Verifying 40 "Qualifying Quarters," and five years have passed since the alien's legal date of entry; or

(4) an alien child 18 years of age or under who meets the definition of a qualified alien at 8 U.S.C. §1641(b).

§366.219. Social Security Number.

An applicant must provide or apply for a social security number (SSN) (including children referred to the Children's Health Insurance Program (CHIP)), except that the Texas Health and Human Services Commission:

(1) refers a Medicaid-eligible mother directly to the Social Security Administration to obtain an SSN for her newborn, if her newborn was certified for Medicaid as a result of a notice from an authorized medical provider (for example, a hospital or clinic); and

(2) requests, but does not require, budget group members who are not eligible for Medicaid to provide or apply for an SSN.

§366.221. Residence.

An applicant or recipient must be a resident of Texas. The Texas Health and Human Services Commission follows 42 CFR §435.403 in determining a person's state residence.

§366.223. Child Support and Medical Support.

If an applicant volunteers to receive services provided by the Office of Attorney General of Texas (OAG), the Texas Health and Human Services Commission must collect absent parent information and refer the child's case to the OAG.

§366.225. Resources.

The Texas Health and Human Services Commission does not request or verify resources for the Presumptive Medicaid for Pregnant Women Program.

§366.227. Income Limit.
To be eligible for benefits under the Presumptive Medicaid for Pregnant Women Program, an applicant must meet the income requirement established in §366.213 of this division (relating to Eligible Group).

§366.229. Determining Whose Income Counts.
To determine income eligibility for the Presumptive Medicaid for Pregnant Women Program, the Texas Health and Human Services Commission (HHSC) counts the income of:

(1) the members of the certified group (that is, the applicant);

(2) the applicant's siblings under 19 years of age, if the applicant is a minor;

(3) the applicant's children under 19 years of age;

(4) the applicant's spouse;

(5) stepparents living with the certified group, if the applicant is a minor;

(6) in the case of an unmarried minor parent recipient, parents of the minor who live with the minor; and

(7) in the case of a household containing a sponsored alien, the income of the alien's sponsor and the sponsor's spouse to the extent allowed by federal law.

§366.231. Allowable Income Deductions.
The Texas Health and Human Services Commission (HHSC) allows the following deductions when determining countable income:

(1) a work-related expense deduction of up to $120 of earned income for each employed person whose needs are included in the budget group or certified group or who is a disqualified member;

(2) a dependent care deduction of $200 per month for each child under two years of age, and $175 per month for each dependent two years of age or older, including an earned income deduction for the actual costs of unreimbursed payments if the person incurs an expense for the care of a child or incapacitated adult (even when the child or incapacitated adult is not included in the certified group) or transportation of a child to and from day care or school;

(3) payments to dependents living outside the home;

(4) alimony;

(5) child support payments made by a member of the budget group; and

(6) up to $75 per month in regular child support disregard payments received per household, except HHSC counts all child support payments a household received if HHSC determines the household has violated an agreement to assign child support to the State.

§366.233. Exempt Income.
The Texas Health and Human Services Commission (HHSC) exempts the following as countable income:

(1) any income that federal law excludes;

(2) the earnings of a child:

(A) who is 18 years of age and is:

(i) a full-time student, including a home-schooled student, or a part-time student employed less than 30 hours a week; and

(ii) considered a child; or

(B) who is under 18 years of age and is:

(i) a full-time student, including a home-schooled student; or

(ii) a part-time student employed less than 30 hours a week;

(3) up to $300 per federal fiscal quarter in cash gifts and contributions that are from private, nonprofit organizations and are based on need;

(4) proceeds from claims on insurance policies to compensate for a loss or that are used to pay medical expenses;

(5) payments from federal volunteer programs for volunteer service, such as payments:

(A) for volunteer service in a senior citizen volunteer program, under the Domestic Volunteer Service Act (42 U.S.C. §5000 et seq.);

(B) for volunteer service to Volunteers in Service to America (VISTA), under 42 U.S.C. §§4951 - 4960; and

(C) for volunteer service under the National and Community Service Act (42 U.S.C. §§12511 - 12656);

(6) payments under the Workforce Investment Act of 1998;

(7) the value of any benefits received under a government nutrition assistance program that is based on need, including benefits under the Supplemental Nutrition Assistance Program (SNAP) (formerly the Food Stamp Program), the Child Nutrition Act of 1966, the National School Lunch Act, and the Older Americans Act of 1965;

(8) foster care payments;

(9) payments made under a government housing assistance program based on need;

(10) energy assistance payments;

(11) job training payments that:

(A) are earmarked as reimbursement for training-related expenses; and

(B) do not duplicate payment for an item that is covered by budgetary needs;

(12) a lump sum provided and used to pay burial, legal, or medical bills, or to replace damaged or lost possessions, except HHSC does not exclude amounts from lump sums used for another purpose;

(13) reimbursements for monies spent on items not covered by budgetary needs;

(14) amounts deducted from royalties for production expenses and severance taxes;

(15) all income of Supplemental Security Income recipients;

(16) third-party funds received and used for a third-party beneficiary who is not a household member;

(17) vendor payments made from funds not legally obligated to the household;

(18) veterans benefits for special needs that are not items covered by budgetary needs;

(19) workers' compensation payments legally obligated to the recipient that are earmarked and used for medical expenses;

(20) the amount of any nonfarm self-employment income offsetting a tax deduction taken that year for a farm loss, for households with farms generating income of at least $1,000 annually;

(21) up to $2,000 of gifts annually from tax-exempt organizations provided to children with life-threatening conditions;

(22) independent living payments to youths who are leaving foster care, as provided by the Social Security Act, Title IV-E (42 U.S.C. §670 et seq.);

(23) funds from payments of up to $2,000 to Native Americans made under the federal Old Age Assistance Claims Settlement Act (25 U.S.C. §2301) or the federal Alaska Native Claims Settlement Act (43 U.S.C. §1601);

(24) funds from payments made to volunteers under Title I of the Domestic Volunteer Services Act of 1973;

(25) funds from adoption subsidy payments made under Title IV-A and Title IV-E of the Social Security Act;

(26) funds from insurance policy dividends;

(27) funds from veterans payments earmarked as a housebound allowance or as an aid and attendance allowance;

(28) earned income tax credit payments;

(29) federal, state, or local government payments provided to rebuild a home or replace personal possessions damaged in a disaster, including payments under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. §5121 et seq.), if the recipient is subject to legal sanction if the payment is not used as intended;

(30) funds from educational assistance payments (but only during the quarter, semester, or applicable period that the payment is intended to cover);

(31) loans, if the circumstances satisfy HHSC that there exists an understanding that the money will be repaid, and the applicant or recipient reasonably explains to HHSC how the money will be repaid; and

(32) crime victim's compensation payments.

§366.235. Third-party Resources.

Medicaid is considered the payor of last resort for a person's medical expenses. As a condition of eligibility, in accordance with 42 CFR §§433.138 - 433.148, an applicant or recipient must:

(1) assign to the Texas Health and Human Services Commission (HHSC) the applicant's or recipient's right to recover any third-party resources available for payment of medical expenses covered under the Texas State Plan for Medical Assistance; and

(2) report to HHSC any third-party resource within 60 days after learning about the third-party resource.

§366.237. Medicaid Eligibility Effective Date.

(a) The Medicaid eligibility effective date is the date the qualified provider receives the application for presumptive eligibility and makes the presumptive eligibility determination.

(b) In accordance with 42 U.S.C. §1396r-1(b)(1), coverage under the Presumptive Eligibility for Pregnant Women Program ends with (and includes) the earlier of:

(1) the date the Texas Health and Human Services Commission makes an eligibility determination for regular Medicaid; or

(2) the last day of the month after the month the qualified provider made the presumptive eligibility determination.

§366.239. Resident of an Institution for Mental Diseases.

A person who lives in an institution for mental diseases, as defined in 42 CFR §435.1010, is only eligible for Medicaid payment for Medicaid covered services received while residing in the institution for mental diseases to the extent allowed by federal law.

§366.241. Inmates of Public Institutions.

An inmate of a public institution, including a jail, prison, reformatory, or other correctional or holding facility, as defined in 42 CFR §435.1009 and §435.1010, is not eligible for Medicaid payment for Medicaid-covered services received while residing in the public institution.

§366.243. Requirement to Report Changes.

(a) A recipient must report:

(1) a change of address; and

(2) termination of the pregnancy.

(b) If a recipient reports a change described in subsection (a) of this section, the Texas Health and Human Services Commission takes appropriate action to adjust or deny Medicaid and sends a written notice of action taken to the recipient.

§366.245. Right to Appeal.

(a) An applicant or recipient has the right to appeal Texas Health and Human Services Commission (HHSC) decisions. Appeals are governed by HHSC's fair hearing rules contained in Chapter 357 of this title (relating to Hearings).

(b) HHSC provides an action notice regarding an HHSC decision to applicants and recipients. The action notice includes information about how to file an appeal and the availability of free legal representation.

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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Steve Aragon
General Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: December 20, 2009
For further information, please call: (512) 424-6576

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DIVISION 3. PROVIDER REQUIREMENTS

1 TAC §366.251, §366.253

Statutory Authority

The new sections are proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and §531.021, which authorizes HHSC to administer the federal medical assistance (Medicaid) program in Texas.

The new sections affect Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§366.251. Eligibility Requirements for Medical Providers.

(a) A medical provider that wishes to contract with the Texas Health and Human Services Commission (HHSC) to provide services under the Presumptive Medicaid for Pregnant Women Program must apply on the form prescribed by HHSC. The form is available from HHSC, Attn: Texas Works Policy, MC 2039, P.O. Box 12668, Austin, TX 78711-2668.

(b) A medical provider applicant must:

(1) be an eligible Medicaid provider;

(2) offer services provided by outpatient hospitals, rural health clinics, or clinics, either provided or directed by physicians (clinics may be administered by someone who is not a physician), as further described in §1905(a)(2)(A) or (B) of the Social Security Act (42 U.S.C. §1396d(a)(2)(A) or (B)), or §1905(a)(9) of the Social Security Act (42 U.S.C. §1396d(a)(9)), or both; and

(3) receive funds from, or participate in, one of the following programs:

(A) health centers for medically underserved populations providing primary health services, including migrant health centers, under 42 U.S.C. §254b;

(B) rural health outreach networks, under 42 U.S.C. §254c;

(C) maternal and child health services block grant programs, under 42 U.S.C. §701 et seq.);

(D) the Indian Health Care Improvement Act, Public Law 94-437, as amended (25 U.S.C. §1651 et seq.);

(E) Special Supplemental Food Program for Women, Infants, and Children (WIC), under 42 U.S.C. §1786;

(F) Commodity Supplemental Food Program of the Agriculture and Consumer Protection Act of 1973, Public Law 93-86, as amended (7 U.S.C. §612c note);

(G) a state perinatal program; or

(H) the Indian Health Service or a health program or facility operated by a tribe or tribal organization under the Indian Self-Determination Act, Public Law 93-638, as amended (25 U.S.C. §450f et seq.).

(c) A medical provider applicant must demonstrate the capability to make presumptive eligibility determinations and receive:

(1) preliminary HHSC approval of the criteria in subsection (b) of this section; and

(2) final HHSC approval, based on an operating plan as described in subsection (d) of this section, which is developed with the HHSC regional director responsible for Medicaid programs for pregnant women.

(d) The operating plan contains the details of the operating procedures between the local HHSC office and the medical provider. The operating plan must specify how the medical provider will:

(1) meet the basic intent of the Presumptive Medicaid for Pregnant Women Program;

(2) provide access to prenatal care services as a part of the facility's ongoing service package, with the following stipulations:

(A) a provider not offering prenatal care services must, through a referral and tracking system, coordinate access to prenatal care services; and

(B) a provider must ensure that services include a case management approach, which assists pregnant women during the Medicaid application process and prenatal care visits;

(3) provide or assure verification of pregnancy;

(4) ensure that prenatal care appointments are scheduled within 10 working days after a presumptive eligibility decision, unless HHSC gives an exception, in which case a provider must report quarterly on the provider's progress toward meeting the requirement;

(5) provide enough trained staff to interview and process the budget of each pregnant woman;

(6) monitor the accuracy of presumptive eligibility determinations;

(7) ensure that presumptive eligibility application packets are delivered to an HHSC service site within one working day after eligibility decisions;

(8) ensure that medical provider staff are trained by HHSC on how to determine presumptive eligibility;

(9) maintain a record of each presumptive eligibility application decision, both certified and denied, for three years after the decision date;

(10) submit required reports to the HHSC regional director responsible for Medicaid for pregnant women;

(11) prepare an applicant for her HHSC interview by providing her with a list of HHSC-required documents and informing her as to what information HHSC must verify;

(12) keep the financial information of applicants and recipients confidential; and

(13) provide services without discrimination on the grounds of race, color, national origin, age, sex, or disability.

(e) HHSC may verify with a third-party agency that a medical provider applicant meets the criteria specified in subsections (b) - (d) of this section.

(f) HHSC notifies a medical provider applicant of HHSC's approval or disapproval of qualified provider status for the provider.

§366.253. Monitoring Medical Providers.

(a) The Texas Health and Human Services Commission (HHSC) monitors providers of presumptive Medicaid services.

(b) HHSC may discontinue eligibility operating procedures with providers that fail to meet program requirements or to comply with the local operating plan.

(c) HHSC cancels the qualified provider status of providers that intentionally misrepresent program eligibility requirements or are negligent in determining eligibility.

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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Steve Aragon
General Counsel
Texas Health and Human Services Commission
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SUBCHAPTER C. PREGNANT WOMEN'S MEDICAID

1 TAC §§366.301, 366.303, 366.305, 366.307, 366.309, 366.311, 366.313, 366.315, 366.317, 366.319, 366.321, 366.323, 366.325, 366.327, 366.329, 366.331, 366.333, 366.335, 366.337, 366.339, 366.341, 366.343

Statutory Authority

The new sections are proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and §531.021, which authorizes HHSC to administer the federal medical assistance (Medicaid) program in Texas.

The new sections affect Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§366.301. Purpose and Scope.

(a) This subchapter establishes the eligibility criteria and participation requirements for Pregnant Women's Medicaid, in accordance with 42 U.S.C. §1396d(a).

(b) Nothing in these rules shall be construed to violate the maintenance of eligibility requirements of section 5001 of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) and make eligibility standards, methodologies, or procedures under the Texas State Plan for Medical Assistance (or any waiver under section 1115 of the Social Security Act (42 U.S.C. §1315)) more restrictive than the eligibility standards, methodologies, or procedures, respectively, under such plan (or waiver) that were in effect on July 1, 2008.

§366.303. Definitions.

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

(1) Applicant--A person seeking assistance under Pregnant Women's Medicaid who:

(A) has never received Medicaid and is not currently receiving Medicaid; or

(B) previously received Medicaid but subsequently was denied and reapplies for Medicaid.

(2) Authorized representative--A person whom a budget group authorizes to apply for Medicaid benefits on behalf of a certified group but who is not included in the certified group.

(3) Budget group--Members of a household whose needs, income, resources, and medical expenses are considered in determining eligibility for Medicaid. The budget group may include both members who are eligible for Medicaid and those who are not. For Pregnant Women's Medicaid, the needs of the applicant's unborn child are included in the budget group.

(4) Certified group--Members of a budget group who are eligible for and receiving Medicaid.

(5) CFR--Code of Federal Regulations.

(6) Child--Any household member under 19 years of age unless the child is married or legally emancipated.

(7) Continuous coverage--Uninterrupted eligibility for the extent of the certification period.

(8) Countable income--The receipt of cash or its equivalent, either earned or unearned, that a person may directly or indirectly use to meet basic needs (such as food, clothing, and shelter), including TANF cash payments.

(9) Earned income--Compensation received from employment or job training, including military and flight pay, allowances for housing and food, and receipts from self-employment (but not receipts from ownership of property involving less than 20 hours of work per week, which are unearned income).

(10) Eligible group--A category of people who are eligible for Pregnant Women's Medicaid. In other Medicaid programs, an eligible group may be called a coverage group.

(11) Federal Poverty Income Limit (FPIL)--The household income guidelines issued annually and published in the Federal Register by the U.S. Department of Health and Human Services. Percentages of these guidelines are used to determine income eligibility for Pregnant Women's Medicaid and certain other public assistance programs. In other programs, the FPIL may be referred to as the Federal Poverty Level or the Federal Poverty Guidelines.

(12) Medicaid--A state and federal cooperative program, authorized under Title XIX of the Social Security Act and the Texas Human Resources Code, that pays for certain medical and health care costs for people who qualify. Also known as the medical assistance program.

(13) Person acting responsibly--A person, other than a provider, who may apply for Medicaid on behalf of an individual who is incompetent or incapacitated if the person is determined by the Texas Health and Human Services Commission (HHSC) to be acting responsibly on behalf of the applicant.

(14) Recipient--A person receiving Pregnant Women's Medicaid services.

(15) Retroactive coverage--Payment for Medicaid-reimbursable medical services received up to three months before the month of application.

(16) Temporary Assistance for Needy Families (TANF)--A program that provides temporary benefits (cash assistance) and work opportunities to families with needy dependent children, authorized under Title IV of the Social Security Act.

(17) *Texas Works Handbook*--An HHSC manual containing policies and procedures used to determine eligibility for SNAP food benefits, TANF, and Medicaid programs for children and families. The *Texas Works Handbook* is found on the Internet at www.hhsc.state.tx.us/Programs/Programs.shtml#handbooks.

(18) Unearned income--Income that is not earned income, including dividends and withdrawals from excluded resources.

(19) U.S.C.--United States Code.

§366.305. General Eligibility Requirements.

To be eligible for Pregnant Women's Medicaid, a person must:

(1) meet the criteria for an eligible group as described in §366.307 of this subchapter (relating to Eligible Group);

(2) comply with the Texas Health and Human Services Commission's application requirements in this subchapter; and

(3) meet all other eligibility and participation requirements in this subchapter.

§366.307. Eligible Group.

To be eligible for Pregnant Women's Medicaid, an applicant must be a pregnant woman with countable income equal to or less than 185% of the Federal Poverty Income Limit.

§366.309. Application Requirements.

(a) To apply for Pregnant Women's Medicaid benefits, an applicant, authorized representative, or someone acting responsibly for the applicant (if the applicant is incompetent or incapacitated) must:

(1) use the application prescribed by the Texas Health and Human Services Commission (HHSC) and complete it according to HHSC instructions:

(A) in writing, using a paper application obtained via telephone, Internet request, or other means;

(B) online, using the application process available over the Internet;

(C) over the telephone, through the State's toll-free telephone number; or

(D) in person, by visiting an HHSC benefits office;

(2) provide all requested information according to HHSC instructions; and

(3) sign the application for assistance under penalty of perjury.

(b) If someone helps an applicant, authorized representative, or person acting responsibly for the applicant complete the application for assistance, the name of the person completing the form must appear as requested on the application.

(c) If HHSC sends an applicant, authorized representative, or person acting responsibly a request for missing information or verification documents, or both, the applicant, authorized representative, or person acting responsibly must provide the requested information to HHSC by the due date given in the request, or eligibility may be denied.

§366.311. Application Processing.

(a) The Texas Health and Human Services Commission (HHSC) allows any office of a state health and human services agency to accept an initial application.

(b) HHSC contracts with third parties to accept applications from hospital districts (including state-owned teaching hospitals), federally qualified health centers, and county health departments.

(c) HHSC may conduct a personal interview with an initial applicant if HHSC has received conflicting information related to household membership, income, or assets that affects eligibility and the information cannot be verified through other means.

(d) HHSC reopens a denied initial application, so long as the household complies with the missed requirements within 60 days after the date the application was submitted. HHSC otherwise requires the household to file a new application.

(e) HHSC may reopen an application for three months prior coverage if:

(1) within two years after the application was filed, the applicant requests that the application be reopened; and

(2) a Medicaid eligibility determination was not previously made for the three-month prior period.

(f) For an applicant who is potentially eligible but unable to provide proof of eligibility, HHSC:

(1) postpones verifications and provides Medicaid coverage to ensure access to medical care within 30 days after the application date;

(2) continues the coverage of an applicant who provides postponed verification by the 30th day after the application date; and

(3) denies the coverage of an applicant who fails to meet the 30-day deadline.

§366.313. Citizenship.

To be eligible for Pregnant Women's Medicaid, an applicant must be:

(1) a citizen or national of the United States (U.S.);

(2) an alien who legally entered the U.S. before August 22, 1996, and who meets the eligibility criteria in 8 U.S.C. §1641(b) or (c);

(3) an alien who legally entered the U.S. on or after August 22, 1996, and who meets the eligibility criteria in 8 U.S.C. §1612(b) and §1613, except that a legal permanent resident alien is eligible after residing in the U.S. for five years only if the alien meets one of the following eligibility requirements:

(A) the alien is an honorably discharged veteran or active duty military personnel;

(B) the alien is a spouse, unmarried surviving spouse, or minor unmarried child of an honorably discharged veteran or active duty military personnel (if a surviving spouse of a deceased veteran or active duty military person, the surviving spouse must not have remarried);

(C) the alien entered the U.S. before August 22, 1996, and remained continuously present in the U.S. (a single absence from the U.S. of more than 30 days or a combined absence of more than 90 days interrupts the "continuous presence") since at least August 21, 1996, until obtaining qualifying immigrant status (an alien who entered the U.S. without proper documents or overstayed his or her visa, is treated the same as an alien who entered and remained in the U.S. with valid immigration documents);

(D) the alien entered the U.S. with a status described in the *Texas Works Handbook,* Item A-342, Chart C and meets those eligibility criteria, or meets the criteria in the *Texas Works Handbook,* Item A-343, How to Determine Eligibility for Battered Aliens; or

(E) the alien meets the 40 qualifying quarters requirements in the *Texas Works Handbook,* Item A-354, Verifying 40 "Qualifying Quarters," and five years have passed since the alien's legal date of entry; or

(4) an alien child 18 years of age or under who meets the definition of a qualified alien at 8 U.S.C. §1641(b).

§366.315. Social Security Number.

As a condition of eligibility, an applicant must provide or apply for her social security number within 30 days after the application date, in accordance with §366.311(f) of this subchapter (relating to Application Processing).

§366.317. Residence.

An applicant or recipient must be a resident of Texas. The Texas Health and Human Services Commission follows 42 CFR §435.403 in determining a person's state residence.

§366.319. Child Support and Medical Support.

A pregnant woman receiving Medicaid must provide the name and last known address of the legal or biological father of her unborn child.

Applicants and recipients may volunteer to receive child support or medical support services. There is no penalty for noncooperation.

§366.321. Resources.

The Texas Health and Human Services Commission does not request or verify resources for Pregnant Women's Medicaid.

§366.323. Income Limits.

To be eligible for Pregnant Women's Medicaid, an applicant or recipient must meet the income requirement established in §366.307 of this subchapter (relating to Eligible Group).

§366.325. Determining Whose Income Counts.

(a) To determine income eligibility for Pregnant Women's Medicaid, the Texas Health and Human Services Commission (HHSC) counts the income of:

(1) the members of the budget group;

(2) each parent of a child in the certified group who lives in the household;

(3) each sibling, if included in the budget group, of a dependent child in the certified group who lives in the household;

(4) stepparents living with the certified group;

(5) in the case of an unmarried minor parent recipient, parents of the minor who live with the minor; and

(6) in the case of a household containing a sponsored alien, the income of the alien's sponsor and the sponsor's spouse to the extent allowed by federal law.

(b) A child's needs, income, and resources may be excluded when determining eligibility of the child's siblings if the caretaker chooses not to apply for Medicaid for the excluded child.

(c) HHSC does not count the applied income of stepparents or grandparents with whom the child lives if the income resulted in the denial of eligibility for Temporary Assistance for Needy Families.

§366.327. Allowable Income Deductions.

The Texas Health and Human Services Commission (HHSC) allows the following deductions when determining countable income:

(1) a work-related expense deduction of up to $120 of earned income;

(2) a dependent care deduction of $200 per month for each child under two years of age, and $175 per month for each dependent two years of age or older, including an earned income deduction for the actual costs of unreimbursed payments if the person incurs an expense for the care of a child or incapacitated adult (even when the child or incapacitated adult is not included in the certified group) or transportation of a child to and from day care or school;

(3) payments to dependents living outside the home;

(4) alimony;

(5) child support payments; and

(6) up to $75 per month in regular child support payments, except HHSC counts all child support payments an applicant received if HHSC determines the applicant has violated an agreement to assign child support to the State.

§366.329. Exempt Income.

The Texas Health and Human Services Commission (HHSC) exempts the following as countable income:

(1) any income that federal law excludes;

(2) the earnings of a child:

(A) who is 18 years of age and is:

(i) a full-time student, including a home-schooled student, or a part-time student employed less than 30 hours a week; and

(ii) considered a child; or

(B) who is under 18 years of age and is:

(i) a full-time student, including a home-schooled student; or

(ii) a part-time student employed less than 30 hours a week;

(3) up to $300 per federal fiscal quarter in cash gifts and contributions that are from private, nonprofit organizations and are based on need;

(4) proceeds from claims on insurance policies to compensate for a loss or that are used to pay medical expenses;

(5) payments from federal volunteer programs for volunteer service, such as payments:

(A) for volunteer service in a senior citizen volunteer program, under the Domestic Volunteer Service Act (42 U.S.C. §5000 et seq.);

(B) for volunteer service to Volunteers in Service to America (VISTA), under 42 U.S.C. §§4951 - 4960; and

(C) for volunteer service under the National and Community Service Act (42 U.S.C. §§12511 - 12656);

(6) payments under the Workforce Investment Act of 1998;

(7) the value of any benefits received under a government nutrition assistance program that is based on need, including benefits under the Supplemental Nutrition Assistance Program (SNAP) (formerly the Food Stamp Program), the Child Nutrition Act of 1966, the National School Lunch Act, and the Older Americans Act of 1965;

(8) foster care payments;

(9) payments made under a government housing assistance program based on need;

(10) energy assistance payments;

(11) job training payments that:

(A) are earmarked as reimbursement for training-related expenses; and

(B) do not duplicate payment for an item that is covered by budgetary needs;

(12) a lump sum provided and used to pay burial, legal, or medical bills, or to replace damaged or lost possessions, except HHSC does not exclude amounts from lump sums used for another purpose;

(13) reimbursements for monies spent on items not covered by budgetary needs;

(14) amounts deducted from royalties for production expenses and severance taxes;

(15) all income of Supplemental Security Income recipients;

(16) third-party funds received and used for a third-party beneficiary who is not a household member;

(17) vendor payments made from funds not legally obligated to the household;

(18) veterans benefits for special needs that are not items covered by budgetary needs;

(19) workers' compensation payments legally obligated to the recipient that are earmarked and used for medical expenses;

(20) the amount of any nonfarm self-employment income offsetting a tax deduction taken that year for a farm loss, for households with farms generating income of at least $1,000 annually;

(21) up to $2,000 of gifts annually from tax-exempt organizations provided to children with life-threatening conditions;

(22) independent living payments to youths who are leaving foster care, as provided by the Social Security Act, Title IV-E (42 U.S.C. §670 et seq.);

(23) funds from payments of up to $2,000 to Native Americans made under the federal Old Age Assistance Claims Settlement Act (25 U.S.C. §2301) or the federal Alaska Native Claims Settlement Act (43 U.S.C. §1601);

(24) funds from payments made to volunteers under Title I of the Domestic Volunteer Services Act of 1973;

(25) funds from adoption subsidy payments made under Title IV-A and Title IV-E of the Social Security Act;

(26) funds from insurance policy dividends;

(27) funds from veterans payments earmarked as a housebound allowance or as an aid and attendance allowance;

(28) earned income tax credit payments;

(29) federal, state, or local government payments provided to rebuild a home or replace personal possessions damaged in a disaster, including payments under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. §5121 et seq.), if the recipient is subject to legal sanction if the payment is not used as intended;

(30) funds from educational assistance payments (but only during the quarter, semester, or applicable period that the payment is intended to cover);

(31) loans, if the circumstances satisfy HHSC that there exists an understanding that the money will be repaid, and the applicant or recipient reasonably explains to HHSC how the money will be repaid; and

(32) crime victim's compensation payments.

§366.331. Third-party Resources.

Medicaid is considered the payor of last resort for a person's medical expenses. As a condition of eligibility, in accordance with 42 CFR §§433.138 - 433.148, an applicant or recipient must:

(1) assign to the Texas Health and Human Services Commission (HHSC) the applicant's or recipient's right to recover any third-party resources available for payment of medical expenses covered under the Texas State Plan for Medical Assistance; and

(2) report to HHSC any third-party resource within 60 days after learning about the third-party resource.

§366.333. Medicaid Eligibility Effective Date.

The Texas Health and Human Services Commission (HHSC) determines the Medicaid eligibility effective date for an applicant as follows:

(1) Medicaid coverage begins on the earliest day of the application month on which the applicant meets all eligibility criteria.

(2) Retroactive coverage may begin as early as three months before the application month.

(3) A recipient has continuous coverage for Medicaid through the second month after the pregnancy terminates.

§366.335. Resident of an Institution for Mental Diseases.

A person who lives in an institution for mental diseases, as defined in 42 CFR §435.1010, is only eligible for Medicaid payment for Medicaid covered services received while residing in the institution for mental diseases to the extent allowed by federal law.

§366.337. Inmates of Public Institutions.

An inmate of a public institution, including a jail, prison, reformatory, or other correctional or holding facility, as defined in 42 CFR §435.1009 and §435.1010, is not eligible for Medicaid payment for Medicaid-covered services received while residing in the public institution.

§366.339. Information from Other Agencies.

(a) Periodically, the Texas Health and Human Services Commission (HHSC) and other state and federal agencies compare the information they have stored on computer files.

(b) After comparing information with another agency, HHSC contacts the Medicaid recipient if the information does not match so that HHSC can confirm the correct information.

(1) If the mismatch of information does not affect eligibility, HHSC does not take action to adjust or deny Medicaid.

(2) If the mismatch of information affects eligibility, HHSC takes appropriate action to adjust or deny Medicaid and sends a written notice of action taken to the recipient.

§366.341. Requirement to Report Changes.

(a) A recipient must report:

(1) a change of address; and

(2) termination of the pregnancy.

(b) If a recipient reports a change described in subsection (a) of this section, the Texas Health and Human Services Commission takes appropriate action to adjust or deny Medicaid and sends a written notice of action taken to the recipient.

§366.343. Right to Appeal.

(a) An applicant or recipient has the right to appeal Texas Health and Human Services Commission (HHSC) decisions. Appeals are governed by HHSC's fair hearing rules contained in Chapter 357 of this title (relating to Hearings).

(b) HHSC provides an action notice regarding an HHSC decision to applicants and recipients. The action notice includes information about how to file an appeal and the availability of free legal representation.

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

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SUBCHAPTER D. MEDICAID FOR BREAST AND CERVICAL CANCER

1 TAC §§366.401, 366.403, 366.405, 366.407, 366.409, 366.411, 366.413, 366.415, 366.417, 366.419, 366.421

Statutory Authority

The new sections are proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and §531.021, which authorizes HHSC to administer the federal medical assistance (Medicaid) program in Texas.

The new sections affect Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§366.401. Purpose and Scope.

(a) This subchapter establishes the eligibility criteria and participation requirements for Medicaid for treatment of breast and cervical cancer, as authorized by 42 United States Code §1396r-1b.

(b) Nothing in these rules shall be construed to violate the maintenance of eligibility requirements of section 5001 of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) and make eligibility standards, methodologies, or procedures under the Texas State Plan for Medical Assistance (or any waiver under section 1115 of the Social Security Act (42 U.S.C. §1315)) more restrictive than the eligibility standards, methodologies, or procedures, respectively, under such plan (or waiver) that were in effect on July 1, 2008.

§366.403. Definitions.

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

(1) Applicant--A person seeking assistance under the Medicaid for Breast and Cervical Cancer Program (MBCC) who:

(A) has never received Medicaid and is not currently receiving Medicaid; or

(B) previously received Medicaid but subsequently was denied and reapplies for Medicaid.

(2) CFR--Code of Federal Regulations.

(3) Creditable coverage--A health insurance plan that covers any aspect of breast or cervical cancer treatment, including:

(A) a group health plan;

(B) health insurance coverage;

(C) Medicare (Part A or B);

(D) armed forces insurance;

(E) a state health benefits risk pool; and

(F) Medicaid coverage other than MBCC.

(4) Eligible group--A category of people who are eligible for MBCC. In other Medicaid programs, an eligible group may be called a coverage group.

(5) Medicaid--A state and federal cooperative program, authorized under Title XIX of the Social Security Act and the Texas Human Resources Code, that pays for certain medical and health care costs for people who qualify. Also known as the medical assistance program.

(6) Recipient--A person receiving MBCC services, including a person who is renewing eligibility for MBCC.

(7) Screen--A test for breast or cervical cancer conducted under the Centers for Disease Control and Prevention's Breast and Cervical Cancer Early Detection Program.

(8) Texas Department of State Health Services (DSHS)--The state agency that identifies and refers applicants for MBCC.

(9) *Texas Works Handbook*--A Texas Health and Human Services Commission manual containing policies and procedures used to determine eligibility for SNAP food benefits, TANF, and Medicaid programs for children and families. The *Texas Works Handbook* is found on the Internet at www.hhsc.state.tx.us/Programs/Programs.shtml#handbooks.

(10) U.S.C.--United States Code.

§366.405. Eligible Group.

The eligible group consists of women screened and found to need treatment for breast or cervical cancer through the Centers for Disease Control and Prevention's National Breast and Cervical Cancer Early Detection Program, created by Public Law 101-354 and administered by the Texas Department of State Health Services as Breast and Cervical Cancer Services.

§366.407. Eligibility Requirements.

To be eligible for Medicaid for Breast and Cervical Cancer, an applicant must:

(1) be a woman under 65 years of age;

(2) be:

(A) a citizen or national of the U.S.;

(B) an alien who legally entered the U.S. before August 22, 1996, and who meets the eligibility criteria in 8 U.S.C. §1641(b) or (c);

(C) an alien who legally entered the U.S. on or after August 22, 1996, and who meets the eligibility criteria in 8 U.S.C. §1612(b) and §1613, except that a legal permanent resident alien is eligible after residing in the U.S. for five years only if the alien meets one of the following eligibility requirements:

(i) the alien is an honorably discharged veteran or active duty military personnel;

(ii) the alien is a spouse, unmarried surviving spouse, or minor unmarried child of an honorably discharged veteran or active duty military personnel (if a surviving spouse of a deceased veteran or active duty military person, the surviving spouse must not have remarried);

(iii) the alien entered the U.S. before August 22, 1996, and remained continuously present in the U.S. (a single absence from the U.S. of more than 30 days or a combined absence of more than 90 days interrupts the "continuous presence") since at least August 21, 1996, until obtaining qualifying immigrant status (an alien

who entered the U.S. without proper documents or overstayed his or her visa, is treated the same as an alien who entered and remained in the U.S. with valid immigration documents);

(iv) the alien entered the U.S. with a status described in the *Texas Works Handbook,* Item A-342, Chart C and meets those eligibility criteria, or meets the criteria in the *Texas Works Handbook,* Item A-343, How to Determine Eligibility for Battered Aliens; or

(v) the alien meets the 40 qualifying quarters requirements in the *Texas Works Handbook,* Item A-354, Verifying 40 "Qualifying Quarters," and five years have passed since the alien's legal date of entry; or

(D) an alien child 18 years of age or under who meets the definition of a qualified alien at 8 U.S.C. §1641(b);

(3) be a resident of Texas, as determined by the Texas Health and Human Services Commission in accordance with 42 CFR §435.403;

(4) provide or apply for a social security number before she is certified;

(5) not be otherwise eligible for Medicaid; and

(6) not have creditable coverage.

§366.409. Application Requirements and Processing.

(a) An applicant is identified through the Texas Department of State Health Services Breast and Cervical Cancer Services (BCCS).

(b) A BCCS medical provider screens and diagnoses qualifying medical conditions and either makes a determination of presumptive eligibility, or, if the medical provider is not enrolled as a Medicaid provider, makes a referral to a qualified entity for determination of presumptive eligibility.

(c) BCCS Medicaid providers have been designated as qualified entities for presumptive eligibility determinations.

(d) A BCCS Medicaid provider, or a qualified Medicaid provider to whom a woman is referred, sends the applicant's application packet containing the provider's determination of presumptive eligibility and an application for assistance to the Texas Health and Human Services Commission (HHSC) within five working days after the date the presumptive eligibility determination is made. HHSC determines eligibility no later than the end of the month following the month the presumptive eligibility determination is made.

(e) The period of presumptive Medicaid eligibility is specified in 42 U.S.C. §1396r-1b(b)(1) as beginning with the date a qualified entity determines eligibility under the State Plan, based upon preliminary information, and ends with (and includes) the earlier of:

(1) the date an eligibility determination is made by the Texas Health and Human Services Commission (HHSC); or

(2) the last day of the month following the month presumptive eligibility was determined.

§366.411. Medicaid Eligibility Effective Date.

The period of coverage begins no earlier than the day after screening and diagnosis of the qualifying medical condition, and lasts for the duration of the cancer treatment or until the woman no longer meets all eligibility requirements, whichever is earlier.

§366.413. Inmates of Public Institutions.

An inmate of a public institution, including a jail, prison, reformatory, or other correctional or holding facility, as defined in 42 CFR §435.1009 and §435.1010, is not eligible for Medicaid payment for Medicaid-covered services received while residing in the public institution.

§366.415. Eligibility Renewal.

(a) A recipient who returns a completed renewal application and all necessary documentation continues to receive ongoing Medicaid coverage.

(b) The Texas Health and Human Services Commission reviews a recipient's Medicaid eligibility every six months.

(c) A recipient's certification ends before the end of her six-month certification period if the recipient:

(1) dies;

(2) moves out of state;

(3) reaches 65 years of age;

(4) receives creditable coverage; or

(5) is no longer receiving treatment.

§366.417. Information from Other Agencies.

(a) Periodically, the Texas Health and Human Services Commission (HHSC) and other state and federal agencies compare the information they have stored on computer files.

(b) After comparing information with another agency, HHSC contacts the Medicaid recipient if the information does not match so that HHSC can confirm the correct information.

(1) If the mismatch of information does not affect eligibility, HHSC does not take action to adjust or deny Medicaid.

(2) If the mismatch of information affects eligibility, HHSC takes appropriate action to adjust or deny Medicaid and sends a written notice of action taken to the recipient.

§366.419. Requirement to Report Changes.

(a) A recipient must report to the Texas Health and Human Services Commission (HHSC) if she:

(1) moves out of state;

(2) receives creditable coverage; or

(3) is no longer receiving treatment.

(b) If a recipient reports a change that affects the recipient's eligibility, HHSC takes appropriate action to adjust or deny Medicaid and sends a written notice of action taken to the recipient.

§366.421. Right to Appeal.

(a) An applicant or recipient has the right to appeal Texas Health and Human Services Commission (HHSC) decisions. Appeals are governed by HHSC's fair hearing rules contained in Chapter 357 of this title (relating to Hearings).

(b) HHSC provides an action notice regarding an HHSC decision to applicants and recipients. The action notice includes information about how to file an appeal and the availability of free legal representation.

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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Texas Health and Human Services Commission
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For further information, please call: (512) 424-6576

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SUBCHAPTER E. CHILDREN'S MEDICAID

1 TAC §§366.501, 366.503, 366.505, 366.507, 366.509, 366.511, 366.513, 366.515, 366.517, 366.519, 366.521, 366.523, 366.525, 366.527, 366.529, 366.531, 366.533, 366.535, 366.537, 366.539, 366.541, 366.543, 366.545, 366.547, 366.549, 366.551, 366.553

Statutory Authority

The new sections are proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and §531.021, which authorizes HHSC to administer the federal medical assistance (Medicaid) program in Texas.

The new sections affect Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§366.501. Purpose and Scope.

(a) This subchapter establishes the eligibility criteria and participation requirements for Children's Medicaid.

(b) Nothing in these rules shall be construed to violate the maintenance of eligibility requirements of section 5001 of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) and make eligibility standards, methodologies, or procedures under the Texas State Plan for Medical Assistance (or any waiver under section 1115 of the Social Security Act (42 U.S.C. §1315)) more restrictive than the eligibility standards, methodologies, or procedures, respectively, under such plan (or waiver) that were in effect on July 1, 2008.

§366.503. Definitions.

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

(1) Applicant--A person seeking assistance under Children's Medicaid who:

(A) has never received Medicaid and is not currently receiving Medicaid; or

(B) previously received Medicaid but subsequently was denied and reapplies for Medicaid.

(2) Authorized representative--A person whom a budget group authorizes to apply for Medicaid benefits on behalf of a certified group but who is not included in the certified group.

(3) Budget group--Members of a household whose needs, income, resources, and medical expenses are considered in determining eligibility for Medicaid. The budget group may include both members who are eligible for Medicaid and those who are not.

(4) Caretaker--An adult who is present in the home, who supervises and cares for a dependent child, and who meets relationship requirements in §366.519(b) of this subchapter (relating to Relationship and Domicile).

(5) Certified group--Members of a budget group who are eligible for and receiving Medicaid.

(6) CFR--Code of Federal Regulations.

(7) Child--Any household member from birth through the month of the member's 19th birthday unless the child is married or legally emancipated.

(8) Continuous coverage--Uninterrupted eligibility for the extent of the certification period.

(9) Countable income--The receipt of cash or its equivalent, either earned or unearned, that a person may directly or indirectly use to meet basic needs (such as food, clothing, and shelter), including TANF cash payments.

(10) Disqualified member--A person who normally would be considered a participating member of a household but whose needs are not considered because the person failed to meet or comply with a program requirement.

(11) Earned income--Compensation received from employment or job training, including military and flight pay, allowances for housing and food, and receipts from self-employment (but not receipts from ownership of property involving less than 20 hours of work per week, which are unearned income).

(12) Eligible group--A category of people who are eligible for Children's Medicaid. In other Medicaid programs, an eligible group may be called a coverage group.

(13) Fair market value--The amount of money an item would bring if sold in the current local market.

(14) Federal Poverty Income Limit (FPIL)--The household income guidelines issued annually and published in the Federal Register by the U.S. Department of Health and Human Services. Percentages of these guidelines are used to determine income eligibility for Children's Medicaid and certain other public assistance programs. In other programs, the FPIL may be referred to as the Federal Poverty Level or the Federal Poverty Guidelines.

(15) Medicaid--A state and federal cooperative program, authorized under Title XIX of the Social Security Act and the Texas Human Resources Code, that pays for certain medical and health care costs for people who qualify. Also known as the medical assistance program.

(16) Newborn--A child from birth through 12 months of age.

(17) Person acting responsibly--A person, other than a provider, who may apply for Medicaid on behalf of an individual who is incompetent or incapacitated if the person is determined by the Texas Health and Human Services Commission to be acting responsibly on behalf of the applicant.

(18) Recipient--A person receiving Children's Medicaid services, including a person who is renewing eligibility for Children's Medicaid.

(19) Resources--Cash (or its equivalent) and property that is convertible to cash (or its equivalent). Resources include:

(A) cash from income that is not obligated in the month of receipt; and

(B) lump sum payments that may be received intermittently and no more often than once annually.

(20) Retroactive coverage--Payment for Medicaid-reimbursable medical services received up to three months before the month of application.

(21) Temporary Assistance for Needy Families (TANF)--A program that provides temporary benefits (cash assistance) and work opportunities to families with needy dependent children, authorized under Title IV of the Social Security Act.

(22) Texas Health Steps--Federally mandated Medicaid services that provide medical and dental check-ups, diagnosis, and treatment to eligible clients from birth through age 20. Federally, this program is known as the Early Periodic Screening, Diagnostic, and Treatment (EPSDT) Program.

(23) Unearned income--Income that is not earned income, including dividends and withdrawals from excluded resources.

(24) U.S.C.--United States Code.

§366.505. General Eligibility Requirements.

To be eligible for Children's Medicaid, a person must:

(1) meet the criteria for an eligible group as described in §366.507 of this subchapter (relating to Eligible Groups);

(2) comply with the Texas Health and Human Services Commission's initial and renewal application requirements in this subchapter; and

(3) meet all other eligibility and participation requirements in this subchapter.

§366.507. Eligible Groups.

(a) To be eligible for Children's Medicaid, an applicant must be:

(1) a newborn with countable income equal to or less than 185% of the Federal Poverty Income Limit (FPIL);

(2) a child one to five years of age with countable income equal to or less than 133% of the FPIL;

(3) a child six to 18 years of age with countable income equal to or less than 100% of the FPIL;

(4) a newborn whose birth mother was a Texas Medicaid recipient when the child was born;

(5) a child born while the child's mother was incarcerated in a Texas criminal justice facility as provided by the Texas Human Resources Code §80.003; or

(6) a child who would be eligible for the Temporary Assistance for Needy Families Program, except for the applied income of the stepparent or grandparents with whom the child lives.

(b) A parent or caretaker may choose to exclude other siblings from the Medicaid budget group. If a child is excluded, the child must remain excluded for all Medicaid programs. A parent or caretaker may not exclude a child from the parent or caretaker's budget group. If a child is excluded from his or her siblings' budget group, the parent or caretaker of the excluded child cannot receive Medicaid.

§366.509. Application Requirements.

(a) To apply for Children's Medicaid benefits, an applicant, authorized representative, or someone acting responsibly for the applicant (if the applicant is incompetent or incapacitated) must:

(1) use the application prescribed by the Texas Health and Human Services Commission (HHSC) and complete it according to HHSC instructions:

(A) in writing, using a paper application obtained via telephone, Internet request, or other means;

(B) online, using the application process available over the Internet;

(C) over the telephone, through the State's toll-free telephone number; or

(D) in person, by visiting an HHSC benefits office;

(2) provide all requested information according to HHSC instructions; and

(3) sign the application for assistance under penalty of perjury.

(b) If someone helps an applicant, authorized representative, or person acting responsibly for the applicant complete the application for assistance, the name of the person completing the form must appear as requested on the application.

(c) If HHSC sends an applicant, authorized representative, or person acting responsibly a request for missing information or verification documents, or both, the applicant, authorized representative, or person acting responsibly must provide the requested information to HHSC by the due date given in the request, or eligibility may be denied.

§366.511. Application Processing.

(a) The Texas Health and Human Services Commission (HHSC) allows any office of a state health and human services agency to accept an initial application.

(b) HHSC contracts with third parties to accept applications from hospital districts (including state-owned teaching hospitals), federally qualified health centers, and county health departments.

(c) HHSC may conduct a personal interview with an initial applicant if HHSC has received conflicting information related to household composition, income, or resources that affects eligibility and the information cannot be verified through other means.

(d) HHSC reopens a denied initial application, so long as the household complies with the missed requirements within 60 days after the date the application was submitted. HHSC otherwise requires the household to file a new application.

(e) HHSC reopens a denied renewal application, so long as the household complies with the missed requirements within 30 days after the last benefit month. HHSC otherwise requires the household to file a new application.

(f) HHSC may reopen an application for three months prior coverage if:

(1) within two years after the application was filed, the applicant requests that the application be reopened; and

(2) a Medicaid eligibility determination was not previously made for the three-month prior period.

§366.513. Citizenship.

To be eligible for Children's Medicaid, an applicant must be:

(1) a citizen or national of the United States (U.S.); or

(2) an alien who meets the definition of a qualified alien at 8 U.S.C. §1641.

§366.515. Social Security Number.

An applicant must provide or apply for a social security number (SSN) (including children referred to the Children's Health Insurance Program (CHIP)), except the Texas Health and Human Services Commission (HHSC):

(1) does not require an SSN for a newborn until the earlier of six months after birth or when HHSC reviews Medicaid eligibility;

(2) refers a Medicaid-eligible mother directly to the Social Security Administration to obtain an SSN for her newborn, if her newborn was certified for Medicaid as a result of a notice from an authorized medical provider (for example, a hospital or clinic); and

(3) requests, but does not require, budget group members who are not eligible for Medicaid to provide or apply for an SSN.

§366.517. Residence.

An applicant or recipient must be a resident of Texas. The Texas Health and Human Services Commission follows 42 CFR §435.403 in determining a person's state residence.

§366.519. Relationship and Domicile.

(a) An applicant or recipient must live in a home with a caretaker who is present in the home and supervises and cares for the applicant or recipient. A home is a family setting maintained or being established, as evidenced by continuation of responsibility for day-to-day care of the applicant or recipient.

(b) A caretaker must be the applicant's or recipient's:

(1) father or mother;

(2) grandparent, to the degree of a "great, great, great" grandparent;

(3) brother or sister;

(4) uncle or aunt, to the degree of a "great, great" uncle or aunt;

(5) first cousin;

(6) nephew or niece, to the to the degree of a "great, great" nephew or niece;

(7) stepfather or stepmother;

(8) stepbrother or stepsister; or

(9) first cousin once removed.

(c) A recipient who is in the group described in §366.507(a)(6) of this subchapter (relating to Eligible Groups) (that is, a child who would be eligible for the Temporary Assistance for Needy Families Program, except for the applied income of the stepparent or grandparents with whom the child lives) must live or be expected to live with a legal parent.

(d) An independent child in a certified group may live alone or with a person who is not a parent or relative. An independent child is a child who does not live with a parent and who:

(1) is able to apply for Medicaid on his or her own behalf; or

(2) is eligible for Medicaid because a responsible person who is not within the degree of relationship required for eligibility in subsection (b) of this section applies on the child's behalf.

§366.521. Child Support and Medical Support.

If a household applying only for Children's Medicaid volunteers to receive services provided by the Office of Attorney General of Texas (OAG), the Texas Health and Human Services Commission will collect absent parent information and refer the child's case to the OAG.

§366.523. Resources.

(a) Resource limits. A household meets the resources eligibility requirement if the household's countable resources are at or below:

(1) $3,000 for a household with a member who is aged or disabled and meets relationship requirements, even if the aged or disabled member is not part of the Medicaid budget group; or

(2) $2,000 for all other households.

(b) Value of a nonliquid resource. The Texas Health and Human Services Commission (HHSC) considers the value of a nonliquid resource, except for a vehicle, to be its equity value. HHSC determines the equity value by subtracting any money owed on the resource and any reasonable cost associated with selling or transferring the resource from the fair market value.

§366.525. Vehicles.

(a) The Texas Health and Human Services Commission (HHSC) considers the value of a vehicle to be its fair market value.

(b) HHSC exempts the value of the highest valued countable vehicle from countable resources.

(c) HHSC exempts the value of a vehicle from countable resources, if:

(1) it is income producing;

(2) it is used for a disabled household member;

(3) its equity value is equal to or less than $1,500;

(4) it is used for long distance travel for employment;

(5) it is used as the household's home; or

(6) it is necessary to carry fuel or water anticipated to be the primary source of fuel or water for the household during the certification period.

(d) HHSC exempts for each adult budget group member up to $4,650 of the value of any vehicle not exempt under subsection (b) of this section. HHSC exempts any other licensed vehicle a minor (under 18 years of age) drives to work, training, school, or to seek employment if the fair market value (FMV) is less than $4,650. HHSC counts the FMV in excess of $4,650 as a resource.

§366.527. Exempt Resources.

The Texas Health and Human Services Commission (HHSC) exempts the following from countable resources:

(1) funds in a retirement account (even if accessible, so long as the funds remain in the account);

(2) balances in the Texas Guaranteed Tuition Plan (formerly called the Texas Tomorrow Fund) even if accessible, so long as the funds remain in the account;

(3) crime victim's compensation payments;

(4) earned income tax credit (EIC) payments to applicants the month of receipt and the following month, and to recipients the month of receipt and the following 11 months, unless there is a break in certification of more than 30 days, in which case any remaining portion of the EIC payment is counted as a resource;

(5) payments or allowances made under any federal law for the purpose of energy assistance;

(6) federal disaster payments and comparable disaster assistance provided by states, local governments, and disaster assistance organizations if the household is subject to legal penalties if the funds are not used as intended;

(7) transitional living allowances;

(8) any resource federal law excludes;

(9) funds from veterans payments earmarked as a housebound allowance or as an aid and attendance allowance;

(10) the cash value of life insurance policies;

(11) an amount up to $7,500 per person of prepaid burial insurance (or of a prepaid funeral plan);

(12) loans, if the circumstances satisfy HHSC that there exists an understanding the money will be repaid, and the applicant or recipient reasonably explains to HHSC how the money will be repaid;

(13) personal possessions HHSC determines are essential for daily living, such as clothing, jewelry, furniture, livestock, and farm equipment;

(14) burial plots;

(15) the homestead and surrounding real property, including:

(A) any structure, including a houseboat or a motor home, the household uses as its primary residence;

(B) surrounding real property divided by a public right-of-way (such as a street or road) but not divided by real property owned by others; and

(C) the homestead if it is temporarily unoccupied due to employment, training for future employment, illness, casualty, or natural disaster, as long as the household intends to return;

(16) income-producing property (any real or personal property that generates income) that:

(A) is essential to a household member's employment or self-employment (such as tools of a trade, farm machinery, stock, and inventory), including:

(i) during temporary periods of unemployment if the household member expects to return to work; and

(ii) for farmers or fishers, the value of the land or equipment for one year after the date the self-employment ceases;

(B) annually produces income consistent with a fair market value comparable in the community (as determined by HHSC through sources such as local realtors, tax assessors, and the Small Business Administration), even if used only on a seasonal basis such as rental property; or

(C) is that portion of the property that is necessary for the maintenance or use of a vehicle exempted as income-producing or as necessary for transporting a physically disabled household member;

(17) real property HHSC determines the household is making a good faith effort to sell;

(18) resources HHSC determines are not accessible to the household;

(19) funds from educational assistance payments (but only during the quarter, semester, or applicable period the payment is intended to cover);

(20) equity value of resources that are not legally available (inaccessible) to the household;

(21) a nonliquid resource if its equity is less than or equal to $1,500;

(22) a One-Time Temporary Assistance for Needy Families (OTTANF) payment for the month of receipt and any remaining OTTANF benefits the month after receipt;

(23) a TANF One-Time Grandparent payment;

(24) reimbursements earmarked and used for replacing or repairing an exempt resource;

(25) for a household containing a sponsored alien, the resources of a sponsor and the sponsor's spouse to the extent allowed by federal law;

(26) resources of residents in shelters for battered women and children if:

(A) resources are jointly owned by the household in the shelter and members of the former household; and

(B) shelter resident's access to the value of the resource depends on the agreement of a joint owner who still lives in the resident's former household;

(27) resources of a recipient of Supplemental Security Income living in the home; and

(28) liquid resources resulting from the earnings of a certified child who is attending school full time, or less than full time and employed less than 30 hours per week.

§366.529. Income Limits.

To be eligible for Children's Medicaid, an applicant or recipient must meet the applicable income requirements established in §366.507 of this subchapter (relating to Eligible Groups).

§366.531. Determining Whose Income Counts.

(a) To determine income eligibility for Children's Medicaid, the Texas Health and Human Services Commission (HHSC) counts the income of:

(1) the members of the budget group;

(2) each parent of a child in the certified group who lives in the household;

(3) each sibling, if included in the budget group, of a dependent child in the certified group who lives in the household;

(4) stepparents living with the certified group;

(5) in the case of an unmarried minor parent recipient, parents of the minor who live with the minor; and

(6) in the case of a household containing a sponsored alien, the income of the alien's sponsor and the sponsor's spouse to the extent allowed by federal law.

(b) A child's needs, income, and resources may be excluded when determining eligibility of the child's siblings if the caretaker chooses not to apply for Medicaid for the excluded child.

(c) A newborn whose birth mother was a Texas Medicaid recipient when the child was born is not required to meet income eligibility requirements.

(d) HHSC does not count the applied income of stepparents or grandparents with whom the child lives if the income resulted in the denial of eligibility for Temporary Assistance for Needy Families.

§366.533. Allowable Income Deductions.

The Texas Health and Human Services Commission (HHSC) allows the following deductions when determining countable income:

(1) a work-related expense deduction of up to $120 of earned income for each employed person whose needs are included in the budget group or certified group or who is a disqualified member;

(2) a dependent care deduction of $200 per month for each child under two years of age, and $175 per month for each dependent two years of age or older, including an earned income deduction for the actual costs of unreimbursed payments if the person incurs an expense

for the care of a child or incapacitated adult (even when the child or incapacitated adult is not included in the certified group) or transportation of a child to and from day care or school;

(3) payments to dependents living outside the home;

(4) alimony;

(5) child support payments made by a member of the budget group; and

(6) up to $75 per month in regular child support payments per household, except HHSC counts all child support payments a household received if HHSC determines the household has violated an agreement to assign child support to the State.

§366.535. Exempt Income.

The Texas Health and Human Services Commission (HHSC) exempts the following as countable income:

(1) any income that federal law excludes;

(2) the earnings of a child:

(A) who is 18 years of age and is:

(i) a full-time student, including a home-schooled student, or a part-time student employed less than 30 hours a week; and

(ii) considered a child; or

(B) who is under 18 years of age and is:

(i) a full-time student, including a home-schooled student; or

(ii) a part-time student employed less than 30 hours a week;

(3) up to $300 per federal fiscal quarter in cash gifts and contributions that are from private, nonprofit organizations and are based on need;

(4) proceeds from claims on insurance policies to compensate for a loss or that are used to pay medical expenses;

(5) payments from federal volunteer programs for volunteer service, such as payments:

(A) for volunteer service in a senior citizen volunteer program, under the Domestic Volunteer Service Act (42 U.S.C. §5000 et seq.);

(B) for volunteer service to Volunteers in Service to America (VISTA), under 42 U.S.C. §§4951 - 4960; and

(C) for volunteer service under the National and Community Service Act (42 U.S.C. §§12511 - 12656);

(6) payments under the Workforce Investment Act of 1998;

(7) the value of any benefits received under a government nutrition assistance program that is based on need, including benefits under the Supplemental Nutrition Assistance Program (SNAP) (formerly the Food Stamp Program), the Child Nutrition Act of 1966, the National School Lunch Act, and the Older Americans Act of 1965;

(8) foster care payments;

(9) payments made under a government housing assistance program based on need;

(10) energy assistance payments;

(11) job training payments that:

(A) are earmarked as reimbursement for training-related expenses; and

(B) do not duplicate payment for an item that is covered by budgetary needs;

(12) a lump sum provided and used to pay burial, legal, or medical bills, or to replace damaged or lost possessions, except HHSC does not exclude amounts from lump sums used for another purpose;

(13) reimbursements for monies spent on items not covered by budgetary needs;

(14) amounts deducted from royalties for production expenses and severance taxes;

(15) all income of Supplemental Security Income recipients;

(16) third-party funds received and used for a third-party beneficiary who is not a household member;

(17) vendor payments made from funds not legally obligated to the household;

(18) veterans benefits for special needs that are not items covered by budgetary needs;

(19) workers' compensation payments legally obligated to the recipient that are earmarked and used for medical expenses;

(20) the amount of any nonfarm self-employment income offsetting a tax deduction taken that year for a farm loss, for households with farms generating income of at least $1,000 annually;

(21) up to $2,000 of gifts annually from tax-exempt organizations provided to children with life-threatening conditions;

(22) independent living payments to youths who are leaving foster care, as provided by the Social Security Act, Title IV-E (42 U.S.C. §670 et seq.);

(23) funds from payments of up to $2,000 to Native Americans made under the federal Old Age Assistance Claims Settlement Act (25 U.S.C. §2301) or the federal Alaska Native Claims Settlement Act (43 U.S.C. §1601);

(24) funds from payments made to volunteers under Title I of the Domestic Volunteer Services Act of 1973;

(25) funds from adoption subsidy payments made under Title IV-A and Title IV-E of the Social Security Act;

(26) funds from insurance policy dividends;

(27) funds from veterans payments earmarked as a housebound allowance or as an aid and attendance allowance;

(28) earned income tax credit payments;

(29) federal, state, or local government payments provided to rebuild a home or replace personal possessions damaged in a disaster, including payments under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. §5121 et seq.), if the recipient is subject to legal sanction if the payment is not used as intended;

(30) funds from educational assistance payments (but only during the quarter, semester, or applicable period that the payment is intended to cover);

(31) loans, if the circumstances satisfy HHSC that there exists an understanding that the money will be repaid, and the applicant or recipient reasonably explains to HHSC how the money will be repaid; and

(32) crime victim's compensation payments.

§366.537. Third-party Resources.

Medicaid is considered the payor of last resort for a person's medical expenses. As a condition of eligibility, in accordance with 42 CFR §§433.138 - 433.148, an applicant or recipient must:

(1) assign to the Texas Health and Human Services Commission (HHSC) the applicant's or recipient's right to recover any third-party resources available for payment of medical expenses covered under the Texas State Plan for Medical Assistance; and

(2) report to HHSC any third-party resource within 60 days after learning about the third-party resource.

§366.539. Medicaid Eligibility Effective Date.

The Texas Health and Human Services Commission (HHSC) determines the Medicaid eligibility effective date for an applicant as follows:

(1) Medicaid coverage begins on the earliest day of the application month on which the applicant meets all eligibility criteria.

(2) Retroactive coverage may begin as early as three months before the application month, except that a newborn's coverage begins no earlier than the child's date of birth.

(3) A recipient is continuously eligible for Medicaid through the certification period or through the month of the recipient's 19th birthday, whichever is earlier. A recipient who is a newborn has continuous eligibility through the month of his or her first birthday. If the household is eligible in the application or process month, the child is eligible for continuous coverage beginning the first month the household meets the eligibility criteria.

§366.541. Resident of an Institution for Mental Diseases.

A person who lives in an institution for mental diseases, as defined in 42 CFR §435.1010, is only eligible for Medicaid payment for Medicaid covered services received while residing in the institution for mental diseases to the extent allowed by federal law.

§366.543. Inmates of Public Institutions.

An inmate of a public institution, including a jail, prison, reformatory, or other correctional or holding facility, as defined in 42 CFR §435.1009 and §435.1010, is not eligible for Medicaid payment for Medicaid-covered services received while residing in the public institution.

§366.545. Eligibility Renewal.

(a) A recipient who returns a completed renewal application and all necessary documentation will continue to receive Medicaid coverage, if eligible.

(b) The Texas Health and Human Services Commission does not review or change the Medicaid eligibility of a child under 19 years of age whose coverage began on or after January 1, 2002, regardless of changes in resources or income, until the earlier of:

(1) the child's recertification date; or

(2) the child's 19th birthday.

§366.547. Comprehensive Health Care Requirements.

(a) A parent or guardian of an applicant must:

(1) attend a health care orientation;

(2) accompany the child on a visit to a health care provider; or

(3) meet with a Texas Health and Human Services Commission (HHSC) representative to discuss the child's eligibility and, as appropriate, receive counseling on the child's need for comprehensive health care.

(b) The parent or guardian of a recipient who is eligible for Texas Health Steps must:

(1) comply with the Texas Health Steps regimen of health care requirements, as required by the Texas Department of State Health Services in 25 TAC Chapter 33 (relating to Early and Periodic Screening, Diagnosis, and Treatment); or

(2) meet with an HHSC representative to discuss the child's eligibility and, as appropriate, receive counseling on the child's need for comprehensive health care.

§366.549. Information from Other Agencies.

(a) Periodically, the Texas Health and Human Services Commission (HHSC) and other state and federal agencies compare the information they have stored on computer files.

(b) After comparing information with another agency, HHSC contacts the Medicaid recipient if the information does not match so that HHSC can confirm the correct information.

(1) If the mismatch of information does not affect eligibility, HHSC does not take action to adjust or deny Medicaid.

(2) If the mismatch of information affects eligibility, HHSC takes appropriate action to adjust or deny Medicaid and sends a written notice of action taken to the recipient.

§366.551. Requirement to Report Changes.

(a) A recipient must report:

(1) a change of address;

(2) if a certified child leaves the home, is institutionalized, or dies; and

(3) the addition of a child to the household, if the household wants Medicaid for the child.

(b) If a recipient reports a change described in subsection (a) of this section, the Texas Health and Human Services Commission takes appropriate action to adjust or deny Medicaid and sends a written notice of action taken to the recipient. A change not described in subsection (a) of this section is documented and handled at the next review.

§366.553. Right to Appeal.

(a) An applicant or recipient has the right to appeal Texas Health and Human Services Commission (HHSC) decisions. Appeals are governed by HHSC's fair hearing rules contained in Chapter 357 of this title (relating to Hearings).

(b) HHSC provides an action notice regarding an HHSC decision to applicants and recipients. The action notice includes information about how to file an appeal and the availability of free legal representation.

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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Texas Health and Human Services Commission
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SUBCHAPTER F. MEDICAID FOR TRANSITIONING FOSTER CARE YOUTH

1 TAC §§366.601, 366.603, 366.605, 366.607, 366.609, 366.611, 366.613, 366.615, 366.617, 366.619, 366.621, 366.623, 366.625, 366.627, 366.629, 366.631, 366.633, 366.635, 366.637, 366.639, 366.641, 366.643, 366.645, 366.647

Statutory Authority

The new sections are proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and §531.021, which authorizes HHSC to administer the federal medical assistance (Medicaid) program in Texas.

The new sections affect Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§366.601. Purpose and Scope.

(a) This subchapter establishes the eligibility criteria for the Medicaid for Transitioning Foster Care Youth Program, which provides medical assistance to eligible youths who leave foster care and transition into the community.

(b) Nothing in these rules shall be construed to violate the maintenance of eligibility requirements of section 5001 of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) and make eligibility standards, methodologies, or procedures under the Texas State Plan for Medical Assistance (or any waiver under section 1115 of the Social Security Act (42 U.S.C. §1315)) more restrictive than the eligibility standards, methodologies, or procedures, respectively, under such plan (or waiver) that were in effect on July 1, 2008.

§366.603. Definitions.

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

(1) Applicant--A person seeking assistance under the Medicaid for Transitioning Foster Care Youth Program (MTFCY) who:

(A) has never received Medicaid and is not currently receiving Medicaid; or

(B) previously received Medicaid but subsequently was denied and reapplies for Medicaid.

(2) Authorized representative--A person whom a budget group authorizes to apply for Medicaid benefits on behalf of a certified group but who is not included in the certified group.

(3) CFR--Code of Federal Regulations.

(4) Child--Any household member under 19 years of age.

(5) Countable income--The receipt of cash or its equivalent, either earned or unearned, that a person may directly or indirectly use to meet basic needs (such as food, clothing, and shelter), including TANF cash payments.

(6) Earned income--Compensation received from employment or job training, including military and flight pay, allowances for housing and food, and receipts from self-employment (but not receipts from ownership of property involving less than 20 hours of work per week, which are unearned income).

(7) Eligible group--A category of people who are eligible for MTFCY. In other Medicaid programs, an eligible group may be called a coverage group.

(8) Fair market value--The amount of money an item would bring if sold in the current local market.

(9) Federal Poverty Income Limit (FPIL)--The household income guidelines issued annually and published in the Federal Register by the U.S. Department of Health and Human Services. Percentages of these guidelines are used to determine income eligibility for MTFCY and certain other public assistance programs. In other programs, the FPIL may be referred to as the Federal Poverty Level or the Federal Poverty Guidelines.

(10) Medicaid--A state and federal cooperative program, authorized under Title XIX of the Social Security Act and the Texas Human Resources Code, that pays for certain medical and health care costs for people who qualify. Also known as the medical assistance program.

(11) Person acting responsibly--A person, other than a provider, who may apply for Medicaid on behalf of an individual who is incompetent or incapacitated if the person is determined by the Texas Health and Human Services Commission (HHSC) to be acting responsibly on behalf of the applicant.

(12) Recipient--A person receiving MTFCY services, including a person who is renewing eligibility for MTFCY.

(13) Resources--Cash (or its equivalent) and property that is convertible to cash (or its equivalent). Resources include:

(A) cash from income that is not obligated in the month of receipt; and

(B) lump sum payments that may be received intermittently and no more often than once annually.

(14) Retroactive coverage--Payment for Medicaid-reimbursable medical services received up to three months before the month of application.

(15) *Texas Works Handbook*--An HHSC manual containing policies and procedures used to determine eligibility for SNAP food benefits, TANF, and Medicaid programs for children and families. The *Texas Works Handbook* is found on the Internet at www.hhsc.state.tx.us/Programs/Programs.shtml#handbooks.

(16) Unearned income--Payments received without performing work-related activities, including benefits from other programs.

(17) U.S.C.--United States Code.

§366.605. Program Administration.

The Texas Health and Human Services Commission administers the Medicaid for Transitioning Foster Care Youth Program in cooperation with the Texas Department of Family and Protective Services.

§366.607. Legal Basis.

The Medicaid for Transitioning Foster Care Youth Program finds its legal authority in the following statutes:

(1) 42 U.S.C. §1396d(w);

(2) 42 U.S.C. §1396a(10)(A)(ii)(XVII);

(3) the Texas Human Resources Code, §32.0247; and

(4) the Foster Care Independence Act of 1999 (42 U.S.C. §677).

§366.609. General Eligibility Requirements.

To be eligible for the Medicaid for Transitioning Foster Care Youth Program, a person must:

(1) meet the criteria for an eligible group as described in §366.611 of this subchapter (relating to Eligible Group);

(2) comply with the Texas Health and Human Services Commission's initial and renewal application requirements in this subchapter; and

(3) meet all other eligibility and participation requirements in this subchapter.

§366.611. Eligible Group.

To be eligible for the Medicaid for Transitioning Foster Care Youth Program, an applicant must:

(1) be in foster care when he or she leaves conservatorship of a State;

(2) be 18 - 20 years of age (coverage continues through the month of his or her 21st birthday); and

(3) not be covered by a health benefits plan offering adequate benefits, as the Texas Health and Human Services Commission defines adequate benefits.

§366.613. Application Requirements.

(a) Except for an applicant described in subsection (b) or (c) of this section, the Texas Department of Family and Protective Services certifies that an applicant's income and resources meet eligibility requirements and notifies the Texas Health and Human Services Commission (HHSC) to authorize Medicaid coverage.

(b) An applicant who, on his or her 18th birthday, was in foster care under the responsibility of a State other than Texas applies for Medicaid for Transitioning Foster Care Youth (MTFCY) as described in subsections (d) - (f) of this section.

(c) An applicant who previously received MTFCY benefits, and desires to reapply for MTFCY, reapplies for MTFCY as described in subsections (d) - (f) of this section.

(d) For an applicant described in subsection (b) or (c) of this section, the applicant, authorized representative, or someone acting responsibly for the applicant (if the applicant is incompetent or incapacitated) must:

(1) use the application for assistance prescribed by HHSC and complete it according to HHSC instructions:

(A) in writing, using a paper application obtained via telephone or other means;

(B) over the telephone, through the State's toll-free telephone number; or

(C) in person, by visiting an HHSC benefits office;

(2) provide all requested information according to HHSC instructions; and

(3) sign the application for assistance under penalty of perjury.

(e) If someone helps an applicant, authorized representative, or person acting responsibly for the applicant complete the application for assistance, the name of the person completing the form must appear as requested on the application.

(f) If HHSC sends an applicant, authorized representative, or person acting responsibly a request for missing information or verification documents, or both, the applicant, authorized representative, or person acting responsibly must provide the requested information to HHSC by the due date given in the request, or eligibility may be denied.

§366.615. Application Processing.

(a) The Texas Health and Human Services Commission (HHSC) processes Medicaid for Transitioning Foster Care Youth applications by mail or telephone.

(b) HHSC reopens a denied initial application, so long as the applicant complies with the missed requirements within 60 days after the date the application was submitted. HHSC otherwise requires the applicant to file a new application.

(c) HHSC reopens a denied renewal application, so long as the recipient complies with the missed requirements within 30 days after the last benefit month. HHSC otherwise requires the recipient to file a new application.

(d) HHSC reopens an application for three months prior coverage if:

(1) within two years after the application was filed, the applicant requests that the application be reopened; and

(2) a Medicaid eligibility determination was not previously made for the prior three-month period.

§366.617. Citizenship.

To be eligible for Medicaid for Transitioning Foster Care Youth, an applicant must be:

(1) a citizen or national of the United States (U.S.);

(2) an alien who legally entered the U.S. before August 22, 1996, and who meets the eligibility criteria in 8 U.S.C. §1641(b) or (c);

(3) an alien who legally entered the U.S. on or after August 22, 1996, and who meets the eligibility criteria in 8 U.S.C. §1612(b) and §1613, except that a legal permanent resident alien is eligible after residing in the U.S. for five years only if the alien meets one of the following eligibility requirements:

(A) the alien is an honorably discharged veteran or active duty military personnel;

(B) the alien is a spouse, unmarried surviving spouse, or minor unmarried child of an honorably discharged veteran or active duty military personnel (if a surviving spouse of a deceased veteran or active duty military person, the surviving spouse must not have remarried);

(C) the alien entered the U.S. before August 22, 1996, and remained continuously present in the U.S. (a single absence from the U.S. of more than 30 days or a combined absence of more than 90 days interrupts the "continuous presence") since at least August 21, 1996, until obtaining qualifying immigrant status (an alien who entered the U.S. without proper documents or overstayed his or her visa, is treated the same as an alien who entered and remained in the U.S. with valid immigration documents);

(D) the alien entered the U.S. with a status described in the *Texas Works Handbook,* Item A-342, Chart C and meets those eligibility criteria, or meets the criteria in the *Texas Works Handbook,* Item A-343, How to Determine Eligibility for Battered Aliens; or

(E) the alien meets the 40 qualifying quarters requirements in the *Texas Works Handbook,* Item A-354, Verifying 40 "Qualifying Quarters," and five years have passed since the alien's legal date of entry; or

(4) an alien child 18 years of age or under who meets the definition of a qualified alien at 8 U.S.C. §1641(b).

§366.619. Social Security Number.

An applicant must provide or apply for a social security number (SSN) (including children referred to the Children's Health Insurance Program (CHIP)), except that the Texas Health and Human Services Commission (HHSC):

(1) does not require an SSN for a newborn until the earlier of six months after birth or when HHSC reviews Medicaid eligibility;

(2) refers a Medicaid-eligible mother directly to the Social Security Administration to obtain an SSN for her newborn, if her newborn was certified for Medicaid as a result of a notice from an authorized medical provider (for example, a hospital or clinic); and

(3) requests, but does not require, budget group members who are not eligible for Medicaid to provide or apply for an SSN.

§366.621. Residence.

An applicant or recipient must be a resident of Texas. The Texas Health and Human Services Commission follows 42 CFR §435.403 in determining a person's state residence.

§366.623. Resources.

(a) Resource limit. An applicant must have countable resources at or below $10,000.

(b) Value of a nonliquid resource. The Texas Health and Human Services Commission (HHSC) considers the value of a nonliquid resource, except for a vehicle, to be its equity value. HHSC determines the equity value by subtracting any money owed on the resource and any reasonable cost associated with selling or transferring the resource from the fair market value.

(c) Consequence of transferring resources. An applicant, if otherwise eligible, is not denied Medicaid for Transitioning Foster Care Youth because the applicant transferred resources to qualify for assistance.

§366.625. Vehicles.

(a) The Texas Health and Human Services Commission (HHSC) considers the value of a vehicle to be its fair market value.

(b) HHSC exempts the value of the highest valued countable vehicle from countable resources.

(c) HHSC exempts the value of a vehicle from countable resources, if:

(1) it is income producing;

(2) it is used for a disabled household member;

(3) its equity value is equal to or less than $1,500;

(4) it is used for long distance travel for employment;

(5) it is used as the household's home; or

(6) it is necessary to carry fuel or water anticipated to be the primary source of fuel or water for the household during the certification period.

(d) HHSC exempts up to $4,650 of the value of any vehicle not exempt under subsection (b) of this section. HHSC exempts any other licensed vehicle a minor (under 18 years of age) drives to work, training, school, or to seek employment if the fair market value (FMV) is less than $4,650. HHSC counts the FMV in excess of $4,650 as a resource.

§366.627. Exempt Resources.

The Texas Health and Human Services Commission (HHSC) exempts the following from countable resources:

(1) funds in a retirement account (even if accessible, so long as the funds remain in the account);

(2) balances in the Texas Guaranteed Tuition Plan (formerly called the Texas Tomorrow Fund) even if accessible, so long as the funds remain in the account;

(3) crime victim's compensation payments;

(4) earned income tax credit (EIC) payments to applicants the month of receipt and the following month, and to recipients the month of receipt and the following 11 months, unless there is a break in certification of more than 30 days, in which case any remaining portion of the EIC payment is counted as a resource;

(5) payments or allowances made under any federal law for the purpose of energy assistance;

(6) federal disaster payments and comparable disaster assistance provided by states, local governments, and disaster assistance organizations if the household is subject to legal penalties if the funds are not used as intended;

(7) transitional living allowances;

(8) any resource federal law excludes;

(9) funds from veterans payments earmarked as a housebound allowance or as an aid and attendance allowance;

(10) the cash value of life insurance policies;

(11) an amount up to $7,500 per person of prepaid burial insurance (or of a prepaid funeral plan);

(12) loans, if the circumstances satisfy HHSC that there exists an understanding the money will be repaid, and the applicant or recipient reasonably explains to HHSC how the money will be repaid;

(13) personal possessions HHSC determines are essential for daily living, such as clothing, jewelry, furniture, livestock, and farm equipment;

(14) burial plots;

(15) the homestead and surrounding real property, including:

(A) any structure, including a houseboat or a motor home, the household uses as its primary residence;

(B) surrounding real property divided by a public right-of-way (such as a street or road) but not divided by real property owned by others; and

(C) the homestead if it is temporarily unoccupied due to employment, training for future employment, illness, casualty, or natural disaster, as long as the household intends to return;

(16) income-producing property (any real or personal property that generates income) that:

(A) is essential to a household member's employment or self-employment (such as tools of a trade, farm machinery, stock, and inventory), including:

(i) during temporary periods of unemployment if the household member expects to return to work; and

(ii) for farmers or fishers, the value of the land or equipment for one year after the date the self-employment ceases;

(B) annually produces income consistent with a fair market value comparable in the community (as determined by HHSC through sources such as local realtors, tax assessors, and the Small Business Administration), even if used only on a seasonal basis such as rental property; or

(C) is that portion of the property that is necessary for the maintenance or use of a vehicle exempted as income-producing or as necessary for transporting a physically disabled household member;

(17) real property HHSC determines the household is making a good faith effort to sell;

(18) resources HHSC determines are not accessible to the household;

(19) any financial benefit used for the purpose of educational or vocational training, such as scholarships, student loans, or grants;

(20) equity value of resources that are not legally available (inaccessible) to the household;

(21) a nonliquid resource if its equity is less than or equal to $1,500;

(22) a One-Time Temporary Assistance for Needy Families (OTTANF) payment for the month of receipt and any remaining OTTANF benefits the month after receipt;

(23) a TANF One-Time Grandparent payment;

(24) reimbursements earmarked and used for replacing or repairing an exempt resource;

(25) for a household containing a sponsored alien, the resources of a sponsor and the sponsor's spouse to the extent allowed by federal law;

(26) resources of residents in shelters for battered women and children if:

(A) resources are jointly owned by the household in the shelter and members of the former household; and

(B) shelter resident's access to the value of the resource depends on the agreement of a joint owner who still lives in the resident's former household;

(27) resources of a recipient of Supplemental Security Income living in the home;

(28) liquid resources resulting from the earnings of a certified child who is attending school full time, or less than full time and employed less than 30 hours per week;

(29) any grants or subsidies obtained as a result of the Foster Care Independence Act of 1999 (42 United States Code §677); and

(30) any financial benefit used for the purpose of housing.

§366.629. Income Limits.

To be eligible for the Medicaid for Transitioning Foster Care Youth Program, an applicant or recipient must have countable income that is equal to or less than 400% of the Federal Poverty Income Limit.

§366.631. Allowable Income Deductions.

The Texas Health and Human Services Commission (HHSC) allows the following deductions when determining countable income:

(1) a work-related expense deduction of up to $120 of earned income;

(2) a dependent care deduction of $200 per month for each child under two years of age, and $175 per month for each dependent two years of age or older, including an earned income deduction for the actual costs of unreimbursed payments if the applicant incurs an expense for the care of a child or incapacitated adult (even when the child or incapacitated adult is not included in the certified group) or transportation of a child to and from day care or school;

(3) payments to dependents living outside the home;

(4) alimony;

(5) child support payments; and

(6) up to $75 per month in regular child support disregard payments received.

§366.633. Exempt Income.

The Texas Health and Human Services Commission (HHSC) exempts the following as countable income:

(1) any income that federal law excludes;

(2) the earnings of a child:

(A) who is 18 years of age and is:

(i) a full-time student, including a home-schooled student, or a part-time student employed less than 30 hours a week; and

(ii) considered a child; or

(B) who is under 18 years of age and is:

(i) a full-time student, including a home-schooled student; or

(ii) a part-time student employed less than 30 hours a week;

(3) up to $300 per federal fiscal quarter in cash gifts and contributions that are from private, nonprofit organizations and are based on need;

(4) proceeds from claims on insurance policies to compensate for a loss or that are used to pay medical expenses;

(5) payments from federal volunteer programs for volunteer service, such as payments:

(A) for volunteer service in a senior citizen volunteer program, under the Domestic Volunteer Service Act (42 U.S.C. §5000 et seq.);

(B) for volunteer service to Volunteers in Service to America (VISTA), under 42 U.S.C. §§4951 - 4960; and

(C) for volunteer service under the National and Community Service Act (42 U.S.C. §§12511 - 12656);

(6) payments under the Workforce Investment Act of 1998;

(7) the value of any benefits received under a government nutrition assistance program that is based on need, including benefits under the Supplemental Nutrition Assistance Program (SNAP) (formerly the Food Stamp Program), the Child Nutrition Act of 1966, the National School Lunch Act, and the Older Americans Act of 1965;

(8) foster care payments;

(9) payments made under a government housing assistance program based on need;

(10) energy assistance payments;

(11) job training payments that:

(A) are earmarked as reimbursement for training-related expenses; and

(B) do not duplicate payment for an item that is covered by budgetary needs;

(12) a lump sum provided and used to pay burial, legal, or medical bills, or to replace damaged or lost possessions, except HHSC does not exclude amounts from lump sums used for another purpose;

(13) reimbursements for monies spent on items not covered by budgetary needs;

(14) amounts deducted from royalties for production expenses and severance taxes;

(15) all income of Supplemental Security Income recipients;

(16) third-party funds received and used for a third-party beneficiary who is not a household member;

(17) vendor payments made from funds not legally obligated to the household;

(18) veterans benefits for special needs that are not items covered by budgetary needs;

(19) workers' compensation payments legally obligated to the recipient that are earmarked and used for medical expenses;

(20) the amount of any nonfarm self-employment income offsetting a tax deduction taken that year for a farm loss, for households with farms generating income of at least $1,000 annually;

(21) up to $2,000 of gifts annually from tax-exempt organizations provided to children with life-threatening conditions;

(22) independent living payments to youths who are leaving foster care, as provided by the Social Security Act, Title IV-E (42 U.S.C. §670 et seq.);

(23) funds from payments of up to $2,000 to Native Americans made under the federal Old Age Assistance Claims Settlement Act (25 U.S.C. §2301) or the federal Alaska Native Claims Settlement Act (43 U.S.C. §1601);

(24) funds from payments made to volunteers under Title I of the Domestic Volunteer Services Act of 1973;

(25) funds from adoption subsidy payments made under Title IV-A and Title IV-E of the Social Security Act;

(26) funds from insurance policy dividends;

(27) funds from veterans payments earmarked as a housebound allowance or as an aid and attendance allowance;

(28) earned income tax credit payments;

(29) federal, state, or local government payments provided to rebuild a home or replace personal possessions damaged in a disaster, including payments under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. §5121 et seq.), if the recipient is subject to legal sanction if the payment is not used as intended;

(30) any financial benefit used for the purpose of educational or vocational training, such as scholarships, student loans, or grants, is excluded from income;

(31) loans, if the circumstances satisfy HHSC that there exists an understanding that the money will be repaid, and the applicant or recipient reasonably explains to HHSC how the money will be repaid;

(32) any financial benefit used for the purpose of housing; and

(33) crime victim's compensation payments.

§366.635. Medicaid Eligibility Effective Dates.

(a) Medicaid eligibility begins the first month the person meets all eligibility criteria as long as the person is not eligible for or receiving other Medicaid coverage.

(b) A person eligible for Medicaid for Transitioning Foster Care Youth is also eligible for retroactive coverage.

§366.637. Resident of an Institution for Mental Diseases.

A person who lives in an institution for mental diseases, as defined in 42 CFR §435.1010, is only eligible for Medicaid payment for Medicaid covered services received while residing in the institution for mental diseases to the extent allowed by federal law.

§366.639. Inmates of Public Institutions.

An inmate of a public institution, including a jail, prison, reformatory, or other correctional or holding facility, as defined in 42 CFR §435.1009 and §435.1010, is not eligible for Medicaid payment for Medicaid-covered services received while residing in the public institution.

§366.641. Eligibility Renewal.

At 12 months, the Texas Health and Human Services Commission determines if the recipient is still eligible to receive ongoing Medicaid coverage.

§366.643. Information from Other Agencies.

(a) Periodically, the Texas Health and Human Services Commission (HHSC) and other state and federal agencies compare the information they have stored on computer files.

(b) After comparing information with another agency, HHSC contacts the Medicaid recipient if the information does not match so that HHSC can confirm the correct information.

(1) If the mismatch of information does not affect eligibility, HHSC does not take action to adjust or deny Medicaid.

(2) If the mismatch of information affects eligibility, HHSC takes appropriate action to adjust or deny Medicaid and sends a written notice of action taken to the recipient.

§366.645. Requirement to Report Changes.

(a) A recipient must report:

(1) a change of address; and

(2) the start of adequate health coverage.

(b) If a recipient reports a change described in subsection (a) of this section, the Texas Health and Human Services Commission takes appropriate action to adjust or deny Medicaid and sends a written notice of action taken to the recipient. A change not described in subsection (a) of this section is documented and handled at the next review.

§366.647. Right to Appeal.

(a) An applicant or recipient has the right to appeal Texas Health and Human Services Commission (HHSC) decisions. Appeals

are governed by HHSC's fair hearing rules contained in Chapter 357 of this title (relating to Hearings).

(b) HHSC provides an action notice regarding an HHSC decision to applicants and recipients. The action notice includes information about how to file an appeal and the availability of free legal representation.

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 November 6, 2009.

TRD-200905109
Steve Aragon
General Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: December 20, 2009
For further information, please call: (512) 424-6576

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SUBCHAPTER G. TANF-LEVEL MEDICAL ASSISTANCE

1 TAC §§366.701, 366.703, 366.705, 366.707, 366.709, 366.711, 366.713, 366.715, 366.717, 366.719, 366.721, 366.723, 366.725, 366.727, 366.729, 366.731, 366.733, 366.735, 366.737, 366.739, 366.741, 366.743, 366.745, 366.747, 366.749, 366.751, 366.753, 366.755, 366.757, 366.759, 366.761

Statutory Authority

The new sections are proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and §531.021, which authorizes HHSC to administer the federal medical assistance (Medicaid) program in Texas.

The new sections affect Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§366.701. Purpose and Scope.

(a) This subchapter establishes the eligibility criteria and participation requirements for TANF-level medical assistance, which provides Medicaid coverage to households eligible for Temporary Assistance for Needy Families (TANF).

(b) Nothing in these rules shall be construed to violate the maintenance of eligibility requirements of section 5001 of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) and make eligibility standards, methodologies, or procedures under the Texas State Plan for Medical Assistance (or any waiver under section 1115 of the Social Security Act (42 U.S.C. §1315)) more restrictive than the eligibility standards, methodologies, or procedures, respectively, under such plan (or waiver) that were in effect on July 1, 2008.

§366.703. Definitions.

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

(1) Applicant--A person seeking assistance under TANF-level medical assistance who:

(A) has never received Medicaid and is not currently receiving Medicaid; or

(B) previously received Medicaid but subsequently was denied and reapplies for Medicaid.

(2) Authorized representative--A person whom a budget group authorizes to apply for Medicaid benefits on behalf of a certified group but who is not included in the certified group.

(3) Budget group--Members of a household whose needs, income, resources, and medical expenses are considered in determining eligibility for Medicaid. The budget group may include both members who are eligible for Medicaid and those who are not.

(4) Budgetary needs--The full basic needs amount, as defined by the Texas Health and Human Services Commission, that is necessary for a family to obtain food, clothing, housing, utilities, and incidentals such as telephone, laundry, and recreation.

(5) Caretaker--A person who cares for a dependent child, who meets relationship requirements in §366.719(c) of this subchapter (relating to Relationship and Domicile), whom the Texas Health and Human Services Commission includes in the certified group, and who ordinarily receives and manages benefits for the certified group.

(6) Certified group--Members of a budget group who are eligible for and receiving Medicaid.

(7) CFR--Code of Federal Regulations.

(8) Child--Any household member from birth through the month of the member's 19th birthday unless the child is married or legally emancipated.

(9) Countable income--The receipt of cash or its equivalent, either earned or unearned, that a person may directly or indirectly use to meet basic needs (such as food, clothing, and shelter), including TANF cash payments.

(10) Disqualified member--A person who normally would be considered a participating member of a household but whose needs are not considered because the person failed to meet or comply with a program requirement.

(11) Earned income--Compensation received from employment or job training, including military and flight pay, allowances for housing and food, and receipts from self-employment (but not receipts from ownership of property involving less than 20 hours of work per week, which are unearned income).

(12) Eligible group--A category of people who are eligible for TANF-level medical assistance. In other Medicaid programs, an eligible group may be called a coverage group.

(13) Fair market value--The amount of money an item would bring if sold in the current local market.

(14) Federal Poverty Income Limit (FPIL)--The household income guidelines issued annually and published in the Federal Register by the U.S. Department of Health and Human Services. Percentages of these guidelines are used to determine income eligibility for certain public assistance programs. In other programs, the FPIL may be referred to as the Federal Poverty Level or the Federal Poverty Guidelines.

(15) Medicaid--A state and federal cooperative program, authorized under Title XIX of the Social Security Act and the Texas Human Resources Code, that pays for certain medical and health care costs for people who qualify. Also known as the medical assistance program.

(16) Person acting responsibly--A person, other than a provider, who may apply for Medicaid on behalf of an individual who is incompetent or incapacitated if the person is determined by the Texas Health and Human Services Commission (HHSC) to be acting responsibly on behalf of the applicant.

(17) Recipient--A person receiving TANF-level medical assistance, including a person who is renewing eligibility for TANF-level medical assistance.

(18) Resources--Cash (or its equivalent) and property that is convertible to cash (or its equivalent). Resources include:

(A) cash from income that is not obligated in the month of receipt; and

(B) lump sum payments that may be received intermittently and no more often than once annually.

(19) Retroactive coverage--Payment for Medicaid-reimbursable medical services received up to three months before the month of application.

(20) Review--Evaluative interview that must take place before a recipient receives his or her seventh month of TANF-level medical assistance.

(21) TANF--Temporary Assistance for Needy Families. A program that provides temporary benefits (cash assistance) and work opportunities to families with needy dependent children, authorized under Title IV of the Social Security Act.

(22) *Texas Works Handbook*--An HHSC manual containing policies and procedures used to determine eligibility for SNAP food benefits, TANF, and Medicaid programs for children and families. The *Texas Works Handbook* is found on the Internet at www.hhsc.state.tx.us/Programs/Programs.shtml#handbooks.

(23) Unearned income--Income that is not earned income, including dividends and withdrawals from excluded resources.

(24) U.S.C.--United States Code.

§366.705. General Eligibility Requirements.

To be eligible for TANF-level medical assistance, a person must:

(1) meet the criteria for an eligible group as described in §366.707 of this subchapter (relating to Eligible Group);

(2) comply with the Texas Health and Human Services Commission's initial and renewal application requirements in this subchapter; and

(3) meet all other eligibility and participation requirements in this subchapter.

§366.707. Eligible Group.

(a) Households eligible for Temporary Assistance for Needy Families benefits also qualify for medical assistance under Medicaid, as provided by §1931 of the Social Security Act (42 U.S.C. §1396u-1).

(b) To be eligible for TANF-level medical assistance, a person must be a caretaker or second parent of a dependent child under 19 years of age who:

(1) meets TANF eligibility criteria; and

(2) receives Medicaid.

(c) The caretaker or second parent is ineligible if the dependent child receives benefits under the Children's Health Insurance Program.

§366.709. Application Requirements.

(a) To receive TANF-level medical assistance, an applicant, authorized representative, or someone acting responsibly for the applicant (if the applicant is incompetent or incapacitated) must:

(1) use the application prescribed by the Texas Health and Human Services Commission (HHSC) and complete it according to HHSC instructions:

(A) in writing, using a paper application obtained via telephone, Internet request, or other means;

(B) online, using the application process available over the Internet;

(C) over the telephone, through the State's toll-free telephone number; or

(D) in person, by visiting an HHSC benefits office;

(2) provide all requested information according to HHSC instructions; and

(3) sign the application for assistance under penalty of perjury.

(b) If someone helps an applicant, authorized representative, or person acting responsibly for the applicant complete the application for assistance, the name of the person completing the form must appear as requested on the application.

(c) If HHSC sends an applicant, authorized representative, or person acting responsibly a request for missing information or verification documents, or both, the applicant, authorized representative, or person acting responsibly must provide the requested information to HHSC by the due date given in the request, or eligibility may be denied.

§366.711. Application Processing.

(a) The Texas Health and Human Services Commission (HHSC) allows any office of a state health and human services agency to accept an initial application.

(b) HHSC contracts with third parties to accept applications from hospital districts (including state-owned teaching hospitals), federally qualified health centers, and county health departments.

(c) HHSC requires a personal interview with an initial applicant, unless the only applicant is a child.

(d) HHSC reopens a denied initial application, so long as the household complies with the missed requirements within 60 days after the date the application was submitted. HHSC otherwise requires the household to file a new application.

(e) HHSC reopens a denied review application, so long as the household complies with the missed requirements within 30 days after the last benefit month. HHSC otherwise requires the household to file a new application.

(f) HHSC may reopen an application for three months prior coverage if:

(1) within two years after the application was filed, the applicant requests that the application be reopened; and

(2) a Medicaid eligibility determination was not previously made for the three-month prior period.

§366.713. Citizenship.

To be eligible for TANF-level medical assistance, an applicant must be:

(1) a citizen or national of the United States (U.S.);

(2) an alien who legally entered the U.S. before August 22, 1996, and who meets the eligibility criteria in 8 U.S.C. §1641(b) or (c);

(3) an alien who legally entered the U.S. on or after August 22, 1996, and who meets the eligibility criteria in 8 U.S.C. §1612(b) and §1613, except that a legal permanent resident alien is eligible after residing in the U.S. for five years only if the alien meets one of the following eligibility requirements:

(A) the alien is an honorably discharged veteran or active duty military personnel;

(B) the alien is a spouse, unmarried surviving spouse, or minor unmarried child of an honorably discharged veteran or active duty military personnel (if a surviving spouse of a deceased veteran or active duty military person, the surviving spouse must not have remarried);

(C) the alien entered the U.S. before August 22, 1996, and remained continuously present in the U.S. (a single absence from the U.S. of more than 30 days or a combined absence of more than 90 days interrupts the "continuous presence") since at least August 21, 1996, until obtaining qualifying immigrant status (an alien who entered the U.S. without proper documents or overstayed his or her visa, is treated the same as an alien who entered and remained in the U.S. with valid immigration documents);

(D) the alien entered the U.S. with a status described in the *Texas Works Handbook,* Item A-342, Chart C and meets those eligibility criteria, or meets the criteria in the *Texas Works Handbook,* Item A-343, How to Determine Eligibility for Battered Aliens; or

(E) the alien meets the 40 qualifying quarters requirements in the *Texas Works Handbook,* Item A-354, Verifying 40 "Qualifying Quarters," and five years have passed since the alien's legal date of entry; or

(4) an alien child 18 years of age or under who meets the definition of a qualified alien at 8 U.S.C. §1641(b).

§366.715. Social Security Number.

An applicant must provide or apply for a social security number (SSN) before certification. If the household cannot provide proof of an application for an SSN, a newborn may receive benefits with the household for the later of:

(1) six months after birth; or

(2) the next recertification or complete review.

§366.717. Residence.

An applicant or recipient must be a resident of Texas. The Texas Health and Human Services Commission follows 42 CFR §435.403 in determining a person's state residence.

§366.719. Relationship and Domicile.

(a) To be eligible for TANF-level medical assistance:

(1) a caretaker must live in a home with and care for a child for which the caretaker has the required degree of relationship as described in subsection (c) of this section; and

(2) a child must live in a home with a relative who is within the required degree of relationship as described in subsection (c) of this section.

(b) A home is a family setting maintained or being established, as evidenced by continuation of responsibility for day-to-day care of a child.

(c) A person meets the relationship requirement, if the person is by law, marriage, or adoption a child's:

(1) father or mother;

(2) grandparent, to the degree of a "great, great, great" grandparent;

(3) brother or sister;

(4) uncle or aunt, to the degree of a "great, great" uncle or aunt;

(5) first cousin;

(6) nephew or niece, to the to the degree of a "great, great" nephew or niece;

(7) stepfather or stepmother;

(8) stepbrother or stepsister; or

(9) first cousin once removed.

§366.721. Medical Support.

As a condition of eligibility, a recipient must comply with medical support requirements, as provided by §1912(a)(1) of the Social Security Act, (42 U.S.C. §1396k(a)(1)).

§366.723. Resources.

(a) Resource limits. A household meets the resources eligibility requirement if the household's countable resources are at or below:

(1) $3,000 for a household with a member who is aged or disabled and meets relationship requirements, even if the aged or disabled member is not part of the Medicaid budget group; or

(2) $2,000 for all other households.

(b) Value of a nonliquid resource. The Texas Health and Human Services Commission (HHSC) considers the value of a nonliquid resource, except for a vehicle, to be its equity value. HHSC determines the equity value by subtracting any money owed on the resource and any reasonable cost associated with selling or transferring the resource from the fair market value.

(c) Consequence of transferring resources. An applicant, if otherwise eligible, is not denied TANF-level medical assistance because the applicant transferred resources to qualify for assistance.

§366.725. Determining Whose Resources Count.

To determine resource eligibility for TANF-level medical assistance, the Texas Health and Human Services Commission (HHSC) counts the resources of:

(1) the members of the certified group;

(2) disqualified persons;

(3) a stepparent:

(A) in full, if the stepparent is in the certified group; and

(B) only the legal parent's half of a jointly owned resource, if the stepparent is not in the certified group; and

(4) in the case of a household containing a sponsored alien, the income of the alien's sponsor and the sponsor's spouse to the extent allowed by federal law.

§366.727. Vehicles.

(a) The Texas Health and Human Services Commission (HHSC) considers the value of a vehicle to be its fair market value (FMV).

(b) HHSC exempts the value of a vehicle from countable resources, if:

(1) it is income producing; or

(2) it is used for a disabled household member.

(c) For a household with one certified parent, HHSC exempts up to $4,650 of the FMV of each vehicle not exempt under subsection (b) of this section, and counts the FMV in excess of $4,650 as a resource.

(d) For a household with two certified parents, HHSC:

(1) exempts up to $15,000 of the FMV of one vehicle owned by a member of the household not exempt under subsection (b) of this section, and counts the FMV in excess of $15,000 as a resource; and

(2) exempts up to $4,650 of the FMV of all other vehicles not exempt under subsection (b) of this section, and counts the FMV in excess of $4,650 as a resource.

§366.729. Exempt Resources.

The Texas Health and Human Services Commission (HHSC) exempts the following from countable resources:

(1) funds in a retirement account (even if accessible, so long as the funds remain in the account);

(2) balances in the Texas Guaranteed Tuition Plan (formerly called the Texas Tomorrow Fund) even if accessible, so long as the funds remain in the account;

(3) crime victim's compensation payments;

(4) earned income tax credit (EIC) payments to applicants the month of receipt and the following month, and to recipients the month of receipt and the following 11 months, unless there is a break in certification of more than 30 days, in which case any remaining portion of the EIC payment is counted as a resource;

(5) payments or allowances made under any federal law for the purpose of energy assistance;

(6) federal disaster payments and comparable disaster assistance provided by states, local governments, and disaster assistance organizations if the household is subject to legal penalties if the funds are not used as intended;

(7) transitional living allowances;

(8) any resource federal law excludes;

(9) funds from veterans payments earmarked as a housebound allowance or as an aid and attendance allowance;

(10) the cash value of life insurance policies;

(11) an amount up to $7,500 per person of prepaid burial insurance (or of a prepaid funeral plan);

(12) loans, if the circumstances satisfy HHSC that there exists an understanding the money will be repaid, and the applicant or recipient reasonably explains to HHSC how the money will be repaid;

(13) personal possessions HHSC determines are essential for daily living, such as clothing, jewelry, furniture, livestock, and farm equipment;

(14) burial plots;

(15) the homestead and surrounding real property, including:

(A) any structure, including a houseboat or a motor home, the household uses as its primary residence;

(B) surrounding real property divided by a public right-of-way (such as a street or road) but not divided by real property owned by others; and

(C) the homestead if it is temporarily unoccupied due to employment, training for future employment, illness, casualty, or natural disaster, as long as the household intends to return;

(16) business property (any real or personal property that generates income) that:

(A) is essential to a household member's employment or self-employment (such as tools of a trade, farm machinery, stock, and inventory), including:

(i) during temporary periods of unemployment if the household member expects to return to work; and

(ii) for farmers or fishers, the value of the land or equipment for one year after the date the self-employment ceases;

(B) annually produces income consistent with a fair market value comparable in the community (as determined by HHSC through sources such as local realtors, tax assessors, and the Small Business Administration), even if used only on a seasonal basis such as rental property; or

(C) is that portion of the property that is necessary for the maintenance or use of a vehicle exempted as income-producing or as necessary for transporting a physically disabled household member;

(17) real property if the household is making a good faith effort to sell it;

(18) resources HHSC determines are not accessible to the household;

(19) funds from educational assistance payments (but only during the quarter, semester, or applicable period the payment is intended to cover);

(20) equity value of resources that are not legally available (inaccessible) to the household;

(21) a nonliquid resource if its equity is less than or equal to $1,500;

(22) a One-Time Temporary Assistance for Needy Families (OTTANF) payment for the month of receipt and any remaining OTTANF benefits the month after receipt;

(23) a TANF One-Time Grandparent payment;

(24) reimbursements earmarked and used for replacing or repairing an exempt resource;

(25) for a household containing a sponsored alien, the resources of a sponsor and the sponsor's spouse to the extent allowed by federal law;

(26) resources of residents in shelters for battered women and children if:

(A) resources are jointly owned by the household in the shelter and members of the former household; and

(B) shelter resident's access to the value of the resource depends on the agreement of a joint owner who still lives in the resident's former household;

(27) resources of a recipient of Supplemental Security Income living in the home; and

(28) liquid resources resulting from the earnings of a certified child who is attending school full time, or less than full time and employed less than 30 hours per week.

§366.731. Income Eligibility.

(a) The Texas Health and Human Services Commission (HHSC) determines income eligibility for TANF-level medical assistance:

(1) for a household that has not received TANF in the last four months, by applying a budgetary needs test; and

(2) for all applicants and certified households, by applying the recognizable needs test in accordance with the table in subsection (b) of this section.

(b) A household meets the income eligibility requirement for recognizable needs if, based on the persons in the certified group and whether the household includes a second parent, the household's total income under §366.733 of this subchapter (relating to Determining Whose Income Counts), minus all applicable deductions in §366.735 of this subchapter (relating to Allowable Income Deductions), is equal to or less than the applicable recognizable needs amount in the following table:

Figure: 1 TAC §366.731(b)

§366.733. Determining Whose Income Counts.

To determine income eligibility for TANF-level medical assistance, the Texas Health and Human Services Commission counts the income of:

(1) the members of the budget group; and

(2) in the case of a household containing a sponsored alien, the income of the alien's sponsor and the sponsor's spouse to the extent allowed by federal law.

§366.735. Allowable Income Deductions.

The Texas Health and Human Services Commission (HHSC) allows the following deductions when determining countable income:

(1) a work-related expense deduction of up to $120 of earned income for each employed person whose needs are included in the budget group or certified group or who is a disqualified member;

(2) a dependent care deduction of $200 per month for each child under two years of age, and $175 per month for each dependent two years of age or older, including an earned income deduction for the actual costs of unreimbursed payments if the person incurs an expense for the care of a child or incapacitated adult (even when the child or incapacitated adult is not included in the certified group) or transportation of a child to and from day care or school;

(3) payments to dependents living outside the home;

(4) alimony;

(5) child support payments made by a member of the budget group;

(6) up to $75 per month in regular child support payments per household, except HHSC counts all child support payments a household received if HHSC determines the household has violated an agreement to assign child support to the State;

(7) a 90% earned income deduction; and

(8) for applicants, a one-third earned income disregard.

§366.737. Exempt Income.

The Texas Health and Human Services Commission (HHSC) exempts the following as countable income:

(1) any income that federal law excludes;

(2) the earnings of a child:

(A) who is 18 years of age and is:

(i) a full-time student, including a home-schooled student, or a part-time student employed less than 30 hours a week; and

(ii) considered a child; or

(B) who is under 18 years of age and is:

(i) a full-time student, including a home-schooled student; or

(ii) a part-time student employed less than 30 hours a week;

(3) up to $300 per federal fiscal quarter in cash gifts and contributions that are from private, nonprofit organizations and are based on need;

(4) proceeds from claims on insurance policies to compensate for a loss or that are used to pay medical expenses;

(5) payments from federal volunteer programs for volunteer service, such as payments:

(A) for volunteer service in a senior citizen volunteer program, under the Domestic Volunteer Service Act (42 U.S.C. §5000 et seq.);

(B) for volunteer service to Volunteers in Service to America (VISTA), under 42 U.S.C. §§4951 - 4960; and

(C) for volunteer service under the National and Community Service Act (42 U.S.C. §§12511 - 12656);

(6) payments under the Workforce Investment Act of 1998;

(7) the value of any benefits received under a government nutrition assistance program that is based on need, including benefits under the Supplemental Nutrition Assistance Program (SNAP) (formerly the Food Stamp Program), the Child Nutrition Act of 1966, the National School Lunch Act, and the Older Americans Act of 1965;

(8) foster care payments;

(9) payments made under a government housing assistance program based on need;

(10) energy assistance payments;

(11) job training payments that:

(A) are earmarked as reimbursement for training-related expenses; and

(B) do not duplicate payment for an item that is covered by budgetary needs;

(12) a lump sum provided and used to pay burial, legal, or medical bills, or to replace damaged or lost possessions, except HHSC does not exclude amounts from lump sums used for another purpose;

(13) reimbursements for monies spent on items not covered by budgetary needs;

(14) amounts deducted from royalties for production expenses and severance taxes;

(15) all income of Supplemental Security Income recipients;

(16) third-party funds received and used for a third-party beneficiary who is not a household member;

(17) vendor payments made from funds not legally obligated to the household;

(18) veterans benefits for special needs that are not items covered by budgetary needs;

(19) workers' compensation payments legally obligated to the recipient that are earmarked and used for medical expenses;

(20) the amount of any nonfarm self-employment income offsetting a tax deduction taken that year for a farm loss, for households with farms generating income of at least $1,000 annually;

(21) up to $2,000 of gifts annually from tax-exempt organizations provided to children with life-threatening conditions;

(22) independent living payments to youths who are leaving foster care, as provided by the Social Security Act, Title IV-E (42 U.S.C. §670 et seq.);

(23) funds from payments of up to $2,000 to Native Americans made under the federal Old Age Assistance Claims Settlement Act (25 U.S.C. §2301) or the federal Alaska Native Claims Settlement Act (43 U.S.C. §1601);

(24) funds from payments made to volunteers under Title I of the Domestic Volunteer Services Act of 1973;

(25) funds from adoption subsidy payments made under Title IV-A and Title IV-E of the Social Security Act;

(26) funds from insurance policy dividends;

(27) funds from veterans payments earmarked as a housebound allowance or as an aid and attendance allowance;

(28) earned income tax credit payments;

(29) federal, state, or local government payments provided to rebuild a home or replace personal possessions damaged in a disaster, including payments under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. §5121 et seq.), if the recipient is subject to legal sanction if the payment is not used as intended;

(30) funds from educational assistance payments (but only during the quarter, semester, or applicable period that the payment is intended to cover);

(31) loans, if the circumstances satisfy HHSC that there exists an understanding that the money will be repaid, and the applicant or recipient reasonably explains to HHSC how the money will be repaid; and

(32) crime victim's compensation payments.

§366.739. Third-party Resources.

Medicaid is considered the payor of last resort for a person's medical expenses. As a condition of eligibility, in accordance with 42 CFR §§433.138 - 433.148, an applicant or recipient must:

(1) assign to the Texas Health and Human Services Commission (HHSC) the applicant's or recipient's right to recover any third-party resources available for payment of medical expenses covered under the Texas State Plan for Medical Assistance; and

(2) report to HHSC any third-party resource within 60 days after learning about the third-party resource.

§366.741. Medicaid Eligibility Effective Date.

The Texas Health and Human Services Commission determines the Medicaid eligibility effective date as the earliest day of the application month on which the applicant meets all eligibility criteria.

§366.743. Resident of an Institution for Mental Diseases.

A person who lives in an institution for mental diseases, as defined in 42 CFR §435.1010, is only eligible for Medicaid payment for Medicaid covered services received while residing in the institution for mental diseases to the extent allowed by federal law.

§366.745. Inmates of Public Institutions.

An inmate of a public institution, including a jail, prison, reformatory, or other correctional or holding facility, as defined in 42 CFR §435.1009 and §435.1010, is not eligible for Medicaid payment for Medicaid-covered services received while residing in the public institution.

§366.747. Retroactive Coverage.

To qualify for retroactive coverage, applicants and recipients must meet the requirements of §1902(a)(34) of the Social Security Act (42 U.S.C. §1396a(a)(34)).

§366.749. Four Months Post-Medicaid Eligibility.

A household is eligible for four months post-Medicaid coverage, as provided by §1931 of the Social Security Act (42 U.S.C. §1396u-1), if the household received TANF or Medicaid only under §1931 of the Social Security Act and then was denied TANF or Medicaid because of receipt of child support.

§366.751. Twelve-Month Transitional Medicaid.

(a) A recipient, certified as required by §1931 of the Social Security Act (42 U.S.C. §1396u-1) and §32.0255 of the Texas Human Resources Code, who is denied because of new or increased earnings or loss of earned income deductions, may be eligible for 12-month transitional Medicaid, as provided by §1925 of the Social Security Act (42 U.S.C. §1396r-6).

(b) To remain eligible for 12-month transitional Medicaid, a recipient must report changes in the fourth, seventh, and tenth months.

(c) A recipient who reports changes is denied only for one or more of the following reasons:

(1) no eligible child is in the home;

(2) on the seventh- or tenth-month report, the caretaker relative had no earnings in one of the previous three months; or

(3) the average monthly income, minus child-care costs, exceeds 185% of the Federal Poverty Income Limit on the seventh- or tenth-month report.

§366.753. Work Requirement.

A recipient receiving TANF-level medical assistance only (no cash assistance) is not subject to a work requirement.

§366.755. Eligibility Review.

(a) In some cases, the Texas Health and Human Services Commission (HHSC) elects to review eligibility every 12 months, but in most cases, HHSC reviews eligibility every six months.

(b) Before the end of the eligibility period, HHSC mails a review form to the household. HHSC schedules an appointment for an eligibility interview when the recipient returns the application.

(c) A recipient who returns a completed review application, completes an eligibility interview, provides all necessary documentation and meets eligibility criteria continues to receive ongoing Medicaid coverage.

§366.757. Information from Other Agencies.

(a) Periodically, the Texas Health and Human Services Commission (HHSC) and other state and federal agencies compare the information they have stored on computer files.

(b) After comparing information with another agency, HHSC contacts the Medicaid recipient if the information does not match so that HHSC can confirm the correct information.

(1) If the mismatch of information does not affect eligibility, HHSC does not take action to adjust or deny Medicaid.

(2) If the mismatch of information affects eligibility, HHSC takes appropriate action to adjust or deny Medicaid and sends a written notice of action taken to the recipient.

§366.759. Requirement to Report Changes.

A recipient must report the following changes within 10 days after learning of the change:

(1) residence;

(2) a source of income;

(3) household composition;

(4) ownership of a licensed vehicle;

(5) wage rate or status for employed household members;

(6) the amount of non-exempt unearned income of any household member;

(7) private medical insurance coverage;

(8) circumstances other than employment that affect a recipient's eligibility;

(9) address, job, or other information related to an absent parent; and

(10) available cash, stocks, bonds, or money in a bank or savings account if the total is over $2,000, or over $3,000 if the household has an aged or disabled member.

§366.761. Right to Appeal.

(a) An applicant or recipient has the right to appeal Texas Health and Human Services Commission (HHSC) decisions. Appeals are governed by HHSC's fair hearing rules contained in Chapter 357 of this title (relating to Hearings).

(b) HHSC provides an action notice regarding an HHSC decision to applicants and recipients. The action notice includes information about how to file an appeal and the availability of free legal representation.

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 November 6, 2009.

TRD-200905110
Steve Aragon
General Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: December 20, 2009
For further information, please call: (512) 424-6576

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SUBCHAPTER H. MEDICALLY NEEDY PROGRAM

1 TAC §§366.801, 366.803, 366.805, 366.807, 366.809, 366.811, 366.813, 366.815, 366.817, 366.819, 366.821, 366.823, 366.825, 366.827, 366.829, 366.831, 366.833, 366.835, 366.837, 366.839, 366.841, 366.843, 366.845, 366.847, 366.849, 366.851, 366.853, 366.855, 366.857

Statutory Authority

The new sections are proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and §531.021, which authorizes HHSC to administer the federal medical assistance (Medicaid) program in Texas.

The new sections affect Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§366.801. Purpose and Scope.

(a) This subchapter establishes the eligibility criteria and participation requirements for the Medically Needy Program, which provides Medicaid benefits to eligible persons whose family income is too high to qualify for other Medicaid programs in accordance with 42 U.S.C. §1396a(a)(10)(C).

(b) Nothing in these rules shall be construed to violate the maintenance of eligibility requirements of section 5001 of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) and make eligibility standards, methodologies, or procedures under the Texas State Plan for Medical Assistance (or any waiver under section 1115 of the Social Security Act (42 U.S.C. §1315)) more restrictive than the eligibility standards, methodologies, or procedures, respectively, under such plan (or waiver) that were in effect on July 1, 2008.

(c) The Medically Needy Program is subject to the availability of appropriated funds.

§366.803. Definitions.

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

(1) Applicant--A person seeking assistance under the Medically Needy Program who:

(A) has never received Medicaid and is not currently receiving Medicaid; or

(B) previously received Medicaid but subsequently was denied and reapplies for Medicaid.

(2) Applied income--A portion of a legal parent's income applied or counted to meet the needs of a minor applicant.

(3) Authorized representative--A person whom a budget group authorizes to apply for Medicaid benefits on behalf of a certified group but who is not included in the certified group.

(4) Budget group--Members of a household whose needs, income, resources, and medical expenses are considered in determining eligibility for Medicaid. The budget group may include both members who are eligible for Medicaid and those who are not.

(5) Caretaker--A person who supervises and cares for a dependent child. A caretaker must be related to the child.

(6) Certified group--Members of a budget group who are eligible for and receiving Medicaid.

(7) CFR--Code of Federal Regulations.

(8) Countable income--The receipt of cash or its equivalent, either earned or unearned, that a person may directly or indirectly use to meet basic needs (such as food, clothing, and shelter), including TANF cash payments.

(9) Disqualified member--A person who normally would be considered a participating member of a household but whose needs are not considered because the person failed to meet or comply with a program requirement.

(10) Earned income--Compensation received from employment or job training, including military and flight pay, allowances for housing and food, and receipts from self-employment (but not receipts from ownership of property involving less than 20 hours of work per week, which are unearned income).

(11) Eligible group--A category of people who are eligible for the Medically Needy Program. In other Medicaid programs, an eligible group may be called a coverage group.

(12) Fair market value--The amount of money an item would bring if sold in the current local market.

(13) Good cause--An acceptable reason that exempts an applicant or recipient from a Medicaid requirement.

(14) Medicaid--A state and federal cooperative program, authorized under Title XIX of the Social Security Act and the Texas Human Resources Code, that pays for certain medical and health care costs for people who qualify. Also known as the medical assistance program.

(15) Medically Needy (MN) Program--A program the Texas Health and Human Services Commission (HHSC) administers that provides Medicaid benefits to pregnant women, children, and parents or caretakers of children whose income is too high to qualify for other Medicaid programs and who have high medical expenses.

(16) Newborn--A child from birth through 12 months of age.

(17) Person acting responsibly--A person, other than a provider, who may apply for Medicaid on behalf of an individual who is incompetent or incapacitated if the person is determined by HHSC to be acting responsibly on behalf of the applicant.

(18) Provider--A health care practitioner, institution, or other entity that is enrolled with the state Medicaid claims administrator to provide Medicaid services in Texas and is authorized to submit claims for payment or reimbursement of medical assistance.

(19) Recipient--A person receiving Medically Needy Program services, including a person who is renewing eligibility for the Medically Needy Program.

(20) Resources--Cash (or its equivalent) and property that is convertible to cash (or its equivalent). Resources include:

(A) cash from income that is not obligated in the month of receipt; and

(B) lump sum payments that may be received intermittently and no more often than once annually.

(21) Retroactive coverage--Payment for Medicaid-reimbursable medical services received up to three months before the month of application.

(22) Spend down--The amount of income that an applicant must apply toward incurred medical bills before the applicant can be certified for the Medically Needy Program.

(23) Temporary Assistance for Needy Families (TANF)--A program that provides temporary benefits (cash assistance) and work opportunities to families with needy dependent children, authorized under Title IV of the Social Security Act.

(24) *Texas Works Handbook*--An HHSC manual containing policies and procedures used to determine eligibility for SNAP food benefits, TANF, and Medicaid programs for children and families. The *Texas Works Handbook* is found on the Internet at www.hhsc.state.tx.us/Programs/Programs.shtml#handbooks.

(25) Third-party resource--A person or organization, other than HHSC or a person living with the applicant, who may be liable as a source of payment of the applicant's medical expenses (for example, a health insurance company).

(26) Unearned income--Income that is not earned income, including dividends and withdrawals from excluded resources.

(27) U.S.C.--United States Code.

§366.805. General Eligibility Requirements.

To be eligible for the Medically Needy Program, a person must:

(1) meet the criteria for an eligible group as described in §366.807 of this subchapter (relating to Eligible Groups);

(2) comply with the Texas Health and Human Services Commission's initial and renewal application requirements in this subchapter; and

(3) meet all other eligibility and participation requirements in this subchapter.

§366.807. Eligible Groups.

(a) To qualify for Medically Needy Program benefits, an applicant must:

(1) be:

(A) a pregnant woman with no child eligible for the Temporary Assistance for Needy Families (TANF) Program;

(B) a child under 19 years of age; or

(C) an adult caretaker, whom HHSC includes in the certified group, and who ordinarily receives and manages the benefits for the certified group, except that:

(i) the caretaker's countable income exceeds TANF limits;

(ii) the caretaker's 60-month time-limited TANF benefits are exhausted;

(iii) the caretaker chooses Medicaid-only benefits; or

(iv) the caretaker is disqualified from TANF for a reason that is not applicable to Medicaid; and

(2) have countable income that meets the applicable income limit in §366.829 of this subchapter (relating to Income Limits).

(b) When determining eligibility for a pregnant applicant or recipient, HHSC includes the needs of her unborn child.

(c) A child's needs, income, and resources may be excluded when determining eligibility of the child's siblings if the caretaker chooses not to apply for Medicaid for the excluded child.

§366.809. Application Requirements.

(a) To receive Medically Needy Program benefits, an applicant, authorized representative, or someone acting responsibly for the applicant (if the applicant is incompetent or incapacitated) must:

(1) use the application prescribed by the Texas Health and Human Services Commission (HHSC) and complete it according to HHSC instructions:

(A) in writing, using a paper application obtained via telephone, Internet request, or other means;

(B) online, using the application process available over the Internet;

(C) over the telephone, through the State's toll-free telephone number; or

(D) in person, by visiting an HHSC benefits office;

(2) provide all requested information according to HHSC instructions; and

(3) sign the application for assistance under penalty of perjury.

(b) If someone helps an applicant, authorized representative, or person acting responsibly for the applicant complete the application for assistance, the name of the person completing the form must appear as requested on the application.

(c) If HHSC sends an applicant, authorized representative, or person acting responsibly a request for missing information or verification documents, or both, the applicant, authorized representative, or person acting responsibly must provide the requested information to HHSC by the due date given in the request, or eligibility may be denied.

§366.811. Application Processing.

(a) The Texas Health and Human Services Commission (HHSC) allows any office of a state health and human services agency to accept an initial application.

(b) HHSC contracts with third parties to accept applications from hospital districts (including state-owned teaching hospitals), federally qualified health centers, and county health departments.

(c) HHSC may conduct a personal interview with an initial applicant if HHSC has received conflicting information related to household membership, income, or assets that affects eligibility and the information cannot be verified through other means.

(d) HHSC reopens a denied initial application, so long as the household complies with the missed requirements within 60 days after the date the application was submitted. HHSC otherwise requires the household to file a new application.

(e) HHSC reopens a denied renewal application, so long as the household complies with the missed requirements within 30 days after the last benefit month. HHSC otherwise requires the household to file a new application.

(f) HHSC may reopen an application for three months prior coverage if:

(1) within two years after the application was filed, the applicant requests that the application be reopened; and

(2) a Medicaid eligibility determination was not previously made for the three-month prior period.

(g) For a pregnant applicant who is potentially eligible but unable to provide proof of eligibility, HHSC:

(1) postpones verifications and provides Medicaid coverage to ensure access to medical care within 30 days after the application date;

(2) continues the coverage of women who provide postponed verifications by the 30th day after the application date; and

(3) denies the coverage of those who fail to meet the 30-day deadline.

(h) There are no conditions limiting the designation of an authorized representative.

§366.813. Citizenship.

In accordance with 42 CFR §435.406, to be eligible for the Medically Needy Program, a person must be:

(1) a citizen or national of the United States (U.S.);

(2) an alien who legally entered the U.S. before August 22, 1996, and who meets the eligibility criteria in 8 U.S.C. §1641(b) or (c);

(3) an alien who legally entered the U.S. on or after August 22, 1996, and who meets the eligibility criteria in 8 U.S.C. §1612(b) and §1613, except that a legal permanent resident alien is eligible after residing in the U.S. for five years only if the alien meets one of the following eligibility requirements:

(A) the alien is an honorably discharged veteran or active duty military personnel;

(B) the alien is a spouse, unmarried surviving spouse, or minor unmarried child of an honorably discharged veteran or active duty military personnel (if a surviving spouse of a deceased veteran or active duty military person, the surviving spouse must not have remarried);

(C) the alien entered the U.S. before August 22, 1996, and remained continuously present in the U.S. (a single absence from the U.S. of more than 30 days or a combined absence of more than 90 days interrupts the "continuous presence") since at least August 21, 1996, until obtaining qualifying immigrant status (an alien who entered the U.S. without proper documents or overstayed his or her visa, is treated the same as an alien who entered and remained in the U.S. with valid immigration documents);

(D) the alien entered the U.S. with a status described in the *Texas Works Handbook,* Item A-342, Chart C and meets those eligibility criteria, or meets the criteria in the *Texas Works Handbook,* Item A-343, How to Determine Eligibility for Battered Aliens; or

(E) the alien meets the 40 qualifying quarters requirements in the *Texas Works Handbook,* Item A-354, Verifying 40 "Qualifying Quarters," and five years have passed since the alien's legal date of entry; or

(4) an alien child 18 years of age or under who meets the definition of a qualified alien at 8 U.S.C. §1641(b).

§366.815. Social Security Number.

An applicant must provide or apply for a social security number (SSN) (including children referred to the Children's Health Insurance Program (CHIP)), except the Texas Health and Human Services Commission (HHSC):

(1) does not require an SSN for a newborn until the earlier of six months after birth or when HHSC reviews Medicaid eligibility;

(2) refers a Medicaid-eligible mother directly to the Social Security Administration to obtain an SSN for her newborn, if her newborn was certified for Medicaid as a result of a notice from an authorized medical provider (for example, a hospital or clinic); and

(3) requests, but does not require, budget group members who are not eligible for Medicaid to provide or apply for an SSN.

§366.817. Residence.

An applicant or recipient must be a resident of Texas. The Texas Health and Human Services Commission follows 42 CFR §435.403 in determining a person's state residence.

§366.819. Relationship and Domicile.

(a) An applicant or recipient must live in a home with a caretaker who is present in the home and supervises and cares for the applicant or recipient. A home is a family setting maintained or being established, as evidenced by continuation of responsibility for day-to-day care of the applicant or recipient.

(b) A caretaker must be the applicant's or recipient's:

(1) father or mother;

(2) grandparent, to the degree of a "great, great, great" grandparent;

(3) brother or sister;

(4) uncle or aunt, to the degree of a "great, great" uncle or aunt;

(5) first cousin;

(6) nephew or niece, to the to the degree of a "great, great" nephew or niece;

(7) stepfather or stepmother;

(8) stepbrother or stepsister; or

(9) first cousin once removed.

(c) An independent child in a certified group may live alone or with a person who is not a parent or relative. An independent child is a child who does not live with a parent and who:

(1) is able to apply for Medicaid on his or her own behalf; or

(2) is eligible for Medicaid because a responsible person who is not within the degree of relationship required for eligibility in subsection (b) of this section applies on the child's behalf.

§366.821. Child Support and Medical Support.

(a) An applicant must cooperate in obtaining child or medical support from absent parents in accordance with this section.

(b) Pregnant women must provide the names and last known addresses of the legal or biological father, or both, of unborn children.

(c) Households applying only for a child under 19 years of age are not required to cooperate to find absent parents to obtain child or medical support. However, caretakers of eligible children qualify for Medicaid coverage for themselves only if they:

(1) cooperate in obtaining medical support from the certified child's absent parent, if the child is deprived of parental support due to absence, as provided by §1912(a)(1) of the Social Security Act, (42 U.S.C. §1396k(a)(1)); or

(2) have good cause not to cooperate, as described in subsection (d) of this section.

(d) Good cause for noncooperation exists if:

(1) the child was conceived as a result of incest or rape;

(2) adoption proceedings for the child are pending;

(3) the parent of the child, for three months or less, has been working with an agency to decide whether to place the child for adoption;

(4) the child may be physically or emotionally harmed by cooperation;

(5) the parent may be physically harmed, or emotionally harmed to the extent of impairing the parent's ability to care for the child, by cooperation; or

(6) the requirement is waived under 45 CFR §260.52(c) in accordance with the requirements of the Texas Human Resources Code, §31.0322.

§366.823. Resources.

(a) Determining whose resources count. In determining eligibility, the Texas Health and Human Services Commission (HHSC) counts the resources of:

(1) the members of the certified group;

(2) each parent of a child in the certified group who lives in the household and is ineligible or disqualified from receiving benefits;

(3) each sibling of a dependent child in the certified group who lives in the household and is disqualified from receiving benefits; and

(4) in the case of a household containing a sponsored alien, the alien's sponsor and the sponsor's spouse to the extent allowed by federal law.

(b) Exemption for pregnant women. HHSC does not count resources in determining eligibility for pregnant women.

(c) Value of a nonliquid resource. HHSC considers the value of a nonliquid resource, except for a vehicle, to be its equity value. HHSC determines the equity value by subtracting any money owed on the resource and any reasonable cost associated with selling or transferring the resource from the fair market value.

(d) Resource limits. A household meets the resources eligibility requirement if the household's countable resources are at or below:

(1) $3,000 for a household with a member who is aged or disabled and meets relationship requirements, even if the aged or disabled member is not part of the Medicaid budget group; or

(2) $2,000 for all other households.

(e) Consequence of transferring resources. An applicant, if otherwise eligible, is not denied Medically Needy Program services because the applicant transferred resources to qualify for Medicaid.

§366.825. Vehicles.

(a) The Texas Health and Human Services Commission (HHSC) considers the value of a vehicle to be its fair market value.

(b) HHSC exempts the value of the highest valued countable vehicle from countable resources.

(c) HHSC exempts the value of a vehicle from countable resources, if:

(1) it is income producing;

(2) it is used for a disabled household member;

(3) its equity value is equal to or less than $1,500;

(4) it is used for long distance travel for employment;

(5) it is used as the household's home; or

(6) it is necessary to carry fuel or water anticipated to be the primary source of fuel or water for the household during the certification period.

(d) HHSC exempts for each adult budget group member up to $4,650 of the value of any vehicle not exempt under subsection (b) of this section. HHSC exempts any other licensed vehicle a minor (under 18 years of age) drives to work, training, school, or to seek employment if the fair market value (FMV) is less than $4,650. HHSC counts the FMV in excess of $4,650 as a resource.

§366.827. Exempt Resources.

The Texas Health and Human Services Commission (HHSC) exempts the following from countable resources:

(1) funds in a retirement account (even if accessible, so long as the funds remain in the account);

(2) balances in the Texas Guaranteed Tuition Plan (formerly called the Texas Tomorrow Fund) even if accessible, so long as the funds remain in the account;

(3) crime victim's compensation payments;

(4) earned income tax credit (EIC) payments to applicants the month of receipt and the following month, and to recipients the month of receipt and the following 11 months, unless there is a break in certification of more than 30 days, in which case any remaining portion of the EIC payment is counted as a resource;

(5) payments or allowances made under any federal law for the purpose of energy assistance;

(6) federal disaster payments and comparable disaster assistance provided by states, local governments, and disaster assistance organizations if the household is subject to legal penalties if the funds are not used as intended;

(7) transitional living allowances;

(8) any resource federal law excludes;

(9) funds from veterans payments earmarked as a housebound allowance or as an aid and attendance allowance;

(10) the cash value of life insurance policies;

(11) an amount up to $7,500 per person of prepaid burial insurance (or of a prepaid funeral plan);

(12) loans, if the circumstances satisfy HHSC that there exists an understanding the money will be repaid, and the applicant or recipient reasonably explains to HHSC how the money will be repaid;

(13) personal possessions HHSC determines are essential for daily living, such as clothing, jewelry, furniture, livestock, and farm equipment;

(14) burial plots;

(15) the homestead and surrounding real property, including:

(A) any structure, including a houseboat or a motor home, the household uses as its primary residence;

(B) surrounding real property divided by a public right-of-way (such as a street or road) but not divided by real property owned by others; and

(C) the homestead if it is temporarily unoccupied due to employment, training for future employment, illness, casualty, or natural disaster, as long as the household intends to return;

(16) income-producing property (any real or personal property that generates income) that:

(A) is essential to a household member's employment or self-employment (such as tools of a trade, farm machinery, stock, and inventory), including:

(i) during temporary periods of unemployment if the household member expects to return to work; and

(ii) for farmers or fishers, the value of the land or equipment for one year after the date the self-employment ceases;

(B) annually produces income consistent with a fair market value comparable in the community (as determined by HHSC through sources such as local realtors, tax assessors, and the Small Business Administration), even if used only on a seasonal basis such as rental property; or

(C) is that portion of the property that is necessary for the maintenance or use of a vehicle exempted as income-producing or as necessary for transporting a physically disabled household member;

(17) real property HHSC determines the household is making a good faith effort to sell;

(18) resources HHSC determines are not accessible to the household;

(19) funds from educational assistance payments (but only during the quarter, semester, or applicable period the payment is intended to cover);

(20) equity value of resources that are not legally available (inaccessible) to the household;

(21) a nonliquid resource if its equity is less than or equal to $1,500;

(22) a One-Time Temporary Assistance for Needy Families (OTTANF) payment for the month of receipt and any remaining OTTANF benefits the month after receipt;

(23) a TANF One-Time Grandparent payment;

(24) reimbursements earmarked and used for replacing or repairing an exempt resource;

(25) for a household containing a sponsored alien, the resources of a sponsor and the sponsor's spouse to the extent allowed by federal law;

(26) resources of residents in shelters for battered women and children if:

(A) resources are jointly owned by the household in the shelter and members of the former household; and

(B) shelter resident's access to the value of the resource depends on the agreement of a joint owner who still lives in the resident's former household;

(27) resources of a recipient of Supplemental Security Income living in the home; and

(28) liquid resources resulting from the earnings of a certified child who is attending school full time, or less than full time and employed less than 30 hours per week.

§366.829. Income Limits.

(a) To be eligible for the Medically Needy Program, an applicant or recipient must meet the applicable Medically Needy Income Limit (MNIL) as provided in the following table:
Figure: 1 TAC §366.829(a)

(b) An applicant whose net income exceeds the applicable MNIL may, in accordance with 42 CFR §435.831, spend down the

excess amount of income to pay unpaid medical bills and qualify for the Medically Needy Program with spend down.

§366.831. Determining Whose Income Counts.

(a) To determine income eligibility for the Medically Needy Program, the Texas Health and Human Services Commission (HHSC) counts the income of:

(1) the members of the budget group;

(2) each parent of a child in the certified group who lives in the household;

(3) each sibling, if included in the budget group, of a dependent child in the certified group who lives in the household;

(4) stepparents living with the certified group;

(5) in the case of an unmarried minor parent recipient, parents of the minor who live with the minor; and

(6) in the case of a household containing a sponsored alien, the income of the alien's sponsor and the sponsor's spouse to the extent allowed by federal law.

(b) A newborn whose legal mother was a Texas Medicaid recipient when the child was born is not required to meet income eligibility requirements.

(c) HHSC does not count the applied income of stepparents or grandparents with whom the child lives if the income resulted in the denial of eligibility for Temporary Assistance for Needy Families.

§366.833. Allowable Income Deductions.

The Texas Health and Human Services Commission (HHSC) allows the following deductions when determining countable income:

(1) a work-related expense deduction of up to $120 of earned income for each employed person whose needs are included in the budget group or certified group or who is a disqualified member;

(2) a dependent care deduction of $200 per month for each child under two years of age, and $175 per month for each dependent two years of age or older, including an earned income deduction for the actual costs of unreimbursed payments if the person incurs an expense for the care of a child or incapacitated adult (even when the child or incapacitated adult is not included in the certified group) or transportation of a child to and from day care or school;

(3) payments to dependents living outside the home;

(4) alimony;

(5) child support payments made by a member of the budget group; and

(6) up to $75 per month disregard in regular child support payments received per household, except HHSC counts all child support payments a household received if HHSC determines the household has violated an agreement to assign child support to the State.

§366.835. Exempt Income.

The Texas Health and Human Services Commission (HHSC) exempts the following as countable income:

(1) any income that federal law excludes;

(2) the earnings of a child:

(A) who is 18 years of age and is:

(i) a full-time student, including a home-schooled student, or a part-time student employed less than 30 hours a week; and

(ii) considered a child; or

(B) who is under 18 years of age and is:

(i) a full-time student, including a home-schooled student; or

(ii) a part-time student employed less than 30 hours a week;

(3) up to $300 per federal fiscal quarter in cash gifts and contributions that are from private, nonprofit organizations and are based on need;

(4) proceeds from claims on insurance policies to compensate for a loss or that are used to pay medical expenses;

(5) payments from federal volunteer programs for volunteer service, such as payments:

(A) for volunteer service in a senior citizen volunteer program, under the Domestic Volunteer Service Act (42 U.S.C. §5000 et seq.);

(B) for volunteer service to Volunteers in Service to America (VISTA), under 42 U.S.C. §§4951 - 4960; and

(C) for volunteer service under the National and Community Service Act (42 U.S.C. §§12511 - 12656);

(6) payments under the Workforce Investment Act of 1998;

(7) the value of any benefits received under a government nutrition assistance program that is based on need, including benefits under the Supplemental Nutrition Assistance Program (SNAP) (formerly the Food Stamp Program), the Child Nutrition Act of 1966, the National School Lunch Act, and the Older Americans Act of 1965;

(8) foster care payments;

(9) payments made under a government housing assistance program based on need;

(10) energy assistance payments;

(11) job training payments that:

(A) are earmarked as reimbursement for training-related expenses; and

(B) do not duplicate payment for an item that is covered by budgetary needs;

(12) a lump sum provided and used to pay burial, legal, or medical bills, or to replace damaged or lost possessions, except HHSC does not exclude amounts from lump sums used for another purpose;

(13) reimbursements for monies spent on items not covered by budgetary needs;

(14) amounts deducted from royalties for production expenses and severance taxes;

(15) all income of Supplemental Security Income recipients;

(16) third-party funds received and used for a third-party beneficiary who is not a household member;

(17) vendor payments made from funds not legally obligated to the household;

(18) veterans benefits for special needs that are not items covered by budgetary needs;

(19) workers' compensation payments legally obligated to the recipient that are earmarked and used for medical expenses;

(20) the amount of any nonfarm self-employment income offsetting a tax deduction taken that year for a farm loss, for households with farms generating income of at least $1,000 annually;

(21) up to $2,000 of gifts annually from tax-exempt organizations provided to children with life-threatening conditions;

(22) independent living payments to youths who are leaving foster care, as provided by the Social Security Act, Title IV-E (42 U.S.C. §670 et seq.);

(23) funds from payments of up to $2,000 to Native Americans made under the federal Old Age Assistance Claims Settlement Act (25 U.S.C. §2301) or the federal Alaska Native Claims Settlement Act (43 U.S.C. §1601);

(24) funds from payments made to volunteers under Title I of the Domestic Volunteer Services Act of 1973;

(25) funds from adoption subsidy payments made under Title IV-A and Title IV-E of the Social Security Act;

(26) funds from insurance policy dividends;

(27) funds from veterans payments earmarked as a housebound allowance or as an aid and attendance allowance;

(28) earned income tax credit payments;

(29) federal, state, or local government payments provided to rebuild a home or replace personal possessions damaged in a disaster, including payments under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. §5121 et seq.), if the recipient is subject to legal sanction if the payment is not used as intended;

(30) funds from educational assistance payments (but only during the quarter, semester, or applicable period that the payment is intended to cover);

(31) loans, if the circumstances satisfy HHSC that there exists an understanding that the money will be repaid, and the applicant or recipient reasonably explains to HHSC how the money will be repaid; and

(32) crime victim's compensation payments.

§366.837. Pursuit and Acceptance of Income.

(a) Household members must pursue and accept all income to which they are legally entitled. The Texas Health and Human Services Commission (HHSC) may determine that a certified group is ineligible for benefits due to a household member's failure to comply with this requirement.

(b) HHSC may grant good cause for failure to comply with this requirement if:

(1) the potential income is Supplemental Security Income (SSI), the person is physically or mentally unable to apply for the SSI, and HHSC fails to assist the person with the SSI application process; or

(2) if HHSC determines that pursuing or accepting the income:

(A) would cause financial hardship to the household;

(B) would not be cost-effective;

(C) would endanger the health or safety of a household member; or

(D) would require the assistance of an attorney, which the person was unable to obtain after making a reasonable effort.

§366.839. Third-party Resources.

Medicaid is considered the payor of last resort for a person's medical expenses. As a condition of eligibility, in accordance with 42 CFR §§433.138 - 433.148, an applicant or recipient must:

(1) assign to the Texas Health and Human Services Commission (HHSC) the applicant's or recipient's right to recover any third-party resources available for payment of medical expenses covered under the Texas State Plan for Medical Assistance; and

(2) report to HHSC any third-party resource within 60 days after learning about the third-party resource.

§366.841. Medicaid Eligibility Effective Date.

The Texas Health and Human Services Commission (HHSC) determines Medicaid eligibility dates for an applicant as follows.

(1) Medicaid coverage begins on the earliest day of the application month on which the applicant meets all eligibility criteria.

(2) Retroactive coverage may begin as early as three months before the application month, except that:

(A) a pregnant woman's coverage begins no earlier than the first day of the month in which the pregnancy began (coverage ends the second month after the month in which the pregnancy terminates); and

(B) a newborn's coverage begins no earlier than the child's date of birth (coverage ends the month of the child's first birthday).

(3) The Medicaid coverage of an applicant whose net income exceeds the Medically Needy Income Limits (MNIL) may spend down the excess amount of income to pay unpaid medical bills and qualify for Medicaid. Medicaid begins on the earliest day of the month of potential eligibility on which spend down requirements are met.

§366.843. Resident of an Institution for Mental Diseases.

A person who lives in an institution for mental diseases, as defined in 42 CFR §435.1010, is only eligible for Medicaid payment for Medicaid covered services received while residing in the institution for mental diseases to the extent allowed by federal law.

§366.845. Inmates of Public Institutions.

An inmate of a public institution, including a jail, prison, reformatory, or other correctional or holding facility, as defined in 42 CFR §435.1009 and §435.1010, is not eligible for Medicaid payment for Medicaid-covered services received while residing in the public institution.

§366.847. Exemption for Newborns.

(a) Except as described in subsection (b) of this section, a newborn is exempt from the following:

(1) resources requirements in §366.823 of this subchapter (relating to Resources);

(2) child support and medical support requirements in §366.821 of this subchapter (relating to Child Support and Medical Support);

(3) school attendance; and

(4) social security number requirements in §366.815 of this subchapter (relating to Social Security Number).

(b) If a pregnant woman received assistance under the Medically Needy Program with spend down, her newborn is not exempt as described in subsection (a) of this section.

§366.849. Comprehensive Health Care Requirements.

(a) A parent or guardian of an applicant must:

(1) attend a health care orientation;

(2) accompany the child on a visit to a health care provider; or

(3) meet with a Texas Health and Human Services Commission (HHSC) representative to discuss the child's eligibility and, as appropriate, receive counseling on the child's need for comprehensive health care.

(b) The parent or guardian of a recipient who is eligible for Texas Health Steps must:

(1) comply with the Texas Health Steps regimen of health care requirements, as required by the Texas Department of State Health Services in 25 TAC Chapter 33 (relating to Early and Periodic Screening, Diagnosis, and Treatment); or

(2) meet with an HHSC representative to discuss the child's eligibility and, as appropriate, receive counseling on the child's need for comprehensive health care.

§366.851. Eligibility Renewal.

(a) Texas Health and Human Services Commission (HHSC) may elect to review eligibility every 12 months, but in most cases, HHSC reviews eligibility every six months.

(b) Before the end of the eligibility period, HHSC mails a review form to the household. HHSC schedules an appointment for an eligibility interview when the recipient returns the application.

§366.853. Information from Other Agencies.

(a) Periodically, the Texas Health and Human Services Commission (HHSC) and other state and federal agencies compare the information they have stored on computer files.

(b) After comparing information with another agency, HHSC contacts the Medicaid recipient if the information does not match, so that HHSC can confirm the correct information.

(1) If the mismatch of information does not affect eligibility, HHSC does not take action to adjust or deny Medicaid.

(2) If the mismatch of information affects eligibility, HHSC takes appropriate action to adjust or deny Medicaid and sends a written notice of action taken to the Medicaid recipient.

§366.855. Requirement to Report Changes.

(a) A recipient must report the following changes within 10 days after the household learns of a change:

(1) in income, including the source of income and the amount of countable income;

(2) in resources, including the amount of countable resources, changes in vehicle ownership, and the receipt of a lump sum payment or settlement;

(3) in household composition, including new household members and household members who leave the home;

(4) of address;

(5) to medical insurance;

(6) in information relating to an absent parent (such as a new job or residence address); and

(7) in circumstances, other than employment, that affects benefits.

(b) A recipient who is pregnant must report the termination of pregnancy.

(c) A recipient under 19 years of age must report a change in address, and a child leaving or joining the household. The child is continuously eligible, regardless of reported income and resource changes, until Medicaid eligibility is reviewed.

§366.857. Right to Appeal.

(a) An applicant or recipient has the right to appeal Texas Health and Human Services Commission (HHSC) decisions. Appeals are governed by HHSC's fair hearing rules contained in Chapter 357 of this title (relating to Hearings).

(b) HHSC provides an action notice regarding an HHSC decision to applicants and recipients. The action notice includes information about how to file an appeal and the availability of free legal representation.

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 November 6, 2009.

TRD-200905111
Steve Aragon
General Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6576

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SUBCHAPTER I. EMERGENCY MEDICAL SERVICES FOR ALIENS INELIGIBLE FOR REGULAR MEDICAID

1 TAC §366.901, §366.903

Statutory Authority

The new sections are proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and §531.021, which authorizes HHSC to administer the federal medical assistance (Medicaid) program in Texas.

The new sections affect Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§366.901. Legal Basis.

(a) Title XIX of the Social Security Act (42 U.S.C. §1396 et seq.) and 42 CFR §435.139 require the state to provide Medicaid for the treatment of an emergency medical condition to an alien who is ineligible for regular Medicaid due to immigration status. The Texas Health and Human Services Commission administers the program in Texas.

(b) To qualify for Medicaid for the treatment of an emergency medical condition, an applicant must meet the eligibility requirements in this subchapter.

(c) Nothing in these rules shall be construed to violate the maintenance of eligibility requirements of section 5001 of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) and make eligibility standards, methodologies, or procedures under the Texas State Plan for Medical Assistance (or any waiver under section 1115 of the Social Security Act (42 U.S.C. §1315)) more restrictive than the eligibility standards, methodologies, or procedures,

respectively, under such plan (or waiver) that were in effect on July 1, 2008.

§366.903. Application and Eligibility Requirements.

(a) To apply for Medicaid for the treatment of an emergency medical condition, a person completes an application for assistance and returns it to a Texas Health and Human Services Commission office or representative.

(b) To qualify for Medicaid for treatment of an emergency medical condition, a person must:

(1) be:

(A) a qualified alien as defined in 8 U.S.C. §1641 who does not meet the requirements to receive Medicaid under the Texas State Plan for Medical Assistance, which is a document describing the Medicaid-funded services provided in Texas in accordance with §1902 of the Social Security Act (42 U.S.C. §1396a); or

(B) an undocumented non-qualified alien as described in 8 U.S.C. §1611;

(2) be otherwise eligible for regular Medicaid services; and

(3) require treatment of an emergency medical condition as described in 42 CFR §440.255(c).

(c) An undocumented non-qualified alien applying for Medicaid for the treatment of an emergency medical condition is exempt from providing proof of alien status or providing a Social Security number as described in 42 CFR §435.406(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.

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Steve Aragon
General Counsel
Texas Health and Human Services Commission
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CHAPTER 372. TEMPORARY ASSISTANCE FOR NEEDY FAMILIES AND SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAMS
SUBCHAPTER B. ELIGIBILITY
DIVISION 7. INCOME

1 TAC §372.404

The Health and Human Services Commission (HHSC) proposes an amendment to §372.404, concerning countable and excluded income in the Temporary Assistance for Needy Families (TANF) Program, in Chapter 372, Temporary Assistance for Needy Families and Supplemental Nutrition Assistance Programs.

Background and Justification

The purpose of the amendment is to revise a TANF income exclusion regarding payments under the Workforce Investment Act of 1998 (WIA). The current rule excludes certain WIA on-the-job training payments from a person's income for the purpose of determining eligibility and calculating benefits for TANF. Recent guidance from the U.S. Department of Health and Human Services, Administration for Children and Families, has clarified that all income a person receives under WIA should be excluded, in accordance with 29 U.S.C. §2931(a)(2).

Section-by-Section Summary

The amendment to §372.404(8) removes the specific exclusion for on-the-job training payments made to children under WIA. The remaining language will allow HHSC to exclude all payments under WIA.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that, for the first five years the proposed amendment is in effect, enforcing or administering the amendment does not have significant fiscal impact relating to costs or revenues of state or local governments.

Small Business and Micro-business Impact Analysis

Ms. Rymal has determined that there will be no effect on small businesses or micro-businesses to comply with the proposal, because the proposal does not require them to alter their business practices. There are no anticipated economic costs to persons who are required to comply with the proposed rules. There is no anticipated negative impact on local employment.

Public Benefit

Joanne Molina, Deputy Executive Commissioner for Social Services, has determined that, for each year of the first five years the amendment is in effect, the anticipated public benefit expected as a result of enforcing the amendment is that HHSC will be in compliance with federal guidelines.

Regulatory Analysis

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

HHSC has determined that this 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 §2007.043 of the Texas Government Code.

Public Comment

Written comments on the proposal may be submitted to Hilary Davis, Health and Human Services Commission, Texas Works Policy, MC 2039, 909 West 45th Street, Austin, TX 78751, or by e-mail to hilary.davis@hhsc.state.tx.us, within 30 days after publication of this proposal in the *Texas Register*.

Legal Authority

The amendment is proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources

Code, Chapter 31, which authorizes HHSC to administer financial assistance programs.

The amendment affects Texas Government Code, Chapter 531; and Texas Human Resources Code, Chapter 31.

§372.404. Countable and Excluded Income in TANF.

In the TANF program, the Texas Health and Human Services Commission (HHSC) counts all income of a person described in §372.403 of this division (relating to Determining Whose Income Counts in TANF), except HHSC excludes the following:

(1) any income federal law excludes;

(2) the earned income of a child who is:

(A) a full-time student, as defined by the school (regardless of how many hours the child works); or

(B) a part-time student employed less than 30 hours a week;

(3) up to $300 per federal fiscal quarter in cash gifts and contributions from private, nonprofit organizations and based on need;

(4) up to $75 per month in regular child support payments per household, except HHSC counts all child support payments a household receives if HHSC determines the household violated an agreement to assign child support to the State;

(5) income legally diverted before actual receipt, such as payments a parent makes for alimony, child support, and to dependents outside the home;

(6) proceeds from claims on insurance policies to compensate a loss or used to pay medical expenses;

(7) payments from federal volunteer programs for volunteer service, such as payments:

(A) for volunteer service in a senior citizen volunteer program, under the Domestic Volunteer Service Act (42 U.S.C. §5000 et seq.);

(B) for volunteer service to Volunteers in Service to America (VISTA), under 42 U.S.C. §§4951 - 4960; and

(C) for volunteer service under the National and Community Service Act (42 U.S.C. §§12511 - 12656);

(8) payments [~~from federal programs for on-the-job training made to a child under 19 years of age and under the parental control of another household member, including payments made under any law described in paragraph (7) of this section, or~~] under the Workforce Investment Act of 1998;

(9) the value of any benefits received under a government nutrition assistance program based on need, including benefits under SNAP, the Child Nutrition Act of 1966, the National School Lunch Act, and the Older Americans Act of 1965;

(10) foster care payments;

(11) payments made under a government housing assistance program based on need;

(12) energy assistance payments;

(13) job training payments that:

(A) are earmarked as reimbursement for training-related expenses; and

(B) do not duplicate payment for an item covered by budgetary needs;

(14) a lump sum provided and used to pay burial, legal, or medical bills, or to replace damaged or lost possessions, except HHSC does not exclude amounts from lump sums used for another purpose;

(15) reimbursements for monies spent on items not covered by budgetary needs;

(16) amounts deducted from royalties for production expenses and severance taxes;

(17) all income of Supplemental Security Income recipients;

(18) third-party funds received and used for a third-party beneficiary who is not a household member;

(19) vendor payments from funds not legally obligated to the household;

(20) veterans benefits for special needs items not covered by budgetary needs;

(21) workers' compensation payments legally obligated to the recipient that are earmarked and used for medical expenses;

(22) the amount of any nonfarm self-employment income offsetting a tax deduction taken that year for a farm loss, for households with farms generating income of at least $1,000 annually;

(23) any income described in §372.355(d) of this subchapter (relating to Treatment of Resources in SNAP);

(24) any income described in §372.354(c)(4), (13), (17), and (18) of this subchapter (relating to Treatment of Resources in TANF);

(25) crime victim's compensation payments; and

(26) the earned income of a person who marries a caretaker or payee, for the first six months from the date of the marriage, if:

(A) the caretaker or payee is receiving TANF benefits on the date of the marriage; and

(B) the combined income of the person and the caretaker or payee, countable under this section, not exceeding 200% of the Federal Poverty Guidelines, as calculated based on the total number of the following persons:

(i) the caretaker or payee;

(ii) the person who marries the caretaker or payee;

(iii) each child living in the household who is related to the caretaker, payee, or person within the degree described in §372.108 of this chapter (relating to Relationship Requirement); and

(iv) a required member if not disqualified or ineligible.

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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Steve Aragon
General Counsel
Texas Health and Human Services Commission
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1 TAC §372.410

The Texas Health and Human Services Commission (HHSC) proposes an amendment to §372.410, concerning allowable deductions from countable income in SNAP, in Chapter 372, Temporary Assistance for Needy Families and Supplemental Nutrition Assistance Programs.

Background and Justification

The amendment mandates the use of the standard utility allowance (SUA) or basic utility allowance (BUA) when calculating the shelter expense deduction for purposes of determining net income for the Supplemental Nutrition Assistance Program (SNAP), as allowed by the Code of Federal Regulations, Title 7, §273.9(d)(6)(iii)(E). The current rule allows a household with utility expenses to choose the option of using either the SUA or actual utility expenses, which requires verification of expenses. Additionally, the current rule requires proration of utility expenses between households living together and sharing utility expenses and also certain households with disqualified members. Currently, HHSC staff must act on changes in the source or amount of heating or cooling costs when reported between certification periods.

The proposal will consolidate and simplify HHSC's SNAP shelter utility policies. The change will eliminate the option of allowing actual utility expenses and also eliminate the proration of utility standards. Ending the use of actual expenses will also eliminate the requirement that staff act on changes in the source or amount of heating or cooling costs reported between certification periods. The new policy will mean higher SNAP benefit amounts for approximately 120,000 households, although it will also decrease benefits for approximately 16,000 households who currently deduct actual utility expenses and have excess shelter costs greater than $325.

Additionally, the amendment clarifies other parts of the rule to ensure that the rule accurately reflects current policy and practice.

Section-by-Section Summary

The amendment to §372.410 clarifies that HHSC does not allow a deduction for expenses related to any type of income from illegal activities; eliminates the requirement that households qualify for the SUA based on out-of-pocket heating and cooling costs; provides for a deduction for a telephone allowance for a household with a telephone expense that does not qualify for either the SUA or the BUA; and states that HHSC does not allow a deduction for actual utility expenses.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that, for the first five years the proposed amendment is in effect, there are foreseeable implications relating to revenue coming into the state. There are no foreseeable implications relating to costs or revenues of local governments.

There is no effect on state government for the first five years the proposed amendment is in effect since these benefits are paid directly by the federal government and are not part of the state budget. The additional federal SNAP benefits that would enter the Texas economy are estimated to be $85.6 million each fiscal year the policy is in effect.

Small Business and Micro-business Impact Analysis

Ms. Rymal has determined that there will be no effect on small businesses or micro-businesses to comply with the proposal because the proposal does not require them to alter their business practices.

There is no anticipated negative impact on local employment.

Public Benefit

Joanne Molina, Deputy Executive Commissioner for Social Services, has determined that, for each year of the first five years the amendment is in effect, the anticipated public benefit expected as a result of enforcing the amendment is that additional SNAP benefits will be available to low-income households in Texas. In addition, the reduced workload and policy simplification that this proposal facilitates will allow HHSC staff to serve their clients with greater efficiency and fewer errors.

Ms. Rymal anticipates the new policy will mean higher SNAP benefit amounts for approximately 120,000 households, although it will also decrease benefits for approximately 16,000 households who currently deduct actual utility expenses and have excess shelter costs greater than $325.

Regulatory Analysis

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

HHSC has determined that this 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 §2007.043 of the Texas Government Code.

Public Comment

Written comments on the proposal may be submitted to Lynn Graves, HHSC Office of Family Services, Texas Works Policy MC-2039, 909 West 45th Street, Austin, Texas 78751, or by e-mail to lynn.graves@hhsc.state.tx.us, within 30 days after publication of this proposal in the *Texas Register.*

Public Hearing

HHSC will hold a public hearing on December 11, 2009, at 9:00 a.m. (Central Time) to receive public comment on the proposal. The hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. Persons requiring Americans with Disabilities Act (ADA) accommodation or auxiliary aids or services should contact Graciela Reyna by calling (512) 206-4778, at least 72 hours prior to the hearing so appropriate arrangements can be made.

Legal Authority

The amendment is proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources

Code, Chapter 33, which authorizes HHSC to administer nutritional assistance programs.

The amendment affects Texas Government Code, Chapter 531; and Texas Human Resources Code, Chapter 33. No other statutes, articles, or codes are affected by this proposal.

§372.410. Allowable Deductions from Countable Income in SNAP.

In SNAP, the Texas Health and Human Services Commission (HHSC) allows a deduction for expenses as required by [~~follows~~] 7 CFR §273.9, and HHSC:

(1) allows actual self-employment expenses but does not deduct expenses [~~costs~~] related to [~~self-employment~~] income from illegal activities;

(2) allows an uncapped excess shelter deduction for households with an elderly or disabled member, even if the member is disqualified;

(3) deducts a standard utility allowance (SUA) for households that qualify [~~due to out-of-pocket heating and cooling costs~~];

(4) deducts a basic utility allowance (BUA) for households with utility expenses that do not qualify for the SUA [~~standard utility allowance~~] in paragraph (3) of this section;

(5) deducts a telephone allowance for households with a telephone expense that do not qualify for the SUA in paragraph (3) of this section or the BUA in paragraph (4) of this section;

(6) [~~(5)~~] allows a standard shelter deduction for homeless households [~~under 7 CFR §273.9(d)(1)~~]; [~~and~~]

(7) does not allow a deduction for actual utility expenses; and

(8) [~~(6)~~] gives elderly or disabled households the option of deducting actual allowable medical expenses (as explained in 7 CFR §273.9(d)(3)) or[~~,~~] using a standard medical deduction of an [~~, which is a set~~] amount HHSC negotiates annually with the U.S. Department of Agriculture, Food and Nutrition Service.

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 November 9, 2009.

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Steve Aragon
General Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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CHAPTER 374. TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF)-LEVEL MEDICAL ASSISTANCE

SUBCHAPTER A. PROGRAM REQUIREMENTS

1 TAC §§374.1 - 374.11

(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 Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Health and Human Services Commission (HHSC) proposes the repeal of Chapter 374, §§374.1 - 374.11, concerning eligibility and participation requirements for Temporary Assistance for Needy Families (TANF)-Level Medical Assistance.

Background and Purpose

The existing rules in Chapter 374 provide eligibility and participation criteria HHSC uses to determine a person eligible for TANF-level medical assistance. Repeal of the existing rules will allow the simultaneous adoption of new rules in Chapter 366, Subchapter G that are updated with correct agency names and rule cross-references and are easier to find and use.

HHSC is proposing new rules governing TANF-level medical assistance in Chapter 366 elsewhere in this issue of the *Texas Register*.

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 (the Administrative Procedure Act). HHSC has reviewed all sections in Chapter 374 and has determined that, although the reasons for adopting rules governing TANF-level medical assistance continue to exist, the rules need updating and would be better located in another chapter of the Texas Administrative Code with similar rules. As a result of this review, HHSC is proposing these repeals.

Section-by-Section Summary

The proposed repeals delete Chapter 374 in its entirety.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that, for the first five years after the repeals, there are no foreseeable implications relating to costs or revenues of state or local governments.

Small Business and Micro-Business Impact Analysis

Ms. Rymal has also determined that the proposed repeals will have no adverse economic effect on small businesses or micro-businesses, because the repeals do not require them to alter their business practices. There are no anticipated economic costs to persons who are required to comply with the proposed rules. There is no anticipated negative impact on local employment.

Public Benefit

Joanne Molina, Deputy Executive Commissioner for Social Services, has determined that, for each year of the first five years after the repeals, the public benefit expected as a result of repealing the sections is that the repealed sections will be replaced with new rules that provide the public with current information and are easier to use.

Regulatory Analysis

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

public health and safety of 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

HHSC has determined that this 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 §2007.043 of the Texas Government Code.

Public Comment

Written comments on the proposal may be submitted to Regina Perez, Health and Human Services Commission, Office of Family Services, MC 2039, 909 West 45th Street, Austin, TX 78751, or by e-mail to gina.perez@hhsc.state.tx.us, within 30 days after publication of this proposal in the *Texas Register*.

Public Hearing

HHSC will hold a public hearing on December 11, 2009, at 2:00 p.m. (Central Time) to receive public comment on the proposal. The hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. Persons requiring Americans with Disabilities Act (ADA) accommodation or auxiliary aids or services should contact Graciela Reyna by calling (512) 206-4778, at least 72 hours prior to the hearing so appropriate arrangements can be made.

Legal Authority

The repeals are proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and §531.021, which authorizes HHSC to administer the federal medical assistance (Medicaid) program in Texas.

The repeals affect Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§374.1. Eligibility Requirement.
§374.2. Resources.
§374.3. Three Months Prior Medicaid Coverage.
§374.4. Four Months Post-Medicaid Eligibility.
§374.5. Twelve-Month Transitional Medicaid.
§374.6. Third-Party Resources.
§374.7. Failure to Comply with Third-Party Resources.
§374.8. Medical Support.
§374.9. Failure to Comply with Medical Support.
§374.10. Work Requirement.
§374.11. Failure to Comply with Work Requirements.

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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Steve Aragon
General Counsel
Texas Health and Human Services Commission
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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER J. COSTS, RATES AND TARIFFS

DIVISION 1. RETAIL RATES

16 TAC §25.233

(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 Public Utility Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Public Utility Commission of Texas (commission) proposes the repeal of §25.233, relating to Treatment of Integrated Resource Plan Costs. This rule, enacted pursuant to Chapter 34 of the Public Utility Regulatory Act (PURA), is now obsolete because Chapter 34 was repealed through passage of Senate Bill 7 in 1999. Act of May 27, 1999, 76th Leg., R.S., Ch. 405, §61, 1999 Tex. Sess. Law 2624 (amended 1999) (current version of PURA at Tex. Util. Code, §38.005, §§11.001 - 66.016 (Vernon 2007 & Supp. 2009)). Chapter 34 of PURA had required the commission to implement provisions concerning integrated resource planning. To comply with Senate Bill 7, the commission repealed Subchapter H, §§25.161 - 25.171, relating to Electrical Planning. The proposed repeal of §25.233 will eliminate the remaining commission rule relating to integrated resource planning. The proposed repeal is needed to ensure consistency among commission rules and compliance with Senate Bill 7. Project Number 36174 is assigned to this proceeding.

Jeff Stuart, Staff Attorney, Legal Division, has determined that for each year of the first five-year period the proposed repeal is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal of this section.

Mr. Stuart has determined that for each year of the first five years the proposed repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be no fiscal implications. There will be no adverse economic effect on small businesses or micro-businesses as a result of repealing this section. Therefore, no regulatory flexibility analysis is required. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

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

The commission staff will conduct a public hearing on the repeal of §25.233, if requested pursuant to the Administrative Procedure Act, Texas Government Code, §2001.029, at the commission's offices located in the William B. Travis Building, 1701

North Congress Avenue, Austin, Texas 78701 on Tuesday, January 5, 2010, at 10:00 a.m. The request for a public hearing must be received no later than December 21, 2009.

Comments on the proposed repeal may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, no later than December 21, 2009, which is 30 days after publication, and reply comments may be submitted no later than January 4, 2010, which is 45 days after publication. Sixteen copies of comments to the proposed repeal are required to be filed pursuant to §22.71(c) of this title. Comments should be organized in a manner consistent with the organization of §25.233. All comments should refer to Project Number 36174.

The repeal is proposed under PURA §14.002, which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and Senate Bill 7, which repealed PURA Chapter 34.

Cross Reference to Statutes: PURA §14.002; Act of May 27, 1999, 76th Leg., R.S., Ch. 405, §61, 1999 Tex. Sess. Law 2624 (amended 1999).

§25.233. Treatment of integrated resource plan costs.

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 November 5, 2009.

TRD-200905051
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: December 20, 2009
For further information, please call: (512) 936-7223

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PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 61. COMBATIVE SPORTS

16 TAC §§61.1, 61.10, 61.22, 61.30, 61.40, 61.44, 61.105

The Texas Department of Licensing and Regulation ("Department") proposes amendments to existing rules at 16 Texas Administrative Code ("TAC") §§61.1, 61.10, 61.22, 61.30, 61.40, 61.44 and 61.105 regarding the Combative Sports program.

These proposed rule changes are necessary to make appropriate clarifications in the rules for combative sports. These proposed rule changes were recommended by the Medical Advisory Committee at its meeting on October 30, 2009.

The Department proposes to amend §61.1 to change the reference from the rules to the chapter as well as removing the phrase "Combative Sports" and "Texas Department of Licensing and Regulation" to maintain consistency and uniformity of the text of the Authority section of all Department rule chapters.

The Department proposes to amend §61.10 to include a new definition of "Federal Identification Card" which is a nationally recognized identification card required to compete in a combative sports event. The remaining definitions are renumbered appropriately.

The Department proposes to amend §61.22(b) to allow Judges applying for a license or license renewal to provide the Department with the results of a visual acuity test that has been performed within three years instead of one year, as is currently required. Because few states require ophthalmologic exams for Judges, at times, Judges who reside out-of-state and who are contracted to work events in Texas, are not able to do so because they have not had an eye exam within the last year. This amendment is proposed to make it less burdensome for Judges from out-of-state to officiate at events in Texas.

Section 61.30. is amended at its title to change "Department" to "Executive Director" to more accurately reflect the content of the section. The Department also proposes to amend §61.30(b), (c), (e), (f)(1), (f)(2)(D), (f)(5), (g) - (k), and (m) - (q) to add the phrase "or his designee" after the term "Executive Director". The proposed amendments are added to provide clarification that the Executive Director may designate an individual to act on his behalf in regulating combative sports events and to conform with §61.30(a) which provides that the Executive Director, or his designee, has complete authority over all phases of an event.

The Department proposes to amend §61.40(b)(3) to add the term "boxing" before registry and to include the national registry for Mixed Martial Arts ("MMA") contestants. These amendments are proposed to distinguish the national boxing registry from the national mixed martial arts registry and to require promoters to provide current results for MMA contestants from the MMA national registry.

The Department proposes to add §61.40(b)(14) to require that a promoter schedule a minimum of six bouts for each MMA event and a maximum of 15 bouts. The remaining paragraphs are renumbered appropriately.

The Department proposes to amend §61.40(b)(15)(A) to change the term cameramen to camera operators and to add the phrase "or his designee" after the term "Executive Director". The Department proposes to amend §61.40(b)(15)(B) to add the phrase "or his designee" after the term "Executive Director".

The Department proposes to amend §61.40(b)(15)(C) to include the terms neck brace, defibrillator, backboard, and portable suction to the portable medical equipment required to be on site for all contests. These items are currently being provided on site for all contests and this amendment reflects current emergency medical technician practices. The Department also proposes to add the phrase "or his designee" after the term "Executive Director".

The Department proposes to amend §61.40(b)(16) to require the promoter to pay by check or money order the licensing fees of seconds, managers or ringside physicians, in addition to contestants, who are not licensed at the time of the weigh-in.

The Department proposes to amend §61.40(d)(4) to change the term "sworn inventory" to "verified report" to conform to the statutory language of Texas Occupations Code §2052.152. The Department proposes additional language that the report must be on a department-approved form.

The Department proposes to amend §61.40(d)(7) to change the term boxing event to combative sport event to include mixed martial arts and to amend §61.40(d)(10) to include the phrase "or his designee" after the term "Executive Director".

The Department proposes to amend §61.44(c) to require that the manager "or his designee" must attend the referee's rules meeting prior to the first contest of an event. This amendment is proposed to address situations where a manager with contestants in different locations is unable to be present at both rule's meetings.

The Department proposes to amend §61.105(b) to change "physicians scales" to "a department-approved scale" to also allow for the use of digital scales.

In addition to the changes identified above, the Department has made a few grammatical and technical corrections to the rules as proposed which include changing the terms "Commission," "Department," and "Executive Director" to lower case to match the use of the terms in the statute.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed amendments are in effect there will be no cost to state or local government as a result of enforcing or administering the proposed amendments.

Mr. Kuntz also has determined that, for each year of the first five-year period the amendments are in effect, the public will benefit from the proposed amendments to the rules that provide greater clarity and, therefore, certainty in the administration of the combative sports program. There will be no adverse economic effect on small or micro-businesses and to persons who are required to comply with the proposal.

Since the agency has determined that the proposed amendments will have no adverse economic effect on small business, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002 is not required.

Comments on the proposal may be submitted to Caroline Jackson, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-3032, or electronically: caroline.jackson@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments are proposed under Texas Occupations Code, Chapters 51 and 2052, which authorizes the Department 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 proposal are those set forth in Texas Occupations Code, Chapters 51 and 2052. No other statutes, articles, or codes are affected by the proposal.

§61.1. Authority.

This chapter is [~~These rules are~~] promulgated under the authority of [~~the~~] Texas Occupations Code, Chapter 2052[~~, "Combative Sports"~~] and [~~the~~] Texas Occupations Code, Chapter 51[~~, "Texas Department of Licensing and Regulation"~~].

§61.10. Definitions.

The following words and terms have the following meanings:

(1) Chief second--The second designated by the contestant as the primary advisor or assistant to the contestant.

(2) Code--The Texas Occupations Code, Chapter 2052, "Combative Sports".

(3) Contestant--Any participant, including a professional combative sports contestant, who competes in a combative sport event regulated by the Code.

(4) Deadwood--The numerical difference between tickets printed and tickets used.

(5) Federal Identification Card--A nationally recognized identification card issued by the National Boxing Registry or the National Mixed Martial Arts Registry required to compete in a combative sport event.

(6) Full Contact--Contact made while intentionally striking a blow with any part of the body to an opponent when the contact has the potential to temporarily disable or to injure an opponent.

(7) [~~(5)~~] Knock-down--A knock-down occurs when any part of a contestant's body, other than his feet, contacts the floor of the ring or fighting area as a result of a blow struck to the contestant by an opponent.

(8) [~~(6)~~] License or Registration--A document issued by the executive director [~~Executive Director~~] permitting a person to participate at an event or perform a function regulated by the Code.

(9) [~~(7)~~] Manager--A person who, under contract, agreement, or other arrangement with a contestant undertakes to directly or indirectly, controls, or administer a professional combative sports contestant's affairs.

(10) [~~(8)~~] Matchmaker--One who arranges matches for professional combative sports contestants.

(11) [~~(9)~~] Person--Any natural person, corporation, partnership, association or other similar entity.

(12) [~~(10)~~] Purse--The financial guarantee or any other remuneration promised to contestants for participating in an event and includes guarantees for cable pay per view, radio, television or motion picture rights.

(13) [~~(11)~~] Ring Officials--Referees, judges, ringside physicians and timekeepers.

(14) [~~(12)~~] Ringside Physician--An individual licensed to practice medicine by the Texas State Board of Medical Examiners, and registered with the department [~~Department~~].

(15) [~~(13)~~] Second--A person who provides assistance or advice to a contestant during a contest.

(16) [~~(14)~~] Technical Zone--A restricted alcoholic beverage free area between the ringside and a department-approved [~~department approved~~] barrier.

(17) [~~(15)~~] Timekeeper--A person who is the official timer of the length of rounds/heats and the intervals between rounds/heats and counts when a contestant is down.

[~~(16) Full Contact--Contact made while intentionally striking a blow with any part of the body to an opponent when the contact has the potential to temporarily disable or to injure an opponent.~~]

§61.22. Licensing Requirements--Judges.

(a) To qualify for a new license as a judge, an applicant must:

(1) be at least 21 years of age;

(2) not have been convicted of a felony; and,

(3) demonstrate the ability to perform the functions of a judge by:

(A) having observed and completed score cards for all contests in at least five events while under the supervision of the department [~~Department~~] and scoring the contests in keeping with standards established by the executive director [~~Executive Director~~]; or,

(B) meeting one or more of the following:

(i) having at least three years active experience as a judge and/or referee by having officiated in at least ten combative sporting events per year;

(ii) being currently licensed as a referee in a state that the executive director [~~Executive Director~~] has determined has licensing requirements that are equivalent to Texas' requirements; or

(iii) having formerly held a Texas judge's license that lapsed in good standing.

(b) To obtain or renew a license, a judge must provide test results showing visual acuity in each eye of at least 20/40 corrected. The test must have been performed by a licensed Optometrist or licensed Ophthalmologist no more than three years [~~one year~~] before the application for licensure or license renewal is filed.

§61.30. Responsibilities and Authority of the Executive Director [~~Department~~].

(a) The executive director [~~Executive Director~~], or his designee, has complete authority over all phases of an event, including, but not limited to the weigh-in, matching of contestants, entrance to the forum, passes to the technical zone, audit of ticket sales, and payment of purses.

(b) For all professional contests, the executive director, or his designee, [~~Executive Director~~] will assign the timekeepers, referees, ringside physicians and judges.

(c) In title and championship contests, the executive director, or his designee, [~~Executive Director~~] will consult with the sponsoring or sanctioning bodies on the assignment of judges and referees. The executive director, or his designee, [~~Executive Director~~] will make assignments for such contests.

(d) The executive director [~~Executive Director~~] may request medical tests to prove gender of a contestant.

(e) The executive director, or his designee, [~~Executive Director~~] may recognize and enforce disciplinary sanctions, disqualification, or medical suspensions imposed by other combative sport authorities. If the executive director, or his designee, [~~Executive Director~~] proposes to deny licensure based on action of another jurisdiction, the applicant has a right to an opportunity for a hearing.

(f) Selection of Ring Officials

(1) The executive [~~Executive~~] director, or his designee, will assign ring officials on a rotational basis from lists of licensees and registrants. Assignments will be made to ensure the highest degree of safety for contestants. The department [~~Department~~] will assist license holders and registrants in developing expertise in the combative sports of their choice, to include training and shadow officiating.

(2) The key determining factors for assigning ring officials are:

(A) the ring official's level of expertise in connection with the level of expertise required for a particular contest and a particular combative sport;

(B) the location of the event;

(C) the location of the licensee's residence; and

(D) any other factors as determined by the executive director, or his designee [~~Executive Director~~].

(3) A ring official who declines to work an event, will miss his rotation.

(4) The name of a ring official who declines to work an event five times in succession will be taken off of the rotational list.

(5) In order to be reinstated on the rotation list, an official may be required to complete additional training as determined by the executive director, or his designee [~~Executive Director~~].

(6) If a ring official under this subsection substitutes for another who declined to work an event, the substituting official does not lose his place on the rotational list.

(g) The executive director, or his designee, [~~Executive Director~~] shall assign two timekeepers for each event, one to keep time and one to count for knock-downs.

(h) The executive director, or his designee, [~~Executive Director~~] may eject any person from an event who violates department [~~Department~~] rules or the Code.

(i) The executive director, or his designee, [~~Executive Director~~] will not approve matches between contestants in different weight categories, except by weight tolerances as stated in §61.105.

(j) The executive director, or his designee, [~~Executive Director~~] will not approve matches between genders.

(k) The executive director, or his designee, [~~Executive Director~~] may waive the application of a rule to an event if he determines that such waiver will not negatively affect the safety of any contestant and that the spirit of the Code and this chapter [~~these rules~~] is served by such waiver. The waiver must be in writing or later confirmed in writing.

(l) Licensure or registration does not automatically authorize an individual to participate in an event.

(m) A decision rendered after a contest shall not be changed unless the executive director, or his designee, [~~Executive Director~~] after a review of the judges' scorecards, finds that a clerical or mathematical error resulted in an incorrect decision.

(n) The executive director, or his designee, [~~Executive Director~~] may approve championship or title contests if the department [~~Department~~] has recognized the sponsoring sanctioning organization as a legitimate combative sport organization.

(o) The executive director, or his designee, [~~Executive Director~~] may require of a contestant, neurological or other medical testing.

(p) The executive director, or his designee, [~~Executive Director~~] may order a drug screen at any time for good cause. If a drug screen is performed, the contestant is responsible for paying the costs of the drug screen.

(q) The executive director, or his designee, [~~Executive Director~~] shall have sole control over the Technical Zone including but not limited to who may be admitted to the zone.

§61.40. Responsibilities of the Promoter.

(a) Bond and Insurance Requirements for Promoters

(1) At the time of licensure and upon each renewal, a promoter applicant must submit to the department [~~Department~~] proof of financial responsibility by:

(A) submitting a $10,000 surety bond written by a bonding company authorized to do business in the state of Texas guaranteeing payment of all obligations, except gross receipts taxes, arising out of events promoted by the applicant which shall remain in effect for four years after the effective cancellation date; and

(B) submitting a $15,000 surety bond, written by a bonding company authorized to do business in the State of Texas,

guaranteeing payment of gross receipts taxes owed for promoted events, which shall remain in effect for four years after the effective cancellation date.

(2) The promoter shall provide insurance and pay all deductibles for contestants, to cover medical, surgical and hospital care with a minimum limit of $50,000 for injuries sustained while participating in a contest and $100,000 to a contestant's estate if he dies of injuries received while participating in a contest. The insurance premium and deductibles shall not be deducted from the contestant's purse. At least ten calendar days before an event, the promoter shall provide to the department [~~Department~~] for each event sponsored, a certificate of insurance showing proper coverage. The promoter shall supply to those participating in the event the proper information for filing a medical claim.

(b) A Promoter shall:

(1) Bear all financial responsibility for the event.

(2) Provide the department [~~Department~~] written notice of all proposed event dates, ticket prices, and participants of the main event, at least 21 days before the proposed event date and obtain written approval from the department [~~Department~~] to promote the event prior to advertising or selling tickets. Promoters who have cancelled or postponed two events in sequence after having obtained departmental [~~Departmental~~] approval for the events will be required to pay the permit fee set out in §61.80(b) at the time the 21 day notice is filed. The fee will not be refunded.

(3) Obtain written departmental approval for the fight card at least 10 working days before the event date. The request shall contain the full legal name, address, date-of-birth, Texas contestant license number, Federal Identification number, weight, previous fight record (by supplying current results from the contestant's boxing registry recognized by the Professional Boxing Safety Act of 1996, 15 USC §§6301-6313 or from Mixed Martial Arts, LLC the national registry for MMA contestants), and number of rounds to be fought for each contestant. In addition, the department [~~Department~~] may require submission of certified birth certificates or other official evidence of identification.

(4) Provide written notice to the department [~~Department~~] of any change in the card before the scheduled weigh-in. Notices announcing changes or substitutions in the card must also be conspicuously posted at the box office and announced from the ring before the opening contest.

(5) Provide to the department [~~Department~~], written notice of any change in the announced or advertised location, time or card cancellations before the scheduled weigh-in.

(6) Provide two ringside physicians, registered by the department [~~Department~~], for each event.

(7) Provide at least one registered physician to conduct pre-fight physicals. The department [~~Department~~] may require additional physicians depending on the event size. Provide a private area for the ringside physician to perform pre-fight examinations.

(8) Assure that beverages are only allowed in paper or plastic cups at the event.

(9) Immediately after the event, compensate the ringside physicians, timekeepers, judges, referees and contestants. Payment of percentage contracts shall be made when the amount can be determined. Payments that do not require additional accounting or auditing, shall be made in the presence of an authorized department [~~Department~~] representative.

(10) Provide no less than two private dressing rooms of adequate size for the contestants and their licensed managers, and seconds, and separate dressing rooms for male and female contestants. Only working commission [~~Commission~~] employees, contract inspectors, media, physicians, licensed working ring officials, promoter, matchmaker, manager and seconds will be allowed in the dressing rooms.

(11) Ensure that no alcoholic beverages or illegal drugs are in the dressing room.

(12) Ensure the safety of the contestants, officials, and spectators.

(A) There shall be a pre-fight plan and route to remove an injured contestant from the ring and arena. Upon request, the promoter shall inform the department [~~Department~~] of these plans. The plan shall include the name and location of a local hospital emergency room.

(B) A sufficient number of security personnel shall be retained to maintain order.

(13) Schedule no less than 24 or more than 60 rounds for each event. No event shall exceed 10 rounds, except a championship or title contest, which shall not exceed 12 rounds. A sparring or exhibition event shall not exceed three rounds.

(14) In an MMA event the promoter shall schedule no less than 6 or more than 15 bouts for each event.

(15) [~~(14)~~] Ensure that the rules set forth below regarding equipment and gloves that apply to a particular type of event are followed and that each event is conducted in compliance with the following:

(A) The ring apron shall be kept clear at all times of objects including, but not limited to: cameras, microphones, and advertisements. A separate camera platform at a neutral corner of the ring for use by camera operators [~~cameramen~~] may be provided. Camera operators [~~Cameramen~~] may be allowed on the ring apron during rest periods, between bouts, or at the discretion of the executive director, or his designee [~~Executive Director~~]. No seats may be sold at the ring apron.

(B) The Technical Zone shall be set up for the department [~~Department~~], according to the executive director's, or his designee's, [~~Executive Director's~~] instructions.

(C) All emergency medical personnel and portable medical equipment shall be located within the Technical Zone during the event. There must be a resuscitator, oxygen, stretcher, a certified ambulance, neck brace, defibrillator, backboard, portable suction, and an emergency medical technician on site for all contests. The executive director, or his designee, [~~Executive Director~~] may require additional medical personnel and equipment depending on the number of matches scheduled.

(D) The judges' chairs shall be high enough that their shoulders shall be no lower than the ring floor. Physician ringside seats shall be in the neutral corner(s).

(E) There shall be at least one, but no more than three, authorized promoter representative(s) at ringside at all times. Only the promoter's representative(s), department [~~Department~~] officials, the press, physicians, representatives of sanctioning bodies, and judges shall sit at the ringside tables. For purposes of this subparagraph [~~rule~~], an event coordinator is a representative of the promoter.

(16) It shall be the promoter's responsibility to pay by check or money order the licensing fees of contestants, seconds,

managers, or ringside physicians who are not licensed at the time of the weigh-in.

[(15) In the event that a person who is intended to be a Contestant is not licensed at the time of the weigh-in it is the promoter's responsibility to pay the licensing fee by check or money order. No cash will be accepted.]

(17) [(16)] Supervise the activities of employees and event coordinators to assure that promoted events are conducted in compliance with these rules and applicable statutes.

(18) [(17)] Ensure that all advertising concerning an event he promotes accurately describes the event and does not include the names of any person or entity, other than the promoter, as a presenter of the event.

(c) Contract requirements between Promoter and Contestant.

(1) The promoter for an event shall have contracts with contestants executed in triplicate on department [Department] forms showing the amount of guarantee or percentage promised the number and time limit of rounds, when and where the contestants are scheduled to appear, weight category, and other pertinent details governing the event. If applicable, the compensation section must include the specifics of television, radio and cable rights. The contract must define and provide for agreement on compensation if the opponent fails to appear at the weigh-in or bout. All contracts must state the dollar amount or percentage withheld for expenses, taxes, advances, sanctions or any other items the promoter seeks to subtract from a contestant's purse.

(2) The promoter shall furnish one executed copy of the contract to the contestants or their managers, retain one, and submit one to the department [Department].

(3) All required information must be typed or legibly printed, and the contestant and promoter shall initial any changes or addenda.

(d) Tickets

(1) All tickets shall have printed on each half, the price including any service surcharge or handling fee, and event date.

(2) Roll tickets with consecutive numbers shall be sold only at the box office on the day of the show.

(3) If there is no ticket manifest, tickets of different prices shall be printed on different colored ticket stock

(4) The promoter shall submit a verified report [sworn inventory] to the department [Department] of tickets delivered to any outlet or event sponsor. The report [inventory] shall account for any known overprints, changes, or extras and must be on a department-approved form.

(5) Tickets shall not be sold for more than the actual capacity of the location where the event is held.

(6) All tickets shall be torn in half and one half returned to the ticket holder at the entrance gate. The other half shall be immediately deposited in a sealed container, where it is to remain until the department's [Department's] representative witnesses the opening of the container. No one shall pass through the gate without having their ticket torn or shall occupy a seat unless holding a ticket half or have a working pass or credential with a specific seat assignment indicated on them. Passes and or credentials may not be sold or bartered.

(7) If a main event or special added attraction is postponed or cancelled for any reason, the promoter shall promptly refund ticket sales. A special added attraction is the appearance of any person or persons at any boxing event whose reputation or ability is calculated to increase attendance. Tickets in the hands of ticket services shall be returned to the promoter not later than when the box office at the combative sport [boxing] event site has closed.

(8) Promoters shall hold tickets of every description used for any event for at least 30 days after the event. The tickets shall be kept in separate packages for each event for audit purposes.

(9) When computing gross receipts, the face value of tickets, except deadwood, shall be included whether the tickets were sold for cash, given away, or bartered for services provided.

(10) Tickets shall be accounted for after the event and the executive director, or his designee, [Executive Director] may review the process, and may check the number of gate ticket containers and their seals or padlocks.

(e) A promoter shall submit to the department [Department] a tax report and a 3% gross receipts tax payment within three business days of an event.

§61.44. Responsibilities of Managers.

(a) Managers shall deal fairly with contestants.

(b) It is the contestant and manager's joint responsibility to comply with all requirements, including rest periods and medical suspensions.

(c) Managers or their designees, must attend the referee's rules meeting conducted prior to the first contest of an event.

§61.105. Weight Categories and Weigh-in--Boxing and Kickboxing.

(a) A Promoter shall assure that the weigh-in takes place at a specific time set by the promoter and approved by the department [Department], generally between the hours of 2 p.m. of the day before the contest and 12 noon the day of the contest. The department [Department] must be notified ten days before the event.

(b) A department-approved scale [Physician's scales] must be used for weighing-in contestants. The department [Department] may require that the scales be certified.

(c) Contestants failing to meet contract weight shall have two hours to meet the allowances and be reweighed.

(d) No contestant may engage in a contest where the weigh-in weight difference between contestants exceeds the allowance shown in the following "WEIGHT ALLOWANCE" schedule:

(1) 112 lbs. or under--3 lbs.

(2) 113-118 lbs.--4 lbs.

(3) 119-126 lbs.--5 lbs.

(4) 127-135 lbs.--6 lbs.

(5) 136-147 lbs.--8 lbs.

(6) 148-160 lbs.--10 lbs.

(7) 161-175 lbs.--12 lbs.

(8) 176-200 lbs.--15 lbs.

(9) 201 lbs. or over--No limit

(e) If a contestant's body weight at the time of weigh-in is 5% or more over his contracted weight, he shall be disqualified for the contest.

(f) If in an attempt to make weight, a contestant shows evidence of dehydration, having taken diuretics, or other drugs, or having used any other harsh modality, the department [Department] shall disqualify the contestant on the advice of the examining physician.

(g) Weight Divisions. The weight classes for boxing and kickboxing contests or exhibitions are shown in the schedule below. A contestant in a weight class may participate in a bout with a contestant in an adjacent weight class so long as their weight difference falls within the weight allowance shown in subsection (d) [~~of this section above~~] for the weight of the contestant weighing the least.

(1) Flyweight--up to 112 lbs.

(2) Super Flyweight--over 112 to 115 lbs.

(3) Bantamweight--over 115 to 118 lbs.

(4) Super Bantamweight--over 118 to 122 lbs.

(5) Featherweight--over 122 to 126 lbs.

(6) Super Featherweight--over 126 to 130 lbs.

(7) Lightweight--over 130 to 135 lbs.

(8) Super Lightweight--over 135 to 140 lbs.

(9) Welterweight--over 140 to 147 lbs.

(10) Super Welterweight--over 147 to 154 lbs.

(11) Middleweight--over 154 to 160 lbs.

(12) Super Middleweight--over 160 to 168 lbs.

(13) Light Heavyweight--over 168 to 175 lbs.

(14) Cruiserweight--over 175 to 200 lbs.

(15) Heavyweight--over 200 lbs.

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 November 9, 2009.

TRD-200905141
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: December 20, 2009
For further information, please call: (512) 463-7348

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS
SUBCHAPTER II. COMMISSIONER'S RULES CONCERNING HIGH SCHOOL ALLOTMENT

19 TAC §§61.1091 - 61.1095, 61.1097 - 61.1101

The Texas Education Agency proposes amendments to §§61.1091 - 61.1095 and §§61.1097 - 61.1101, concerning the high school allotment for school districts. The sections implement provisions for the administration of high school allotment funds. The proposed amendments would update the rules to reflect statutory changes resulting from the 81st Texas Legislature, 2009.

House Bill (HB) 1, 79th Texas Legislature, Third Called Session, 2006, added the Texas Education Code (TEC), §42.2516(b)(3), providing for an allotment of $275 for each student in average daily attendance in Grades 9-12 in a school district. The additional state aid is for the purpose of improving graduation and college readiness rates. In addition, HB 1 added the TEC, §39.113 and §39.114, authorizing the commissioner of education to adopt rules to implement provisions relating to the use of this additional state aid referred to as the high school allotment.

The commissioner exercised rulemaking authority to implement the high school allotment by adopting 19 TAC Chapter 61, School Districts, Subchapter II, Commissioner's Rules Concerning High School Allotment, effective November 9, 2006.

HB 3, 81st Texas Legislature, 2009, renumbered the TEC, §39.113, as §39.233, and the TEC, §39.114, as §39.234. HB 3 also revised language in renumbered TEC, §39.234(b), regarding criteria for identification of school districts eligible for exceptions for alternative uses of the funds.

HB 3646, 81st Texas Legislature, 2009, repealed the provisions for the funding of the high school allotment that were in the TEC, §42.2516, and placed these provisions in new TEC, §42.160, making the allotment no longer a part of additional state aid for tax reduction but instead a Tier I allotment.

The proposed amendments to 19 TAC Chapter 61, Subchapter II, would reflect these statutory changes by updating references throughout the subchapter to renumbered TEC sections.

Other changes would include an amendment to §61.1091, Definitions, to update the title of a cross-referenced rule and amendments to §61.1094, Exceptions for Alternative Uses of Funds, and §61.1101, Standards for Selecting and Methods for Recognizing Districts and Campuses Offering Exceptional Programs, to remove outdated year references.

Technical edits would be made throughout the subchapter to correct word usage and punctuation.

The proposed amendments would have no new procedural and reporting implications. The proposed amendments would have no new locally maintained paperwork requirements.

Lisa Dawn-Fisher, Deputy Associate Commissioner for School Finance, has determined that for the first five-year period the amendments are in effect there will be no additional costs for state or local government as a result of enforcing or administering the amendments.

Ms. Dawn-Fisher has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendments would be the reflection in rule of recent statutory changes. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal begins November 20, 2009, and ends December 21, 2009. 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* or faxed to (512) 463-0028. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner

of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on November 20, 2009.

The amendments are proposed under the TEC, §39.233, which authorizes the commissioner to adopt rules for the administration of programs for recognition of high school completion and success and college readiness; TEC, §39.234, which authorizes the commissioner to adopt rules relating to the use of high school allotment funds; and TEC, §42.160, which authorizes the commissioner to adopt rules to administer the high school allotment.

The amendments implement the TEC, §§39.233, 39.234, and 42.160.

§61.1091. Definitions.

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

(1) Academically rigorous course work--Academically rigorous course work is an academically intense and high-quality program of study that provides students with the information and skills necessary to successfully enroll in entry-level courses at an institution of higher education without the need for developmental course work. Academically rigorous coursework includes four years of high school level mathematics and four years of high school level science.

(2) Advanced academic opportunity--An advanced academic opportunity includes the following:

(A) honors [~~advanced~~] courses, such as College Board advanced placement and International Baccalaureate courses, and others as defined in §74.30 of this title (relating to Identification of Honors [~~Advanced~~] Courses), with the exception of the Social Studies Advanced Studies;

(B) dual enrollment courses for which students receive both high school and college credit, as limited by §74.25 of this title (relating to High School Credit for College Courses);

(C) an original research/project as described in [~~defined by~~] §74.54 of this title (relating to Distinguished Achievement High School Program--Advanced High School Program) or by §74.64 of this title (relating to Distinguished Achievement High School Program--Advanced High School Program); and

(D) advanced technical credit courses.

(3) College readiness program--A college readiness program is any program, activity, or strategy designed to do either of the following:

(A) increase the number of students who are academically prepared to enroll in entry-level courses at institutions of higher education without the need for developmental course work; or

(B) increase the number of students who enroll in institutions of higher education.

(4) Developmental course work--As defined in §4.53 of this title (relating to Definitions), developmental course work is [~~refers to~~] non-degree-credit course work designed to address a student's deficiencies.

(5) High school allotment--The high school allotment is the funding [~~refers to funds~~] allocated under the Texas Education Code (TEC), §42.160 [~~§42.2516(b)(3)~~].

(6) High school completion and success initiative--A high school completion and success initiative is any program, activity, or strategy designed to do the following:

(A) improve student achievement in high school; and

(B) increase the number of students who graduate from high school.

(7) Institution of higher education--An institution of higher education is any public technical institute, public junior college, public senior college or university, medical or dental unit, or other agency of higher education as defined in the TEC, §61.003.

(8) School district--For the purposes of this subchapter, an open-enrollment charter school is considered a school district.

§61.1092. Payment of the High School Allotment.

(a) In accordance with the Texas Education Code (TEC), Chapter 42, Subchapter C [~~E~~], the Texas Education Agency (TEA) will [~~shall~~] distribute funds to school districts for the purpose of payment of the high school allotment, as specified by the provisions in this subchapter.

(b) Each school district must [~~shall~~] provide to the TEA an estimate of student enrollment for Grades 9-12 for the school district in a manner established by the commissioner of education.

(c) High school allotment funds will [~~shall~~] be distributed to each school district as a part of regularly scheduled state aid payments according to the district's Foundation School Program payment schedule.

(d) School districts must [~~shall~~] account for the receipt and expenditure of funds distributed under the TEC, §42.160 [~~§42.2516(b)(3)~~], in accordance with §109.41 of this title (relating to Financial Accountability System Resource Guide). The commissioner may establish specific [~~Specific~~] procedures for reporting the receipt and expenditure of high school allotment funds [~~may be established by the commissioner~~].

§61.1093. Use of Funds.

In accordance with the Texas Education Code, §39.234(a) [~~§39.114(a)~~], high school allotment funds may be spent on the following, which, unless otherwise noted, must [~~shall~~] be targeted toward Grades 6-12:

(1) programs that provide underachieving students, as defined by local policy, with the following:

(A) instruction in study skills for success in college level work;

(B) academic and community support for success in college preparatory classes;

(C) support to participate in academic competitions; and

(D) information about and access to college and financial aid;

(2) activities designed to increase the number of students who take preparatory college entrance examinations and college entrance examinations;

(3) programs that increase the number of students who enroll and succeed in College Board advanced placement courses and International Baccalaureate courses;

(4) programs that increase the number of students who take College Board advanced placement examinations and International Baccalaureate examinations;

(5) programs that expand participation in dual enrollment or concurrent enrollment courses;

(6) activities designed to increase access for underachieving students to college and financial aid;

(7) activities designed to create a college-going culture within a district or on a campus;

(8) early college high school programs that provide at-risk students and other students with the opportunity to graduate from high school with an associate's degree or 60 hours of credit toward a baccalaureate degree;

(9) programs that provide academic support and instruction to increase the number of students who complete the Recommended High School Program or the Distinguished Achievement Program as defined in Chapter 74, Subchapter E, of this title (relating to Graduation Requirements, Beginning with School Year 2004-2005)[~~,~~] or Chapter 74, Subchapter F, of this title (relating to Graduation Requirements, Beginning with School Year 2007-2008);

(10) strategies that create small learning communities, advocacy programs, or advisory programs for students;

(11) programs or activities that create individualized high school graduation and postsecondary plans for students;

(12) programs that ensure that students have access to rigorous curriculum, effective instruction, and timely formative assessment;

(13) programs that create opportunities for middle and high school educators and college and university faculty to jointly identify college and secondary curricular requirements and expectations and develop means to align these requirements and expectations;

(14) summer transition programs and other programs that provide academic support and instruction for students entering Grade 9; and

(15) other high school completion and success initiatives as approved by the commissioner of education.

§61.1094. Exceptions for Alternative Uses of Funds.

In accordance with the Texas Education Code, §39.234(b) [~~(TEC), §39.114(b)~~], before the beginning of each [~~the 2008-2009~~] school year, the commissioner of education will [~~shall~~] identify school districts that are eligible for exceptions for alternative uses of high school allotment funds.

§61.1095. Allowable Expenditures.

(a) A school district may use high school allotment funds to support a program or activity that is currently in place in the district or on a campus, provided that the program satisfies at least one of the permissible uses of funds identified in the Texas Education Code (TEC), §39.234(a) [~~§39.114(a)~~], and further defined in §61.1093 of this title (relating to Use of Funds).

(b) A school district may spend high school allotment funds on the following, provided these items are for uses identified in the TEC, §39.234(a) [~~§39.114(a)~~], and further defined in §61.1093 of this title:

(1) tuition and fees;

(2) textbooks and other instructional materials;

(3) transportation;

(4) equipment, including science laboratory equipment;

(5) technology;

(6) parent and community involvement and outreach;

(7) professional development;

(8) technical assistance services;

(9) performance reward and incentive programs for students;

(10) personnel costs, including salaries and benefits;

(11) stipends and extra-duty pay; and

(12) performance reward and incentive programs established in district policy or employment contracts.

(c) School districts may pool high school allotment funds to implement multidistrict [~~multi-district~~] programs for the uses of funds identified in the TEC, §39.234(a) [~~§39.114(a)~~], and further defined in §61.1093 of this title.

§61.1097. Additional High School Completion and Success Initiatives Approved by the Commissioner.

(a) To [~~In order to~~] implement high school completion and success initiatives for students in Grades 6-12 other than those programs, activities, and strategies identified for Grades 6-12 in the Texas Education Code (TEC), §39.234(a) [~~§39.114(a)~~], or further defined in §61.1093 of this title (relating to Use of Funds), a school district must apply to the Texas Education Agency (TEA), by a date set by the commissioner of education. The application must include a standard application as required by the TEA division responsible for approving high school completion and success initiatives under this subchapter. No application is needed to implement programs under [~~in accordance with~~] §61.1093 of this title.

(b) The TEA will [~~shall~~] review and consider approval of applications submitted under this section.

(c) The TEA may consider criteria that include, but are not limited to, the following when determining whether to approve an application:

(1) indications that the initiative will improve student performance in relation to the performance indicators established in §61.1099 of this title (relating to School District Annual Performance Review);

(2) evidence that activities under the initiative address the needs of the target population participating in the initiative;

(3) indications that the design of the initiative reflects up-to-date knowledge about high school completion and success and/or college readiness and effective practices;

(4) the qualifications, experience, or certifications of personnel or external consultants involved in the initiative; and

(5) the appropriateness of proposed expenditures.

(d) A school district that receives approval from the TEA to implement a high school completion and success initiative under this section may be required to reapply [~~re-apply~~] for approval each year.

(e) The TEA may identify specific programs, activities, and strategies that are approved for use in the expenditure of high school allotment funds in addition to those identified in the TEC, §39.234(a) [~~§39.114(a)~~], or further defined in §61.1093 of this title.

§61.1098. Policy Advisory Group.

(a) The commissioner of education may create an advisory group composed of stakeholders, including the following:

(1) representatives from school districts;

(2) representatives from institutions of higher education;

(3) experts with high school completion and success and college readiness experience; and

(4) other interested stakeholders.

(b) The advisory group may review activities and programs implemented with high school allotment funds and make recommendations to the commissioner regarding the following:

(1) standards for evaluating the success and cost-effectiveness of high school completion and success and college readiness programs implemented with high school allotment funds;

(2) criteria for identifying and disseminating promising practices and strategies; and

(3) guidance for school districts and campuses in establishing and improving high school completion and success and college readiness programs implemented with high school allotment funds.

(c) If requested by the commissioner, the advisory group will [~~shall~~] make recommendations regarding standards for selecting and methods for recognizing school districts and campuses with exceptional high school completion and success and college readiness programs implemented with high school allotment funds.

§61.1099. School District Annual Performance Review.

(a) At an open meeting of the board of trustees, each school district must [~~shall~~] establish annual performance goals for programs, activities, and strategies implemented with high school allotment funds related to the following performance indicators:

(1) percentage of students graduating from high school;

(2) enrollment in advanced courses, including College Board advanced placement courses, International Baccalaureate courses, and dual or college credit courses;

(3) percentage of students successfully graduating on the Recommended High School Program or Distinguished Achievement Program described in Chapter 74, Subchapter E, of this title (relating to Graduation Requirements, Beginning with School Year 2004-2005)[~~,~~] or Chapter 74, Subchapter F, of this title (relating to Graduation Requirements, Beginning with School Year 2007-2008);

(4) percentage of students who achieve the higher education readiness component qualifying scores on the English language arts section of the exit-level Texas Assessment of Knowledge and Skills (TAKS); and

(5) percentage of students who achieve the higher education readiness component qualifying scores on the mathematics section of the exit-level TAKS.

(b) Annually, the board of trustees of each school district must [~~shall~~] review its progress in relation to the performance indicators specified in subsection (a) of this section. Progress should be assessed based on information that is disaggregated with respect to race, ethnicity, gender, and socioeconomic status.

(c) Each school district must [~~shall~~] ensure that decisions about the continuation or establishment of programs, activities, and strategies implemented with high school allotment funds are based on:

(1) state assessment results and other student performance data;

(2) standards for success and cost-effectiveness as established by the commissioner of education under [~~in accordance with~~] the Texas Education Code (TEC), §39.233(a)(1) [~~§39.113(a)(1)~~]; and

(3) guidance for improving high school completion and success and college readiness programs as established by the commissioner under the [~~in accordance with~~] TEC, §39.233(a)(2) [~~§39.113(a)(2)~~].

§61.1100. Evaluation of Programs.

(a) The Texas Education Agency (TEA) will [~~shall~~] evaluate programs implemented with high school allotment funds based on the following:

(1) performance indicators as established in §61.1099 of this title (relating to School District Annual Performance Review); and

(2) standards for success and cost-effectiveness as established by the commissioner under [~~in accordance with~~] the Texas Education Code , §39.233(a)(1) [~~(TEC), §39.113(a)(1)~~].

(b) In addition to the evaluation on the indicators identified in subsection (a) of this section, school districts will [~~shall~~] be evaluated based on the academic quality indicators in the TEA's performance-based monitoring system and other compliance requirements.

§61.1101. Standards for Selecting and Methods for Recognizing Districts and Campuses Offering Exceptional Programs.

(a) In accordance with the Texas Education Code (TEC), §39.233(a)(3) [~~§39.113(a)(3)~~], by January 1 of each year, [~~beginning in 2008,~~] the commissioner of education will [~~shall~~] select for recognition districts and campuses that offer exceptional high school completion and success and college readiness programs implemented with high school allotment funds.

(b) The commissioner must establish standards for selecting school districts and campuses with exceptional high school completion and success and college readiness programs [~~shall be established by the commissioner of education~~].

(c) The standards for selection will [~~shall~~] be based on information that is disaggregated with respect to race, ethnicity, gender, and socioeconomic status. Standards for selection will [~~shall~~] include consideration of district and campus performance in relation to the following:

(1) performance indicators as established in §61.1099 of this title (relating to School District Annual Performance Review);

(2) standards for success and cost-effectiveness as established by the commissioner under [~~in accordance with~~] the TEC, §39.233(a)(1) [~~§39.113(a)(1)~~]; and

(3) district or campus improvement relative to districts and campuses that exhibit similar characteristics of students served by the campus or district, including, but not limited to, past academic performance, socioeconomic status, ethnicity, and limited English proficiency.

(d) The commissioner must establish methods for recognizing school districts and campuses that offer exceptional high school completion and college readiness programs implemented with high school allotment funds [~~shall be established by the commissioner~~].

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 November 9, 2009.

TRD-200905142
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: December 20, 2009
For further information, please call: (512) 475-1497

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CHAPTER 129. STUDENT ATTENDANCE
SUBCHAPTER AA. COMMISSIONER'S RULES

19 TAC §129.1025

The Texas Education Agency (TEA) proposes an amendment to §129.1025, concerning student attendance accounting. The section adopts by reference the annual student attendance accounting handbook. The handbook provides student attendance accounting rules for school districts and charter schools. The proposed amendment would adopt by reference the *2009-2010 Student Attendance Accounting Handbook Version 2.*

Legal counsel with the TEA has recommended that the procedures contained in each annual student attendance accounting handbook be adopted as part of the Texas Administrative Code. This decision was made in 2000 as a result of a court decision challenging state agency decision making via administrative letters and publications. Given the statewide application of the attendance accounting rules and the existence of sufficient statutory authority for the commissioner of education to adopt by reference the student attendance accounting handbook, staff proceeded with formal adoption of rules in this area. The intention is to annually update the rule to refer to the most recently published student attendance accounting handbook. Data from previous school years will continue to be subject to the student attendance accounting handbook as the handbook existed in those years.

Each annual student attendance accounting handbook provides school districts and charter schools with the Foundation School Program (FSP) eligibility requirements of all students, prescribes the minimum requirements of all student attendance accounting systems, lists the documentation requirements for attendance audit purposes, specifies the minimum standards for systems that are entirely functional without the use of paper, and details the responsibilities of all district personnel involved in student attendance accounting. The TEA distributes FSP resources under the procedures specified in each current student attendance accounting handbook. The final version of the student attendance accounting handbook is published on the TEA website each June or July. A supplement, if necessary, is also published on the TEA website.

The proposed amendment to 19 TAC §129.1025 would adopt by reference the *2009-2010 Student Attendance Accounting Handbook Version 2.* In the first version of the student attendance accounting handbook for the 2009-2010 school year, incorrect dates for data submission for districts operating year-round programs were provided in the subsection on data submission, and information on residential facilities was erroneously included in the subsection on juvenile justice alternative education programs (JJAEPs). These errors necessitated publication of a second version of the handbook.

Significant changes to the *2009-2010 Student Attendance Accounting Handbook Version 2* from the *2008-2009 Student Attendance Accounting Handbook Version 2* include the following.

Section 2

An explanation that attendance records and reports may be kept at an accessible, secure off-site location was added.

The term *bilingual/ESL participation code* was replaced with *bilingual program type code and ESL program type code.*

Sections 2 and 3

Audit requirements specific to paperless attendance accounting systems were added.

Section 3

Explanations of eligibility codes were clarified.

An explanation that study halls do not qualify as instructional hours was added.

Information on the funding eligibility of students who have met all graduation requirements except passing state-required assessments was added.

A correction was made in the notes on maximum eligible age in subsection 3.2.3 to state that students receiving special education services who are at least 22 years of age and under 26 years of age on September 1 admitted for the purpose of completing the requirements for a high school diploma are not eligible for other weighted state funding. Previously, the note incorrectly stated "21 years of age" instead of "22 years of age" and did not include the phrase "on September 1."

A list of the residency criteria that make students eligible for attendance at Texas public schools was added to subsection 3.3.3.

A subsection on the entitlement of certain students to transfer to the district of a bordering state was added.

Information about circumstances under which students who are 18 years of age or older will be considered dropouts was added. Also, an explanation that a district's authority to revoke enrollment for certain students does not override the district's responsibility to provide a free appropriate public education to a special education student was added.

The list of information that must be transferred via the Texas Student Records Exchange system with each student moving from one Texas district to another was updated.

Information on circumstances under which students not present at the official attendance-taking time may be counted in attendance for funding purposes was added. The updated subsection on this topic explains that a student who is not present when attendance is taken may be counted in attendance for funding purposes if the student misses school to serve as an election clerk, if the student is at least 16 years old and has the principal's permission; misses school to appear at a governmental office to complete paperwork required for the student's application for United States citizenship; misses school to take part in a United States naturalization oath ceremony; is temporarily absent to attend a health care appointment related to services for autism spectrum disorder; or misses school to visit an institution of higher education (IHE) to determine the student's interest in attending the institution, if the student is a junior or senior.

An explanation that a student's attending school on a Saturday does not nullify any previously recorded absence was added.

Information on the minimum documentation required to be maintained in homebound logs was added.

Information on general education homebound (GEH) services for students with chronic illnesses or acute health problems was added, as was information on transitioning students with chronic illnesses from the GEH program to a school-based placement. Information on the GEH program and students with recurring chronic or acute health conditions was also added.

A clarification that a district calendar may be shorter than 180 days if the district has been approved to provide fewer instruc-

tional days through a flexible attendance program has been added, as was an explanation that under no circumstance may a district offer fewer than 170 instructional days.

The subsection on makeup days was changed to state that a district *must* build two makeup days into its calendar instead of that a district *should* build two makeup days into its calendar.

Information on waivers related to students taking dual credit courses at IHEs whose calendars do not align with the school district calendar was added.

Dates for submission and resubmission of attendance data by districts operating year-round programs were updated.

Section 4

The requirement that a student in a regional day school program for the deaf be in the program for less than 50 percent of the school day to be eligible for average daily attendance was deleted.

Requirements related to teachers providing instruction in mainstream settings was added.

Information on the minimum documentation required to be maintained in homebound logs was added.

Information on test administration and the homebound instructional arrangement/setting was added.

Information on the homebound instructional arrangement/setting and students with recurring chronic or acute health conditions was added.

An explanation that the instructional arrangement/setting code 41 or 42 is used to report a three- or four-year-old student with a disability who is receiving educational services in a prekindergarten setting but is ineligible for prekindergarten services was added.

Section 5

Charts with information on the coding of career and technical education students were added.

Section 6

The term *bilingual/ESL participation code* was replaced with *bilingual program type code* or *ESL program type code,* as applicable.

Explanations of which participation codes to use in specific circumstances were replaced with the web address of a web page providing program type code tables.

The statement that students served only in the Preschool Program for Children with Disabilities (PPCD) cannot generate bilingual/ESL average daily attendance (ADA) was revised to state that students *who are under age 3 and* served only in the PPCD cannot generate bilingual/ESL ADA.

In subsection 6.2.1, a note about parental permission codes was removed.

The exit criteria chart in subsection 6.4.2 was updated with current-year information.

The flowchart in subsection 6.4.3 was replaced with the web address of a web page containing the flowchart.

Information on teacher certification requirements was updated.

Section 7

Explanations that the term *child* includes a stepchild and the term *parent* includes a stepparent were added.

Information on documentation requirements related to Head Start Program participation and eligibility for the National School Lunch Program was added.

The prekindergarten eligibility criteria related to a parent's membership in the armed forces were revised.

The program name *PK Expansion Grant Program* was updated to *PK Early Start Grant Program.*

Section 9

Information on the need for pregnancy-related services students to get a medical release before returning to campus to take a state-required assessment was added.

Information on the minimum documentation required to be maintained in homebound logs was added.

Section 10

Information on which leaver code to use for certain students whose admission is revoked was added.

The term *performance ratings* was replaced with the term *accountability ratings.*

An explanation that an out-of-school suspension may not exceed three school days was added.

Information on circumstances under which a county with a population greater than 125,000 would be considered a county with a population of 125,000 or less was added.

Information on types of expellable conduct was added.

Section 11

An explanation that, for the 2009-2010 and 2010-2011 school years, school districts will continue to be permitted to count the time that students spend in dual credit courses for state funding purposes even if the students are required to pay tuition, fees, or textbook costs was added.

In subsection 11.3.2, the term *dual credit programs* was replaced with the term *college credit programs.*

The subsection on the Optional Flexible School Day Program was updated to reflect recent statutory changes that expanded eligibility for the program.

A correction was made to the information in subsection 11.5.5 to state that a student receiving special education services who is at least 22 years of age and under 26 years of age on September 1 admitted for the purpose of completing the requirements for a high school diploma is not eligible for other weighted state funding. Previously, the information incorrectly stated "21 years of age" instead of "22 years of age" and did not include the phrase "on September 1."

The subsection on the High School Equivalency Program was updated to reflect rule changes related to how attendance in the program is calculated.

The subsection on the Electronic Course Pilot was deleted to reflect statutory changes.

The subsection on the Texas Virtual School Network was updated to reflect recent statutory changes that expanded the program.

Section 12

An appendix on ADA and state funding was added as Section 12.

Section 13

The glossary was made Section 13.

A definition of *2-through-4-hour rule* was added to the glossary.

The definitions of *High School Equivalency Program (HSEP)* and *Optional Flexible School Day Program (OFSDP)* were revised.

The proposed amendment would place the specific procedures contained in the *2009-2010 Student Attendance Accounting Handbook Version 2* in the Texas Administrative Code. The TEA distributes FSP funds in accordance with the procedures specified in each annual student attendance accounting handbook. Data reporting requirements are addressed through the Public Education Information Management System. The handbook has long stated that school districts and open-enrollment charter schools must keep all student attendance documentation for five years from the end of the school year. Any new student attendance documentation required to be kept would correspond with the student attendance accounting requirement changes described previously.

Lisa Dawn-Fisher, Deputy Associate Commissioner for School Finance, 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.

Ms. Dawn-Fisher 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 the public notice of the existence of the current publications specifying attendance accounting procedures for school districts and charter schools. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal begins November 20, 2009, and ends December 21, 2009. 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* or faxed to (512) 463-0028. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on November 20, 2009.

The amendment is proposed under the TEC, §42.004, which authorizes the commissioner of education, in accordance with rules of the State Board of Education, to take such action and require such reports consistent with TEC, Chapter 42, as may be necessary to implement and administer the Foundation School Program.

The amendment implements the TEC, §42.004.

§129.1025. Adoption By Reference: Student Attendance Accounting Handbook.

(a) The standard procedures that school districts and charter schools must use to maintain records and make reports on student attendance and student participation in special programs for school year 2009-2010 [~~2008-2009~~] are described in the official Texas Education Agency (TEA) publication *2009-2010* [~~*2008-2009*~~] *Student Attendance Accounting Handbook Version 2,* which is adopted by this reference as the agency's official rule. A copy of the *2009-2010* [~~*2008-2009*~~] *Student Attendance Accounting Handbook Version 2* is available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. In addition, the publication can be accessed from the TEA official website. The commissioner of education shall amend the *2009-2010* [~~*2008-2009*~~] *Student Attendance Accounting Handbook Version 2* and this subsection adopting it by reference, as needed.

(b) Data from previous school years will continue to be subject to the student attendance accounting handbook as the handbook existed in those years.

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 November 9, 2009.

TRD-200905143
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: December 20, 2009
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 175. FEES, PENALTIES AND FORMS

22 TAC §175.5

The Texas Medical Board (Board) proposes amendments to §175.5, concerning Payment of Fees or Penalties.

The amendment to §175.5 allows the Board to offer refunds to applicants who withdraw their applications within 45 days of initial application.

Nancy Leshikar, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing this proposal will be to allow individuals to obtain refunds if timely application withdrawals are made.

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

Comments on the proposals may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments

to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

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

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

§175.5. Payment of Fees or Penalties.

(a) Method of Payment. Fees paid online must be submitted by credit card, electronic check, or debit card, as required by the online application. All other licensure fees or penalties must be submitted in the form of a money order, personal check, or cashier's check payable on or through a United States bank. Fees and penalties cannot be refunded except as provided in subsection (b) of this section. If a single payment is made for more than one individual permit, it must be made for the same class of permit and a detailed listing, on a form prescribed by the board, must be included with each payment.

(b) Refunds. Refunds of fees may be granted under the following circumstances:

(1) Administrative error by the Board;

(2) Licensure applicants who do not appear before the Licensure Committee and who withdraw their applications and request a refund within 30 days of being notified by board staff that they are ineligible for licensure;

(3) Applicants who withdraw a licensure application after applying for multiple types of licensure at the same time but then either elect to pursue only one type of license or the Board approves one type of license before completing the review of the other applications;

(4) Applicants who apply for temporary licenses but do not receive a temporary license due to the issuance of full licensure;

(5) Licensees who retire or request cancellation of their licenses within 90 days of paying the registration fee;

(6) Applicants or licensees who die within 90 days of having paid a fee; or [.]

(7) Applicants who withdraw their applications within 45 days of initial application.

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-200905138
Mari Robinson, J.D.
Executive Director
Texas Medical Board
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For further information, please call: (512) 305-7016

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CHAPTER 180. TEXAS PHYSICIAN HEALTH PROGRAM AND REHABILITATION ORDERS

22 TAC §180.4

The Texas Medical Board (Board) proposes new §180.4, concerning Operation of Program.

New §180.4 establishes the requirements for eligibility, referrals, drug-testing, and fees for the Physician Health Program.

Elsewhere in this issue of the *Texas Register,* the Board contemporaneously adopts new §180.4 on an emergency basis. The rule is adopted on an emergency basis under §2001.034 of the Government Code due to the requirements of state law, specifically, passage of Senate Bill (SB) 292 of the 81st Legislative Session that went into effect September 1, 2009.

Nancy Leshikar, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the proposal will be to implement recent amendments to the Medical Practice Act adopted by the 81st Texas Legislature through the passage of SB 292 which created a confidential Texas Physician Health Program to address physician mental health and substance abuse issues and encourage licensees to receive treatment for mental health and substance abuse issues before patient safety is compromised. The program is to be overseen by experts in mental health and substance abuse issues who provide a course of treatment for physicians and monitor their progress through the program.

Ms. Leshikar has also determined that for the first five-year period the section is in effect the fiscal implication to state or local government as a result of enforcing the section as proposed will be as follows: 2010 ($183,720), 2011 ($357,426), 2012 ($487,791), 2013 ($670,974), 2014 ($720,644). The effect to individuals required to comply with the rule as proposed will be the annual fee of $1,200 and other related costs to include medical examinations, drug-testing, and counseling if required. There will be no effect on small or micro businesses.

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

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

The new rule is also authorized by §§167.001 - 167.011, Texas Occupations Code.

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

§180.4. Operation of Program.

(a) Referrals.

(1) The program shall accept a self-referral from a licensure applicant or licensee, or a referral from an individual, a physician health and rehabilitation committee, a physician assistant organization, a state physician health program, a state acupuncture program, a hospital or hospital system licensed in this state, a residency program, the medical board, physician assistant board, or the acupuncture board.

(2) In addition to confidential referrals to the program, the medical board, physician assistant board, and acupuncture board may publicly refer an applicant or licensee to the program after a contested case hearing or through an agreed order. Unless good cause is found, an applicant or licensee that has been subject to disciplinary action in

another state based on alcohol or substance abuse related violations shall be referred to the program through a public referral.

(b) Eligible Program Participants. An individual who has or may have mental or physical impairment or an alcohol/substance use disorder is eligible to participate in the program unless the person:

(1) has violated the standard of care as a result of drugs or alcohol;

(2) committed a boundary violation with a patient or a patient's family; or

(3) has been convicted of, placed on deferred adjudication community supervision or deferred disposition for a felony.

(c) Drug Testing.

(1) The program's drug testing shall be provided under contract for services with the vendor used by the Texas Medical Board.

(2) The program shall adopt policies and protocols for drug-testing that are consistent with those of the agency in effect on December 31, 2009.

(3) The agency may monitor the test results for all program participants, provided that the identities of the program participants are not disclosed to the agency.

(d) Reports to the Agency.

(1) If an individual who has been referred by the agency or a third party to the program and does not enter into an agreement for services or is found to have committed a substantive violation of an agreement, the governing board shall report that individual to the agency for possible disciplinary action.

(2) A positive drug screen that is not attributed to a prescription by a physician, shall be determined to be substantive violation of an agreement by the program participant.

(3) After receiving the report, the agency may refer the individual back to the program or may pursue disciplinary action through the agency's disciplinary process.

(e) Fees.

(1) Program participants shall pay an annual fee of $1,200. This fee is in addition costs owed by program participants for medical care, primary treatment, continuing care, and required evaluations to include costs for drug testing associated with a program participant's Physician Health Program agreement.

(2) The governing board may waive the annual fee for an applicant upon a showing of good cause.

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-200905139
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Earliest possible date of adoption: December 20, 2009
For further information, please call: (512) 305-7016

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CHAPTER 187. PROCEDURAL RULES
SUBCHAPTER B. INFORMAL BOARD PROCEEDINGS

22 TAC §187.14

The Texas Medical Board (Board) proposes amendments to §187.14, concerning Informal Resolution of Disciplinary Issues Against a Licensee.

The amendment to §187.14 amends the composition and functions of the Quality Assurance Committee that reviews investigated complaints filed with the Board.

Nancy Leshikar, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the proposal will be to expedite the processing of some complaints, reduce the number of cases referred for informal settlement conferences, and better utilize resources of the Board.

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

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

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

The amendment is also authorized by §164.003, Texas Occupations Code.

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

§187.14. Informal Resolution of Disciplinary Issues Against a Licensee.

Pursuant to §§164.003 - 164.004 of the Act and §§2001.054 - 2001.056 of the Administrative Procedure Act (APA), the following rules shall apply to informal resolution:

(1) Any matter within the board's jurisdiction may be resolved informally by agreed order, dismissal, or default.

(2) Prior to the imposition of any disciplinary action against a licensee, the licensee shall be given the opportunity to show compliance with all the requirements of the law for the retention of an unrestricted license before one or more board representatives.

(3) If a determination is made by the board representatives that there has been no violation, the board representatives may recommend that the complaint or allegations be dismissed.

(4) If a determination is made by the board representatives that a licensee has violated the Act, board rules, or board order, the board representatives may make recommendations for resolution of the issues to be reduced to writing and processed in accordance with §187.19 of this title (relating to Resolution by Agreed Order).

(5) An opportunity for the licensee to show compliance shall not be required prior to a temporary suspension under §164.059

of the Act, or in accordance with the terms of an agreement between the board and a licensee.

(6) Any modification made by the board to any proposed agreed order before the initial effective date of the order must be approved by the licensee.

(7) Informal Resolution of Violations.

(A) The [~~Pursuant to §164.0025 of the Act, the~~] Quality Assurance ("QA") Committee [~~of board employees~~] may recommend dismissal or an agreed settlement of any complaint[~~, except a complaint that relates directly to patient care. For purposes of this section, the term "relates directly to patient care" means that there is an allegation regarding the standard of care, sexual misconduct affecting patients, or any harm to patients resulting from intemperate use of drugs or alcohol~~].

(B) The QA Committee shall include designated board members, district review committee members, and board staff members [~~the Executive Director or the Deputy Executive Director, the manager of the investigation division, and the manager of the legal division~~].

(C) The QA Committee shall review all complaints [~~that are~~] referred by the investigation division to determine whether

[~~(i)~~] the complaint should be accepted for legal action.[~~, and~~]

[~~(ii)~~ ~~the complaint relates directly to patient care.~~]

(D) If the QA Committee determines that an offer of settlement should be made regarding a complaint [~~that does not relate directly to patient care,~~] the offer of settlement shall be presented to the licensee.

(i) If the licensee accepts the offer of settlement, the signed proposed [~~agreed~~] order shall be presented to the board at a public meeting for approval.

(ii) If the licensee fails to timely accept the offer of settlement, or if the licensee requests that an Informal Settlement Conference (ISC) be held, the offer shall be deemed to be rejected and an ISC shall be scheduled.

(E) Agreed settlements reached under these provisions shall be called "Corrective Orders."

(F) Corrective Orders can only be offered by the QA Committee, and shall not be available after an ISC is convened.

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-200905140
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Earliest possible date of adoption: December 20, 2009
For further information, please call: (512) 305-7016

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PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER F. RECORDS KEEPING

22 TAC §573.51

The Texas Board of Veterinary Medical Examiners proposes an amendment to §573.51, concerning Rabies Control, specifically deleting and replacing requirements on rabies vaccination certificates as required by 25 TAC §169.29 (relating to Vaccination Requirements) as promulgated by the Department of State Health Services.

The proposed amendment removes the requirement that the rabies vaccination certificate shall include the vaccine used producer and expiration date and adds the requirements of the vaccine used product name and manufacturer. The proposed amendment conforms the Board's rule to the requirements promulgated by the Department of State Health Services.

Dewey E. Helmcamp III, Executive Director, has determined that for each year of the first five years that the rule is in effect there will be no fiscal implication for the state and no fiscal implication for local government as a result of enforcing or administering the rule as proposed. Mr. Helmcamp has also determined that the rule will have no local employment impact.

Mr. Helmcamp has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to ensure greater clarification on the requirements for rabies vaccination certificates so there are no discrepancies between the rules promulgated by the Department of State Health Services and the Board's rules on the same rabies vaccination certificates.

Mr. Helmcamp has also determined there will be a no direct adverse effect on small businesses or micro-businesses because this is simply conforming the Board's rule on rabies vaccination certificates to the already existing rule promulgated by the Department of State Health Services.

Mr. Helmcamp has further determined that there are no economic costs to persons required to comply with the rule.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment to the rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7556, or by e-mail vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.*

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter as well as §801.151(b) which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§573.51. Rabies Control.

(a) Only the vaccinating veterinarian shall issue official rabies vaccination certificates. Each certificate shall contain the information required by 25 TAC §169.29 (relating to Vaccination Requirement) adopted by the Department of State Health Services, including:

(1) owner's name, address and telephone number;

(2) animal identification species, sex (including neutered if applicable), approximate age (three months to 12 months, 12 months or older), size (pounds), predominant breed, and colors;

(3) vaccine used product name, manufacturer, [~~producer, expiration date~~] and serial number;

(4) date vaccinated;

(5) date vaccination expires (re-vaccination due date);

(6) rabies tag number if a tag is issued; and

(7) veterinarian's signature, or electronic signature, or signature stamp, address and license number. Use of a veterinarian's signature stamp, or electronic signature pad on a vaccination certificate by a non-licensed person shall be authorized only under the direct supervision of the vaccinating veterinarian.

(b) A veterinarian may allow a non-licensed person to administer a rabies vaccine, provided the non-licensed person is under the direct supervision of the veterinarian.

(c) Each veterinarian that issues a rabies vaccination certificate, or the veterinary practice where the certificate was issued, shall retain a readily retrievable copy of the certificate for a period of not less than five years from the date of issuance.

(d) A veterinarian having knowledge of an animal bite to a human shall immediately report the incident to the local health authority. A veterinarian preparing an animal's body for rabies diagnosis shall comply with all requirements of 25 TAC §169.33 (relating to Submission of Specimens for Laboratory Examination) adopted by the Department of State Health Services.

(e) A veterinarian who ceases the practice of veterinary medicine shall deliver to the local health authority all duplicate rabies vaccination certificates issued by the veterinarian within the preceding five-year period. A veterinarian who sells or leases his practice to another veterinarian may transfer duplicate rabies certificates with the records of the practice which are transferred to a new owner.

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-200905130
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
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For further information, please call: (512) 305-7563

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SUBCHAPTER G. OTHER PROVISIONS

22 TAC §573.69

The Texas Board of Veterinary Medical Examiners proposes an amendment to §573.69, concerning Reporting of Criminal Activity.

The proposed amendment adds a time period for the required reporting of criminal activity under the rule, specifically no later than the 30th day after the criminal activity. In addition, the proposed amendment clarifies the language in the rule to add the required reporting of the arrest for a felony to the Board. Under the current rule, a licensee is required to report the arrest for or conviction for any misdemeanor related to the practice of veterinary medicine, or any conviction for a felony.

Dewey E. Helmcamp III, Executive Director, has determined that for each year of the first five years that the rule is in effect there will be no fiscal implication for the state and no fiscal implication for local government as a result of enforcing or administering the rule as proposed. Mr. Helmcamp has also determined that the rule will have no local employment impact.

Mr. Helmcamp has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to ensure the Board is made aware of the arrest of a licensee for a felony in a timely manner so that the Board may conduct an investigation into the circumstances and determine if the allegations by the police lead to violations of the Veterinary Licensing Act and/or the Board's rules or would affect the application for a license before the Board, as well as monitor the outcome of the case to determine if the applicant/licensee is convicted of the felony. The Board feels that the underlying rationale for the rule as currently written extends to the arrest for a felony, as well.

Mr. Helmcamp has also determined there will be a no direct adverse effect on small businesses or micro-businesses because this is a reporting requirement on the criminal activity of an individual licensee to the Board.

Mr. Helmcamp has further determined that there are no economic costs to persons required to comply with the rule.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment to the rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7556, or by e-mail vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.*

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter as well as §801.151(b) which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§573.69. Reporting of Criminal Activity.

(a) A licensed veterinarian or an applicant for a license from the board shall report to the board no later than the 30th day after any arrest for, or a conviction for, any misdemeanor related to the practice of veterinary medicine, or any arrest for or a conviction for a felony.

(b) On a finding by the board that a licensee has engaged in non-drug related criminal conduct or committed a non-drug related felony or misdemeanor, other than a misdemeanor under the Uniform Act Regulating Traffic or Highways, Texas Civil Statutes, Article 6701d, or a similar misdemeanor traffic offense, the executive director shall notify the district attorney or county attorney of the county in which the licensee resides. The notice must be in writing and contain

a copy of the board's finding and any order of the board relating to the licensee's conduct.

(c) On a finding by the board that a licensee has engaged in drug related criminal conduct or committed a drug related felony or misdemeanor, the executive director shall notify the Narcotics Service, Texas Department of Public Safety and/or the U.S. Drug Enforcement Administration. The notice must be in writing and contain a copy of the board's finding and any order of the board relating to the licensee's conduct.

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-200905131
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: December 20, 2009
For further information, please call: (512) 305-7563

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CHAPTER 575. PRACTICE AND PROCEDURE

22 TAC §575.26

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

The Texas Board of Veterinary Medical Examiners proposes the repeal of §575.26, concerning Complaint Form.

The proposed repeal is in conjunction with proposed new §575.26. The proposed repeal will remove the form from rule and will allow board approved changes to be made to the form when needed without the requirement of a rule change.

Dewey E. Helmcamp III, Executive Director, has determined that for each year of the first five years that the repeal is in effect there will be no foreseeable fiscal implications for the state or local governments as a result of enforcing or administering the repeal. Mr. Helmcamp also determined that there would be no probable direct adverse effect on small businesses, micro businesses, or local or state employment. Mr. Helmcamp has also determined that there would be no probable economic cost to persons required to comply with the repeal as proposed.

Mr. Helmcamp has also determined that for each year of the first five years the repeal is in effect, the anticipated public benefit will be to allow the Board to approve the complaint form at a Board open meeting without going through the rulemaking process, thereby creating a more efficient process to provide the general public with the most updated complaint form in a timely manner.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7556, or by e-mail vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.*

The repeal is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§575.26. Complaint Form.

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-200905132
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: December 20, 2009
For further information, please call: (512) 305-7563

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22 TAC §575.26

The Texas Board of Veterinary Medical Examiners proposes new §575.26, concerning Complaint Form.

The proposed new rule requires all complaints filed against a licensee to be submitted to the Board on the Board-approved complaint form. The proposed new rule states where the complaint form may be obtained and how the complaint will be received by the Board.

Dewey E. Helmcamp III, Executive Director, has determined that for each year of the first five years that the rule is in effect there will be no fiscal implication for the state and no fiscal implication for local government as a result of enforcing or administering the rule as proposed. Mr. Helmcamp has also determined that the rule will have no local employment impact.

Mr. Helmcamp has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to allow the Board to approve the complaint form at a Board open meeting without going through the rulemaking process, thereby creating a more efficient process to provide the general public with the most updated complaint form in a timely manner.

Mr. Helmcamp has also determined there will be a no direct adverse effect on small businesses or micro-businesses because this is a requirement regarding how a complaint will be received by the Board of an individual licensee to the Board and where the form may be obtained.

Mr. Helmcamp has further determined that there are no economic costs to persons required to comply with the rule.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed new rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7556, or by e-mail vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.*

The new rule is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§575.26. Complaint Form.

(a) All complaints filed against a licensee must be submitted to the Board on the Board-approved standardized complaint form. The Board-approved complaint form can be obtained free of charge from the Board office or downloaded from the Board's website at http://www.tbvme.state.tx.us/.

(b) The complaint form must be physically delivered to the Board office or mailed to the Board office.

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-200905133
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: December 20, 2009
For further information, please call: (512) 305-7563

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PART 29. TEXAS BOARD OF PROFESSIONAL LAND SURVEYING

CHAPTER 661. GENERAL RULES OF PROCEDURES AND PRACTICES

SUBCHAPTER A. THE BOARD

22 TAC §661.5

The Texas Board of Professional Land Surveying (TBPLS) proposes an amendment to §661.5, concerning the duties of the executive director. The amendment will delete outdated language that is not commonly used today.

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

Ms. Smith has also determined that for each year of the first five years the amendment is in effect the public will benefit from the amended rule because it updates language used in the 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 amendment 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, TX 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. All requests for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the Executive Director not more than 30 calendar days after notice of a proposed change to the section has been published in the *Texas Register.*

The amendment is proposed pursuant to Occupations Code, Title 6, Subtitle C, Chapter 1071, §1071.151, 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, Chapter 661, General Rules of Procedures and Practices.

§661.5. Executive Director.

The executive director shall conduct and care for all correspondence in the name of the board. The executive director shall maintain all records prescribed by law. The executive director shall keep a record of all meetings and maintain a proper account of all business of the board. The executive director shall be the custodian of the official seal and affix same to all certificates and other official documents upon the orders of the board. The executive director shall check and certify all bills and check all vouchers (claims) and shall approve same, if appropriate, and shall perform such other duties as directed by the board. The board shall furnish the executive director the necessary equipment, supplies, and [~~stenographic~~] assistance, paying for same directly on vouchers (claims) handled as prescribed herein and by law.

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-200905146
Sandy Smith
Executive Director
Texas Board of Professional Land Surveying
Earliest possible date of adoption: December 20, 2009
For further information, please call: (512) 239-5263

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SUBCHAPTER D. APPLICATIONS, EXAMINATIONS, AND LICENSING

22 TAC §661.45

The Texas Board of Professional Land Surveying (TBPLS) proposes an amendment to §661.45, concerning applicants who fail three consecutive exams and updating the types of devices that are not permitted in the exam room.

The amendment will make an applicant wait a period of one year after he/she has failed an exam three times and provides the Board with proof of additional experience or education that will help him achieve a passing score on a subsequent exam. This will take effect beginning January 1, 2011. The section on acceptable calculators is also being updated to list additional devices that are not permitted in the exam room.

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

Ms. Smith has also determined that for each year of the first five years the amendment is in effect the public will benefit from the amended rule because it allows the applicant to prepare for future exams if he/she has failed three exams and it updates the policy on devices allowed in the exam room.

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 amendment 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, TX 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. All requests for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the Executive Director not more than 30 calendar days after notice of a proposed change to the section has been published in the *Texas Register.*

The amendment is proposed pursuant to Occupations Code, Title 6, Subtitle C, Chapter 1071, §1071.151, 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, Chapter 661, General Rules of Procedures and Practices.

§661.45. Examinations.

(a) (No change.)

(b) [~~Calculators will be permitted to be used during any examination.~~] Only Board approved calculators will be permitted for use during examinations. No communication/imaging device of any type will be permitted, including but not limited to pagers, pocket PCs, scanners, texting devices and cellular phones. Devices or materials that might compromise the security of the examination or the examination process are not permitted in the examination room.

(c) - (g) (No change.)

(h) Beginning January 1, 2011, any applicant who is unsuccessful in three attempts to pass any part of a SIT or RPLS examination shall not have an application approved for a subsequent taking of the same examination for a period of one year from the date of notice of failure of the third exam. Applications submitted subsequent to the one year waiting period shall include documented evidence satisfactory to the Board that the applicant has acquired additional education and experience indicative that the applicant would better be able to pass a subsequent examination. This rule applies to all examinations administered by the Board, both past and future.

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 November 9, 2009.

TRD-200905145

Sandy Smith
Executive Director
Texas Board of Professional Land Surveying
Earliest possible date of adoption: December 20, 2009
For further information, please call: (512) 239-5263

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CHAPTER 663. STANDARDS OF RESPONSIBILITY AND RULES OF CONDUCT

SUBCHAPTER B. PROFESSIONAL AND TECHNICAL STANDARDS

22 TAC §663.19

The Texas Board of Professional Land Surveying (TBPLS) proposes an amendment to §663.19, concerning what should be included on reports.

The amendment will add language as to how courses shall be referenced.

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

Ms. Smith has also determined that for each year of the first five years the amendment is in effect the public will benefit from the amended rule because it adds language as to how courses should be referenced.

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 amendment 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, TX 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. All requests for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the Executive Director not more than 30 calendar days after notice of a proposed change to the section has been published in the *Texas Register.*

The amendment is proposed pursuant to Occupations Code, Title 6, Subtitle C, Chapter 1071, §1071.151, 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, Chapter 663, Standards of Responsibility and Rules of Conduct.

§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 narratives.

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

(4) Courses shall be referenced [~~by notation upon the survey plat~~] to an existing physically monumented [~~identifiable~~] line for directional control or oriented to a valid published reference datum and shall be clearly noted upon any report, survey plat or other written instrument.

(5) - (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 November 9, 2009.

TRD-200905144
Sandy Smith
Executive Director
Texas Board of Professional Land Surveying
Earliest possible date of adoption: December 20, 2009
For further information, please call: (512) 239-5263

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 19. AGENTS' LICENSING SUBCHAPTER K. CONTINUING EDUCATION, ADJUSTER PRELICENSING EDUCATION PROGRAMS, AND CERTIFICATION COURSES

28 TAC §§19.1001 - 19.1007, 19.1009, 19.1011 - 19.1017, 19.1019, 19.1024 - 19.1030

The Texas Department of Insurance proposes amendments to §§19.1001 - 19.1007, 19.1009, 19.1011 - 19.1017, 19.1019, and new 19.1024 - 19.1030, concerning Medicare-related product certification, small employer health benefit plan specialty certification, annuity certification, continuing education courses, and licensee training requirements. These proposed amended and new sections are necessary to implement the following legislation enacted by the 81st Legislature, Regular Session: (i) Senate Bill (SB) 79, which amends the Insurance Code Chapter 4054 to establish a voluntary specialty certification program for agents who market small employer health benefit plans in Texas; (ii) House Bill (HB) 739, which amends the Insurance Code Chapter 4004 to establish initial and continuing education requirements for agents who market Medicare advantage plans, Medicare prescription drug plans, or other health plans operated under the Medicare program, such as Medicare cost plans or Medicare demonstration plans in Texas; and (iii) House Bill (HB) 1294, which amends the Insurance Code Chapters 1115 and 4004 to establish initial and continuing education requirements for agents who sell, solicit, or negotiate an annuity contract or represent an insurer in relation to an annuity product.

SB 79. Voluntary specialty certification program for agents who market small employer health benefit plans. One of the purposes of SB 79 is to create an optional specialty certification for insurance agents who market small employer health benefit plans. (TEXAS STATE SENATE STATE AFFAIRS COMMITTEE, BILL ANALYSIS (ENROLLED), SB 79, 81ST Leg., R.S. (Sept. 2, 2009)). Agents who obtain such a certification must hold a general life, accident, and health insurance license under Chapter 4054 of the Insurance Code and must complete statutorily specified training. According to the bill analysis, it is important that agents who are selling small employer coverage understand the unique requirements of the small employer market so that they do not provide "bad advice, or even illegal advice or information, to employers who are purchasing such coverage." The Insurance Code §4054.359 authorizes the Commissioner, in accordance with the Insurance Code §36.001 (General Rulemaking Authority), to adopt rules as necessary to administer the Insurance Code Chapter 4054 (Life, Accident, and Health Agents), Subchapter H (Specialty Certification for Agents Serving Certain Employer Groups). Section 3 of SB 79 provides that the Department may begin issuing specialty certifications as authorized under SB 79 not later than January 1, 2010. Proposed amendments to §§19.1001, 19.1002, 19.1006, 19.1007, 19.1009, and proposed new §19.1026 and §19.1027 are necessary to (i) establish a voluntary specialty certification program for individuals who market small employer health benefit plans in accordance with the Insurance Code Chapter 1501 and (ii) prescribe the specific standards for the new small employer health benefit plan specialty certification course in accordance with the Insurance Code §4054.353 and §4054.355. Section 4054.353(a) requires that before an individual can be certified under Chapter 4054, Subchapter H of the Insurance Code, the individual must first complete training in the law, including Department rules, applicable to small employer health benefit plans offered under Chapter 1501. Section 4054.353(b) requires an individual seeking such specialty certification to complete a course applicable to small employer health benefit plans under Chapter 1501, as prescribed and approved by the Commissioner. Section 4054.353(b) further provides that, with certain statutorily specified exceptions, an individual is not eligible for the specialty certification unless, on completion of the course, it is certified to the Commissioner, as required by the Department, that the individual has completed the course and passed an examination testing the individual's knowledge and qualification. Section 4054.353(c) specifies that an exception to the §4054.353(b) requirement is any individual who demonstrates to the Department, in the manner prescribed by the Department, that the individual holds a designation as a: (i) Registered Health Underwriter (RHU), (ii) Certified Employee Benefit Specialist (CEBS), or (iii) Registered Employee Benefits Consultant (REBC). Section 4054.355 provides that each hour of education completed in accordance with the statutory and rule requirements to obtain or renew a specialty license may be used to satisfy an hour of a continuing education requirement otherwise applicable to the agent. Additionally, §4054.357 of the Insurance Code, enacted by SB 79, provides that an individual who holds a specialty certification may advertise, in the manner specified by Department rule, that the individual is specially trained to serve small employers. New §19.1026(a) is proposed to implement §4054.357.

HB 739. Continuing education requirements for agents who market Medicare advantage plans, Medicare prescription drug plans, or other health plans operated under the Medicare program. The purpose of HB 739 is to "elevate the threshold of competency and familiarity with Medicare that agents must possess, which will in turn protect consumers from misinformed or uninformed opinions or inappropriate or unethical behavior by agents." (TEXAS STATE SENATE STATE AFFAIRS COMMITTEE, BILL ANALYSIS (ENGROSSED), HB 739, 81ST Leg., R.S. (May 8, 2009). According to the bill analysis, this will be achieved, as provided in HB 739, through requiring a standard minimum of Medicare-specific education for an agent to complete, and thereafter maintain, in order to sell, solicit, or negotiate a contract for Medicare products in this state. HB 739 amends the Insurance Code Chapter 4004 by

adding a new Subchapter D to require an insurance agent who sells, solicits, negotiates, or receives an application or contract for a Medicare-related product in Texas or who represents an insurer, a health maintenance organization, or a preferred provider organization in relation to such a product to meet certain professional training and continuing education requirements regarding those products. Pursuant to Section 3 of HB 739, an agent licensed on or after April 1, 2010, is prohibited from selling a Medicare-related product unless the agent has completed the requisite training. The Insurance Code §4004.154(b) requires the Commissioner by rule to adopt criteria for the programs used to satisfy the requirements of §4004.152 and §4004.153 that are designed to ensure that an agent has knowledge, understanding, and professional competence concerning a Medicare-related product. Proposed amendments to §§19.1001, 19.1002, 19.1006, 19.1007, 19.1009, and proposed new §19.1024 and §19.1025 are necessary to implement HB 739 requirements, including §4004.152 (Agent Education Requirements) and §4004.153 (Required Continuing Education Regarding Medicare Products). Section 4004.152(a) provides that unless an agent has completed eight hours of professional training related to a Medicare-related product, an agent may not sell, solicit, negotiate, or receive an application or contract for the Medicare-related product in this state or represent an insurer in relation to the Medicare-related product in this state. Section 4004.152(b) specifies that the training required under §4004.152(a) may be used to satisfy the continuing education requirements established under the Insurance Code Chapter 4004, Subchapter B (Agent Continuing Education Requirements). Section 4004.153(a) applies to an agent who solicits, negotiates, procures, or collects a premium on a Medicare-related product or who represents or purports to represent an insurer, a health maintenance organization, or a preferred provider organization in relation to such a Medicare-related product. Section 4004.153(b) requires that each such agent must complete four hours of continuing education that specifically relates to Medicare-related products during the agent's two-year licensing period. Section 4004.153(c) provides that only training in a program that has been certified by the Department may be used to satisfy the §4004.153(b) requirements. Section 4004.153(d) provides that the continuing education required under §4004.153(b) may be used to satisfy the continuing education requirements established under the Insurance Code Chapter 4004, Subchapter B (Agent Continuing Education Requirements).

HB 1294. Initial and continuing education requirements for agents who sell, solicit, or negotiate an annuity contract or represent an insurer in relation to an annuity product. One of the purposes of HB 1294 is to "elevate the threshold of competency and familiarity with annuities that agents must possess; this, in turn, will protect consumers from misinformed or uninformed opinions or inappropriate or unethical behavior from agents." (TEXAS STATE SENATE STATE AFFAIRS COMMITTEE, BILL ANALYSIS (COMMITTEE REPORT), CSHB 1294, 81ST Leg., R.S. (May 12, 2009). HB 1294 requires insurance agents licensed to sell annuities to complete four hours of annuity-related education initially and four hours annually as part of an agent's required continuing education courses. HB 1294 also prohibits an agent from using misleading or fraudulent senior-specific designations or certifications when selling life insurance or annuities. HB 1294 amends the Insurance Code Chapter 1115, Subchapter B by adding new §1115.056 to require a resident agent that intends to sell, solicit, or negotiate a contract for an annuity in this state or to represent an insurer in relation to such an annuity to submit evidence satisfactory to the Department of completion of at least four hours of training relating to annuities before soliciting individual consumers for the purpose of selling annuities. HB 1294 also amends the Insurance Code Chapter 4004 by adding new Subchapter E, relating to continuing education requirements for the sale of annuities, to require insurance agents licensed to sell annuities to complete four hours annually as part of an agent's required continuing education courses. Pursuant to §1.004 of HB 1294, the requirements of the Insurance Code Chapter 4004, Subchapter E (Continuing Education Requirements for Sale of Annuities) apply to continuing education requirements for insurance for a license issued or renewed on or after April 1, 2010. The Insurance Code §4004.203 requires the Commissioner by rule to adopt criteria for continuing education programs used to satisfy the requirements of §4004.202. Section 4004.203(a) specifies that those criteria must include: (i) topics related specifically to annuities; (ii) state laws and rules related to annuities, including requirements adopted under the Insurance Code Chapter 1115; (iii) prohibited sales practices regarding annuities; (iv) recognition of indicators that a prospective insured may lack the short-term memory or judgment to knowingly purchase an annuity; and (v) fraudulent and unfair trade practices regarding the sale of annuities. Section 4004.202 (Required Continuing Education Regarding Annuities) applies to a resident agent who sells, solicits, or negotiates a contract for an annuity in this state or represents or purports to represent an insurer in relation to such an annuity. Section 4004.202(b) requires that each such agent complete four hours of continuing education annually that specifically relates to annuities. Section 4004.202(b) further requires that the annual period be based on the agent's license expiration date or another date specified by the Commissioner by rule, and that the education requirement be met within that annual period. Section 4004.202(c) provides that the continuing education requirements may be used to satisfy the continuing education requirements under the Insurance Code Chapter 4004, Subchapter B (Agent Continuing Education Requirements). As required by the Insurance Code §4004.203, amendments to §§19.1001, 19.1002, 19.1006, 19.1007, 19.1009, and new §19.1028 and §19.1029 are proposed to implement HB 1294 requirements, including §4004.152 (Agent Education Requirements) and §4004.153 (Required Continuing Education Regarding Medicare Products).

Other implementation. In addition to implementing the certification course requirements and licensee training requirements for the Medicare-related products, the small employer health benefit plan specialty certification, and the annuity certification, the proposed amendments and new sections also (i) amend §19.1011 to require providers of Department regulated continuing education courses to use a written, online, or computer-based final examination to determine completion of all certified classroom certification courses that statutorily require an examination for successful completion of the certified classroom certification course; (ii) add a new §19.1030 to provide regulatory standards for reissuance of a certification upon the renewal of a license that has been expired for one year or more or has been revoked or refused renewal by the Department; and (iii) conform the definition of the term "licensee" in §1901.002(17) and the licensee requirements in §19.1003 to include licensees for life insurance not exceeding $25,000, in lieu of "licensees for life insurance not exceeding $15,000" in the existing rules.

Section-by-section summary. The following is a section-by-section summary of the proposed amendments and new sections.

As previously indicated, most of the amendments relate to the proposed procedures and requirements for the certification and approval of (i) Medicare-related product certification courses and licensee Medicare-related product continuing education requirements; (ii) small employer health benefit plan specialty certification courses and licensee small employer health benefit plan specialty continuing education requirements; and (iii) annuity certification courses and licensee annuity continuing education requirements.

The proposed amendment to the subchapter title is necessary to more accurately reflect the proposed additional content, which includes requirements for multiple certification courses.

Proposed amendments to §19.1001(a) are necessary to specify three additional purposes of the subchapter. Specifically, proposed new §19.1001(a)(4) specifies procedures and requirements for certification and approval of Medicare-related product certification courses and licensee Medicare-related product continuing education requirements as authorized under the Insurance Code Chapter 4004, Subchapter D. Proposed new §19.1001(a)(5) specifies procedures and requirements for certification and approval of small employer health benefit plan specialty certification courses and licensee small employer health benefit plan specialty continuing education requirements as authorized under the Insurance Code Chapter 4054, Subchapter H. Proposed new §19.1001(a)(6) specifies procedures and requirements for certification and approval of annuity certification courses and licensee annuity continuing education requirements as authorized under the Insurance Code §1115.056.

Proposed amendments to §19.1002(b) add a new definition for the frequently used term "Certification course" and renumber the remaining definitions as necessary for inclusion of the new definition. New proposed §19.1002(b)(9) defines "Certification course" to refer to a course designed to enhance the student's knowledge, understanding, and professional competence regarding specified subjects for an insurance product. The definition also specifies that the term includes Long-Term Care Certification courses, Medicare-Related Product Certification courses, Small Employer Health Benefit Plan Specialty Certification courses, and Annuity Certification courses. This definition is necessary to distinguish between certification courses and continuing education courses in the subchapter.

Proposed amendments to §19.1002(b)(17)(D) and §19.1003(a) conform the definition of the term "licensee" in §19.1002(b)(17) and the licensee requirements in §19.1003(a) to include licensees for life insurance not exceeding $25,000, in lieu of "licensees for life insurance not exceeding $15,000" in the existing rules. This is necessary because of the enactment of House Bill (HB) 2570, enacted by the 81st Legislature, Regular Session, effective September 1, 2009. HB 2570 amends the Insurance Code §§884.303, 884.304, 4054.051, 4054.201, 4054.206, and 4054.301 to increase the statutory maximum from $15,000 to $25,000 for the amount of life insurance liability that may be initially assumed by a stipulated premium company on one life. Section 13 of HB 2570 provides that the Act applies only to an insurance policy delivered, issued for delivery, or renewed on or after January 1, 2010. A policy delivered, issued for delivery, or renewed before January 1, 2010, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

Proposed amendments to §19.1006 are necessary to prescribe the general course criteria for Department certified certification courses and to provide a regulatory framework for the new certification courses by making existing Subchapter K provisions applicable to the new certification courses, as appropriate. Specifically, each of the proposed new §19.1006(d) - (f), respectively, add the requirement that the course content of the new certification courses for the Medicare-related product certification, the small employer health benefit plan specialty certification, and the annuity certification enhance the student's knowledge, understanding, and professional competence regarding the subjects required for each of the courses. In addition, proposed new §19.1006(d) - (f), respectively, also clarify that, unless specifically stated otherwise, each provision of Subchapter K applies equally to the new certification courses and continuing education courses for the Medicare-related product certification, the small employer health benefit plan specialty certification, and the annuity certification.

Proposed amendments to §19.1007 are necessary to incorporate the new certification courses for each of the three types to be regulated under the proposed amendments and new sections into the submission requirements for applications submitted by course providers. The proposed amendment to §19.1007(a)(7)(A) adds Medicare-related product certification, small employer health benefit plan specialty certification, and annuity certification to the list of course types that may be shown on the sample certificate of completion that must be submitted with the application. The proposed amendment to §19.1007(a)(7)(I) adds Medicare-related product certification, small employer health benefit plan specialty certification, and annuity certification to the list of certification types that may be shown on the sample certificate of completion that must be submitted with the application. The proposed amendment also moves the reference to "long-term care partnership certification" to be included with the list of the other three types of new certifications being added.

Proposed amendments to §19.1009 are necessary to incorporate each of three new types of certification courses into the regulatory framework for course type requirements and to specify the types of courses that may be used to satisfy a course of study for the new certification courses. Proposed new §19.1009(d) - (f), respectively, each specify that providers must offer each new certification course for Medicare-related product certification courses, small employer health benefit plan specialty certification course, and annuity certification courses as a complete course of study and that the course of study may consist of classroom, classroom equivalent, and self-study instruction for each of the three new types of certification courses.

Proposed amendments to §19.1011 are necessary to ensure that minimum standards exist for all Department regulated certified classroom certification courses that require an examination for completion. The Insurance Code §4054.353(b)(2) provides that, except as provided by §4054.353(c) (relating to course and examination exemptions), an individual is not eligible for the small employer health benefit plan specialty certification unless that individual has passed an examination testing the individual's knowledge and qualifications. While there are currently minimum standards for the development and implementation of examinations for classroom equivalent and self-study courses, the current §19.1011(a) relies on the use of attendance rosters to certify completion of certified classroom courses. Proposed amendments to §19.1011(a) specify that providers shall use a written, online, or computer-based final examination to determine completion of all certified classroom certification courses that statutorily require an examination for

successful completion of the certified classroom certification course. This standard mirrors the standard currently used for the examination requirements for all certified self-study courses. The small employer health benefit plan specialty certification is the only Department regulated certified classroom certification course that statutorily requires an examination as a requirement for course completion. Proposed §19.1011(a) determines the minimum standards to be used for certified classroom courses that statutorily require an examination as a requirement for course completion and does not otherwise impose additional requirements for other regulated certified classroom courses that do not require an examination for course completion.

Proposed new §19.1024 is necessary to prescribe the specific standards for the new Medicare-related product certification course required by the Insurance Code §4004.152. Proposed §19.1024(a) prohibits an individual from performing any action constituting the act of an agent under Insurance Code §4001.051 with regard to a Medicare-related product unless the individual satisfies the requirements of existing §19.1024 and has completed a Medicare-related product certification course. Proposed §19.1024(b) specifies that a Medicare-related product certification course must be submitted to the Department for approval, be at least eight hours in length, and cover each of the subjects described in §19.1024(f). Proposed §19.1024(c) allows a licensee to count a Medicare-related product certification course toward completion of the continuing education requirements prescribed in §19.1003. Proposed §19.1024(d) requires a licensee to maintain proof of completion of a Medicare-related product certification course for a period of four years from the date of completion of the course and to provide proof of completion to the Department upon request. Proposed §19.1024(e) provides that a provider issued completion certificate for a Medicare-related product certification course must comply with the requirements of §19.1011 (relating to Requirements for Successful Completion of Continuing Education Courses). Proposed §19.1024(f) specifies that the course subjects for a Medicare-related product certification course must include topics that are related specifically to Medicare-related products, state and federal laws and rules related to Medicare-related products, prohibited sales practices regarding Medicare-related products, suitability of sales of Medicare-related products, and fraudulent and unfair trade practices regarding the sale of Medicare-related products. Proposed §19.1024(g) clarifies that exemptions provided under §19.1004(b) or (c) (relating to Licensee Exemption from and Extension of Time for Continuing Education) do not apply to the requirements of §19.1024.

Proposed new §19.1025 is necessary to prescribe the specific standards for the new Medicare-related product continuing education requirements required by the Insurance Code §4004.153. Proposed §19.1025(a) requires a licensee to complete at least four hours of Department certified Medicare-related product continuing education during each reporting period following the reporting period in which the licensee completed the Medicare-related product certification course. Proposed §19.1025(b) specifies that Department certified Medicare-related product continuing education must comply with the requirements of §19.1006 (relating to Course Criteria) and must enhance the knowledge, understanding, and professional competence of the student with regard to one or more of the subjects described in §19.1024(f). Proposed §19.1025(c) clarifies that exemptions provided under §19.1004(b) or (c) (relating to Licensee Exemption from and Extension of Time for Continuing Education) do not apply to the requirements of §19.1025.

Proposed new §19.1026 is necessary to prescribe the specific standards for the new small employer health benefit plan specialty certification course in accordance with the Insurance Code §4054.351 and §4054.353. Proposed §19.1026(a) provides that an individual may advertise that the individual is specially trained to serve small employers in the health benefit plan market if the individual (i) holds a current Life, Accident, and Health license issued by the Department; (ii) agrees to market small employer health benefit plans to small employers without regard to the number of employees to be covered under the plan; (iii) maintains on file with the Department a current business address, phone number, and general description of the individual's service area; (iv) has completed a small employer health benefit plan specialty certification course meeting the requirements of Subchapter K or qualifies for an exception from completion of the small employer health benefit plan specialty certification course; and (v) has passed an examination testing the individual's knowledge and qualifications in compliance with the requirements of §19.1011 of Subchapter K (relating to Requirements for Successful Completion of Continuing Education Courses) or qualifies for an exception from completion of the small employer health benefit plan specialty certification course. Proposed §19.1026(b) specifies that a small employer health benefit plan specialty certification course must be submitted to the Department for approval, be at least eight hours in length, cover each of the subjects described in §19.1026(e), and comply with the requirements of §19.1011 (relating to Requirements for Successful Completion of Continuing Education Courses). Proposed §19.1026(c) allows a licensee to count a small employer health benefit plan specialty certification course toward completion of the continuing education requirements prescribed in §19.1003. Proposed §19.1026(d) requires a licensee to maintain proof of completion of a small employer health benefit plan specialty certification course for a period of four years from the date of completion of the course and to provide proof of completion or proof of exception from completion to the Department upon request. Proposed §19.1026(e) specifies that the course subjects for a small employer health benefit plan specialty certification course must include topics related to (i) small employer health benefit plans, (ii) state and federal law and rules related to employer health benefit plans, (iii) anti-rebating and prohibited sales practices regarding employer benefit plans, (iv) federal programs and other alternatives related to small employer health benefit plans, and (v) fraudulent and unfair trade practices regarding small employer health benefit plans.

Proposed new §19.1027 is necessary to prescribe the specific standards for the new small employer health benefit plan specialty continuing education requirements in accordance with the Insurance Code §4054.355. Proposed §19.1027(a) provides that, in order to maintain the small employer health benefit plan specialty certification, a licensee must complete at least five hours of Department certified small employer health benefit plan specialty continuing education during each reporting period following the reporting period in which the licensee completed the small employer health benefit plan specialty certification course. Proposed §19.1027(b) specifies that Department certified small employer health benefit plan specialty continuing education must comply with the requirements of §19.1006 (relating to Course Criteria) and must enhance the knowledge, understanding, and professional competence of the student with regard to one or more of the subjects described in §19.1026(e).

Proposed new §19.1028 is necessary to prescribe the specific standards for the new annuity certification course in accordance

with the Insurance Code §1115.056. Proposed §19.1028(a) prohibits an individual who obtains a current resident agent license issued by the Department on or after April 1, 2010, or renews a resident agent license on or after April 1, 2010, from performing any action constituting the act of an agent under Insurance Code §4001.051 with regard to an annuity product unless the individual has completed an annuity certification course. Proposed §19.1028(b) clarifies that exemptions provided under §19.1004(b) or (c) (relating to Licensee Exemption from and Extension of Time for Continuing Education) do not apply to the requirements of §19.1028. Proposed §19.1028(c) specifies that an annuity certification course must be submitted to the Department for approval, be at least four hours in length, and cover each of the subjects described in §19.1028(g). Proposed §19.1028(d) allows a licensee to count an annuity certification course toward completion of the continuing education requirements prescribed in §19.1003. Proposed §19.1028(e) requires a licensee to maintain proof of completion of an annuity certification course for a period of four years from the date of completion of the course and to provide proof of completion or proof of exception from completion to the Department upon request. Proposed §19.1028(f) specifies that a provider issued completion certificate for an annuity certification course must comply with the requirements of §19.1011 of the subchapter (relating to Requirements for Successful Completion of Continuing Education Courses). Proposed §19.1028(g) specifies that course subjects of an annuity certification course must include: (i) the requirements of the Insurance Code Chapters 1114 and 1115, and the requirements of 28 Texas Administrative Code Chapter 3, Subchapter NN (relating to Consumer Notices for Life Insurance Policy and Annuity Contract Replacements); (ii) the prohibitions specified in the Insurance Code §§541.051 - 541.061; (iii) recognition of indicators that a prospective insured may lack the short-term memory or judgment to knowingly purchase an annuity; and (iv) practices relating to annuities that are prohibited by the Penal Code Chapter 35. Proposed §19.1028(h) specifies that course subjects for an annuity certification course may include additional topics addressing statutes enacted and rules adopted subsequent to the effective date of the proposed section, provided that the statutes or rules relate specifically to annuities.

Proposed new §19.1029 is necessary to prescribe the specific standards for the new annuity continuing education requirements in accordance with the Insurance Code §4004.202 and §4004.203. Proposed §19.1029(a) specifies that a licensee who sells, solicits, or negotiates an annuity contract or represents an insurer in relation to an annuity in this state, or intends to sell, solicit, or negotiate an annuity contract in this state must complete at least four hours of Department certified annuity continuing education in compliance with §19.1029. Proposed §19.1029(b) specifies that if a licensee completes the required annuity certification course before the expiration of the 12th month of the licensee's licensing period, the continuing education course must be completed by the end of the expiration of that licensing period. Proposed §19.1029(b) further specifies that if a licensee completes the required annuity certification course after the 12th month of the licensee's licensing period, the continuing education must be completed by the expiration of the 12th month in the licensing period following the licensing period in which the licensee completed the annuity certification course. Proposed §19.1029(c) specifies that after a licensee has completed the required annuity certification course, a licensee subject to the requirements of the proposed section must complete at least four hours of Department certified annuity continuing education every twelve months, calculated from the date of the license renewal. Proposed §19.1029(d) specifies that the Department certified continuing education required under proposed §19.1029(a) must comply with the requirements of §19.1006 of the subchapter (relating to Course Criteria) and enhance the knowledge, understanding, and professional competence of the student with regard to one or more of the subjects described in proposed §19.1028(g)(1) - (4) of the subchapter (relating to Annuity Certification Courses).

Proposed new §19.1030 is necessary to provide regulatory standards for reissuance of a certification upon the renewal of a license that has been expired for one year or more or has been revoked or refused renewal by the Department. Proposed §19.1030 specifies that a licensee whose license has been expired for one year or more or has been revoked or refused renewal by the Department shall, upon the issuance of a new original license, comply with the certification requirements of Subchapter K and may not use any certification course or continuing education course completed under the licensee's inactive license to satisfy the requirements. These standards mirror the renewal standards for expired licenses provided in the Insurance Code §4003.007. New §19.1030 is proposed pursuant to §4004.005 and §4054.359 of the Insurance Code. Section 4004.005 authorizes the Commissioner to adopt rules necessary to implement Title 13 of the Insurance Code, relating to the regulation of agent licensing in general, including new Subchapter D relating to additional continuing education requirements for the sale of Medicare-related products and Subchapter E relating to continuing education requirements for the sale of annuities. Section 4054.359 authorizes the Commissioner, in accordance with §36.001 of the Insurance Code, to adopt rules as necessary to administer the Insurance Code Chapter 4054 Subchapter H, which regulates specialty certification for agents serving certain employer groups.

In addition to the foregoing proposed amendments and new sections, the Department is proposing nonsubstantive changes throughout §§19.1001 - 19.1007, 19.1009, 19.1011 - 19.1017, and 19.1019 to correct form and grammar, make clarifications, correct citations, and replace references to "long-term care partnership certification" with the more generic term "certification" to reflect that multiple certification courses are now available.

FISCAL NOTE. Matt Ray, Deputy Commissioner for the Licensing Program, has determined that for the first five years the proposal will be in effect, there will be no measurable fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. There will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT/COST NOTE. Mr. Ray also has determined that for each year of the first five years the proposed amendments and new sections are in effect, there are a number of public benefits anticipated. The anticipated public benefits are licensee completion of quality certification and continuing education courses for Medicare-related products, small employer health benefit plans, and annuities and an increased opportunity for Department certified course providers to offer quality certification and continuing education courses for Medicare-related products, small employer health benefit plans, and annuities. Additionally, it is anticipated that licensees having completed one or more of the certification courses will obtain specialized knowledge of Medicare-related products, small employer health benefit plans, or annuities, which should enable them to pro-

vide better information about these complex products to consumers. This will enable Texas consumers to make more informed choices about the purchase of such policies and will provide more appropriate insurance products to consumers. Finally, this proposal provides new business opportunities for existing Department certified providers and for persons wishing to become Department certified providers to develop and offer certification and continuing education courses for Medicare-related products, small employer health benefit plans, and annuities.

Mr. Ray has also determined that for each year of the first five years the proposed amendments and new sections are in effect, there will be costs for those required to comply with the proposal. The costs anticipated as a result of the proposed sections are as follows:

Estimated Probable Costs to Licensees. Proposed new §19.1024 and §19.1025 implement certification and continuing education requirements imposed by HB 739 for licensees who sell Medicare-related products. These requirements are codified at the Insurance Code Chapter 4004, Subchapter D. Proposed new §19.1024 provides minimum standards for the required Medicare-related product certification course. Proposed new §19.1025 provides minimum standards for the required Medicare-related product continuing education courses.

Proposed new §19.1026 and §19.1027 implement certification and continuing education requirements imposed by SB 79 for licensees who wish to receive the small employer specialty certification and wish to advertise that they are specially trained to serve the small employer market. These requirements are codified at the Insurance Code Chapter 4054, Subchapter H. Proposed new §19.1026 provides minimum standards for the voluntary small employer health plan certification course and provides, as required by statute, that the course is mandatory for licensees who wish to receive the small employer specialty certification and advertise that they are specially trained to serve the small employer market. Proposed new §19.1027 provides minimum standards for the voluntary small employer continuing education courses.

Proposed new §19.1028 and §19.1029 implement certification and continuing education requirements imposed by HB 1294 for licensees who sell annuities. These requirements are codified at the Insurance Code Chapter 1115, Subchapter B, and Chapter 4004, Subchapter E. Proposed new §19.1028 provides minimum standards for the required annuity certification course. Proposed new §19.1029 provides minimum standards for the required annuity continuing education courses.

Proposed §19.1024 and §19.1025 requirements apply to licensees who hold a current Life, Accident, and Health license and engage in the marketing of Medicare-related products. The proposed §19.1028 and §19.1029 requirements apply to licensees who hold a current agent license and who engage in the sale of annuities. The proposed §19.1026 and §19.1027 requirements apply to licensees who hold a current Life, Accident, and Health license and who wish to receive the small employer specialty certification and to advertise that they are specially trained to serve the small employer market. Proposed new §§19.1024 - 19.1029 require such licensees to complete a certification course and to complete additional continuing education in each reporting period following the reporting period in which the licensee completed the certification course. The total probable economic costs to licensees for compliance with the proposal are estimated to range from between $2.50 per credit hour and $13 per credit hour, for an average of $6.50 per credit hour. These estimated costs are based on the following considerations. The Department collected a sampling of existing continuing education costs per credit hour. The credit hours ranged from one hour to 13 credit hours and their associated costs ranged from $19.95 to $52.00. Based on these figures, the range of cost per hour is $2.50 to $13, with an average cost per course credit hour of $6.50. Since the material, structure, design and approval process for both the certification and the continuing education courses are similar, the Department anticipates that the cost per credit hour for the certification courses will be analogous to the cost per credit hour for the continuing education courses.

The Department anticipates that the cost to obtain and maintain the Medicare-product related certification will be $104. This estimated cost is based on the average cost per course credit hour multiplied by the number of credit hours needed to comply for the first five years. The number of credit hours needed to comply for the first five years consists of the initial 8 hours of certification courses, four hours of continuing education courses in the first licensing renewal period, and four hours of continuing education courses in the second licensing renewal period for a total of 16 credit hours. The Department anticipates that the cost to obtain and maintain the small employer health benefit plan specialty certification will be $117. This estimated cost is based on the average cost per course credit hour multiplied by the number of credit hours needed to comply for the first five years. The number of credit hours needed to comply for the first five years consists of the initial 8 hours of certification courses, five hours of continuing education courses in the first licensing renewal period, and five hours of continuing education courses in the second licensing renewal period for a total of 18 credit hours. The Department anticipates that the cost to obtain and maintain the annuity certification will be $130. This estimated cost is based on the average cost per course credit hour multiplied by the number of credit hours needed to comply for the first five years. The number of credit hours needed to comply for the first five years consists of the initial 4 hours of certification courses plus four hours of continuing education courses in each of the following years for a total of 20 credit hours.

The actual cost of compliance for a licensee may be less than anticipated because licensees may count the certification course and continuing education towards satisfying a portion of the statutorily required continuing education requirements for a Life, Accident, and Health license. While licensees that have already met the statutorily required continuing education requirements for a Life, Accident, and Health license are not exempt from the requirements of §§19.1024 - 19.1029, the Department anticipates that the cost to complete any additional coursework required by the new sections will be the same as stated above. These estimated probable costs to licensees to comply with proposed new §§19.1024 - 19.1029 result from the legislative enactment of SB 79, HB 739, and HB 1294 and are not a result of the adoption, enforcement, or administration of the proposal. There are no other costs to licensees to comply with the proposed amendments.

Estimated Probable Costs to Providers. Proposed §§19.1006, 19.1007, 19.1009, 19.1011, 19.1012, 19.1014, and 19.1024 - 19.1029 implement regulatory standards imposed by SB 79, HB 739, and HB 1294 on providers that develop, maintain, and offer certification and continuing education courses for Medicare-related products, small employer health benefit plans, or annuities. These requirements are codified at the Insurance Code Chapter 4054, Subchapter H (enacted by HB 79), the Insurance Code

Chapter 4004, Subchapter D (enacted by HB 739), and the Insurance Code Chapter 1115, Subchapter B, and Chapter 4004, Subchapter E (enacted by HB 1294).

The proposed requirements will only apply to providers that develop and offer certification and continuing education courses for Medicare-related products, small employer health benefit plans, or annuities. While the Department anticipates that the development and implementation of the new certification and continuing education courses will initially require some out-of-pocket expenses for providers who develop, maintain, and offer these courses, the Department anticipates that all such costs will be passed on to licensees in the form of either course registration or association membership fees and that the net cost, if any, to providers for compliance with the regulatory standards will be negligible. The Department also anticipates that developing, maintaining, and offering the mandatory final examination requirement in §19.1011 for certified classroom certification courses for the small employer health benefit plan specialty certification will initially require some additional out-of-pocket expenses for providers who develop and implement these courses. This is because such examinations are not routinely administered in classroom courses. However, the Department anticipates that any such costs associated with developing, maintaining, and offering the required examination will be a one-time cost per course, that the cost will be recouped in the form of course registration fees passed on to licensees, and that the net cost, if any, to providers for compliance with the examination requirement will be negligible.

The costs required to comply with the proposed amendments to §§19.1006, 19.1007, 19.1009, 19.1012, and 19.1014, which incorporate the new certification and continuing education courses into the existing regulatory framework for certification and continuing education courses, result from the legislative enactment of SB 79, HB 739, and HB 1294. The costs required to comply with the proposed amendments to §19.1011, which provides minimum standards for certified classroom certification courses that statutorily require an examination for completion, result from the legislative enactment of SB 79. The costs required to comply with proposed new §19.1024, which provides minimum standards for the required Medicare-related product certification course result from the legislative enactment of HB 739. The costs required to comply with proposed new §19.1025, which provides minimum standards for the required Medicare-related product continuing education courses, result from the legislative enactment of HB 739. The costs required to comply with proposed new §19.1026, which provides minimum standards for the voluntary small employer health plan certification course, result from the legislative enactment of SB 79. The costs required to comply with proposed new §19.1027, which provides minimum standards for the voluntary small employer health plan continuing education courses, result from the legislative enactment of SB 79. The costs required to comply with proposed new §19.1028, which provides minimum standards for the required annuity certification course, result from the legislative enactment of HB 1294. The costs required to comply with proposed new §19.1029, which provides minimum standards for the required annuity continuing education courses, result from the legislative enactment of HB 1294.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. In accordance with the Government Code §2006.002(c), the Department has determined that this proposal will not have an adverse economic effect on any licensee or provider that is a small business or micro business as defined by the Government Code. The Government Code §2006.001(a)(2) 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. The Government Code §2006.001(a)(1) defines "micro 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 not more than 20 employees. The Department's cost analysis and resulting estimated costs in the Public Benefit/Cost Note portion of this proposal are equally applicable to any small or micro businesses that are required to comply with this proposal. No person who qualifies as a small or micro business is required by law to sell Medicare-related products or annuities nor required to hold a small employer benefit plan specialty certification and advertise that they are specially trained to serve the small employer market. No person is required by law to develop and offer certification and continuing education courses for Medicare-related products, small employer health benefit plans, or annuities. Only those small or micro businesses that engage in such insurance business activities are required to comply with the proposed requirements. As detailed in the Public Benefit/Cost Note, for those persons, including small and micro businesses, who sell Medicare-related products or annuities or hold a small employer specialty certification and advertise that they are specially trained to serve the small employer market, the Department estimates that the total probable economic costs to licensees for compliance with the proposal are estimated to range from between $2.50 per credit hour and $13 per credit hour, for an average of $6.50 per credit hour. Because this is a voluntary decision on the part of the licensee to sell annuities or Medicare-related products or hold a small employer specialty certification, the Department is unable to reasonably estimate the cost of compliance to a licensee over a time period. These costs to persons who comply with the proposed new requirements are the result of the legislative enactment of SB 79, HB 739, and HB 1294, as detailed in the Public Benefit/Cost Note. Also, as detailed in the Public Benefit/Cost Note, for those persons, including small and micro businesses, who develop and offer certification and continuing education courses for Medicare-related products, small employer health benefit plans, or annuities, the Department anticipates that all such costs will be passed on to licensees in the form of either course registration or association membership fees and that the net cost, if any, to providers for compliance with the regulatory standards will be negligible. The Department also anticipates that while the development and implementation of the §19.1011 mandatory final examination requirement for certified classroom certification courses for the small employer health benefit plan specialty certification will initially require some additional out-of-pocket expenses, any such costs will be a one-time cost per course, the cost will be recouped in the form of course registration fees passed on to licensees, and the net cost, if any, to providers for compliance with the examination requirement will be negligible.

Additionally, because the proposal does not impose any new requirements or costs that are in addition to those imposed under state law, with which businesses, regardless of size, must comply, any costs to persons required to comply with these proposed amendments and new sections are the result of the enactment of the state laws, SB 79, HB 739, and HB 1294. The proposed amendments and new sections are necessary to implement these new laws and do not impose requirements on any

individual or entity that are in addition to those imposed by the laws. In accordance with the Government Code §2006.002(c), the Department has, therefore, determined that for the preceding reasons, a regulatory flexibility analysis is not required.

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

REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on Monday, December 21, 2009, 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 comments must be simultaneously submitted to Matt Ray, Deputy Commissioner for the Licensing Program, Mail Code 107-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing should be submitted separately to the Office of the Chief Clerk before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

STATUTORY AUTHORITY. The proposed amendments and new sections are proposed under the Insurance Code §§4004.154(b), 4004.152 and 4004.153, 4004.203(a), 4054.359, 4004.005, 4004.202, 4054.353, 1115.056, 884.303, 884.304, 4054.051, 4054.201, 4054.206, and 4054.301, and 36.001. Section 4004.154(b) requires the Commissioner by rule to adopt criteria for the programs used to satisfy the requirements of §4004.152, relating to agent education requirements for agents who sell, solicit, negotiate, or receive an application or contract for Medicare-related products in this state or who represent an insurer in relation to Medicare-related products in this state, and §4004.153, relating to required continuing education courses regarding Medicare products for agents who solicits negotiate, procure, or collect a premium on Medicare-related products or who represent or purport to represent an insurer, a health maintenance organization, or a preferred provider organization in relation to Medicare-related products. Section 4004.154(b) states that §4004.152 and §4004.153 are designed to ensure that an agent has knowledge, understanding, and professional competence concerning a Medicare-related product. Section 4004.154(b) further provides that the rules adopted under §4004.154(b) may incorporate by reference any requirements established by the Centers for Medicare and Medicaid Services or any other appropriate federal agency. Section 4004.203(a) of the Insurance Code, which regulates program certification requirements for required continuing education courses for agents who sell, solicit, or negotiate a contract for an annuity in this state or who represent or purport to represent an insurer in relation to an annuity, requires the Commissioner by rule to adopt criteria for continuing education courses used to satisfy the requirements of §4004.202, relating to required continuing education courses regarding annuities. Section 4004.203(a) further specifies that those criteria must include: (i) topics related specifically to annuities; (ii) state laws and rules related to annuities, including requirements adopted under Chapter 1115; (iii) prohibited sales practices regarding annuities; (iv) recognition of indicators that a prospective insured may lack the short-term memory or judgment to knowingly purchase an annuity; and (v) fraudulent and unfair trade practices regarding the sale of annuities. Section 4054.359 authorizes the Commissioner, in accordance with §36.001 of the Insurance Code, to adopt rules as necessary to administer the Insurance Code Chapter 4054 Subchapter H, which regulates specialty certification for agents serving certain employer groups. Section 4004.005 authorizes the Commissioner to adopt rules necessary to implement Title 13 of the Insurance Code, relating to the regulation of agent licensing in general, including new Subchapter D relating to additional continuing education courses for the sale of Medicare-related products and Subchapter E relating to continuing education courses for the sale of annuities. Section 4004.202 specifies the required continuing education courses for agents selling annuities. Section 4054.353 specifies the initial training that an individual must complete to receive a small employer health benefit plan specialty certification. Section 1115.056 specifies the education requirements for a resident agent that intends to sell, solicit, or negotiate a contract for an annuity in this state or to represent an insurer in relation to such an annuity. The Insurance Code §§884.303, 884.304, 4054.051, 4054.201, 4054.206, and 4054.301 were amended by HB 2570, 81st Legislature, Regular Session, effective September 1, 2009, to increase the statutory minimum from $15,000 to $25,000 for the amount of life insurance liability that may be assumed by a stipulated premium company. The Insurance Code §36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal: Insurance Code §§1115.056, 4004.201 - 4004.203, 4004.151 - 4004.155, and 4054.351 - 4054.359

§19.1001. General Provisions.

(a) Purpose. The purpose of this subchapter is to specify:

(1) (No change.)

(2) procedures and requirements for certification and approval of adjuster prelicensing education courses and adjuster examinations as authorized under the Insurance Code [~~§~~]§4101.054 and §4101.056; [~~and~~]

(3) procedures and requirements for certification and approval of long-term care partnership certification courses and licensee long-term care partnership training requirements as authorized under the Insurance Code Chapter 1651, Subchapter C, and the Human Resources Code Chapter 32, Subchapter C;[~~.~~]

(4) procedures and requirements for certification and approval of Medicare-related product certification courses and licensee Medicare-related product training requirements as authorized under the Insurance Code Chapter 4004, Subchapter D;

(5) procedures and requirements for certification and approval of small employer health benefit plan specialty certification courses and licensee small employer health benefit plan specialty training requirements as authorized under the Insurance Code Chapter 4054, Subchapter H; and

(6) procedures and requirements for certification and approval of annuity certification courses and licensee annuity training requirements as authorized under the Insurance Code §1115.056.

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

§19.1002. Definitions.

(a) Words and terms defined in the Insurance Code §§4001.003, 4004.151, and 4004.201 [~~§4001.003~~] shall have the same meaning when used in this subchapter.

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

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

(9) Certification course--A course designed to enhance the student's knowledge, understanding, and professional competence regarding specified subjects for an insurance product. The term includes courses that satisfy the requirements for the Long-Term Care Certification required by the Insurance Code Chapter 1651, Subchapter C and the Human Resources Code Chapter 32, Subchapter C; the Medicare-Related Product Certification required by the Insurance Code Chapter 4004, Subchapter D; the Small Employer Health Benefit Plan Specialty Certification required by the Insurance Code Chapter 4054, Subchapter H; and the Annuity Certification required by the Insurance Code §1115.056.

(10) [~~(9)~~] Certified course--A classroom, classroom equivalent, or self-study course offered by a registered provider that the department or its designee has determined meets the requirements of this subchapter.

(11) [~~(10)~~] Department--Texas Department of Insurance.

(12) [~~(11)~~] Disinterested third party--An individual who is:

(A) not related to a student by blood, adoption, or marriage as a parent, child, grandparent, sibling, niece, nephew, aunt, uncle, or first cousin; or

(B) not an employee or subordinate of the student.

(13) [~~(12)~~] Ethics course--A course that deals with usage and customs among members of the insurance profession, involving their moral and professional duties toward one another, toward clients, toward insureds, and toward insurers.

(14) [~~(13)~~] Insurance course--A course primarily focused on teaching subjects related to the business of insurance.

(15) [~~(14)~~] Interactive inquiries--An interactive electronic component that complies with §19.1009(d)(2) of this title.

(16) [~~(15)~~] Knowledge level--Recall of specific facts, patterns, methods, rules, dates, or other information that must be committed to memory.

(17) [~~(16)~~] Licensee--An individual licensed under one or more of the following Insurance Code provisions:

(A) Chapter 4051, Subchapters B, C, D, E, and I (general property and casualty agent, limited lines agent, insurance service representative, county mutual agent, and personal lines property and casualty agent);

(B) Chapter 4052 (life and health insurance counselor);

(C) Chapter 4053 (managing general agent);

(D) Chapter 4054, Subchapters B, C, E, and G (general lines - life, accident, and health agent, limited lines agent, life insurance not exceeding $25,000 [~~$15,000~~] agent, and life agent);

(E) Chapter 4101 (adjuster);

(F) Chapter 4102 (public insurance adjuster).

(18) [~~(17)~~] Long-term care partnership insurance policy--For purposes of §19.1022 and §19.1023 of this subchapter only, (relating to Long-Term Care Partnership Certification Course and Long-Term Care Partnership Continuing Education), a policy established under the Human Resources Code, Chapter 32, Subchapter C, and the Insurance Code, Chapter 1651, Subchapter C.

(19) [~~(18)~~] National designation certification--A professional designation which is:

(A) nationally recognized in the insurance industry; and

(B) issued by an entity that maintains a not-for-profit status and has been in existence for at least five years.

(20) [~~(19)~~] One-time-event--A type of classroom course complying with §19.1009(f) of this title.

(21) [~~(20)~~] Provider--An individual or organization including a corporation, partnership, depository institution, insurance company, or entity chartered by the Farm Credit Administration as defined in the Insurance Code §4001.108, registered with the department to offer continuing education courses for licensees, prelicensing instruction for adjusters, or long-term care partnership certification courses for licensees.

(22) [~~(21)~~] Provider registration--The process of a provider seeking permission to offer continuing education courses for licensees, prelicensing education for adjusters, or long-term care partnership certification courses for licensees.

(23) [~~(22)~~] Qualifying course--Insurance courses for which a licensee may receive continuing education credit and are:

(A) offered for credit by accredited colleges, universities, or law schools;

(B) part of a national designation certification program;

(C) approved for classroom, classroom equivalent, or participatory credit by the continuing education approval authority of a state bar association or state board of public accountancy; or

(D) certified or approved for continuing education credit under the guidelines of the Federal Crop Insurance Corporation.

(24) [~~(23)~~] Reporting period--The period from the issue date or last renewal date of the license to the expiration date of the license, generally a two-year period.

(25) [~~(24)~~] Self-study--A course complying with §19.1009(e) of this title.

(26) [~~(25)~~] Speaker--An individual who shall be speaking from special knowledge regarding the business of insurance obtained through experience and position in professional or social organizations, industry, or government.

(27) [~~(26)~~] Student--A licensee or adjuster applicant enrolled in and attending a certified course for credit.

(28) [~~(27)~~] TDI license number--An identification number the department assigns to the licensee and found on the license certificate.

(29) [~~(28)~~] Visually monitored environment--An environment permitting visual identification of students and visual confirmation of attendance, including observation by camera.

§19.1003. Licensee Requirements.

(a) Licensees shall complete 30 hours of continuing education within each reporting period, except that licensees holding only a license issued under the Insurance Code Chapter 4054, Subchapter C,

§§4054.101 - 4054.103, and Chapter 4054, Subchapter E, §§4054.201-4054.208 [~~Articles 21.07-1 §§4 and 6~~] (limited lines and life insurance not exceeding $25,000 [~~$15,000~~]) and Chapter 4051, Subchapter C, §§4051.101- 4051.102, and Chapter 4051, Subchapter E, §§4051.201-4051.206 [~~21.14 §§6 and 9~~] (limited lines and county mutual agent) shall complete 10 hours of continuing education during each reporting period. Licensees shall complete at least two hours of the continuing education requirement in certified ethics and/or consumer protection courses. Licensees may satisfy the remainder of the continuing education requirement by completing certified courses applicable to any license type.

(b) (No change.)

(c) Adjuster applicants seeking an examination exemption under the Insurance Code §4101.056(a)(4) [~~Article 21.07-4 §10(4)~~] shall complete both a certified adjuster prelicensing education course of not less than 40 hours and pass the course examination testing the applicant's knowledge and qualifications as set forth in this subchapter. Adjuster applicants shall complete at least 30 hours of the course requirement through classroom or classroom equivalent course work.

(d) - (f) (No change.)

§19.1004. Licensee Exemption from and Extension of Time for Continuing Education.

(a) (No change.)

(b) Agents holding a Texas license issued under the Insurance Code Chapter 4054 [~~Articles 21.07-1~~], as Group I, legal reserve life insurance agents and general lines - life, accident and health insurance agents; Chapter 4053 [~~21.07-3~~], as managing general agents; and/or Chapter 4051 [~~21.14~~], as local recording agents, solicitors, general lines - property and casualty agents, and insurance service representatives, for at least 20 years or more as of December 31, 2002, are exempt from the requirements of this subchapter. Agents shall register and confirm that they qualify for this exemption by submitting a written request to the department indicating that they have met the longevity requirement. Agents must satisfy the continuing education requirements through the end of the 20th year of licensure. The number of credit hours for the final reporting period is calculated at the rate of one hour for each whole month between the last renewal date and the effective date of the exemption. Agents that have previously qualified for the longevity exemption authorized under the Insurance Code as in effect prior to September 1, 2001, shall remain qualified and do not have to reapply for this exemption.

(c) - (e) (No change.)

(f) Licensees called to active military service in a combat theater, as provided for in the Insurance Code §36.109 [~~Article 1.10-1~~], may apply to the department for an exemption from or an extension of time for meeting the continuing education requirements or extending their license renewal. The licensee must request the exemption or extension prior to the end of the reporting period for which it applies and must include:

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

(g) Any individual who qualifies as specified in the Insurance Code §4054.152 [~~Article 21.07-1 §5B~~] is exempt from the continuing education requirements in this subchapter.

§19.1005. Provider Registration, Instructor, and Speaker Criteria.

(a) A provider applicant seeking initial registration or renewal registration from the department as a continuing education provider, adjuster prelicensing education provider, or [~~long-term care partnership~~] certification course provider shall submit to the department or its designee, an application on forms provided by the department and all applicable fees as set forth in §19.1012 of this title (relating to Forms and Fees). The department may require the following items in order to approve or disapprove a provider's registration request:

(1) - (6) (No change.)

(7) A statement as to whether or not the provider applicant has had any certification or approval for a professional continuing education course, prelicensing education course, or a [~~long-term care partnership~~] certification course revoked, suspended, or placed on probation, whether by agreement or as ordered in an administrative or judicial proceeding, by a court, financial or insurance regulator, or other agency of this state, another state, or the United States;

(8) - (9) (No change.)

(b) Providers shall have a single registration and may, but are not required to, certify and offer continuing education courses, adjuster prelicensing education courses, and [~~long-term care partnership~~] certification courses.

(c) - (e) (No change.)

(f) Providers may use speakers only in conjunction with one-time-event continuing education courses. Providers may not use speakers in conjunction with other continuing education courses, adjuster prelicensing courses, or [~~long-term care partnership~~] certification courses unless the speaker qualifies as an instructor.

(g) (No change.)

§19.1006. Course Criteria.

(a) To be certified as a continuing education course, the course content shall be designed to enhance the knowledge, understanding, and/or professional competence of the student as to one or more of the following topics: insurance principles and coverages; applicable laws, and rules; recent and prospective changes in coverages; technical policy provisions and underwriting guidelines and standards; law and the duties and responsibilities of the licensee; consumer protection; or insurance ethics. The course content may also include instruction on management of the licensee's insurance agency. Ethics and consumer protection course credit shall apply equally to all license types and the content for ethics and consumer protection topics shall be designed to relate to the business of insurance and provide instruction consistent with one or more of the following topics:

(1) Chapter 541 of the Insurance Code, entitled Unfair Methods of Competition and Unfair or Deceptive Acts or Practices [~~Article 21.21, Insurance Code~~];

(2) Chapter 547 of the Insurance Code, entitled False Advertising by Unauthorized Insurers [~~The Unauthorized Insurers False Advertising Process Act (Article 21.21-1, Insurance Code)~~];

(3) Chapter 542, Subchapter A, entitled Unfair Claim Settlement Practices [~~The Unfair Claim Settlement Practices Act (Article 21.21-2, Insurance Code)~~];

(4) Chapter 17, Subchapter E, of the Business and Commerce Code, entitled Deceptive Trade Practices and Consumer Protection Act [~~The Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business and Commerce Code)~~];

(5) Analogous laws as specified by the department, including:

(A) Chapter 1952, Subchapter G, of the Insurance Code, entitled Repair of Motor Vehicles [~~Repair of Motor Vehicles: Disclosure of Consumer Information (Article 5.07-1, Insurance Code)~~];

(B) Chapter 542, Subchapter B, of the Insurance Code, entitled Prompt Payment of Claims [~~Prompt Payment of Claims (Article 21.55, Insurance Code)~~];

(C) Chapter 542, Subchapter D, of the Insurance Code, entitled Notice of Settlement of Claim Under Casualty Insurance Policy [~~Notice of Settlement of Liability Claims (Article 21.56, Insurance Code)~~];

(D) Chapter 542, Subchapter E, of the Insurance Code, entitled Recovery of Deductible From Third Parties Under Certain Automobile Insurance Policies [~~Action for Amount of Deductible (Article 21.79G, Insurance Code)~~];

(E) - (F) (No change.)

(6) - (18) (No change.)

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

(d) To be certified as a Medicare-related product certification course, the course content must enhance the student's knowledge, understanding, and professional competence regarding the subjects specified in §19.1024 of this subchapter (relating to Medicare-Related Product Certification Course). Unless specifically stated otherwise, this subchapter shall apply equally to courses certified for continuing education, Medicare-related product certification, and Medicare-related product continuing education purposes.

(e) To be certified as a small employer health benefit plan specialty certification course, the course content must enhance the student's knowledge, understanding, and professional competence regarding the subjects specified in §19.1026 of this subchapter (relating to Small Employer Health Benefit Plan Specialty Certification Course). Unless specifically stated otherwise, this subchapter shall apply equally to courses certified for continuing education and small employer health benefit plan specialty certification.

(f) To be certified as an annuity certification or continuing education course, the course content must enhance the student's knowledge, understanding, and professional competence regarding the subjects specified in §19.1028(g)(1) - (4) of this subchapter (relating to Annuity Certification Course). Unless specifically stated otherwise, this section shall apply equally to courses certified for continuing education and annuity certification.

(g) [~~(d)~~] The following course content shall not be considered applicable to a licensee's continuing education requirements:

(1) Meetings held in conjunction with the regular business of the licensee or courses or training relating to the marketing and business practices of a specific company;

(2) Course content teaching general accounting, speed reading, other general business skills, computer use, or computer software application use;

(3) Course content teaching motivation, goal-setting, time management, communication, sales, or marketing skills;

(4) Course content providing for prelicensing training qualifying examination preparation;

(5) Course content that does not meet the requirement of subsection (a) of this section; and

(6) Course content that is substantially:

(A) a glossary, dictionary, or index of insurance terms without independent distinction as to the application of these terms to the business of insurance through case studies or analysis based on actual or hypothetical factual situations that apply to the business of insurance; or

(B) a recitation of statutes, rules, legal principles, or theories without independent distinction as to the application of these issues to the business of insurance through case studies or analysis based on actual or hypothetical factual situations that apply to the business of insurance.

(h) [~~(e)~~] A single continuing education course may include both ethics and consumer protection credit topics with other topics meeting the requirements of subsection (a) of this section.

§19.1007. Course Certification Submission Applications, Course Expirations, and Resubmissions.

(a) The provider shall submit the course certification application to the department or its designee and include the following information:

(1) - (6) (No change.)

(7) A sample of the certificate of completion which shall be used when licensees or adjuster applicants successfully complete the certified course for approval by the department or its designee. The certificate of completion must contain, at a minimum, the following information:

(A) a statement that the course is for continuing education credit, adjuster prelicensing training, [~~or~~] long-term care partnership certification, Medicare-related product certification, small employer health benefit plan specialty certification, or annuity certification;

(B) - (H) (No change.)

(I) for [~~long-term care partnership~~] certification courses, TDI license number, [~~and~~] the name of the student completing the course, and the type of certification (long-term care partnership certification, Medicare-related product certification, small employer health benefit plan specialty certification, or annuity certification);

(8) A statement that the course is intended for:

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

(C) [~~long-term care partnership~~] certification and whether the course is primarily intended to be open to all licensees or will have a restricted enrollment;

(9) - (10) (No change.)

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

§19.1009. Types of Courses.

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

(c) Providers must offer long-term care partnership certification courses only as a complete course of study that meets the requirements of §19.1022 of this subchapter (relating to Long-Term Care Partnership Certification Course). The course of study for long-term care partnership certification courses may consist of classroom, classroom equivalent, and self-study [~~self study~~] instruction.

(d) Providers must offer Medicare-related product certification courses only as a complete course of study that meets the requirements of §19.1024 of this subchapter (relating to Medicare-Related Product Certification Course). The course of study for Medicare-related product certification courses may consist of classroom, classroom equivalent, and self-study instruction.

(e) Providers must offer small employer health benefit plan specialty certification courses only as a complete course of study that meets the requirements of §19.1026 of this subchapter (relating to

Small Employer Health Benefit Plan Specialty Certification Course). The course of study for small employer health benefit plan specialty certification courses may consist of classroom, classroom equivalent, and self-study instruction.

(f) Providers must offer annuity certification courses only as a complete course of study that meets the requirements of paragraphs §19.1028(g)(1) - (4) of this subchapter (relating to Annuity Certification Course). The course of study for annuity certification courses may consist of classroom, classroom equivalent, and self-study instruction.

(g) [~~(d)~~] Classroom courses may include lectures, seminars, audio, video, computer-based instruction, and teleconferences that meet the following requirements:

(1) A disinterested third party attendant, an instructor, or a disinterested third party using visual observation technology must visually monitor attendance either inside or at all exits to the course presentation area at all times during the course presentation.

(2) At least three students and an instructor must be involved in each presentation of the course; however, in circumstances involving remote presentations, all students and the instructor do not need to be in the same location. In the case of presenting recorded or text materials, the instructor making the live course presentation does not have to be the same instructor included on the recorded presentation or who prepared the text materials.

(3) Question and answer and discussion periods must be provided by:

(A) an instructor making a live presentation of the course to licensees in the same room or via real-time live audio or audio-visual connection which shall allow for immediate student inquiries and responses with the presenting instructor; or

(B) an instructor who is present for the entire remote, recorded, or computer-based course presentation to students in the same room which shall allow for immediate inquiries and responses of students to the instructor.

(4) The course pace is set by the instructor and does not allow for independent completion of the course by students.

(h) [~~(e)~~] Classroom equivalent courses may be internet, CD-ROM, DVD, or other computer-based presentations that:

(1) May not have more than one student at any one presentation of the course.

(2) Must have an interactive electronic component that:

(A) provides for at least four interactive multiple choice inquiry periods during each hour of the course, one of which shall be at the end of the course. Inquiry periods shall occur at regular and relatively evenly-spaced intervals between each period. Inquiry periods shall cover material presented in that section of the course;

(B) requires answering 70% of the inquiries for each period correctly to demonstrate mastery of the current section, including the final section, before the student is allowed by the program to proceed to the next section or complete the course;

(C) identifies all incorrect responses and informs the student of the correct response with an explanation of the correct answer;

(D) generates a different set of inquiries for the section, which may be repeated as necessary on a random or rotating basis if the student does not achieve the 70% correct response rate necessary to advance to the next section;

(E) is capable of generating at least two separate sets of inquiries for each inquiry period;

(F) provides for a method to directly transmit the final course completion results to the provider or a printed course completion receipt to be sent to the provider for issuance of a completion certificate; and

(G) has a means to reasonably authenticate the student's identity on a periodic hourly basis, including upon entering, during, and exiting the course.

(3) A comprehensive final examination is not required for classroom equivalent courses.

(i) [~~(f)~~] Self-study courses may include textbook, audio, video, computer-based instruction, or any combination of these in an independent study setting designed in such a manner as to insure that the course cannot be completed by the typical enrollee in less time than the period for which the course is certified to the department.

(j) [~~(g)~~] One-time-event courses shall:

(1) meet the requirements of a classroom course, except that the course may be offered only in a lecture or seminar format at particular events such as conventions and organizational meetings; and

(2) be designed to be offered as a single live presentation, except that providers may offer the course as a live presentation an additional three times per year within this state.

(k) [~~(h)~~] One-time-event courses may be presented by speakers or instructors.

(l) [~~(i)~~] Qualifying courses shall be categorized as classroom, classroom equivalent, or self-study based upon the teaching format in which the course is offered.

§19.1011. Requirements for Successful Completion of Continuing Education Courses.

(a) Providers shall use, at a minimum, actual attendance rosters to certify completion of a certified classroom or one-time-event continuing education course or a certified classroom [~~long-term care partnership~~] certification course. The department requires each student to attend at least 90% of the course. Providers shall establish a means to ensure that each student attended at least 90% of the course. Attendance records must include, at a minimum, sign-in and sign-out sheets, and the legible names, addresses, and TDI license number of each student in attendance. Providers shall use a written, online, or computer-based final examination to determine completion of all certified classroom certification courses that statutorily require an examination for successful completion of the certified classroom certification course. Providers may establish additional assessment measurements or any other completion requirements[~~, in addition to attendance,~~] for successful completion of a classroom continuing education or classroom [~~long-term care partnership~~] certification course, but those requirements must be fully disclosed in the registration materials before the student purchases the course. Providers shall determine successful completion of these additional requirements.

(b) Providers shall use the periodic interactive inquiries to determine completion of certified classroom equivalent continuing education or [~~long-term care partnership~~] certification courses. A student must complete all inquiry sections with a minimum score of at least 70% for each section.

(c) Providers shall use a written, online, or computer-based final examination as the means of completion for all certified self-study continuing education or [~~long-term care partnership~~] certification courses. The department does not require providers to monitor contin-

uing education or [~~long-term care partnership~~] certification self-study examinations. Course records for each examination attempt must include, at a minimum, the date the exam was taken, the final examination score, the examination version used, the legible name, address, and the TDI license number of each student.

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

§19.1012. Forms and Fees.

(a) (No change.)

(b) The department establishes the following nonrefundable fees, which are necessary to administer the continuing education and [~~long-term care partnership~~] certification programs and shall apply unless the department contracts with a third party to provide continuing education or [~~long-term care partnership~~] certification services:

(1) (No change.)

(2) Continuing education and [~~long-term care partnership~~] certification course certification:

(A) Initial submission - $10 for each hour of course credit requested on the application; and

(B) Resubmission - $10 for each hour of course credit requested on the application.

(3) (No change.)

§19.1013. Licensee Record Maintenance.

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

(c) The department shall consider the filing of a properly completed renewal application with the department in the form prescribed by the department as a licensee's certification that all required continuing education hours for the reporting period have been completed, absent a timely written request or notice for extension or exemption as required under the Insurance Code §4004.052(a) [~~Article 21.01-1 §3(c)~~] and §19.1004(b) - (g) of this title (relating to Licensee Exemption from and Extension of Time for Continuing Education). The department's renewal of any license does not relieve a licensee from compliance with the continuing education requirements for any reporting period and failure to obtain required continuing education hours without obtaining a prior exemption or extension shall subject the licensee to administrative action.

(d) (No change.)

§19.1014. Provider Compliance Records.

(a) Providers shall maintain all continuing education records, adjuster prelicensing education records, [~~long-term care partnership~~] certification course records, attendance records, and course materials, including final examinations for at least four years, and the department or its designee may review these materials at any time.

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

(e) If continuing education records, adjuster prelicensing records, or [~~long-term care partnership~~] certification course records are audited or reviewed and the validity or completeness of the records are questioned, the provider shall have 30 days from the date of notice to correct discrepancies or submit new documentation.

(f) (No change.)

§19.1015. Failure to Comply.

(a) The department or its designee may at any time investigate or audit a licensee's continuing education records and/or compliance with this subchapter. The commissioner may, after notice and opportunity for hearing, discipline a licensee under the Insurance Code, Chapter 82, Chapter 4005, Subchapter C, §§4005.101- 4005.110 [~~Articles 21.01-2 §3A~~] and Chapter 4101, Subchapter E, §§4101.201- 4101.203 [~~21.07-4 §17~~], and this subchapter, if the commissioner determines that the license holder:

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

(5) has failed to pay within 90 days an automatic fine assessed pursuant to the Insurance Code §4005.109 [~~Article 21.01-2 §5A(a)~~] and §19.1016 of this title (relating to Automatic Fines) without properly requesting a hearing.

(b) The department or its designee may at any time investigate or audit a provider's continuing education records and/or compliance with this subchapter. The commissioner may, after notice and an opportunity for hearing, discipline a provider and/or the provider's authorized representative, officers, directors, managers or partners, under the Insurance Code[~~,~~] Chapter 82 and Chapter 4005, Subchapter C, §§4005.101- 4005.110 [~~Article 21.01-2 §3A~~], and this subchapter, if the commissioner determines that the provider and/or its authorized representative, officer, director, manager, or partner:

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

(9) has failed to pay within 90 days an automatic fine assessed pursuant to the Insurance Code §4005.109 [~~Article 21.01-2 §5A(a)~~] and §19.1016 of this title without properly requesting a hearing;

(10) - (17) (No change.)

(c) (No change.)

§19.1016. Automatic Fines.

(a) Pursuant to the Insurance Code §4005.109 [~~Article 21.01-2 §5A(a)~~], the department establishes the following procedure for automatic fines:

(1) (No change.)

(2) If the assessment of the fine is disputed, the department may, in its discretion, assert other matters and claims against the fined party at such hearing and also seek any disciplinary action available under the Insurance Code, Chapter 82, Chapter 4005, Subchapter C, §§4005.101- 4005.110 [~~Articles 21.01-2 §3A~~], and Chapter 4101, Subchapter E, §§4101.201- 4101.203 [~~21.07-4 §17~~], and this subchapter, including additional fine amounts in excess of the automatic fine amount.

(b) (No change.)

§19.1017. Adjuster Prelicensing Education Course Content and Examination Requirements.

(a) (No change.)

(b) All adjuster prelicensing examinations for compliance with the Insurance Code §4101.056(a)(4) [~~Article 21.07-4 §10(4)~~] may be written or computer-based and shall be designed to test applicants on the materials as specified in this section for the appropriate license designation and shall meet the criteria set forth in paragraphs (1) - (7) of this subsection:

(1) - (7) (No change.)

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

§19.1019. Full-Time Home Office Salaried Employees.

(a) Full-time home office salaried employees registered under the Insurance Code §4051.301 [~~Article 21.14 §7~~] shall comply with the hourly continuing education requirement set forth in §19.1003(a) and

(f) of this title (relating to Licensee Requirements). Insurers employing full-time home office salaried employees must provide the employees with instruction regarding the disclosure required by the Insurance Code §4051.301(c) [~~Article 21.14 §7(d)~~].

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

(d) The department or its designee may at any time investigate or audit an insurer's continuing education records and/or compliance with this subchapter. The commissioner may, after notice and opportunity for hearing, discipline an insurer or full-time home office salaried employee under the Insurance Code, Chapter 82, Chapter 4005, Subchapter C, §§4005.101- 4005.110 [~~Article 21.01-2 §3A~~], and this subchapter, if the commissioner determines that the insurer or full-time home office salaried employee is in violation of, or has failed to comply with, the Insurance Code or this subchapter.

§19.1024. Medicare-Related Product Certification Course.

(a) An individual whose Life, Accident, and Health license is issued or renewed by the department on or after April 1, 2010, may not perform an action constituting the act of an agent under the Insurance Code §4001.051 with regard to a Medicare-related product, unless the individual:

(1) satisfies the requirements of §19.102 of this title (relating to Agent Authority to Market Medicare Advantage Plans, Medicare Advantage Prescription Drug Plans, and Medicare Prescription Drug Plans); and

(2) has completed a Medicare-related product certification course meeting the requirements of this subchapter.

(b) This section establishes the standards for a Medicare-related product certification course. The course shall:

(1) be submitted to the department for approval in compliance with §19.1007 of this subchapter (relating to Course Certification Submission Applications, Course Expirations, and Resubmissions);

(2) be at least eight hours in length; and

(3) cover each of the subjects described in subsection (f) of this section.

(c) Licensees may count a Medicare-related product certification course toward completion of the continuing education requirements prescribed in §19.1003 of this subchapter (relating to Licensee Requirements). If a licensee chooses to use a Medicare-related product certification course to satisfy a portion of the continuing education requirements prescribed in §19.1003 of this subchapter, the licensee shall comply with §19.1013 of this subchapter (relating to Licensee Record Maintenance).

(d) A licensee shall maintain proof of completion of a Medicare-related product certification course for a period of four years from the date of completion of the course. Upon request, the licensee shall provide proof of completion of the Medicare-related product certification course to the department.

(e) A provider issued completion certificate for a Medicare-related product certification course must comply with the requirements of §19.1011 of this subchapter (relating to Requirements for Successful Completion of Continuing Education Courses).

(f) Course subjects for a Medicare-related product certification course outline must include topics that address:

(1) topics related specifically to Medicare-related products;

(2) state and federal laws and rules related to Medicare-related products;

(3) prohibited sales practices regarding Medicare-related products;

(4) topics related to the suitability of sales of Medicare-related products ; and

(5) fraudulent and unfair trade practices regarding the sale of Medicare-related products.

(g) Licensees that may qualify for the exemptions provided under §19.1004(b) or (c) of this subchapter (relating to Licensee Exemption from and Extension of Time for Continuing Education) are not exempt from the provisions of this section.

§19.1025. Medicare-Related Product Continuing Education.

(a) In addition to completing the Medicare-related product certification course required by §19.1024 of this subchapter (relating to Medicare-Related Product Certification Course), in each reporting period following the reporting period in which a licensee completed a certification course, a licensee who performs or intends to perform any action constituting the act of an agent under the Insurance Code §4001.051 with regard to a Medicare-related product must also complete at least four hours of department certified continuing education during each reporting period as part of the licensee's continuing education requirements prescribed in §19.1003 of this subchapter (relating to Licensee Requirements).

(b) The department certified continuing education required under subsection (a) of this section must:

(1) comply with the requirements of §19.1006 of this subchapter (relating to Course Criteria); and

(2) enhance the knowledge, understanding, and professional competence of the student with regard to one or more subjects described in §19.1024(f) of this subchapter.

(c) Licensees that may qualify for the exemptions provided under §19.1004(b) or (c) of this subchapter (relating to Licensee Exemption from and Extension of Time for Continuing Education) are not exempt from the provisions of this section.

§19.1026. Small Employer Health Benefit Plan Specialty Certification Course.

(a) An individual may advertise, in compliance with Chapter 21, Subchapter B of this title (relating to Insurance Advertising, Certain Trade Practices, and Solicitation), that the individual is specially trained to serve small employers in the health benefit plan market if the individual:

(1) holds a current Life, Accident, and Health license issued by the department;

(2) agrees to market small employer health benefit plans to small employers that satisfy the requirements of the Insurance Code Chapter 1501 without regard to the number of employees to be covered under the plan;

(3) maintains on file with the department a current business address, phone number, and general description of the individual's service area;

(4) has completed a small employer health benefit plan specialty certification course meeting the requirements of this subchapter or qualifies for an exception from completion of the small employer health benefit plan specialty certification course in accordance with the Insurance Code §4054.353(c); and

(5) has passed an examination testing the individual's knowledge and qualifications in compliance with the requirements of

§19.1011 of this subchapter (relating to Requirements for Successful Completion of Continuing Education Courses) or qualifies for an exception from completion of the small employer health benefit plan specialty certification course in accordance with the Insurance Code §4054.353(c).

(b) This section establishes the standards for a small employer health benefit plan specialty certification course. The course shall:

(1) be submitted to the department for approval in compliance with §19.1007 of this subchapter (relating to Course Certification Submission Applications, Course Expirations, and Resubmissions);

(2) be at least eight hours in length;

(3) cover each of the subjects described in subsection (e) of this section; and

(4) comply with the requirements of §19.1011 of this subchapter.

(c) Licensees may count a small employer health benefit plan specialty certification course toward completion of the continuing education requirements prescribed in §19.1003 of this subchapter (relating to Licensee Requirements). If a licensee chooses to use a small employer health benefit plan specialty certification course to satisfy a portion of the continuing education requirements prescribed in §19.1003 of this subchapter, the licensee shall comply with §19.1013 of this subchapter (relating to Licensee Record Maintenance).

(d) A licensee shall maintain proof of completion of a small employer health benefit plan specialty certification course for a period of four years from the date of completion of the course. Upon request, the licensee shall provide to the department the following:

(1) proof of completion of the small employer health benefit plan specialty certification course, or

(2) proof of exception from completion of the small employer health benefit plan specialty certification course in accordance with the Insurance Code §4054.353(c).

(e) Course subjects for a small employer health benefit plan specialty certification course outline must include topics that address:

(1) topics related specifically to small employer health benefit plans;

(2) state and federal laws and rules related to employer health benefit plans;

(3) anti-rebating and prohibited sales practices regarding employer health benefit plans;

(4) federal programs and other alternatives related to small employer health benefit plans; and

(5) fraudulent and unfair trade practices regarding small employer health benefit plans.

§19.1027. Small Employer Health Benefit Plan Specialty Continuing Education.

(a) In addition to completing the small employer health benefit plan specialty certification course required by §19.1026 of this subchapter (relating to Small Employer Health Benefit Plan Specialty Certification Course), in each reporting period following the reporting period in which a licensee completed a certification course, a licensee seeking to renew a small employer health benefit plan specialty certification must also complete at least five hours of department certified continuing education during each reporting period as part of the licensee's continuing education requirements prescribed in §19.1003 of this subchapter (relating to Licensee Requirements).

(b) The department certified continuing education required under subsection (a) of this section must:

(1) comply with the requirements of §19.1006 of this subchapter (relating to Course Criteria); and

(2) enhance the knowledge, understanding, and professional competence of the student with regard to one or more subjects described in §19.1026(e) of this subchapter.

§19.1028. Annuity Certification Course.

(a) An individual who obtains a current resident agent license issued by the department on or after April 1, 2010, or renews a resident agent license on or after April 1, 2010, may not sell, solicit, or negotiate a contract for an annuity or represent an insurer in relation to an annuity in this state until they have completed the annuity certification course as specified in this section.

(b) Licensees that may qualify for the exemption provided under §19.1004(b) or (c) of this subchapter (relating to Licensee Exemption from and Extension of Time for Continuing Education) are not exempt from the provisions of this section.

(c) This subsection establishes the standards for an annuity certification course. The course shall:

(1) be submitted to the department for approval in compliance with §19.1007 of this subchapter (relating to Course Certification Submission Applications, Course Expirations, and Resubmissions);

(2) be at least four hours in length; and

(3) cover each of the subjects described in subsection (g) of this section.

(d) Licensees may count an annuity certification course toward completion of the continuing education requirements prescribed in §19.1003 of this subchapter (relating to Licensee Requirements). If a licensee chooses to use an annuity certification course to satisfy a portion of the continuing education requirements prescribed in §19.1003 of this subchapter, the licensee shall comply with §19.1013 of this subchapter (relating to Licensee Record Maintenance).

(e) A licensee shall maintain proof of completion of an annuity certification course for a period of four years from the date of completion of the course. Upon request, the licensee shall provide proof of completion of the annuity certification course to the department.

(f) A provider issued completion certificate for an annuity certification course must comply with the requirements of §19.1011 of this subchapter (relating to Requirements for Successful Completion of Continuing Education Courses).

(g) Course subjects for an annuity certification course outline must include each of the following topics:

(1) the requirements of the Insurance Code Chapters 1114 and 1115, and the requirements of Chapter 3, Subchapter NN of this title (relating to Consumer Notices for Life Insurance Policy and Annuity Contract Replacements);

(2) the prohibitions specified in the Insurance Code §§541.051- 541.061;

(3) recognition of indicators that a prospective insured may lack the short-term memory or judgment to knowingly purchase an annuity; and

(4) practices relating to annuities that are prohibited by the Penal Code Chapter 35.

(h) Course subjects for an annuity certification course outline may include additional topics addressing statutes enacted and rules

adopted subsequent to the effective date of this section, provided that the statutes or rules relate specifically to annuities.

§19.1029. Annuity Continuing Education.

(a) In addition to completing the annuity certification course required by §19.1028 of this subchapter (relating to Annuity Certification Course), a licensee who sells, solicits, or negotiates a contract for an annuity or represents an insurer in relation to an annuity in this state, or intends to sell, solicit, or negotiate a contract for an annuity or represent an insurer in relation to an annuity in this state must complete at least four hours of department certified annuity continuing education in compliance with this section.

(b) If a licensee completes the annuity certification course required by §19.1028 of this subchapter before the expiration of the 12th month of the licensee's licensing period, the continuing education required by this section must be completed by the end of the expiration of that licensing period. If a licensee completes the annuity certification course required by §19.1028 of this subchapter after the 12th month of the licensee's licensing period, the continuing education required by this section must be completed before the expiration of the 12th month in the licensing period following the licensing period in which the licensee completed the annuity certification course.

(c) For each successive licensing period following the expiration of a licensee's license occurring on or after April 1, 2010, and after a licensee has completed the annuity certification course required by §19.1028 of this subchapter, a licensee subject to the requirements of this section must complete at least four hours of department certified annuity continuing education every twelve months, calculated from the date of the license renewal.

(d) The department certified continuing education required under subsection (a) of this section must:

(1) comply with the requirements of §19.1006 of this subchapter (relating to Course Criteria); and

(2) enhance the knowledge, understanding, and professional competence of the student with regard to one or more of the subjects described §19.1028(g)(1) - (4) of this subchapter.

§19.1030. Effect of License Expiration, Revocation, or Refusal to Renew on Certification Requirements.

A licensee whose license has been expired for one year or more or has been revoked or refused renewal by the Department shall, upon the issuance of a new original license, comply with the certification requirements of this subchapter and may not use any certification course or continuing education course completed under the licensee's inactive license to satisfy the requirements.

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 November 9, 2009.

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Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
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For further information, please call: (512) 463-6327

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CHAPTER 26. SMALL EMPLOYER HEALTH INSURANCE REGULATIONS

SUBCHAPTER E. HEALTHY TEXAS PROGRAM

The Texas Department of Insurance proposes new Subchapter E, §§26.501, 26.502, 26.511 - 26.517, 26.521, 26.522, 26.531 - 26.538, 26.551 - 26.553, and 26.561 - 26.564, concerning provisions essential to the operation of the Healthy Texas Program and changes in law made by the Insurance Code Chapter 1508, added pursuant to Senate Bill (SB) 78, 81st Legislature, Regular Session. The proposed new sections are necessary to implement SB 78, which amended the Insurance Code by adding Chapter 1508 to establish the Healthy Texas Program to provide access to quality small employer health benefit plans at an affordable price and to encourage small employers to offer health benefit plan coverage to employees and to dependents of employees. The proposed sections are essential to help ensure that the Healthy Texas Program is fully operational in a manner permitting participating health benefit plan issuers to issue qualified small employer health benefit plans and utilize the Healthy Texas Premium Stabilization Fund and make the first annual request for reimbursement January 1, 2011.

Division 1. General Provisions

Proposed new §26.501 states the purpose of the subchapter, including the objectives of providing access to quality small employer health benefit plans at an affordable price and encouraging small employers to offer health benefit plan coverage to employees and dependents of employees.

Proposed new §26.502 provides definitions of essential words and terms used in the subchapter. *Dependent* has the meaning assigned by the Insurance Code §1501.002(2). *Eligible employee* has the meaning assigned by the Insurance Code §1501.002(3). Fund is defined as the Healthy Texas small employer premium stabilization fund established under the Insurance Code Chapter 1508, Subchapter F. *Health benefit plan* has the meaning assigned by the Insurance Code §1501.002(5). *Health benefit plan issuer* has the meaning assigned by the Insurance Code §1501.002(6). *Participating health benefit plan issuer* is defined as a health benefit plan issuer that has elected to participate in the Healthy Texas Program in accordance with the Insurance Code Chapter 1508 and this subchapter. *Qualifying group health benefit plan* is defined as a health benefit plan that provides benefits for health care services in the manner described by the Insurance Code Chapter 1508, and as approved by the Commissioner. *Small employer* has the meaning assigned by the Insurance Code §1501.002(14).

Division 2. Participation by Health Benefit Plan Issuers

Proposed new §26.511 outlines the essential elements for health benefit plan issuer participation, including submission of an application to be a participating issuer, issuer compliance with the Insurance Code Chapter 1508 and this subchapter, and offering only qualifying group health benefit plans to small employers participating in the Healthy Texas Program. It includes a statement of Commissioner determination that limitation concerning which health benefit plan issuers may participate in the Healthy Texas Program is necessary to achieve the purposes of the program, and that the Commissioner will, in accordance with the Insurance Code §1508.101(c), contract on a competitive procurement basis with one or more health benefit plan issuers to provide qualifying health benefit plan coverage.

Proposed new §26.512 details provisions relating to the enrollment process for obtaining coverage under a qualified group health benefit plan, including the application process, initial eligibility certification and verification process, acceptance and issuance-of-coverage provisions, enrollment periods, and enrollment-related documents to be created and transmitted or maintained by participating issuers.

Proposed new §26.513 specifies provisions relating to annual recertification of eligibility of employers and enrollees participating in the Healthy Texas Program, and potential consequences of failure to provide recertification.

Proposed new §26.514 details provisions for health plan renewal and provides that a qualifying group health benefit plan is renewable at the option of a participating small employer so long as the eligibility and certification or recertification provisions of the Insurance Code Chapter 1508 and applicable provisions of proposed new §§26.512, 26.513 and 26.521 continue to be met. It also provides that a qualifying group health benefit plan is renewable at the option of a participating small employer unless any one of the four circumstances described in §26.514(b) is present. The proposed new section also contains the notice requirements for nonrenewal or termination. The proposed new section also specifies that continuation of coverage does not apply to qualified group health benefit plans.

Proposed new §26.515 set forth notice and administrative requirements for group health benefit plan discontinuance resulting from a participating health benefit plan issuer's election to withdraw from participation in the Healthy Texas Program, including the timing, content and recipients of the notice; the uniformity qualifications applicable to the discontinuance; and the continuing requirement that the health benefit plan issuer comply with all other applicable legal provisions.

Proposed new §26.516 requires a 30-day grace period for payment of premiums.

Proposed new §26.517 lists the participating health plan issuer contact information, and revisions or updates to such contact information, that must be submitted to the department by a participating health benefit plan issuer. Information required includes the name, mailing and email address, and telephone number of a health plan issuer contact person assigned to the Healthy Texas Program, the mailing and email address and toll-free telephone number to which consumer inquiries about the program are to be directed, and the service area in which the program will be available.

Division 3. Participation by Small Employers

Proposed new §26.521 specifies the mandatory and discretionary provisions relating to small employer participation in the program. The proposed new section restates statutory criteria for qualification as a small employer. It specifies that a small employer must offer coverage to all persons who are eligible employees and requires that 30 percent of eligible employees meet wage criteria described in Chapter 1508 of the Insurance Code. The proposed new section also mandates an offer of coverage to each dependent of an eligible employee; it permits small employers to offer coverage to part-time employees working at least 20 hours per week, as well as their dependents, but clarifies that part-time employees or dependents who are offered coverage are not eligible employees for purposes of determining a small employer's eligibility to purchase a qualifying group health benefit plan. The proposed new section also details premium contribution requirements for employers and participation requirements for eligible employees, and clarifies that employers are not required to make contribution to the premium paid to a group health benefit plan issuer for either dependent or part-time employee coverage. The proposed new section also provides that the small employer's place of business must be located within the State of Texas in order for the small employer to qualify to purchase a qualifying group health benefit plan. Proposed new §26.521 also provides that a qualifying small employer may not have provided group health insurance covering any of their employees at any time during the 12-month period preceding application for a Healthy Texas plan, subject to a de minimis per-employee contribution amount or baseline annual maximum benefit threshold. The proposed new section provides that mid-year fluctuations in group size, wage levels and employee participation are not bases for termination of a Healthy Texas plan. The proposed new section also provides that a small employer may impose waiting periods which newly hired workers must satisfy in advance of obtaining coverage, so long as the waiting period is no longer than 90 days from date of hire and is the same for all newly hired workers.

Proposed new §26.522 provides for the verification of income upon which qualification for coverage is based, in accordance with the Insurance Code §1508.051.

Division 4. Participation by Regional and Local Health Care Programs

Proposed new §26.531 states the purpose of the division. The proposed new section also contains a brief description of regional and local health care programs.

Proposed new §26.532 sets forth the applicability and scope of the division, providing that existing or newly formed regional or local health care programs may elect to participate in the Healthy Texas Program.

Proposed new §26.533 addresses the submission requirements for participation by such regional or local health care programs, including submission of an election on an application form for participation in the Healthy Texas Program. The proposed new section details the options for participation available to regional or local health care programs. It also references participation requirements to be met by such programs.

Proposed new §26.534 details the provisions for participation in the Healthy Texas Program by a regional or local health care program through direct purchase of a health benefit plan. The Health and Safety Code §75.102(a)(3) provides that a regional or local health care program may provide health care benefits to employees of small employers by purchasing or facilitating purchase of health benefit plan coverage for those employees from a health benefit plan issuer, including coverage under any other health benefit plan available in this state, in lieu of choosing to purchase or facilitate purchase of a Chapter 1501 small employer health benefit plan or Chapter 1507 standard health benefit plan. The proposed new section includes employer and employee eligibility provisions and requirements that must be satisfied on an individual small employer basis.

Proposed new §26.535 specifies the provisions for participation through the implementation of a regional or local health care program containing benefit, operational and administrative provisions that meet or exceed standards established by the Commissioner for benefit and service level categories described in the section. The proposed new section includes continuing employer eligibility provisions for participating regional or local health care programs, including employer premium or program

health care cost contribution requirements and employee participation requirements. It also provides that a regional or local health care program must meet claims eligibility provisions of §26.562, as well as the response to information request provisions of §26.563(b), and the data filing requirements of §26.564 that apply to health benefit plan issuers. The proposed new section includes provisions directed to financial soundness and solvency of regional and local health care programs participating in the Healthy Texas Program.

Proposed new §26.536 addresses the matter of withdrawal from participation in the Healthy Texas Program by a regional or local health care program, and the provision of necessary notice and disclosure to the Commissioner and to program enrollees concerning such withdrawal by a regional or local health care program.

Proposed new §26.537 specifies the program certification provisions, including initial and renewal certification, for small employers that are members of a regional or local health care program that is participating in Healthy Texas under either of the two options described in §26.534 and §26.535.

Proposed new §26.538 provides that except as expressly provided in Division 4 of the subchapter, the provisions of Division 3 of the subchapter apply to small employers and the employees of those employers that participate in a regional or local health care program that elects to participate in the Healthy Texas Program.

Division 5. Rating of Qualified Health Benefit Plans

Proposed new §26.551 provides for premium rates and rating of plans eligible for claim reimbursement under the Healthy Texas Program. The proposed section provides for review and approval of premium rates and restricts issuers to the use of age and gender as case characteristics in accordance with the Insurance Code §1508.202(c). The proposed new section requires that premium rates consider availability of reimbursement from the fund. It also requires: that rating factors be applied consistently for employers in the same class of business; that the claims expense component used for calculating loss ratios, premium rates and premium rate adjustments be adjusted based on reimbursement from the fund; and that initial rate submissions and rate adjustment applications contain information prescribed by the Commissioner as necessary to assist in determination of anticipated premium rate impact on availability of fund reimbursement.

Proposed new §26.552 permits participating health benefit plan issuers to reinsure their Healthy Texas business in whole or in part if such action would favorably impact premium rates.

Proposed new §26.553 requires that a health benefit plan issuer, not later than 30 days from the effective date of any amendment to this subchapter, submit policy form amendments and premium rate adjustments necessitated by the amendments.

Division 6. Healthy Texas Small Employer Premium Stabilization Fund

Proposed new §26.561 defines terms essential to the Healthy Texas small employer premium stabilization fund provisions of the subchapter. *Claims corridor* is defined as claims paid on behalf of a covered person in excess of $5,000 and less than $75,000 per calendar year. *Claims paid* is defined as claims paid by a participating health benefit plan issuer pursuant to a qualifying health benefit plan issued under the Healthy Texas Program as determined by the date of payment rather than the date of service or date the claim was incurred. *Claims threshold* is defined as the aggregate amount that a participating health benefit plan issuer must pay out as claims paid before reaching the claims corridor and becoming eligible for reimbursement on behalf of an enrollee in a given calendar year.

Proposed new §26.562 specifies the eligibility provisions relating to reimbursement from the fund for claims paid. In accordance with the Insurance Code §1508.252, the proposed section provides that fund reimbursement shall be calculated on a per-covered-person aggregated basis. It provides that reimbursement eligibility is limited to 80 percent of eligible claims paid on behalf of a covered person under a qualifying health plan. It further provides that an issuer is not entitled to any reimbursement on behalf of an enrollee whose paid claims do not in the aggregate reach the claims threshold for a given calendar year. The proposed new section also provides that claims paid are determined by the date of payment rather than the date of service or date the claim was incurred and prohibits delay of claim payment solely to assure that the payment date will fall in a subsequent calendar year. The proposed new section also provides that: claims paid shall not include interest paid by an issuer in connection with any claim; claims paid in a calendar year must be submitted for reimbursement before April 1 of the subsequent calendar year to be eligible for fund reimbursement; and claims paid shall not include claims paid prior to January 1, 2010.

Proposed new §26.563 addresses fund establishment and administration. It describes some of the oversight functions of the Commissioner, as well as the requirement for health benefit plan issuer response to requests for information from the Commissioner.

Proposed new §26.564 specifies the provisions relating to data filing requirements, including necessary claims data in connection with an issuer's annual submission of requests for reimbursement from the fund. It describes some of the categories and elements of data to be submitted by issuers, provides for data reporting periods that may be other than a calendar year and with a frequency that might be monthly if determined by the Commissioner to be necessary, requires that claims payment data clearly state both the date the claim was incurred and the date it was paid, and requires plan issuers to use a coding system to ensure the privacy of all covered individuals.

FISCAL NOTE. Katrina Daniel, Senior Associate Commissioner of Life, Health, and Licensing, has determined that for each year of the first five years the proposed new sections will be in effect there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the rule. There will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT/COST NOTE. Ms. Daniel also has determined that for each year of the first five years the proposed new sections are in effect, the public benefits anticipated as a result of the proposed new sections will be the provision of health insurance and access to a regular source of care for certain uninsured low-income employees and their dependents, a greater encouragement to small employers to offer health benefit plan coverage to employees, and the strategic targeting of state dollars to optimize their usefulness in attaining the legislative objectives of the Healthy Texas Program.

Any costs to persons required to comply with these proposed new sections for each year of the first five years the proposed new sections will be in effect are the result of the enactment

of SB 78 and not the result of the adoption, enforcement, or administration of the proposed new sections. SB 78 provides that participation in the program is voluntary. Those persons that may voluntarily participate include eligible small employers as defined by the Insurance Code §1501.002(14), employees of such small employers and their dependents, qualifying small group health benefit plan issuers, and regional or local health care programs as defined in Chapter 75 of the Health and Safety Code. These entities and individuals will have access to information about costs resulting from and associated with participation in the Healthy Texas Program before agreeing to participate, and may therefore opt to participate or alternatively to not participate, based on these estimated costs. The proposal does not impose any new requirements or costs that are in addition to those required under SB 78 with which businesses, regardless of size, must comply. Therefore, any costs to persons opting to participate and thereby required to comply with these proposed new sections are the result of the enactment of SB 78, and not the result of the adoption, enforcement, or administration of the proposed new sections. There is no anticipated difference in cost of compliance between small and large businesses.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. The Government Code §2006.002(c) requires that if a proposed rule may have an economic impact on small businesses, state agencies must prepare as part of the rulemaking process an economic impact statement that assesses the potential impact of the proposed rule on small or micro businesses. The Government Code §2006.001(a)(2) 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. The Government Code §2006.001(a)(1) defines "micro business" similarly to "small business" but specifies that such a business may not have more than 20 employees. The Government Code §2006.001(a)(1) does not specify a maximum level of gross receipts for a "micro business."

In accordance with the Government Code §2006.002(c), the Department has determined that the proposed new sections concerning the structure, function, and operational and administrative provisions to fully implement the Healthy Texas Program, will not have an adverse economic effect on small businesses or micro businesses that opt to participate in the Healthy Texas Program and are thereby required to comply with these proposed new sections. As explained in the Public Benefit/Cost Note of this proposal, SB 78 provides that participation in the Healthy Texas Program is voluntary. Those persons that may voluntarily participate include eligible small employers as defined by the Insurance Code §1501.002(14), employees of such small employers and their dependents, qualifying small group health benefit plan issuers, and regional or local health care programs as defined in Chapter 75 of the Health and Safety Code. A small employer is defined in the Insurance Code §1501.002(14) as a person who employed an average of at least two employees but not more than 50 eligible employees on business days during the preceding calendar year and who employs at least two employees on the first day of the plan year. The term includes a governmental entity subject to Article 3.51-1; 3.51-4; or 3.51-5; to Subchapter C, Chapter 1364; to Chapter 1578; or to Chapter 177, Local Government Code, that otherwise meets the requirements relating to number of employees as specified in this definition. Therefore, some employers that meet the definition of "small employer" in the Insurance Code §1501.002(14) will also qualify as a small or micro business pursuant to the Government Code §2006.001(a)(1) and (2).

Entities and individuals that opt to voluntarily participate in the Healthy Texas Program will have access to the information about costs resulting from and associated with participation before agreeing to participate. Such entities and individuals may therefore opt to participate or alternatively to not participate, based on these estimated costs. The proposal does not impose any new requirements or costs that are in addition to those required under SB 78 with which small or micro businesses that opt to participate in the Healthy Texas Program must comply. Therefore, any costs to persons opting to participate and thereby required to comply with these proposed new sections are the result of the enactment of SB 78, and not the result of the adoption, enforcement, or administration of the proposed new sections. In accordance with the Government Code §2006.002(c), the Department has therefore determined that a regulatory flexibility analysis is not required because the proposal will not have an adverse impact on small or micro businesses.

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

REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on December 21, 2009 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 must be simultaneously submitted to Amy Einhorn, Project Manager, Healthy Texas Program, Mail Code 107-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. The Commissioner will consider the adoption of the proposed new sections in a public hearing under Docket Number 2707, scheduled for 9:30 a.m., on December 2, 2009, in Room E1.012 of the Capitol Extension, Texas State Capitol, 112 East 11th Street, Austin, Texas. Written and oral comments presented at the hearing will be considered.

DIVISION 1. GENERAL PROVISIONS

28 TAC §26.501, §26.502

STATUTORY AUTHORITY. The new sections are proposed under the Insurance Code Chapter 1508 and §36.001. Section 1508.003 authorizes the Commissioner to adopt rules to implement Chapter 1508, which establishes the Healthy Texas Program. Section 1508.101(d) requires the Commissioner by rule to establish participation requirements applicable to regional and local health care programs considering the unique plan designs, benefit levels and participation criteria of each program. Section 1508.251 requires the Commissioner to adopt rules necessary to implement and administer the fund, including rules setting out procedures for operation of the fund and distribution of money from the fund. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statute is affected by this proposal: Insurance Code Chapter 1508.

§26.501. Purpose.

The purpose of this subchapter is to implement the provisions of the Healthy Texas Program as set out in the Insurance Code Chapter 1508 and to facilitate the attainment of its objectives to:

(1) provide access to quality small employer health benefit plans at an affordable price;

(2) encourage small employers to offer health benefit plan coverage to employees and the dependents of employees; and

(3) maximize reliance on proven managed care strategies and procedures.

§26.502. Definitions.

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

(1) Dependent--Has the meaning assigned by the Insurance Code §1501.002(2).

(2) Eligible employee--Has the meaning assigned by the Insurance Code §1501.002(3).

(3) Fund--The Healthy Texas small employer premium stabilization fund established under the Insurance Code Chapter 1508, Subchapter F.

(4) Health benefit plan--Has the meaning assigned by the Insurance Code §1501.002(5).

(5) Health benefit plan issuer--Has the meaning assigned by the Insurance Code §1501.002(6).

(6) Participating health benefit plan issuer--A health benefit plan issuer which has elected to participate in the Healthy Texas Program in accordance with the Insurance Code Chapter 1508 and this subchapter.

(7) Qualifying group health benefit plan--A health benefit plan that provides benefits for health care services in the manner described by the Insurance Code Chapter 1508, and as approved by the commissioner.

(8) Small employer--Has the meaning assigned by the Insurance Code §1501.002(14).

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 November 6, 2009.

TRD-200905115
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: December 20, 2009
For further information, please call: (512) 463-6327

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DIVISION 2. PARTICIPATION BY HEALTH BENEFIT PLAN ISSUERS

28 TAC §§26.511 - 26.517

STATUTORY AUTHORITY. The new sections are proposed under the Insurance Code Chapter 1508 and §36.001. Section 1508.003 authorizes the Commissioner to adopt rules to implement Chapter 1508, which establishes the Healthy Texas Program. Section 1508.101(d) requires the Commissioner by rule to establish participation requirements applicable to regional and local health care programs considering the unique plan designs, benefit levels and participation criteria of each program. Section 1508.251 requires the Commissioner to adopt rules necessary to implement and administer the fund, including rules setting out procedures for operation of the fund and distribution of money from the fund. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statute is affected by this proposal: Insurance Code Chapter 1508.

§26.511. Health Benefit Plan Issuer Participation.

(a) A health benefit plan issuer electing to participate in the Healthy Texas Program by offering qualifying group health benefit plans shall file an application with the department to be a participating health benefit plan issuer in a form and manner prescribed by the commissioner.

(b) A health benefit plan issuer electing to participate in the program must do so under the terms and conditions of the Insurance Code Chapter 1508 and this subchapter.

(c) A participating health benefit plan issuer must offer only qualifying group health benefit plans to small employers participating in the Healthy Texas Program.

(d) The commissioner has determined that limitation concerning which health benefit plan issuers may participate in the Healthy Texas Program is necessary to achieve the purposes of the program, and will, in accordance with the Insurance Code §1508.101(c), contract on a competitive procurement basis with one or more health benefit plan issuers to provide qualifying health benefit plan coverage.

§26.512. Application, Initial Certification of Eligibility, and Enrollment.

(a) Applications from employers applying for qualifying group health benefit plans must be made directly to a participating health benefit plan issuer. A participating health benefit plan issuer shall maintain a record of the date and time it receives an employer application for coverage under a qualifying group health benefit plan.

(b) A participating health benefit plan issuer shall provide all necessary information, including application and enrollment forms to applicants on request.

(c) A participating health benefit plan issuer shall collect the initial employer eligibility certifications required by the Insurance Code §1508.151 as well as necessary supporting documentation and shall be responsible for examination of such employer eligibility certifications and supporting documentation for verification that applicants meet applicable eligibility requirements. Issuer verification shall be based on review of the employer certification and any supporting documentation requested and received by a participating health benefit plan issuer.

(d) The commissioner may prescribe a standardized health benefit plan application form that includes an employer eligibility certification section.

(1) The commissioner may, as part of such standardized application form process, prescribe a standardized notification form to be utilized by a participating health benefit plan issuer to inform a small

employer applicant about submission of an incomplete application, and actions necessary to complete the application.

(2) A participating health benefit plan issuer must use any standardized application form that may be prescribed by the commissioner.

(e) A qualified group health benefit plan must provide employees with an initial enrollment period that is at least 31 days in length, and at least one open enrollment period annually that is at least 31 days in length.

(f) Unless the commissioner suspends enrollment in the Healthy Texas Program pursuant to the Insurance Code §1508.258, or limits the dates on which a health benefit plan issuer must accept employer applications pursuant to the Insurance Code §1508.152, all applicants meeting eligibility criteria shall be accepted and coverage must be issued on the first day of the month following the month in which a complete application has been submitted if such completed application has been submitted on or prior to the 20th day of the month of application. For complete applications submitted after the 20th day of a month, coverage shall be issued no later than the first day of the second month following the date of complete submission.

(g) A participating health benefit plan issuer shall provide to applicants who have failed to demonstrate eligibility a written notice of denial which clearly states the basis for the denial within two weeks of receipt of the completed initial employer eligibility certification or renewal certification and supporting documentation.

(h) A participating health benefit plan issuer must submit, monthly or at other intervals as determined reasonable and necessary by the commissioner, enrollment reports in the format specified by the commissioner. Pursuant to the Insurance Code §1508.154, such reports shall be submitted to the commissioner within a reasonable time frame as set by the commissioner.

(i) In the event that the enrollment in the small employer Healthy Texas Program is suspended by the commissioner pursuant to the Insurance Code §1508.258, a participating health benefit plan issuer shall:

(1) notify applicants that enrollment has been suspended; and

(2) maintain a waiting list to be filled in the order of receipt of application in the event that enrollment is reactivated.

(j) An enrollment suspension pursuant to the Insurance Code §1508.258 shall not preclude the addition of dependents or new employees to existing qualifying group health benefit plans.

§26.513. Annual Recertification of Eligibility.

(a) A participating health benefit plan issuer shall, at least 90 days prior to the annual renewal date of the group health benefit plan, provide any forms necessary for small employers to submit recertification of eligibility.

(b) A participating health benefit plan issuer shall annually collect certifications of continued eligibility for the Healthy Texas Program and shall be responsible for examination of such certifications to verify that small employers and enrollees participating in the program continue to meet eligibility requirements and continue to comply with the terms of the program. A participating health benefit plan issuer shall determine whether the small employer and enrollees continue to meet the requirements for participation in the Healthy Texas Program and shall provide written notice of such eligibility determination to the small employer within two weeks of receipt of the annual recertification.

(c) The failure of an employer to provide written certification demonstrating continued eligibility and continued compliance with the terms of the Healthy Texas Program shall be a basis for nonrenewal of a qualifying health benefit plan.

§26.514. Health Plan Renewal Provisions.

(a) A qualifying group health benefit plan is renewable at the option of a participating small employer so long as:

(1) the Healthy Texas Program is active and operational;

(2) the small employer continues to meet eligibility requirements that are set forth in the Insurance Code Chapter 1508 and §26.521 of this subchapter (relating to Small Employer Participation); and

(3) the small employer timely provides a participating health benefit plan issuer the initial or renewal certification information as addressed in §26.512(c) of this division (relating to Application, Initial Certification of Eligibility, and Enrollment), §26.513(b) and (c) of this division (relating to Annual Recertification of Eligibility), and §26.521(j) of this subchapter.

(b) In accordance with subsection (a) of this section, a participating health benefit plan issuer shall renew any small employer health benefit plan for any covered small employer at the option of the small employer, unless:

(1) the premium has not been paid as required by the terms of the plan;

(2) the small employer has committed fraud or intentional misrepresentation of a material fact not related to health status;

(3) the small employer has not complied with a material provision of the health benefit plan relating to premium contribution, group size, or participation requirements; or

(4) membership of an employer in an association terminates, but only if coverage is terminated uniformly without regard to a health status related factor of a covered individual.

(c) A participating health benefit plan issuer may not cancel a qualifying group health benefit plan except for the reasons specified for refusal to renew under subsection (b) of this section. A participating health benefit plan issuer may not cancel the coverage of an eligible employee or dependent except for the reasons specified for refusal to renew under subsection (b) of this section.

(d) A participating health benefit plan issuer shall provide written notice to the contract holder and any covered employees of a nonrenewal or termination at least 45 days prior to its effective date. Notice of the nonrenewal or termination shall state the basis for the nonrenewal or termination and include a description of any available conversion opportunities. Notice of the nonrenewal or termination also shall include a description of other coverage options available for purchase from the participating health benefit plan issuer.

(e) A qualifying group health benefit plan is not subject to the continuation of coverage provisions established by the Consolidated Omnibus Budget Reconciliation Act of 1985 (Publ. L. No 99-272), as amended, or the continuation of coverage provisions addressed in the Insurance Code, §§1251.251 - 1251.255.

§26.515. Notice of Discontinuance of Health Plan; Issuer Withdrawal from Participation.

(a) A participating health benefit plan issuer may elect to discontinue Healthy Texas coverage only if the participating health benefit plan issuer has filed written notice of withdrawal from participation

in the Healthy Texas Program with the commissioner on a form and in the manner prescribed by the commissioner and the participating health benefit plan issuer:

(1) before the 90th day preceding the date of the discontinuation of the coverage:

(A) provides notice of the discontinuation to each employer and the department; and

(B) offers to each employer the option to purchase other small employer coverage offered by the participating health benefit plan issuer at the time of the discontinuation; and

(2) acts uniformly without regard to the claims experience of the employer or any health status related factors of employees or dependents or new employees or dependents who may become eligible for the coverage.

(b) This section does not exempt a participating health benefit plan issuer from any other legal requirements, such as those in Insurance Code Chapter 827, §26.511(c) of this division (relating to Health Benefit Plan Issuer Participation), and §§7.1801, et seq. of this title (relating to Withdrawal Plan Requirements and Procedures), or requirements for discontinuation of certain plans under this chapter.

§26.516. Grace Period.

A qualifying group health benefit plan shall provide a 30-day grace period for payment of premiums.

§26.517. Health Plan Contact Information.

A participating health benefit plan issuer shall submit to the department:

(1) the name, mailing address, email address, and telephone number of a health plan issuer contact person assigned to the Healthy Texas Program;

(2) the mailing address, email address, and toll-free telephone number to which consumer inquiries regarding the Healthy Texas Program are to be directed;

(3) the service area in which the Healthy Texas Program will be available; and

(4) any revisions or updates to the information specified in paragraphs (1) - (3) of this section, or subsequently required contact information, in the timeframe and manner prescribed by the commissioner.

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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DIVISION 3. PARTICIPATION BY SMALL EMPLOYERS

28 TAC §26.521, §26.522

STATUTORY AUTHORITY. The new sections are proposed under the Insurance Code Chapter 1508 and §36.001. Section 1508.003 authorizes the Commissioner to adopt rules to implement Chapter 1508, which establishes the Healthy Texas Program. Section 1508.101(d) requires the Commissioner by rule to establish participation requirements applicable to regional and local health care programs considering the unique plan designs, benefit levels and participation criteria of each program. Section 1508.251 requires the Commissioner to adopt rules necessary to implement and administer the fund, including rules setting out procedures for operation of the fund and distribution of money from the fund. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statute is affected by this proposal: Insurance Code Chapter 1508.

§26.521. Small Employer Participation.

(a) In accordance with the Insurance Code §1508.002(7), qualifying small employers must have at least two but no more than 50 eligible employees.

(b) Qualifying small employers must offer coverage to all persons who are considered to be eligible employees as defined in §26.502(2) of this subchapter (relating to Definitions) for the purpose of determining the employer's eligibility to purchase a qualifying group health benefit plan, at least 30 percent of which must be eligible employees who are earning annual wages from the employer equal to or less than 300 percent of the poverty guidelines for an individual as defined and updated annually by the United States Department of Health and Human Services, or as adjusted by the commissioner in accordance with the Insurance Code §1508.052(b).

(c) Qualifying small employers must offer coverage to each dependent of an eligible employee. An eligible employee's spouse and dependent children younger than age 25 shall be considered eligible dependents under qualifying group health benefit plans.

(d) Qualifying small employers may offer coverage to part-time employees working at least 20 hours per week, and their dependents. Part-time employees or their dependents to whom coverage may be offered are not eligible employees for purposes of determining the small employer's eligibility to purchase a qualifying group health benefit plan pursuant to the Insurance Code §1508.051(a)(2) and §1508.053 and subsections (e) and (f) of this section.

(e) Qualifying small employers must, in accordance with the Insurance Code §1508.051 and §1508.063, have eligible employees as defined in §26.502(2) of this subchapter who meet the criteria specified in paragraphs (1) - (3) of this subsection.

(1) At least 30 percent of eligible employees must earn annual wages from the employer equal to or less than 300 percent of the poverty guidelines for an individual as defined and updated annually by the United States Department of Health and Human Services, or as adjusted by the commissioner in accordance with the Insurance Code §1508.052(b).

(2) At least 60 percent of eligible employees must participate in group health insurance coverage through the Healthy Texas Program.

(3) At least one eligible employee earning annual wages from the employer equal to or less than 300 percent of the poverty guidelines for an individual as defined and updated annually by the United States Department of Health and Human Services as adjusted by the commissioner in accordance with the Insurance Code

§1508.052(b) must participate in group health insurance coverage through the Healthy Texas Program.

(f) On behalf of participating employees, qualifying small employers must contribute at least 50 percent of the premium charge for each employee for the qualifying group health benefit plan, except as provided in this division and Division 4 of this subchapter (relating to Participation by Regional and Local Health Care Programs). Qualifying small employers may choose the level of any premium contribution to be made on behalf of dependents of employees and/or part-time employees or their dependents, but such employers are not required to make an employer contribution to the premium paid to a group health benefit plan issuer for dependent or part-time employee coverage.

(g) A qualifying small employer's place of business must be located within the state of Texas in order for the small employer to be eligible to purchase a qualifying group health benefit plan.

(h) In accordance with the Insurance Code §1508.051(a)(1), qualifying small employers shall in no case include any small employers who have provided group health insurance covering any of their employees at any time during the 12-month period preceding the date of application.

(1) Small employer applicants shall be considered to have provided group health insurance if they have arranged for group health insurance coverage (insured or self-insured) on behalf of their employees and have either contributed more than a de *minimus* amount towards the cost of coverage on behalf of their employees or provided coverage that exceeds the threshold specified in subparagraph (B) of this paragraph.

(A) *De minimus* contributions are those that are less than an average of $50 per employee per month, based on the number of employees at the time the coverage was provided. Small employers who have paid more than this amount are not qualified to purchase health insurance coverage through the Healthy Texas Program.

(B) A health benefit plan providing coverage with an annual maximum benefit level equal to or greater than $50,000 exceeds the threshold for arranging for employee group health insurance.

(i) Mid-year fluctuations in group size, wage levels and employee participation shall not serve as a basis for termination of a qualifying group health benefit plan.

(j) Upon initial application by a small employer, a participating health benefit plan issuer shall collect and examine employer certifications of eligibility and any supporting documentation to determine eligibility for a qualifying group health benefit plan and compliance with the terms of the Healthy Texas Program. A small employer must provide the participating health benefit plan issuer with information requested to enable the participating health benefit plan issuer to process the employer eligibility certification.

(k) A qualifying small employer may impose waiting periods which newly hired workers must satisfy in advance of obtaining coverage under the small employer's qualifying group health benefit plan.

(1) The waiting period shall not exceed 90 days from the date of hire.

(2) The waiting period must be the same for all newly hired workers.

§26.522. Verification of Income.

(a) To qualify for coverage under the Healthy Texas Program, eligible employees must satisfy the income criteria provided in the Insurance Code §1508.051.

(b) A participating health benefit plan issuer shall collect from the employer such documentation in the form of payroll data or other documentation as is necessary and sufficient to verify that the income requirements of the Healthy Texas Program have been satisfied.

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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DIVISION 4. PARTICIPATION BY REGIONAL AND LOCAL HEALTH CARE PROGRAMS

28 TAC §§26.531 - 26.538

STATUTORY AUTHORITY. The new sections are proposed under the Insurance Code Chapter 1508 and §36.001. Section 1508.003 authorizes the Commissioner to adopt rules to implement Chapter 1508, which establishes the Healthy Texas Program. Section 1508.101(d) requires the Commissioner by rule to establish participation requirements applicable to regional and local health care programs considering the unique plan designs, benefit levels and participation criteria of each program. Section 1508.251 requires the Commissioner to adopt rules necessary to implement and administer the fund, including rules setting out procedures for operation of the fund and distribution of money from the fund. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statute is affected by this proposal: Insurance Code Chapter 1508.

§26.531. Purpose.

The purpose of this division is to establish participation requirements applicable to regional and local health care programs described by the Health and Safety Code Chapter 75 that elect to participate in the Healthy Texas Program. Regional and local health care programs are programs that provide health care services or benefits to employees of participating small employers who are located within the boundaries of a participating county or counties as applicable. Section 75.052 provides that a regional or local health care program may be operated by a joint council, tax-exempt nonprofit entity, or other entity that operates the program under a contract with a county commissioners court or courts, as applicable, or is an entity in which the county or counties participate or that is established or designated by the commissioners court or courts, as applicable, to operate the program.

§26.532. Applicability and Scope.

This division applies to any existing or newly formed regional or local health care program described by the Health and Safety Code Chapter 75 that desires to participate in the Healthy Texas Program.

§26.533. Submission of Election to Participate in Healthy Texas.

(a) As provided in this division, a regional or local health care program described by the Health and Safety Code Chapter 75 may file an election with the commissioner, on an application form and in the manner prescribed by the commissioner, to participate in the Healthy Texas Program and its small employer premium stabilization fund, utilizing the options set forth in subsections (b) and (c) of this section.

(b) A regional or local health care program may apply to participate through purchase of an available Healthy Texas health benefit plan pursuant to the Health and Safety Code §75.102(a)(3) in accordance with Divisions 3 and 6 of this subchapter (relating to Participation by Small Employers and Healthy Texas Small Employer Premium Stabilization Fund, respectively) applicable to the facilitation of purchase or direct purchase of a Healthy Texas qualifying health benefit plan, and as further provided in §26.534 of this division.

(c) A regional or local health care program also may apply to participate through the completion of a process that results in a regional or local health care program with benefit, operational and administrative provisions that meet or exceed the standards set forth in §26.535 of this division (relating to Participation Through Eligible Regional or Local Health Care Program Implementation).

(d) Any newly formed regional or local health care program electing to participate must meet all requirements for participation as provided in this division, and must file its election not later than the 90th day before the date coverage for health care is to become effective for such regional or local health care program.

(e) Any existing regional or local health care program electing to participate must meet all requirements for participation as provided in this division, and must file its election not later than the 90th day before the anniversary date on which post-anniversary date coverage for health care is to become effective for such regional or local health care program.

§26.534. Participation Through Direct Purchase of Health Benefit Plan.

A regional or local health care program may apply to participate through purchase of an available Healthy Texas health benefit plan pursuant to the Health and Safety Code §75.102(a)(3), so long as the eligibility criteria in paragraphs (1) and (2) of this section are met.

(1) Employers of employees for whom the regional or local health care program is purchasing or facilitating the purchase of health benefit plan coverage through Healthy Texas must:

(A) comply with the provisions of §26.521(a) - (e) and (g) - (k) of this subchapter (relating to Small Employer Participation); and

(B) contribute an amount of premium costs for employees which, when combined with any amount obtained from any other eligible source as provided in the Health and Safety Code §75.055, amounts to at least 50 percent of the premium for each employee covered under the Healthy Texas benefit plan.

(2) Employees of small employers associated with the regional or local health care program must:

(A) meet the definition of "eligible employee" as defined in the Insurance Code §1508.002(2);

(B) meet the annual wage criteria of the Insurance Code §1508.051(a)(2) or §1508.052(b);

(C) elect to participate in the Healthy Texas Program at a rate equal to or greater than 60 percent of eligible employees; and

(D) comply with §26.521(e)(3) of this subchapter.

§26.535. Participation Through Eligible Regional or Local Health Care Program Implementation.

(a) A regional or local health care program may apply to participate through the development and implementation of a regional or local health care program with benefit, operational and administrative provisions that meet or exceed the standards specified in this section.

(b) A regional or local health care program participating in the Healthy Texas Program under this section must provide benefits and service levels for participating enrollees that meet or exceed those that are established by the commissioner for the benefit categories set forth in paragraphs (1) - (9) of this subsection. Such compliance must be certified by an authorized representative of the governing body of the regional or local health care program on a form and in the manner prescribed by the commissioner for the following categories of benefits and service levels:

(1) an annual maximum benefit requirement per enrollee;

(2) an annual per-individual and per-family maximum financial requirement prerequisite to payment of eligible claims of participating enrollees;

(3) cost-sharing maximum requirements for benefits or services covered by or through a regional or local health care program;

(4) an annual out-of-pocket maximum requirement;

(5) hospital inpatient and outpatient benefits;

(6) radiology and diagnostic tests;

(7) emergency care;

(8) maternity coverage with a limited copay for the initial prenatal visit; and

(9) immunization coverage at 100 percent of cost.

(c) A small employer participating in a regional or local health care program applying to participate in the Healthy Texas Program under this section must:

(1) meet the small employer participation provisions of §26.521(a) - (e)(1) and (g) - (k) of this subchapter (relating to Small Employer Participation);

(2) have eligible employees that elect to participate in the Healthy Texas Program at a rate equal to or greater than 60 percent; and

(3) contribute an amount of premium or program health care costs for employees which, when combined with any amount obtained from any other eligible source as provided in the Health and Safety Code §75.055, amounts to at least 50 percent of the premium or program health care costs for each employee covered under the health care program.

(d) A regional or local health care program participating in the Healthy Texas Program under this section must meet the claims eligibility provisions of §26.562 of this subchapter (relating to Eligibility of Claims Paid for Reimbursement from the Fund), the response provisions to information requests under §26.563(b) of this subchapter (relating to Fund Administration), and the data filing requirements of §26.564 of this subchapter (relating to Data Filing Requirements) that apply to a health benefit plan issuer participating in the Healthy Texas Program.

(e) A regional or local health care program participating in the Healthy Texas Program under this section shall, within 90 days of the end of its fiscal year, file the documents described in paragraphs (1)

- (3) of this subsection with the commissioner in a form and manner prescribed by the commissioner:

(1) financial statements audited by a certified public accountant;

(2) an actuarial opinion prepared and signed by a qualified actuary who is a member of the American Academy of Actuaries. The actuarial opinion must opine on the adequacy of reserves in support of the program benefits and must include the amount of any additional reserves needed in order to render an unqualified opinion. A determination of adequacy must include a determination that a good and sufficient provision is made for all unpaid claims and other actuarial liabilities in support of the program benefits. In no event can the total reserves held be less than 20 percent of the total contributions in the preceding program operating year or less than 20 percent of the total estimated contributions for the current program operating year. Reserves must be maintained in cash or federally guaranteed obligations of less than five-year maturity that have fixed principal amounts; and

(3) a report prepared and certified by the governing board or program operator. The certified report shall include a summary and description of the financial soundness of the regional or local health care program, including any actions the program is recommended to take or intends to implement to improve or to enhance the financial soundness of the program.

§26.536. Withdrawal from Participation.

(a) Any existing participating regional or local health care program may withdraw from participation in the Healthy Texas Program at any time by written notice filed with the commissioner on a form and in the manner prescribed by the commissioner.

(b) Any existing participating regional or local health care program also must provide enrollees under the program written notice of its intention to withdraw from participation in the Healthy Texas Program not later than the 90th day prior to the anniversary date on which the withdrawal is to become effective.

§26.537. Program Certification.

(a) At the time of initial application, a regional or local health care program electing to participate in Healthy Texas shall obtain from small employers participating in its program written certification or information to ensure that the regional or local health care program can provide written certification to the health benefit plan issuer or to the commissioner, as applicable, that each employer meets the eligibility requirements of the Insurance Code §1508.051 and the minimum employer participation requirements of the Insurance Code §1508.053.

(b) A regional or local health care program participating in the Healthy Texas Program under §26.534 of this division (relating to Participation Through Direct Purchase of Health Benefit Plan) shall, not later than the 90th day before the renewal date of the health benefit plan, provide the health benefit plan issuer a written certification that each employer continues to meet the eligibility requirements of the Insurance Code §1508.051 and the minimum employer participation requirements of the Insurance Code §1508.053.

(c) A regional or local health care program participating in the Healthy Texas Program under §26.535 of this division (relating to Participation Through Eligible Regional or Local Health Care Program Implementation) shall, not later than the 90th day before the renewal date of the health services contract, provide the commissioner a written certification that each employer continues to meet the eligibility requirements of the Insurance Code §1508.051 and the minimum employer participation requirements of the Insurance Code §1508.053.

(d) The health benefit plan issuer may require the submission of appropriate documentation to support a certification described by subsection (a) or (b) of this section.

§26.538. Applicability of Other Subchapter Provisions.

Except as expressly provided in this division, the provisions of Division 3 of this subchapter (relating to Participation by Small Employers) apply to small employers and employees of small employers that participate in a regional or local health care program that elects to participate in the Healthy Texas Program.

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

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DIVISION 5. RATING OF QUALIFIED HEALTH BENEFIT PLANS

28 TAC §§26.551 - 26.553

STATUTORY AUTHORITY. The new sections are proposed under the Insurance Code Chapter 1508 and §36.001. Section 1508.003 authorizes the Commissioner to adopt rules to implement Chapter 1508, which establishes the Healthy Texas Program. Section 1508.101(d) requires the Commissioner by rule to establish participation requirements applicable to regional and local health care programs considering the unique plan designs, benefit levels and participation criteria of each program. Section 1508.251 requires the Commissioner to adopt rules necessary to implement and administer the fund, including rules setting out procedures for operation of the fund and distribution of money from the fund. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statute is affected by this proposal: Insurance Code Chapter 1508.

§26.551. Rating of Plans Eligible for Claims Reimbursements.

(a) Premium rates to be charged for qualifying group health benefit plans must be filed with the department for review and approval by the commissioner in a form and within the timeframe set by the commissioner. In accordance with the Insurance Code §1508.202(c), a health benefit plan issuer may use only age and gender as case characteristics, as defined in the Insurance Code §1501.201(2), in setting premium rates for a qualifying health benefit plan.

(b) Premium rates established for qualifying group health benefit plans must recognize and consider the availability of reimbursement from the fund.

(c) Rating factors shall be applied consistently with respect to all small employers in a class of business.

(d) Reimbursement from the fund shall reduce claims expenses for the purposes of calculating loss ratios, premium rates and premium rate adjustments.

(e) Initial rate submissions and rate adjustment applications submitted for qualifying group health benefit plans shall contain such information as may be needed and prescribed by the commissioner in order to assist the commissioner in determining the anticipated premium rate impact on the availability of reimbursement from the fund.

(f) Estimates of anticipated receipts from the fund may be calculated based upon available enrollment data and such other data as may be deemed appropriate by the commissioner.

§26.552. Reinsurance Permitted.

Participating health benefit plan issuers may reinsure their Healthy Texas business in whole or in part if they determine it would favorably impact premium rates. The impact of any such reinsurance shall be factored into the premium rates for affected qualifying group health benefit plan premiums.

§26.553. Required Policy Form and Rate Filings.

Not later than 30 days from the effective date of any amendment to this subchapter, participating health benefit plan issuers shall submit the policy form amendments and premium rate adjustments necessitated by the amendments.

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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DIVISION 6. HEALTHY TEXAS SMALL EMPLOYER PREMIUM STABILIZATION FUND

28 TAC §§26.561 - 26.564

STATUTORY AUTHORITY. The new sections are proposed under the Insurance Code Chapter 1508 and §36.001. Section 1508.003 authorizes the Commissioner to adopt rules to implement Chapter 1508, which establishes the Healthy Texas Program. Section 1508.101(d) requires the Commissioner by rule to establish participation requirements applicable to regional and local health care programs considering the unique plan designs, benefit levels and participation criteria of each program. Section 1508.251 requires the Commissioner to adopt rules necessary to implement and administer the fund, including rules setting out procedures for operation of the fund and distribution of money from the fund. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statute is affected by this proposal: Insurance Code Chapter 1508.

§26.561. Definitions.

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

(1) Claims corridor--Claims paid on behalf of a covered person in excess of $5,000 and less than $75,000 per calendar year.

(2) Claims paid--Claims paid by a participating health benefit plan issuer pursuant to a qualifying health benefit plan issued under the Healthy Texas Program as determined by the date of payment rather than the date of service or date the claim was incurred.

(3) Claims threshold--The aggregate amount that a participating health benefit plan issuer must pay out as claims paid before reaching the claims corridor and becoming eligible for reimbursement on behalf of an enrollee in a given calendar year.

§26.562. Eligibility of Claims Paid for Reimbursement from the Fund.

(a) For each health benefit plan eligible for reimbursement from the fund, a participating health benefit plan issuer shall record and aggregate claims paid on a per-covered-person basis. Reimbursement from the fund shall be calculated based on such per-covered-person aggregates.

(b) A participating health benefit plan issuer shall be eligible for reimbursement of 80 percent of eligible claims paid within the claims corridor on behalf of each person covered under a qualifying group health benefit plan.

(c) A participating health benefit plan issuer shall not be entitled to any reimbursement on behalf of an enrollee if the claims paid on behalf of that person in a given calendar year do not, in the aggregate, reach the claims threshold. Additionally, claims paid on behalf of an enrollee which exceed the claims corridor in a given calendar year shall not be eligible for reimbursement from the fund.

(d) Claims paid within a calendar year shall be determined by the date of payment rather than the date of service or date the claim was incurred. A participating health benefit plan issuer may not delay or defer payment of a claim solely for the purpose of causing the date of payment to fall into a subsequent calendar year.

(e) Claims paid shall not include interest paid by a participating health benefit plan issuer in connection with any claim.

(f) Claims paid that are not submitted for reimbursement prior to April 1 of the calendar year following the calendar year in which they are paid shall not be eligible for reimbursement from the fund and shall not be credited as paid claims in any year for the purpose of determining whether the claims threshold has been reached.

(1) If the commissioner determines that the claims data submitted in conjunction with a reimbursement request is insufficient to make a reimbursement determination, the commissioner or the fund administrator shall make a request for clarification of the data or for the submission of additional data.

(2) Participating health benefit plan issuers shall comply with all such requests within 15 business days of the date of the request.

(3) If a participating health benefit plan issuer fails to comply with such a request from the commissioner or the fund administrator within 15 business days, the commissioner has discretion to deem any affected claims ineligible for reimbursement.

(g) Claims paid shall not include claims paid prior to January 1, 2010.

§26.563. Fund Administration.

(a) The commissioner shall establish the fund and oversee its administration. The functions of the commissioner may include the following:

(1) choosing a firm or firms, to administer the fund, based on an evaluation of competitive bids received in a public procurement process;

(2) granting approval of the general systems and procedures used by the firm or firms to administer the fund, including procedures utilized to verify the appropriateness of payments from the fund to any participating health benefit plan issuer;

(3) making payment of reasonable fees from the fund to the firm or firms for administration of the fund;

(4) changing the administrating firm or firms, or the administrative systems and procedures, if necessary;

(5) collecting necessary data from participating health benefit plan issuers;

(6) arranging for periodic audits of participating health benefit plan issuers and for the payment of reasonable fees for such audits from the fund; and

(7) reviewing and approving the format and content of the annual report of the administrating firm or firms regarding the affairs and operation of the fund, and requiring such other reports as are deemed necessary by the commissioner.

(b) A participating health benefit plan issuer must respond to requests for information from the commissioner and/or the fund administrator(s) within 15 business days of the date on which the request for information is made.

§26.564. Data Filing Requirements.

(a) Each participating health benefit plan issuer or regional or local health care program shall submit to the commissioner necessary claims data in connection with its annual submission of requests for reimbursement from the fund. Each participating health benefit plan issuer or regional or local health care program also shall provide the commissioner with such additional data, as deemed necessary by the commissioner, to oversee the operation of the fund and the Healthy Texas Program. Reports pertaining to reimbursement or loss ratio shall be certified, by an officer of the submitting entity, as to their accuracy and completeness. Data to be submitted may include the following:

(1) the total number of plans issued or groups enrolled in a regional or local health care program within the reporting period and the total number of plans in force or groups enrolled in a regional or local health care program that are covered by the fund;

(2) the total number of primary insured persons or primary covered persons, the total number of dependents covered, and the total number of child dependents covered; the commissioner may require that such totals be specified by geographic region;

(3) total premium earned, and per-enrollee per-month premium earned, for all plans covered by the fund for the reporting period;

(4) claims payment data, reported individually for each enrollee and/or for each enrollee for whom the participating health benefit plan issuer has paid claims eligible for reimbursement;

(5) total claims eligible for reimbursement year-to-date; and

(6) other data and information as necessary to determine continuing program compliance.

(b) Data reporting periods may be other than a calendar year and reporting frequency for some data may be as often as monthly, as determined by the commissioner to be reasonably necessary to determine or monitor ongoing effective and efficient operation of the fund and the Healthy Texas Program and continuing attainment of program objectives. Claims payment data shall state clearly both the date the claim was incurred and the date the claim was paid. Claims payment data also may be requested on a cumulative basis or in the form of aggregates, specific categories, and averages.

(c) A participating health benefit plan issuer shall use a coding system to ensure the privacy of insured individuals.

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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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 295. WATER RIGHTS, PROCEDURAL

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §§295.13, 295.155, and 295.161; and also proposes new §295.114.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

In 2009, the 81st Legislature passed House Bill (HB) 4231, relating to the conveyance or transfer in Texas of water imported into Texas from a source located outside the state. HB 4231 amends Texas Water Code (TWC), §11.042 and §11.085. TWC, §11.042 is amended to add §11.042(a-1), which authorizes the use of the bed and banks of a stream in Texas to convey water imported from a source located wholly outside of the state. TWC, §11.085 is amended to add §11.085(v)(5), which provides an exemption from the requirements of TWC, §11.085(b) - (u) for water imported from a source located wholly outside of the state. The commission's procedural rules related to water rights are in Chapter 295.

In a corresponding rulemaking published in this issue of the *Texas Register;* the commission proposes to also amend 30 TAC Chapter 297, Water Rights, Substantive.

SECTION BY SECTION DISCUSSION

The commission proposes to amend §295.13, Interbasin Transfers, to add §295.13(c)(5), which grants an exemption from the application requirements in §295.13(b) for transfers of imported water into Texas.

Proposed §295.13(c)(2) is amended to correct the title of the reference to §297.17.

Proposed §295.13(c)(5) reflects the new TWC, §11.085(v)(5) created by HB 4231.

The commission proposes new §295.114, Application to Convey Imported Water in Bed and Banks, to define the application requirements for an application under TWC, §11.042(a-1). These requirements are necessary to provide an applications process for a bed and banks authorization for imported water.

Proposed new §295.114(a) indicates that the purpose of §295.114 is to provide the application content requirements for a bed and banks authorization under TWC, §11.042(a-1).

Proposed new §295.114(b) lists the application requirements for a bed and banks authorization under TWC, §11.042(a-1).

Proposed new §295.114(b)(1) requires applicants to provide their name, mailing address, and telephone number. This information is necessary for agency staff to be able to contact the applicant.

Proposed new §295.114(b)(2) requires the applicant to provide the name of the stream and the locations of the point of discharge and diversion as identified on a United States Geological Survey 7.5 minute topographical map(s). This information is necessary for the agency to know where the imported water will be transported, and to be better able to manage the waters of the state.

Proposed new §295.114(b)(3) requires the applicant to indicate the source, amount, and rates of discharge and diversion. This information is necessary for the agency to calculate any water losses that may result from the bed and banks transfer.

Proposed new §295.114(b)(4) requires the applicant to provide a description of the water quality of the water discharged and, if applicable, the permit number and name of any related discharge permit. This information is necessary for the agency to ensure that there will be no significant impact to the water quality of the river by the bed and banks transfer.

Proposed new §295.114(b)(5) requires the applicant to provide a copy of the legal authorization for the imported water from the source state. This information is necessary for the agency to know that it is issuing a valid authorization for water from another state.

Proposed new §295.114(b)(6) requires the applicant to indicate the estimated amount of water that will be lost to transportation, evaporation, seepage, channel, or other associated carriage losses from the point of discharge to the point of diversion. This information is necessary for the agency to calculate any water losses that may result from the bed and banks transfer.

Proposed new §295.114(b)(7) requires the applicant to provide an assessment of the adequacy of the quantity and quality of flows remaining after the proposed diversion to meet instream uses and bay and estuary freshwater inflow needs.

Proposed new §295.114(b)(8) requires the applicant to provide an accounting plan demonstrating that no state water will be diverted under this rule. This information is necessary to ensure that the applicant is only taking water imported from another state, and no state water is being taken without authorization.

Proposed new §295.114(b)(9) requires the applicant to provide any other information the executive director may need to complete an analysis of the application.

Proposed new §295.114(c) indicates that nothing in §295.114 shall be construed to affect an existing project for which all required water rights and reuse authorizations have been granted by the commission prior to September 1, 1997. This language is necessary to be consistent with TWC, §11.042(d) and §295.112 and §295.113.

Proposed new §295.114(d) indicates that the method and calculation of carriage losses under §295.114 is subject to the review and approval of the executive director. This language is necessary to be consistent with §295.112.

The commission proposes to amend §295.155, Notice for Interbasin Transfers, to add an exemption for imported water from its requirements. Proposed §295.155(a) will add subsection (d)(5) to this list of subsections exempt from §295.155 requirements. This change is necessary to reflect new TWC, §11.085(v)(5).

Proposed §295.155(d)(5) will grant an exemption from the notice requirements defined in §295.155(b). This change is also necessary to comply with new TWC, §11.085(v)(5).

Proposed §295.155(d)(2) is amended to correct the title of the reference to §297.17.

The commission proposes to amend §295.161, Notice of Application to Convey Water in Bed and Banks, to add imported water to the types of water to which it applies. Proposed §295.161(a) will add imported water to the list of types of water excepted from its requirements. Proposed §295.161(b) will add imported water, pursuant to TWC, §11.042(a-1), to the types of water to which it applies. These changes are necessary to comply with new TWC, §11.042(a-1). Proposed §295.161(f) will correct a statutory reference.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, determined that, for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency or other units of state or local governments as a result of administration or enforcement of the proposed rules.

The proposed rules implement the provisions of HB 4231, which provides for the ability to use the bed and banks of a stream in Texas to import water from outside the state's boundaries, except for water from Mexico. The proposed rules amend Chapters 295 and 297 of the Texas Administrative Code. This fiscal note details the fiscal implication of proposed amendments to Chapter 295, and the fiscal impact of amendments to Chapter 297 are detailed in a separate fiscal note.

The proposed rules define the application requirements for a bed and banks authorization for conveyance of imported water, specify the application content, and specify notice requirements for conveyance of imported water. In addition, the proposed rules exempt such imported water from most of the current requirements of an interbasin transfer.

The number of applications for a bed and banks authorization to convey imported water is expected to be small due to expected high costs of buying water outside the state. Local governments that might import water from outside the state include river authorities, municipalities, and various types of water districts. If a local government applies for a bed and banks authorization for conveyance of imported water, it will be subject to the existing application fees of Chapter 295. These one time fees could range from $100 to $1,000 depending on the volume of water.

The proposed rules will require limited notice for the application for a bed and banks authorization for conveyance of imported water and exempt imported water from the notice requirements regarding interbasin transfers. Notice for an application for a bed and banks transfer for the conveyance of imported water only requires that diverters of record on the watercourse between proposed points of discharge and diversion be notified, and this type of notice could cost as much as $3.00 per notice to mail to the required parties.

The proposed rules are not expected to have a significant fiscal impact on local governments since they are expected to use existing staff or outside professionals used during their normal course of business when preparing an application for a bed and banks authorization for conveyance of imported water. Also, applications for this authorization are expected to occur in conjunction with requests to amend existing water rights, so additional effort and cost is expected to be minimal. Local governments could also recoup any cost increases they might experience by increasing rates charged to customers.

PUBLIC BENEFITS AND COSTS

Nina Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be the ability to import water into the state using the bed and banks of a stream in Texas to ensure adequate water supply and efficient delivery of water for the use of the citizens of the state.

The number of applications to import water is expected to be small, and these applications are expected to occur in conjunction with requests to amend existing water rights. No large businesses are known to have an interest in importing water from other states. If a large business does decide to import water into the state using the bed and banks of a stream in Texas, it will be subject to the same application fee and notification requirement as a local government, and any costs associated with the proposed rules will be the same as those incurred by a local government. Customers may experience higher costs for imported water depending on market rates at the time if the business decides to pass that cost on to its customer base. However, the ability to import water into the state will allow access to a water supply if conditions require the use of water from outside the state.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. The proposed rules are intended to enhance the ability to import water into the state using the bed and banks of a stream. At this time, no small businesses are known to have an interest in importing water from other states. Also, small businesses that provide water typically purchase their water supply from another provider, and they are not expected to apply for authorizations to import water themselves.

SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules are required to comply with state law and do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and 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.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission evaluated the proposed rules and performed an analysis of whether the proposed rules require a regulatory impact analysis under Texas Government Code, §2001.0225. The proposed rules are not a "major environmental rule" under Texas Government Code, §2001.0225. The purpose of the rulemaking is to implement HB 4231 to authorize with prior authorization from the TCEQ, the use of the bed and banks of a stream in Texas to convey water imported from a source located wholly outside of the state and to exempt those transfers from the requirements of TWC, §11.085. The specific intent of allowing the use of the bed and banks of a river to convey water from out of state and exempting the transfer from interbasin transfer requirements is not to protect the environment or reduce risks to human health from environmental exposure, and the rulemaking does not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, or the public health and safety of the state or a sector of the state sources. These proposed rules in Chapter 295 are procedural requirements for these authorizations. Also, these rules do not exceed a standard set by federal law not required by state law, exceed an express requirement of state law, exceed a requirement of a federal delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program, and are not being proposed solely under the general powers of the agency instead of under a specific state law. Therefore, no regulatory impact analysis is required under Texas Government Code, §2001.0225 for this rulemaking.

The commission invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed rules and performed an analysis of whether the proposed rules constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed rules is to establish procedural requirements to implement HB 4231, which authorizes, with prior authorization from the TCEQ, the use of the bed and banks of a stream in Texas to convey water imported from a source located wholly outside of the state, and the exemption of those transfers from interbasin transfer requirements in TWC, §11.085. The proposed rules would substantially advance this stated purpose by establishing procedural requirements for obtaining these authorizations. The addition of the exemption from interbasin transfer requirements for this transfer does not impact real property rights. Promulgation and enforcement of the proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulations do not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally) nor restrict or limit the owner's right to property and reduce its value by 25 percent or more beyond that which would otherwise exist in the absence of the regulations. The use of the bed and banks of state watercourses to transport water is already authorized by state law

for in-state water. There are no other reasonable or practicable alternatives to this rulemaking because it is required by statute.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rule, 31 TAC §505.11(b)(4), relating to Actions and Rules Subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the rulemaking is consistent with CMP goals and policies because the rulemaking is unlikely to be of environmental significance to the coastal natural resource areas.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on January 5, 2010 at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Charlotte Horn, Office of Legal Services at (512) 239-0779. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Patricia Durón, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.state.tx.us/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2009-040-295-PR. The comment period closes January 11, 2010. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html.* For further information, please contact Ron Ellis, Water Supply Division, (512) 239-1282.

SUBCHAPTER A. REQUIREMENTS OF WATER RIGHTS APPLICATIONS GENERAL PROVISIONS

DIVISION 1. GENERAL REQUIREMENTS

30 TAC §295.13

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules as necessary to carry out its power and duties under the TWC. The amendment is also proposed under TWC, §11.085(v)(5), which exempts from the interbasin transfer requirements of TWC, §11.085 transfers of water from out of state into this state using the bed and banks of any flowing natural stream located in this state.

The proposed amendment implements TWC, §11.085(v)(5).

§295.13. Interbasin Transfers.

(a) An applicant seeking to transfer state water from one basin to another basin shall so state in the application. For purposes of this section, a river basin is defined and designated by the Texas Water Development Board by rule pursuant to Texas Water Code (TWC), §16.051. The application content requirements contained in this chapter for a new or amended water right, as applicable, shall apply to all applications for an interbasin transfer unless otherwise provided.

(b) In addition to the application requirements for a new or amended water right contained in this chapter, the application must also include the following unless exempted by subsection (c) of this section:

(1) the contract price of the water to be transferred;

(2) a statement of each general category of proposed use of the water to be transferred and a detailed description of the proposed uses and users under each category;

(3) the cost of diverting, conveying, distributing, and supplying the water to, and treating the water for, the proposed users;

(4) the projected effect on user rates and fees for each class of ratepayers;

(5) an analysis of whether and to what extent there is the need for the water in the basin of origin and in the proposed receiving basin based upon the period for which the transfer is requested, but not to exceed 50 years;

(6) factors identified in the applicable approved regional water plans which address the following (Regional water management plans must be submitted to the Texas Water Development Board for review and approval not later than September 1, 2000. If applicable approved regional water management plans do not exist at the time the application is submitted, the following information under this paragraph is not required to be submitted.):

(A) an analysis of the availability of feasible and practicable alternative supplies in the receiving basin for which the water is needed;

(B) the amount and purposes of use in the receiving basin for which the water is needed;

(C) the proposed methods and efforts by the receiving basin to avoid waste and implement water conservation and drought contingency measures;

(D) the proposed methods and efforts by the receiving basin to put the water proposed for transfer to beneficial use;

(E) the projected economic impact that is reasonably expected to occur in each basin as a result of the transfer; and

(F) the projected impacts of the proposed transfer that are reasonably expected to occur on existing water rights, instream uses, water quality, aquatic and riparian habitat, and bays and estuaries that must be assessed under TWC, §§11.147, 11.150, and 11.152 and related commission rules contained in §§297.49 - 297.52 of this title (relating to Return and Surplus Waters, Consideration of Water Con-

servation Plans, Time Limitations for Commencement or Completion of Construction, Suppliers of Water for Agriculture) in each basin. If the water sought to be transferred is currently authorized to be used under an existing water right, such impacts shall only be considered in relation to that portion of the water right proposed for transfer and shall be based on historical uses of the water right for which amendment is sought.

(7) proposed mitigation or compensation, if any, to the basin of origin by the applicant;

(8) the continued need to use the water for the purposes authorized under the existing water right if an amendment to an existing water right is being sought; and

(9) any other related information the executive director or commission may require to review the application to make recommendation or determine, as applicable, whether it meets all applicable requirements of the TWC or other applicable law.

(c) Subsection (b) of this section shall not apply to:

(1) a proposed transfer which in combination with any existing transfers totals less than 3,000 acre-feet of water per annum from the same water right;

(2) a request for an emergency transfer of water under §297.17 of this title (relating to Emergency Authorization [~~Authorizations~~] (Texas Water Code, §11.139));

(3) a proposed transfer from a basin to its adjoining coastal basin; [~~or~~]

(4) a proposed transfer from a basin to a county or municipality or the municipality's retail service area that is partially within the basin for use in that part of the county or municipality and the municipality's retail service area not within the basin. For purposes of this paragraph, a county, municipality, or municipality's service area refers to a geographic area; or[~~.~~]

(5) a proposed transfer of water that is:

(A) imported from a source located wholly outside the boundaries of this state, except water that is imported from a source located in the United Mexican States;

(B) for use in this state; and

(C) transported by using the bed and banks of any flowing natural stream in this state.

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 November 5, 2009.

TRD-200905033
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: December 20, 2009
For further information, please call: (512) 239-6087

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DIVISION 11. REQUIREMENTS FOR APPLICATIONS FOR AUTHORIZATIONS TO USE BED AND BANKS

30 TAC §295.114

STATUTORY AUTHORITY

The new section is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules as necessary to carry out its power and duties under the TWC. The new section is also proposed under TWC, §11.042(a-1), which authorizes, with prior authorization from the TCEQ, the use of the bed and banks of a stream in Texas to convey water imported from a source located wholly outside of the state.

The proposed new section implements TWC, §11.042(a-1).

§295.114. Application to Convey Imported Water in Bed and Banks.

(a) The purpose of this section is to provide the application content requirements for a bed and banks authorization under Texas Water Code, §11.042(a-1).

(b) A person wishing to place water imported into the state from a source located wholly outside the state into a stream or watercourse, convey the imported water in the watercourse or stream, and subsequently divert such water shall file an application with the commission containing the following information:

(1) the name, mailing address, and telephone number of the applicant;

(2) the name of the stream and the locations of the points of discharge and diversion as identified on a United States Geological Survey 7.5 minute topographical map(s);

(3) the source, amount, and rates of discharge and diversion;

(4) a description of the water quality of the water discharged and, if applicable, the permit number and name of any related discharge permit;

(5) a copy of the legal authorization for the imported water from the source state;

(6) the estimated amount of water that will be lost to transportation, evaporation, seepage, channel, or other associated carriage losses from the point of discharge to the point of diversion;

(7) an assessment of the adequacy of the quantity and quality of flows remaining after the proposed diversion to meet instream uses and bay and estuary freshwater inflow needs;

(8) an accounting plan demonstrating that no state water will be diverted under this rule; and

(9) any other information the executive director may need to complete an analysis of the application.

(c) Nothing in this section shall be construed to affect an existing project for which all required water rights and reuse authorizations have been granted by the commission prior to September 1, 1997.

(d) The method and calculation of carriage losses under this section is subject to the review and approval of the executive director.

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 November 5, 2009.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-6087

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SUBCHAPTER C. NOTICE REQUIREMENTS FOR WATER RIGHT APPLICATIONS

30 TAC §295.155, §295.161

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules as necessary to carry out its power and duties under the TWC. The amendments are also proposed under TWC, §11.042(a-1), which authorizes, with prior authorization from the TCEQ, the use of the bed and banks of a stream in Texas to convey water imported from a source located wholly outside of the state, and TWC, §11.085(v), which exempts from the interbasin transfer requirements of TWC, §11.085 transfers of water from out of state into this state using the bed and banks of any flowing natural stream located in this state.

The proposed amendments implement TWC, §11.042(a-1) and §11.085(v)(5).

§295.155. Notice for Interbasin Transfers.

(a) The notice requirements of this subchapter for an application for a new or amended water right, as applicable, shall apply to an application for an interbasin transfer except as otherwise provided by this section. In addition, notice shall be given to users of record in the receiving basin who are located below the point of introduction except for interbasin transfers described under subsection (d)(2) - (5) [~~(d)(2), (3), and (4)~~] of this section. For purposes of this section, a river basin is defined and designated by the Texas Water Development Board by rule pursuant to Texas Water Code, §16.051. An increase in the amount of water being transferred to the receiving basin under an existing water right constitutes a new interbasin basin transfer for purposes of this section.

(b) In addition to the notice requirements provided by subsection (a) of this section, notice of an application for an interbasin transfer shall also include the following unless exempted by subsection (d) of this section:

(1) notice of the application shall be mailed to:

(A) all holders of water rights located in whole or in part in the basin of origin if not already provided under subsection (a) of this section;

(B) each county judge of a county located in whole or in part in the basin of origin;

(C) each mayor of a city with a population of 1,000 or more based upon the most recent estimate of the U.S. Census Bureau located in whole or in part in the basin or origin; and

(D) all groundwater conservation districts located in whole or in part in the basin of origin;

(E) each state legislator in both basins; and

(F) the presiding officer of each affected regional water planning group in both basins.

(2) the applicant shall cause notice of the application to be published once a week for two consecutive weeks in one or more newspapers having general circulation in each county located in whole or in part in the basin of origin and the receiving basin. The published notice may not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches. The notice of application and public meetings shall be combined in the mailed and published notices; and

(3) the notice of the application must state how a person may obtain from the applicant, without cost, information relating to the contract price of the water to be transferred; a statement of each general category of proposed use of the water to be transferred, and a detailed description of the proposed uses and users under each category; the cost of diverting, conveying, distributing, and supplying the water to, and treating the water for, the proposed users; and the projected effect on user rates and fees for each class of ratepayers.

(c) The applicant shall pay the cost of notice required to be provided under this section.

(d) Subsection (b) of this section shall not apply to:

(1) a proposed transfer which in combination with any existing transfers totals less than 3,000 acre-feet of water per annum from the same water right;

(2) a request for an emergency transfer of water under §297.17 of this title (relating to Emergency Authorization [~~Authorizations~~] (Texas Water Code, §11.139));

(3) a proposed transfer from a basin to its adjoining coastal basin; or

(4) a proposed transfer from a basin of origin to a county or municipality or the municipality's retail service area that is partially within the basin of origin for use in that part of the county or municipality and the municipality's retail service area not within the basin of origin. The further transfer and use of this water outside of such county or municipal retail service area as existing at the time of the transfer or as may exist in the future other than back to the basin of origin shall not be exempt under this paragraph. For purposes of this paragraph, a county, municipality, or municipality's retail service area refers to a geographic area.

(5) a proposed transfer of water that is:

(A) imported from a source located wholly outside the boundaries of this state, except water that is imported from a source located in the United Mexican States;

(B) for use in this state; and

(C) transported by using the bed and banks of any flowing natural stream in this state.

§295.161. Notice of Application to Convey Water in Bed and Banks.

(a) Except for an application to convey imported water, new or future increases of groundwater-based effluent or other groundwater as provided in subsection (b) of this section, notice of an application to convey groundwater-based effluent or other water in the bed and banks of a stream or watercourse pursuant to Texas Water Code, §11.042(b) and (c) shall be provided by first class mail, postage prepaid, by the commission to every water right holder of record downstream of the discharge point at least thirty (30) days prior to commission consideration of the application.

(b) If the commission has received a written statement of a proposed conveyance of imported water pursuant to Texas Water Code, §11.042(a-1), or new or future increases in groundwater-based effluent or other groundwaters in the bed and banks of a stream or watercourse pursuant to Texas Water Code, §11.042(b), it shall send notice to each diverter of record on the watercourse between the proposed point of discharge and the proposed point of diversion. The notice shall set forth the approximate time that deliveries of such water will occur, the legal consequences that could result from the unlawful diversion and taking of such water in transit, and other details the commission considers appropriate.

(c) Notice of an application for a bed and banks permit under this section shall also be provided to the Texas Parks and Wildlife Department and the Public Interest Counsel.

(d) No published notice shall be required for an application under this section.

(e) The applicant shall be responsible for the costs of providing notice under this section. (For notice requirements relating to the conveyance of stored water under Texas Water Code, §11.042(a), see §295.160 of this title (relating to Notice of Applications to Convey Stored Water).)

(f) Nothing in this section is intended to deny any additional notice to an affected person that may be required under the Texas Administrative Procedure [~~Procedures~~] Act.

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

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-6087

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CHAPTER 297. WATER RIGHTS, SUBSTANTIVE

SUBCHAPTER B. CLASSES OF WATER RIGHTS

30 TAC §297.16, §297.18

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §297.16 and §297.18.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

In 2009, the 81st Legislature passed House Bill (HB) 4231, relating to the conveyance or transfer in Texas of water imported into this state from a source located outside Texas. HB 4231 amends Texas Water Code (TWC), §11.042 and §11.085. TWC, §11.042 is amended to add §11.042(a-1), which authorizes the use of the bed and banks of a stream in Texas to convey water imported from a source located wholly outside of the state. TWC, §11.085 is amended to add §11.085(v)(5), which provides an exemption from the requirements of TWC, §11.085(b) - (u) for water imported from a source located wholly outside of the state. The commission's substantive rules related to water rights are in Chapter 297.

In a corresponding rulemaking published in this issue of the *Texas Register,* the commission proposes to also amend 30 TAC Chapter 295, Water Rights, Procedural.

SECTION BY SECTION DISCUSSION

The commission proposes to amend §297.16, Conveyance of Water Down Bed and Banks, to require authorization to use the bed and banks to convey imported water and define the terms for such an authorization. Proposed §297.16(c) requires authorization to use the bed and banks to convey imported water and defines the terms for such an authorization. Proposed §297.16(c) reflects the requirements of TWC, §11.042(a-1) created by HB 4231. Existing subsections (c) and (d) are relettered to accommodate the addition of new requirements in proposed §297.16.

The commission proposes to amend §297.18 to add an exemption for imported water from interbasin transfer provisions defined in that section.

The commission proposes to amend §297.18(c)(5) to replace the reference of "§295.17" with §297.17," which is the correct section.

The commission proposes to amend §297.18(d)(2) to correct the title of the reference to Chapter 288.

The commission proposes to amend §297.18(k)(2) to correct the reference to §297.17.

Proposed §297.18(k)(4) will exempt imported water from the application requirements defined in §297.18(b) - (j) for interbasin transfers. Proposed §297.18(k)(4) also reflects TWC, §11.085(v)(5) created by HB 4231. Existing §297.18(k)(4) is proposed to be renumbered as §297.18(k)(5).

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, determined that, for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency or other units of state or local governments as a result of administration or enforcement of the proposed rules.

The proposed rules implement the provisions of HB 4231, which provides for the ability to use the bed and banks of a stream in Texas to import water from outside the state's boundaries except for water from Mexico. The proposed rules amend Chapters 295 and 297 of the Texas Administrative Code. This fiscal note details the fiscal implication of proposed amendments to Chapter 297, and the fiscal impact of amendments to Chapter 295 are detailed in a separate fiscal note.

The proposed amendments to Chapter 297 allow for the use of the bed and banks of a stream in Texas to convey water imported from other states. The proposed rules require authorization and define the terms of authorization to use the bed and banks of the state for conveyance of imported water and exempt imported water from some of the application requirements for interbasin transfer provisions.

The number of applications for a bed and banks authorization to convey imported water is expected to be small due to the cost of importing water. Local governments that might import water from outside the state's boundaries include river authorities, munici-

palities, and various types of water districts. The proposed rules for Chapter 297 are not expected to have a fiscal impact on local governments since any costs associated with notice and applications for a bed and banks authorization to convey imported water will be imposed by the proposed rules for Chapter 295.

PUBLIC BENEFITS AND COSTS

Nina Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be the ability to import water into the state to ensure adequate water supply and efficient delivery of water for the use of the citizens of the state.

The number of applications to import water using the beds and banks of Texas' streams is expected to be small, and the proposed rules for Chapter 297 are not expected to have a fiscal impact on regulated parties that might buy water from outside the state. No large businesses are known to have an interest in importing water from other states. Any costs associated with notice and applications for a bed and banks authorization to convey imported water will be imposed by the proposed rules for Chapter 295.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. The proposed rules are intended to enhance the ability to import water into the state using the beds and banks of its streams. At this time, no small businesses are known to have an interest in importing water from other states. Small businesses that provide water typically purchase their water supply from another water provider, and small businesses are not expected to apply for authorization under Chapter 297 or 295.

SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules are required to comply with state law and do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and 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.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission evaluated the proposed amendments and performed an analysis of whether the proposed amendments require a regulatory impact analysis under Texas Government Code, §2001.0225. The proposed amendments are not a "major environmental rule" under Texas Government Code, §2001.0225. The purpose of the rulemaking is to implement HB 4231 to authorize with prior authorization from the TCEQ, the use of the bed and banks of a stream in Texas to convey water imported from a source located wholly outside of the state, and to exempt that transfer from the requirements for interbasin transfers in TWC, §11.085. This will make transfer of water to Texas from out of state a simpler procedure and will help provide additional water resources for the state. The specific intent of allowing the use of the bed and banks of a river to convey water from out of state and exempting these transfers from interbasin transfer requirements is not to protect the environment or reduce risks to human health from environmental exposure, and the rulemaking does not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, or the public health and safety of the state or a sector of the state's sources. Also, these rules do not exceed a standard set by federal law not required by state law, exceed an express requirement of state law, exceed a requirement of a federal delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program, and are not being proposed solely under the general powers of the agency instead of under a specific state law. Therefore, no regulatory impact analysis is required under Texas Government Code, §2001.0225 for this rulemaking.

The commission invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed amendments and performed an analysis of whether the proposed amendments constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed amendments is to implement HB 4231, which authorizes, with prior authorization from the TCEQ, the use of the bed and banks of a stream in Texas to convey water imported from a source located wholly outside of the state and to exempt those transfers from the requirements for interbasin transfers in TWC, §11.085. The proposed amendments would substantially advance this stated purpose by adding this authorization to the TCEQ's rules. Promulgation and enforcement of the proposed amendments would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulations do not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally) nor restrict or limit the owner's right to property and reduce its value by 25 percent or more beyond that which would otherwise exist in the absence of the regulations. The use of the bed and banks of state watercourses to transport water is already authorized by state law for in-state water. There are no other reasonable or practicable alternatives to this rulemaking because it is required by statute.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rule, 31 TAC §505.11(b)(4), relating to Actions and Rules Subject to the Coastal Management Program, and will, therefore, require that the goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the rulemaking is consistent with CMP goals and policies because the rulemaking is unlikely to be of environmental significance to the coastal natural resource areas.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on January 5, 2010 at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Charlotte Horn, Office of Legal Services at (512) 239-0779. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Patricia Durón, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.state.tx.us/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2009-040-295-PR. The comment period closes January 11, 2010. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html.* For further information, please contact Ron Ellis, Water Supply Division, (512) 239-1282.

STATUTORY AUTHORITY

The amendments are proposed under TWC, §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules as necessary to carry out its power and duties under the TWC. The amendments are also proposed under TWC, §11.042(a-1), which authorizes, with prior authorization from the TCEQ, the use of the bed and banks of a stream in Texas to convey water imported from a source located wholly outside of the state, and TWC, §11.085(v)(5), which exempts a transfer of water from a source located wholly outside the boundaries of the state for use in this state, transported by using the bed and banks of any flowing natural stream located in this state.

The proposed amendments implement TWC, §11.042(a-1) and §11.085(v)(5).

§297.16. Conveyance of Water Down Bed and Banks.

(a) A person who wishes to discharge treated wastewater derived from privately owned groundwater into a stream or other state watercourse and then subsequently divert and reuse such water must obtain prior authorization from the commission for the discharge, conveyance and diversion of this water. The authorization may allow for the diversion by the discharger of existing discharges, less carriage losses, and shall be subject to special conditions if necessary to protect an existing water right that was granted based on the use or availability of these discharges. Special conditions may also be included in the permit to help maintain instream uses and freshwater inflows to bays and estuaries. A person wishing to divert and reuse future increases of discharged wastewater derived from privately owned groundwater must obtain authorization to divert and reuse such increases in discharges before the increase occurs.

(b) Except as provided by Subchapter I of this chapter (relating to Conveying Stored Water) for the conveyance of stored or conserved water, a person who wishes to convey and subsequently divert water in a watercourse or stream must obtain the prior approval of the commission through a bed and banks authorization. The authorization shall allow to be diverted only the amount of water put into a watercourse or stream, less carriage losses and subject to any special conditions that may address the impact of the discharge, conveyance, and diversion on existing water rights, instream uses, and freshwater inflows to bays and estuaries.

(c) With prior authorization, a person, association of persons, corporation, water control and improvement district, or irrigation district supplying water imported from a source located wholly outside the boundaries of this state, except water imported from a source located in the United Mexican States, may use the bed and banks of any flowing natural stream in the state to convey water for use in this state. The authorization must:

(1) allow for the diversion of only the amount of water put into a watercourse or stream, less carriage losses; and

(2) include special conditions adequate to prevent a significant impact to the quality of water in this state.

(d) [~~(c)~~] Water discharged into a watercourse or stream under this section shall not cause a degradation of water quality as provided by §307.5 of this title (relating to Antidegradation). Authorizations under this section and water quality authorizations may be approved in a consolidated permit proceeding. Nothing in this chapter affects the obligation to obtain and comply with a permit under Chapter 26 of the Texas Water Code or other applicable law.

(e) [~~(d)~~] Nothing in this section shall be construed to affect an existing project for which water rights and reuse authorizations have been granted by the commission before September 1, 1997.

§297.18. Interbasin Transfers, Texas Water Code, §11.085.

(a) No person may take or divert any state water from a river basin and transfer such water to any other river basin without first applying for and receiving a water right or an amendment to a water right authorizing the transfer.

(b) An increase in the authorized amount of water being transferred to the receiving basin under an existing water right constitutes a new interbasin transfer for purposes of this section.

(c) In addition to the other requirements of this chapter relating to the review of and action on an application for a new or amended water right, the commission shall weigh the effects of the proposed transfer by considering:

(1) the need for the water in the basin of origin and in the proposed receiving basin based on the period for which the water supply is requested, but not to exceed fifty years;

(2) factors identified in the applicable approved regional water plans which address the following:

(A) the availability of feasible and practicable alternative supplies in the receiving basin to the water proposed for transfer;

(B) the amount and purposes of use in the receiving basin for which the water is needed;

(C) proposed methods and efforts by the receiving basin to avoid waste and implement water conservation and drought contingency measures;

(D) proposed methods and efforts by the receiving basin to put the water proposed for transfer to beneficial use;

(E) the projected economic impact that is reasonably expected to occur in each basin as a result of the transfer; and

(F) the projected impacts of the proposed transfer that are reasonably expected to occur on existing water rights, instream uses, water quality, aquatic and riparian habitat, and bays and estuaries in each basin. If the water sought to be transferred is currently authorized to be used under an existing water right in the basin of origin, such impacts shall only be considered in relation to that portion of the water right proposed for transfer and shall be based on the historical uses of the water right for which amendment is sought.

(3) proposed mitigation or compensation, if any, to the basin of origin by the applicant;

(4) the continued need to use the water for the purposes authorized under the existing water right if an amendment to an existing water right is sought;

(5) comments received from county judges required to be provided notice of the application as provided by §297.17 [~~§295.17~~] of this title (relating to Emergency Authorization[~~,~~] (Texas Water Code, §11.139)); and

(6) information required to be submitted by the applicant.

(d) The commission may grant, in whole or in part, an application for an interbasin transfer only to the extent that:

(1) the detriments to the basin of origin during the proposed transfer period are less than the benefits to the receiving basin during the proposed transfer period as defined by the factors provided in subsection (c) of this section; and

(2) the applicant for the interbasin transfer has prepared drought contingency and water conservation plans meeting the requirements of Chapter 288 of this title (relating to Water Conservation Plans, Drought Contingency Plans, [~~and~~] Guidelines and Requirements) and has implemented a water conservation plan that will result in the highest practicable levels of water conservation and efficiency achievable within the jurisdiction of the applicant.

(e) The commission may grant new or amended water rights under this section with or without specific terms or periods of use and with specific conditions under which a transfer of water may occur.

(f) If an interbasin transfer of water is based on a contractual sale of water, the new or amended water right authorizing the transfer shall contain a condition for a term or period not greater than the contract term, including any extension or renewal of the term.

(g) The parties to a contract for an interbasin transfer of water may include provisions for compensation and mitigation. If the party from the basin of origin is a governmental entity, each county judge located in whole or in part in the basin of origin may provide comment on the appropriate compensation and mitigation for the interbasin transfer.

(h) A new water right or amendment to an existing water right for a proposed interbasin transfer of water is junior in priority to water rights in the basin of origin granted before the time an administratively complete application for the transfer is filed with the chief clerk in accordance with §281.17 of this title (relating to Notice of Receipt of Application and Declaration of Administrative Completeness). If an amendment is made to the water right to effectuate an interbasin transfer of water for a term, the affected portion of the water right shall be junior to all existing water rights in the basin of origin only for the term of the amendment.

(i) A new water right or amendment to an existing water right for a transfer of water from a river basin in which two or more river authorities or water districts have written agreements or permits that provide for the coordinated operation of their respective reservoirs to maximize the amount of water for beneficial use within their respective water service areas shall be junior in priority to water rights granted in that basin before the time an administratively complete application for the interbasin transfer is filed with the chief clerk in accordance with §281.17 of this title. If an amendment is made to the water right to effectuate an interbasin transfer of water for a term, the affected portion of the water right shall be junior to all existing water rights in the basin of origin only for the term of the amendment.

(j) An appropriator of water for municipal purposes in the basin of origin may, at the appropriator's option, be a party in any hearings under this section. Nothing in this provision shall be construed as adversely affecting the ability of any other potentially affected person to obtain party status.

(k) The provisions that are contained in subsections (b) - (j) of this section that are in addition to those generally required for an application for a new or amended water right do not apply to:

(1) a proposed transfer which in combination with any existing transfers totals less than 3,000 acre-feet of water per annum from the same water right;

(2) a request for an emergency transfer of water as provided by §297.17 of this title [~~(relating to Emergency Authorizations; Texas Water Code, §11.139)~~];

(3) a proposed transfer from a basin to its adjoining coastal basin; [~~or~~]

(4) a proposed transfer of water that is:

(A) imported from a source located wholly outside the boundaries of this state; except water that is imported from a source located in the United Mexican States;

(B) for use in this state; and

(C) transported by using the bed and banks of any flowing natural stream in this state; or

(5) [~~(4)~~] a proposed interbasin transfer from the basin of origin to a county or municipality or the municipality's retail service area that is partially within the basin of origin for use in the part of the county or municipality and the municipality's retail service area not within the basin of origin. The further transfer and use of this water outside of such county or municipal retail service area as existing at the time of the transfer or as may exist in the future other than back to the basin of origin shall not be exempt under this paragraph. For purposes of this paragraph, a county, municipality, or municipality's retail service area refers to a geographic area.

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 November 5, 2009.

TRD-200905036
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: December 20, 2009
For further information, please call: (512) 239-6087

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 7. PREPAID HIGHER EDUCATION TUITION PROGRAM

SUBCHAPTER I. REFUNDS, TERMINATION

34 TAC §7.81

The Comptroller of Public Accounts proposes an amendment to §7.81, concerning refunds. This section establishes the criteria that determine how refunds will be calculated when a contract of the Prepaid Higher Education Tuition Program (Program) is cancelled or terminated. This Program is also known as the Texas Tomorrow Fund I and the Texas Guaranteed Tuition Plan and was the Board's first prepaid tuition plan established in 1995. It is governed by the Texas Prepaid Higher Education Tuition Board (Board).

Texas Education Code, §54.632(c) gives the Board the authority to determine how refunds will be calculated when a Program contract is cancelled. The Board proposed a rule amendment on May 12, 2009, that changed the existing rule to limit refunds to the amount of money paid for those hours under the contract, less fees, and less any funds paid under the contract. The Board believed that it was in the best interest of the fund to revise the refund policy in order to extend the financial viability of the Program.

Since then, the Board received numerous items of correspondence from affected Purchasers expressing concern for the revision to the refund policy. Members of the legislature also expressed concern regarding the rule change. Because of the concerns raised by the public and members of the legislature, the Board does not intend to implement the rule change. Instead, the Board will reinstate the previous rule to allow the legislature to consider further action.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government. The Program's actuary had estimated the May 12, 2009 rule change would result in a reduction in the amount of refunds paid out from 2010 through the end of the program in approximately 2031. The present value of such a reduction, estimated over the next 21 years, would have been in the range of $60 million to $80 million. Even if the previous rule is reinstated, the balance of the fund appears to be sufficient to meet all obligations of the Program through 2014. Therefore, reinstatement of the rule will have no significant fiscal impact to the state until after 2014.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the amendment would benefit the public by returning to the former criteria to determine refunds and by providing the legislature the opportunity to consider the refund policy. There would be no anticipated significant economic cost to the public. The proposed amendment would have no significant fiscal impact on small businesses.

Comments on the proposal may be submitted to Linda Fernandez, CEO and Manager, Educational Opportunities and Investment Division, Post Office Box 13407, Austin, Texas 78711-3407, or transmitted electronically to linda.fernandez@cpa.state.tx.us.

This rule amendment is proposed under Texas Education Code, §54.618(b)(2) which authorizes the Board to adopt rules to implement the Program.

The proposed amendment implements Texas Education Code, §54.632.

§7.81. Refunds.

(a) Refunds shall be made in accordance with provisions of these rules and the prepaid tuition contract, in a manner that will not adversely affect the tax status of the program under applicable provisions of the Internal Revenue Code, as amended from time to time. Refunds shall be governed by these rules as amended and as in effect on the date the request for refund is submitted to the board. The amount of any refund shall be the sum of all payments made under the contract for tuition and required fees, less fees due and payable to the program under the board's fee schedule and less any amounts paid by the program pursuant to the prepaid tuition contract prior to the refund. [~~If a contract is cancelled due to the death of the purchaser or beneficiary or due to the graduation of the beneficiary from an eligible educational institution, no cancellation fee will be assessed against the contract.~~]

(b) Refunds shall be made to the purchaser of the prepaid tuition contract unless otherwise designated by the purchaser in writing to the board in the event of the purchaser's death.

(c) Should a beneficiary terminate his/her student status on or after the date on which the institution denies refunds to students withdrawing for a particular semester, no refund shall be paid under the prepaid tuition contract for amounts relating to such semester.

(d) Examples of circumstances under these rules in which refunds may be made include, but are not limited to, the following.

(1) Under any plan if the beneficiary receives a full scholarship for tuition and required fees, the amount of tuition and required fees that would have been paid under the plan selected may be refunded. Under a junior college plan, junior/senior college plan, or a senior college plan, the amount of such refund shall not exceed the tuition scholarship amount. Refund payments may be issued each academic term as long as the scholarship is effective. The purchaser of the prepaid tuition contract shall be entitled to such refund. Proof of scholarship must be submitted in a form acceptable to the board.

(2) Under the junior college plan, junior/senior college plan or senior college plan, if a beneficiary receives a partial scholarship for tuition and required fees, the tuition scholarship amount may be refunded. Under the private college plan, if a beneficiary receives a partial scholarship, a refund may be made in an amount equal to the excess of the estimated average private tuition and required fee amounts, over the actual tuition and required fee amounts less the scholarship amount. Refund payments up to the amount determined in accordance with this paragraph may be issued each academic term as long as the scholarship is effective. The purchaser of the prepaid tuition contract shall be entitled to such refund. Proof of scholarship must be submitted in a form acceptable to the board.

(3) If the beneficiary dies or becomes disabled while attending an institution of higher education or a private or independent institution of higher education, the amount of benefits remaining available under the prepaid tuition contract, less any applicable fees, may be refunded. A lump sum refund may be made within 60 days of the date the program is notified of the death or disability to the purchaser of the prepaid tuition contract, provided proof of death or disability is submitted in a form acceptable to the board.

(4) If the beneficiary dies or becomes disabled after having graduated from high school but prior to attending an institution of higher education or a private or independent institution of higher education, a refund may be issued or the benefits under such contract may be transferred to another qualified beneficiary. If a change of beneficiary is not requested, a lump sum refund may be made within 60 days of the date the program is notified of the death or disability to the purchaser of the prepaid tuition contract, provided proof of death or disability is submitted in a form acceptable to the board. Under the junior college plan, junior/senior college plan, or senior college plan, the refund will equal the average amount of tuition and required fees in effect at the time the refund is requested. Under the private college plan, the refund will equal the estimated average of private tuition and required fees as determined annually by the board.

(5) If the beneficiary dies or becomes disabled before the contract is paid in full, a refund may be issued or the benefits under such contract may be transferred to another qualified beneficiary. If a change of beneficiary is not requested, a lump sum refund may be made within 60 days of the date the program is notified of the death or disability to the purchaser of the prepaid tuition contract, provided proof of death or disability is submitted in a form acceptable to the board. For junior college plans, junior/senior college plans, or senior college plans, the refund amount will be equal to a pro rata amount of the average amount of tuition and required fees in effect at the time the refund is requested, such pro rata amount determined by the number of payments made under the contract by the purchaser to the number of payments required to pay the contract in full. For private college plans, the refund amount will be equal to a pro rata amount of the estimated amount of private tuition and required fees set forth in the prepaid tuition contract, such pro rata amount determined by the number of payments made under the contract by the purchaser to the number of payments required to pay the contract in full.

(6) If a prepaid tuition contract is terminated under §7.82(c) of this title (relating to Termination of Prepaid Tuition Contract), such contract may be refunded in an amount equal to the present lump sum actuarial value, as of the date of termination, of the average amount of tuition or the estimated amount of private tuition and required fees of junior college plans, junior/senior college plans or the estimated amount of private tuition and required fees for the private college plan, less a cancellation fee; and any other applicable fee. In no case shall a refund be made in an amount less than the total amount paid by the purchaser under the contract less any applicable administrative fees or amounts previously distributed.

(7) If the purchaser who selected the junior college plan, junior/senior college plan, or senior college plan dies or becomes disabled and payments cease before the contract is paid in full, and unless otherwise directed by the purchaser in writing, a refund may be made. The refund amount will be equal to a percentage of the average amount of tuition and required fees in effect at the time the refund is requested, determined by reference to the percentage of payments made under the contract by the purchaser. If the purchaser who selected the private college plan dies or becomes disabled and payments cease before the contract is paid in full, a refund may be made. The refund amount will be equal to a percentage of the estimated amount of private tuition and required fees set forth in the prepaid tuition contract, determined by reference to the percentage of payments made under the contract by the purchaser. A lump sum refund may be made within 60 days to the purchaser of the prepaid tuition contract unless otherwise specified in writing by the purchaser as described in this paragraph. In the alternative, contract benefits may be converted to a plan with reduced benefits. Proof of death or disability shall be in a form acceptable to the board. Notwithstanding any other provision of this paragraph, the purchaser, in a writing to the board, and providing such other information as the board may request, may designate a person who shall have a right of survivorship with respect to purchaser's rights and obligations pursuant to a prepaid tuition contract; provided that such designation shall in no way affect the purchaser's ability to modify or terminate the contract and receive a refund without the consent or authorization of the designee.

(8) Refunds may be made for other reasons as approved by the board. By way of example, such refunds may be made in an amount equal to the lowest amount of tuition and required fees of all institutions under the plan selected, less a cancellation fee. Refund payments may be made in semiannual installments to the purchaser of the prepaid tuition contract.

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 November 9, 2009.

TRD-200905135
Ashley Harden
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: December 20, 2009
For further information, please call: (512) 475-0387

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 11. QUALITY ASSURANCE FEE

40 TAC §§11.1 - 11.9

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), new §11.1, concerning purpose of chapter; §11.2, concerning definitions; §11.3, concerning quality assurance fee determination methodology; §11.4, concerning required reports; §11.5, concerning payment and collection of quality assurance fee; §11.6, concerning enforcement; §11.7, concerning penalty; and §11.8, concerning informal review; §11.9, concerning appeal of an informal review decision, in new Chapter 11, concerning Quality Assurance Fee.

BACKGROUND AND PURPOSE

The purpose of the new chapter is to transfer the rules related to the quality assurance fee (QAF) from the HHSC rule base in Texas Administrative Code (TAC) Title 1, Part 15, to the DADS rule base in TAC, Title 40, Part 1. The proposed new rules govern the assessment and collection of a fee, known as the QAF, imposed on an intermediate care facility for persons with mental retardation in accordance with Texas Health and Safety Code, Chapter 252, Subchapter H. Subchapter H provides that the Department of Human Services, which is now the Department of Aging and Disability Services (DADS), may assess and collect the QAF at the direction of the Health and Human Services Commission (HHSC). The proposed new rules are being transferred to reflect the responsibility DADS has for the QAF. HHSC is si-

multaneously proposing to repeal its rules governing the QAF at 1 TAC Chapter 352.

SECTION-BY-SECTION SUMMARY

Proposed new §11.1 explains the purpose of the chapter.

Proposed new §11.2 defines the meanings of words used in the chapter.

Proposed new §11.3 provides the methodology to determine the QAF.

Proposed new §11.4 sets forth requirements facilities must follow when filing monthly patient day reports, annual reports of gross receipts, and amended reports.

Proposed new §11.5 provides instructions for the payment of QAF.

Proposed new §11.6 sets forth enforcement procedures regarding the QAF, including audits of facility records and QAF determinations.

Proposed new §11.7 sets forth penalty procedures for facilities failing to file reports, filing false, erroneous, or fraudulent reports, or facilities failing to pay a QAF.

Proposed new §11.8 explains the purpose and process of an informal review for a facility that believes DADS has incorrectly calculated the amount of a QAF.

Proposed new §11.9 describes the appeal process regarding an informal review decision.

FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed new sections are in effect, enforcing or administering the new sections does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed new sections will not have an adverse economic effect on small businesses or micro-businesses, because this proposal is simply a transfer of existing rules from the HHSC rule base to the DADS rule base.

PUBLIC BENEFIT AND COSTS

Barry Waller, DADS Assistant Commissioner for Provider Services, has determined that, for each year of the first five years the new sections are in effect, the public benefit is that because DADS administers and collects the QAF, the rules will be more logically located in the DADS rule base.

Mr. Waller anticipates that there will not be an economic cost to persons who are required to comply with the new sections. The new sections will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

DADS has determined that this 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 Texas Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Sean Ivie at (512) 438-5208 in DADS' Provider Services division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-003, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, TX 78751; faxed to (512) 438-5759; or e-mailed to *rulescomments@dads.state.tx.us*. To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS' last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 9R003" in the subject line.

STATUTORY AUTHORITY

The new rules are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Health and Safety Code, Chapter 252, Subchapter H, which provides HHSC and DADS with authority governing the quality assurance fee. The new rules affect Texas Government Code, §531.0055 and §531.021, Texas Human Resources Code, §161.021, and Texas Health and Safety Code, Chapter 252, Subchapter H.

§11.1. Purpose of Chapter.

(a) This chapter implements the determination, assessment, collection, and enforcement of the quality assurance fee authorized under Chapter 252, Health and Safety Code, Subchapter H.

(b) The purpose of the quality assurance fee established under this chapter is to improve the quality of care provided to persons with mental retardation as follows:

(1) the quality assurance fee is intended to support and/or maintain an increase in reimbursement to facilities that participate in the Medicaid program, subject to legislative appropriation for this purpose; and

(2) the Department of Aging and Disability Services (DADS) may also offset allowable expenses to administer the quality assurance fee program against revenues generated by the collection of the quality assurance fee.

§11.2. Definitions.

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

(1) DADS--The Department of Aging and Disability Services.

(2) Facility--Any of the following:

(A) an intermediate care facility for the mentally retarded or the corporate parent of an intermediate care facility for the mentally retarded licensed under Chapter 252, Health and Safety Code; or

(B) a facility operated according to the requirements of Chapter 252, Health and Safety Code, and owned and/or operated by a community mental health and mental retardation center as described in Chapter 534, Subchapter A, Health and Safety Code; or

(C) a facility owned by DADS.

(3) Gross receipts--Money paid to a facility as compensation for services provided to residents, including resident participation, but does not include charitable contributions to a facility. Gross receipts are defined as accrued payments and not as cash received.

(4) Total patient days--The sum, computed on a monthly basis, of the following:

(A) the total number of residents occupying a facility bed immediately before midnight on each day of the month; and

(B) the total number of beds that are on hold on each day of the month and that have been placed on hold for a period not to exceed three consecutive calendar days during which a resident is on therapeutic leave during the month; and

(C) the total number of days a resident is discharged from a facility are not counted in the calculation of the total patient days under this chapter.

§11.3. Quality Assurance Fee Determination Methodology.

(a) Quality assurance fee. Effective January 1, 2008, the quality assurance fee for a facility is five and one-half percent of a facility owner's gross receipts.

(b) Quality assurance fee review. Every twelve months on a schedule determined by DADS, DADS will review each facility owner's quality assurance fee payments from all of the owner's facilities combined. A facility owner's liability for the quality assurance fee may be adjusted following this review to ensure that the quality assurance fee equals five and one half percent of annual gross receipts from all facilities.

§11.4. Required Reports.

(a) The following reports must be filed by a facility in accordance with DADS instructions:

(1) the monthly patient day report required under subsection (c) of this section; and

(2) the annual report of gross receipts required under subsection (d) of this section.

(b) Amended reports.

(1) A facility may amend a report required under subsections (c) or (d) of this section.

(2) An amended monthly patient day report must be filed no later than 20 calendar days after the last day of the month for which the report was filed.

(3) An amended report of gross receipts must be filed no later than 10 calendar days after the filing of the report required under subsection (d) of this section.

(c) Monthly patient day report.

(1) A facility must report, not later than the 10th calendar day after the last day of a month, the total number of patient days for the facility during the preceding month.

(2) A facility must file the report required by this subsection on forms or in the format and according to the instructions prescribed by DADS.

(d) Reporting of gross receipts.

(1) A facility must report, no later than October 31 of each year, money paid to the facility by private-pay residents and money paid to the facility for bed-hold fees for the period of September 1 through August 31 immediately preceding the report. DADS will use the Durable Medical Equipment and Applied Income amounts on file with the Claims Management System and the amounts reported by the facility for private-pay and bed-hold to determine the total gross receipts.

(2) A facility must file the report required by this subsection on forms or in the format and according to the instructions prescribed by DADS.

§11.5. Payment and Collection of Quality Assurance Fee.

(a) A facility must:

(1) pay the amount of the quality assurance fee in accordance with DADS instructions not later than the 30th day after the last day of the month for which the fee is assessed; or

(2) pay the amount of the quality assurance fee in accordance with DADS instructions and request an informal review of the calculation of the quality assurance fee in accordance with §11.8 of this chapter (relating to Informal Review).

(b) DADS may review the calculation of the quality assurance fee to ensure its accuracy and instruct the facility to correct its calculation and payment.

§11.6. Enforcement.

(a) DADS monitors a facility's records or the record of any corporate parent or affiliate of a facility for the purpose of determining the total patient days and gross receipts of the facility.

(b) The Health and Human Services Commission (HHSC) and DADS may not grant any exceptions from the quality assurance fee or the provision of any data necessary for DADS to calculate the fee.

(c) HHSC or its designee audits quality assurance fee determinations in accordance with this subsection.

(1) HHSC or its designee periodically audits the records of a facility and, if necessary, the corporate parent or affiliate of a facility to verify the amount of the quality assurance fee owned by the facility. The facility must allow HHSC or its designee to review and photocopy any records necessary to conduct the audit.

(2) If a facility fails to maintain records or fails to allow HHSC or its designee to review and photocopy any records necessary to conduct an audit, an audit will be conducted with the records available.

(3) HHSC or its designee provides the facility with a report of the final audit findings.

(4) If the final audit findings show the facility owes additional amounts for the quality assurance fee, DADS notifies the facility of the amount due. If the final audit findings show the facility is owed money due to overpayment of the quality assurance fee, DADS refunds the amount owed to the facility owner.

§11.7. Penalty.

(a) DADS will assess a financial penalty against a facility that:

(1) fails to timely file the monthly facility report required under §11.4 of this chapter (relating to Required Reports);

(2) files a false, erroneous, or fraudulent monthly facility report that DADS concludes resulted in the assessment of a quality assurance fee that is less than the facility should have been assessed; or

(3) fails to timely pay a quality assurance fee assessed under §11.5 of this chapter (relating to Payment and Collection of Quality Assurance Fee).

(b) A penalty assessed under this section is an amount equal to one-fourth the amount of the quality assurance fee for each month the quality assurance fee is late, not reported or unpaid.

(c) DADS will notify a facility in writing of the assessment of a penalty under this section and the amount of the penalty.

(d) DADS may make a referral to an appropriate authority in cases where it makes a good faith determination that a facility has:

(1) committed fraud in the submission of information to DADS;

(2) willfully submitted erroneous information to DADS; or

(3) violated a requirement of its license or Medicaid certification.

(e) DADS may suspend payments to a facility that fails to pay or report the quality assurance fee.

(f) The assessment of a penalty under this section does not relieve a facility from:

(1) providing services to residents in accordance with its obligations under contract or the law;

(2) paying additional quality assurance fees that may be assessed to the facility; or

(3) otherwise complying with licensure and certification requirements.

§11.8. Informal Review.

(a) A facility that believes DADS incorrectly calculated the amount of a quality assurance fee as defined in this chapter may request an informal review from DADS in accordance with this section.

(b) The purpose of an informal review is to provide for the informal and efficient resolution of the matters in dispute. An informal review is not a formal administrative hearing, but is a prerequisite to obtaining a formal administrative hearing and is conducted according to the following procedures:

(1) The facility must request an informal review in writing to DADS, delivered by United States mail or special mail delivery to DADS no later than 20 calendar days after the date on the written notification of a calculation described in subsection (a) of this section.

(2) A facility's written request for an informal review must include:

(A) a concise statement of the specific actions or determinations the facility disputes;

(B) the facility's recommended resolution; and

(C) any supporting documentation the facility deems relevant to the dispute. It is the responsibility of facility to submit all pertinent information at the time of its request for an informal review.

(c) On receipt of a request for informal review, DADS assigns the review to appropriate staff.

(1) DADS coordinates a review by appropriate staff of the information submitted by the facility.

(2) DADS may request additional information from the facility, which the facility must submit in writing to DADS within 14 calendar days after the request for additional information. Information received after 14 days may not be used in DADS written decision unless the interested party receives approval from DADS to submit the information after 14 days.

(d) Within 30 days after the date the request for informal review is received by DADS or the date additional requested information is received by DADS, DADS sends the facility its written decision by certified mail, return receipt requested.

§11.9. Appeal of an Informal Review Decision.

A facility that wishes to appeal an informal review decision under §11.8 of this chapter (relating to Informal Review) may request a hearing from the Health and Human Services Commission in accordance with Title 1, Part 15, Chapter 357, Subchapter I of the Texas Administrative Code (relating to Hearings Under the Administrative Procedure Act).

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

Filed with the Office of the Secretary of State on November 5, 2009.

TRD-200905087
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: December 20, 2009
For further information, please call: (512) 438-3734

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TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 206. MANAGEMENT

The Texas Department of Motor Vehicles (department) proposes new Chapter 206, Subchapter A, §206.1 and §206.2, concerning Organization and Responsibilities; Subchapter B, §§206.21 - 206.23, concerning Public Meetings and Hearings; Subchapter C, §206.41, concerning Procedure to Petition to Adopt Rules; Subchapter D, §§206.61 - 206.73, concerning Procedures in Contested Cases; Subchapter E, §§206.91 - 206.94, concerning Advisory Committees; Subchapter F, §206.111, concerning Department Vehicle Fleet Management; and Subchapter G, §206.131, concerning Electronic Signatures.

EXPLANATION OF PROPOSED NEW CHAPTER

New Chapter 206 is necessary to implement the provisions of House Bill 3097, 81st Legislature, Regular Session, 2009, which created the Department of Motor Vehicles from the motor carrier, motor vehicle, vehicle titles and registration, and automobile burglary and theft prevention authority divisions of the Texas Department of Transportation (TxDOT). This chapter establishes the management structure and policies for the department.

New Subchapter A, Organization and Responsibilities, includes §206.1 and §206.2. New §206.1 establishes the Texas Motor Vehicle Board (board) and its responsibilities, including providing for the: regulation of the distribution and sale of motor vehicles and for the protection of consumers who purchase motor vehicles; registration and regulation of salvage vehicle dealers; registration and titling of vehicles operating on the public roads; regulation and registration of motor carriers; and bond-

ing process for motor transportation brokers. The section establishes the responsibilities of the chair of the board, including reporting requirements. New §206.2 establishes the responsibilities of the executive director and the department staff, including providing operating policies and procedures, and organizing the department into the administrative, motor carrier, motor vehicle, vehicle titles and registration, and automobile burglary and theft prevention authority divisions.

New Subchapter B, Public Meetings and Hearings, includes §§206.21 - 206.23. New §206.21 requires the board to meet at least once each quarter and provides that the chair may create subcommittees. New §206.22 provides that agenda items will be posted, reasonable efforts to accommodate persons with disabilities will be made, and that notice will be filed with the Office of the Secretary of State. The section also sets forth how the department will receive public input, including offering an open comment period.

New §206.23 provides that the board may hold public hearings to consider adoption of rules for department programs and, as deemed appropriate, for public input. The section creates guidelines for presentations at public hearings and provides for the accommodation of persons with disabilities.

New Subchapter C, Procedure to Petition to Adopt Rules, §206.41 provides the procedure to submit a petition to request rules. The petition must contain the substance and purpose of the proposed rule. The department may deny the petition or initiate a rulemaking.

New Subchapter D, Procedures in Contested Cases, includes §§206.61 - 206.73. New §206.61 describes the purpose of the subchapter, which is to provide procedures in contested cases; new §206.62 provides definitions; new §206.63 describes who may file a petition; new §206.64 states the information required to be in the petition; and new §206.65 authorizes the executive director to examine the petition for sufficiency. New §206.66 allows the department to initiate a contested case with the State Office of Administrative Hearings if a petition is presented or upon the department's initiative. The section also provides for service of notice, the standard of review, and the burden of proof. New §206.67 provides for discovery; new §206.68 establishes the admission of evidence; new §206.69 allows an administrative law judge (ALJ) to withdraw or amend a proposal for decision (PFD); new §206.70 provides a process to file exceptions or an extension of time to file exceptions to the ALJ's PFD; new §206.71 states the requirements for the exceptions; new §206.72 provides the process to file a motion for rehearing; and new §206.73 allows the ALJ to extend the time for final order.

New Subchapter E, Advisory Committees, includes §§206.91 - 206.94. New §206.91 describes the purpose of the subchapter to prescribe procedures for advisory committees; new §206.92 establishes definitions; and new §206.93 creates procedures for the appointment of members, elections of officers, and meeting requirements. New §206.93 also provides for removal of a member, for reimbursement of expenses, the standard for conflict of interest, that the board will consider the recommendations submitted by the advisory committees, for reporting, and that each statutory advisory committee ends on November 1, 2013. New §206.94 creates the motor vehicle, motor carrier, and vehicle titles and registration advisory committees, and outlines the requirements to become a member of the committees.

New Subchapter F, Department Vehicle Fleet Management, §206.111 provides the procedure for the department to assign a vehicle to an individual or the motor pool.

New Subchapter G, Electronic Signatures, §206.131, prescribes the requirements that govern the issuance, use, and revocation of digital certificates issued for electronic commerce. The section also provides definitions; who can authorize the program; and application, issuance, and revocation procedures.

FISCAL NOTE

Brian Ragland, Interim Chief Financial Officer, has determined that, for the first five years the new chapter as proposed is in effect, there will be fiscal implications for state governments as a result of enforcing or administering the new chapter. The cost for the department's new four central administration employees is provided for in Appropriation Bill, 81st Regular Session, 2009, Article IX, Contingency Rider 17.30 at $200,000 per year. The employees transferred from TxDOT will not be an additional cost to the state. The cost for travel for the department's Board is estimated at $100,000 per year. There is no expected increase to the state for public hearings, public meetings, petitions to adopt rules, procedures in contested cases, fleet management, or processing of electronic signatures as the duties and personnel will transfer from TxDOT.

Mr. Ragland has determined that, for the first five years the new chapter as proposed is in effect, there will be no fiscal implications for local governments as a result of enforcing or administering the new chapter.

Jennifer Soldano, Legal Counsel, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the new chapter.

PUBLIC BENEFIT AND COST

Ms. Soldano has also determined that, for each year of the first five years the new chapter is in effect, the public benefit anticipated, as a result of enforcing or administering the new chapter, will be to provide an efficient and effective organizational structure for the management of the Department of Motor Vehicles.

There are no anticipated economic costs for persons required to comply with the new chapter. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the new chapter may be submitted to Jennifer Soldano, Legal Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Building 1, Austin, Texas 78731. The deadline for receipt of comments is 5:00 p.m. on December 21, 2009.

SUBCHAPTER A. ORGANIZATION AND RESPONSIBILITIES

43 TAC §206.1, §206.2

STATUTORY AUTHORITY

The new sections are proposed under Transportation Code, §1002.001, which provides the Texas Motor Vehicles Board with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 1001 and 1004.

§206.1. Texas Motor Vehicle Board.

(a) Board.

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

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

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

(b) Board responsibilities.

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

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

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

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

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

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

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

(G) adopt rules for the operation of the department;

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

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

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

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

(L) perform other duties required by law.

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

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

(d) Chair of the board.

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

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

(B) represent the department as liaison with the governor;

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

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

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

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

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

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

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

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

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

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

(M) perform any other duties assigned by law.

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

§206.2. Texas Department of Motor Vehicles.

(a) Executive director.

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

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

(3) The executive director shall:

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

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

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

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

(E) perform other responsibilities as required by law or assigned by the board.

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

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

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

(A) formulating and applying operating procedures; and

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

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

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

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

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

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

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 November 5, 2009.

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Jennifer Soldano
Legal Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: December 20, 2009
For further information, please call: (512) 463-8683

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SUBCHAPTER B. PUBLIC MEETINGS AND HEARINGS

43 TAC §§206.21 - 206.23

STATUTORY AUTHORITY

The new sections are proposed under Transportation Code, §1002.001, which provides the Texas Motor Vehicles Board with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 1001 and 1004.

§206.21. Board Meetings.

(a) The Texas Motor Vehicle Board will hold at least one regular business meeting each quarter and, subject to the call of the chair, any special or emergency meetings necessary for the performance of the board's duties. Each meeting will be conducted in accordance with applicable provisions of the Open Meetings Act, Government Code, Chapter 551.

(b) The chair or, in the chair's absence, the vice chair, shall preside at all board meetings. The chair or vice chair rules on motions and points of order and determines the order of business.

(c) The chair may create subcommittees, appoint members to subcommittees, and receive the reports of subcommittees to the board as a whole. A formal meeting of a subcommittee will follow the procedures set forth in the Open Meetings Act, Government Code, Chapter 551, but compliance is not required for an informal meeting of four members if the informal meeting would not otherwise be independently subject to the Open Meetings Act.

§206.22. Public Access to Board Meetings.

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

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

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

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

(c) Open comment period.

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

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

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

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

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

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

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

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

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

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

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

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

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

§206.23. Public Hearings.

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

(1) to consider the adoption of rules;

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

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

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

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

(1) Questioning of those making presentations will be reserved to members, the executive director, or, if applicable, the presiding officer.

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

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

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

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

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

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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Jennifer Soldano
Legal Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 463-8683

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SUBCHAPTER C. PROCEDURE FOR PETITION TO ADOPT RULES

43 TAC §206.41

STATUTORY AUTHORITY

The new section is proposed under Transportation Code, §1002.001, which provides the Texas Motor Vehicles Board with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 1001 and 1004.

§206.41. Petition.

Any interested person may petition the department requesting the adoption of a rule. Such petition must be in writing directed to the executive director at the department's headquarters building in Austin and shall contain a clear and concise statement of the substance of the proposed rule, together with a brief explanation of the purpose to be accomplished through such adoption. Within 60 days after receipt, the department will either deny the petition in writing, stating its reasons therefore, or will initiate rulemaking proceedings in accordance with the Administrative Procedure Act (Government Code, Chapter 2001, Subchapter 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.

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SUBCHAPTER D. PROCEDURES IN CONTESTED CASES

43 TAC §§206.61 - 206.73

STATUTORY AUTHORITY

The new sections are proposed under Transportation Code, §1002.001, which provides the Texas Motor Vehicles Board with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 1001 and 1004.

§206.61. Scope and Purpose.

This subchapter describes the procedures to be followed in contested cases arising under Government Code, Chapter 2001. Contested cases shall be governed by the procedural rules of the State Office of Administrative Hearings.

§206.62. Definitions.

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

(1) Administrative Law Judge--A person appointed by the State Office of Administrative Hearings to conduct a hearing on matters within the department's jurisdiction.

(2) Claim--A claim made pursuant to Occupations Code, Chapter 2302, Salvage Vehicle Dealers; Transportation Code, §681.012, Seizure and Revocation of Placard; Transportation Code, Chapter 643, Motor Carrier and Leasing Company Registration; and Transportation Code, Chapter 645, Single State Registration for Motor Carriers.

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

(4) Executive director--The chief administrative officer of the department or, if permitted by law, the director's designee.

(5) Party--The department or a person named or permitted to participate in a contested case.

(6) Petition--The document that initiates a contested case.

(7) Petitioner--A party who files a petition.

§206.63. Filing of Petition.

An individual, representative, partnership, corporation, association, governmental subdivision, or public or private organization, the department, or any other entity may seek to initiate a contested case by filing an original, and one copy of a petition, with the executive director at the department's headquarters building in Austin.

§206.64. Content of Petition.

(a) A petition must include:

(1) the name of the petitioner;

(2) the names of all other known persons with an interest in the outcome of the contested case;

(3) a concise statement of the facts on which the petitioner relies, including as an attachment, if applicable, the document issued by the department that notified the petitioner of the decision or action challenged by the petitioner;

(4) a statement of the relief demanded by the petitioner;

(5) any other matter required by statute;

(6) the signature of the petitioner or the petitioner's authorized representative; and

(7) a department reference number, if applicable.

(b) No document including a settlement offer by a party may be enclosed with the petition, and the petition may not refer to the substance of a settlement offer.

§206.65. Examination by Executive Director.

(a) The executive director will examine a petition and make a preliminary determination whether the petition states a claim that entitles the petitioner to initiate a contested case and whether the petition meets the procedural requirements of §206.63 and §206.64 of this subchapter (relating to Filing of Petition and Content of Petition) and of Government Code, Chapter 2001.

(b) If the executive director finds that the petition does not meet all legal requirements, the executive director will return the petition to the petitioner along with a statement of the reasons for rejecting it. The petitioner will be given at least 10 days in which to file a corrected petition.

(c) If a corrected petition is rejected under this section, the executive director will return the corrected petition to the petitioner along with a statement of the reasons for rejecting it. The petitioner will not be given an opportunity to file another corrected petition.

(d) The executive director's preliminary determination of a petition's legal sufficiency is without prejudice to the department's right to assert, in litigation, that a contested case should be dismissed for any reason.

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

(a) Initiation.

(1) If the executive director finds that a petition meets all legal requirements, the department will initiate a contested case in accordance with the rules of the State Office of Administrative Hearings.

(2) The department may initiate a contested case on its own initiative in accordance with the rules of the State Office of Administrative Hearings.

(b) Service of notice of hearing. Service of the notice of hearing shall be accomplished by certified or registered mail to the party's last known address as shown in the department's records. A notice of a hearing in a contested case is sufficient for purposes of notice if it includes a copy of the petition, prepared in accordance with §206.64 of this subchapter (relating to Content of Petition), and the following information, unless it is included in the petition:

(1) a statement of the time, place, and nature of the hearing;

(2) a statement of the legal authority and jurisdiction under which the hearing is to be held; and

(3) reference to the particular sections of the statutes and rules involved.

(c) Standard of review for department's decision or action.

(1) The standard of review is whether the department was reasonable for claims made pursuant to Transportation Code, §681.012, Seizure and Revocation of Placard, and other claims not specified in paragraph (2) of this subsection.

(2) The standard of review is whether the department's decision or action was based on fraud, misconduct, or such gross mistake as would imply bad faith or failure to exercise an honest judgment for:

(A) claims related to Occupations Code, Chapter 2302, Salvage Vehicle Dealers;

(B) claims related to motor carrier and leasing company registration, Transportation Code, Chapter 643; and

(C) claims related to single state registration for motor carriers, Transportation Code, Chapter 645.

(d) Burden of proof. A party seeking monetary damages or penalties shall bear the burden of proof. In all other instances, the party challenging a department decision or action shall bear the burden of proof.

§206.67. Discovery.

(a) Commissions to take depositions. At the written request of a party, the executive director will issue a written commission directed to officers, authorized by statute, to take a deposition of a witness.

(b) Subpoenas for the production of documents. At the verified written request of a party, the executive director will issue a subpoena for the production of documents. The written request must identify the documents with as much detail as possible and must include a statement of their relevance to the issues in the case.

(c) Subpoenas for attendance at hearings. At the written request of a party, the executive director will issue a subpoena for the attendance of a witness at a hearing in a contested case. The subpoena may be directed to any person within the department's jurisdiction, without regard to the distance between the location of the witness and the location of the hearing.

(d) Limits on discovery. A commission or subpoena will only be issued on a showing of good cause and receipt of a deposit sufficient to ensure payment of expenses and fees related to the subpoena, including statutory witness fees. A commission or subpoena will not be issued if it appears that it is sought for the purpose of harassment or if it would unduly inconvenience the person to whom it is directed. Issuance of a commission or subpoena will be subject to the provisions of Government Code, Chapter 2001, and the rules of the State Office of Administrative Hearings.

§206.68. Evidence.

The admissibility of evidence in a contested case shall be governed by Government Code, Chapter 2001, and by the rules of the State Office of Administrative Hearings, except that a settlement offer shall not be admissible for any purpose.

§206.69. Withdrawal or Amendment of Proposal for Decision.

The administrative law judge may withdraw or amend a proposal for decision at any time before a final order is issued.

§206.70. Filing of Exceptions and Replies.

(a) A party may file exceptions to an administrative law judge's proposal for decision or an amended proposal for decision no more than 20 days after service of the proposal for decision. A reply to exceptions must be filed no more than 15 days after the filing of the exceptions.

(b) Exceptions and replies to exceptions must be filed with the executive director at the department's headquarters building in Austin. A copy must be filed simultaneously with the administrative law judge.

(c) A request for an extension of time in which to file exceptions or a reply must be filed with the executive director no later than three days before the date sought to be extended. The request must be served on all parties by facsimile or hand delivery on the date on which it is filed, or if that is not feasible, by overnight delivery service. A request for an extension of time will be granted only in extraordinary circumstances when it is necessary in the interest of justice.

§206.71. Form of Exceptions and Replies.

Exceptions and replies must conform to the following standards.

(1) Exceptions and replies must be typewritten or printed on paper 8-1/2 inches wide by 11 inches long with an inside margin at least one inch wide. Reproductions are acceptable if all copies are legible.

(2) Exceptions and replies must contain:

(A) the names of all parties;

(B) a concise statement of the facts and law on which the submitting party relies;

(C) a statement of the relief desired;

(D) a certificate of service;

(E) the signature of the submitting party or the submitting party's authorized representative; and

(F) any other matter required by statute.

(3) Each specific exception must be separately numbered, separately set forth, and concisely stated, and it must incorporate all facts and law relating to that specific exception.

§206.72. Motions for Rehearing.

(a) A party may file a motion for rehearing no more than 20 days after service of the final order. A reply to a motion for rehearing must be filed no more than 15 days after the filing of the motion.

(b) A request for an extension of time in which to file a motion for rehearing will not be granted.

(c) A motion for rehearing must conform to the standards for exceptions and replies set forth in §206.71 of this subchapter (relating to Form of Exceptions and Replies).

§206.73. Extension of Time for Final Order.

When the administrative law judge determines that a final order cannot reasonably be issued within 60 days after the date on which the hearing is finally closed, the administrative law judge shall announce, at the conclusion of the hearing, that the time for a final order will be extended. The proposal for decision shall include a reference to the announced extension. The extension shall be for a period extending at least 45 days after the issuance of the proposal for decision to ensure enough time for the filing of exceptions and replies. A longer extension shall be granted in matters of unusual complexity.

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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Jennifer Soldano
Legal Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 463-8683

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SUBCHAPTER E. ADVISORY COMMITTEES

43 TAC §§206.91 - 206.94

STATUTORY AUTHORITY

The new sections are proposed under Transportation Code, §1002.001, which provides the Texas Motor Vehicles Board with

the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 1001 and 1004.

§206.91. Scope and Purpose.

This subchapter prescribes the uniform procedures governing the operation of committees created to advise the Texas Motor Vehicle Board or Texas Department of Motor Vehicles.

§206.92. Definitions.

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

(1) Board--The Texas Motor Vehicle Board.

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

(3) Department advisory committee--Any committee created by the department or the board for the purpose of providing advice or recommendations in a purely advisory manner regarding certain matters within the jurisdiction of the department or the board.

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

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

(6) Statutory advisory committee--A committee expressly created by statute for the purpose of providing advice or recommendations in a purely advisory manner regarding certain matters within the jurisdiction of the board.

§206.93. Statutory Advisory Committee Operations and Procedures.

(a) Applicability. This section applies to statutory advisory committees and governs the operation of statutory advisory committees. A committee has the purposes, powers, and duties, including the manner of reporting its work, prescribed by the board.

(b) Appointment of members. The board shall appoint persons to each advisory committee who:

(1) are selected from a list provided by the executive director; and

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

(c) 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.

(d) Administrative support. For each advisory committee, the executive director will designate a division of the department that will be responsible for providing any necessary administrative support essential to the functions of the committee.

(e) Meetings.

(1) Quorum. A majority of the membership of an advisory committee, including the chair, constitutes a quorum. The committee may act only by majority vote of the members present at the meeting.

(2) 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.

(3) Record. Minutes of all committee meetings shall be prepared and filed with the board. The complete proceedings of all committee meetings must also be recorded by electronic means.

(4) Public information. All minutes, transcripts, and other records of the advisory committees are records of the board and as such may be subject to disclosure under the provisions of Government Code, Chapter 552.

(f) Removal of member. A committee member may be removed at any time without cause by the board.

(g) 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.

(h) Conflict of interest. Advisory committee members are subject to the same laws and policies governing ethical standards of conduct as those for board members and employees of the department.

(i) Advisory committee recommendations. In developing department policies, the board will consider the recommendations submitted by advisory committees.

(j) Manner of reporting.

(1) The designated division shall, in writing, report to the board an official action of a statutory advisory committee, including any advice and recommendations, prior to board 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 board prior to board 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 board prior to board action, the report may be given orally, provided that a written report is furnished within 10 days of board action.

(k) Duration. Except as otherwise specified in this subchapter, each statutory advisory committee is abolished November 1, 2013, unless the board amends its rules to provide for a different date.

§206.94. Statutory Advisory Committees.

(a) General requirements.

(1) Membership. The statutory advisory committees consist of members, one-half of whom must serve as public representatives and are not:

(A) an officer, director, or employee of a business entity regulated by the department;

(B) a person required to register with the Texas Ethics Commission under Government Code, Chapter 305; or

(C) a person related within the second degree by affinity or consanguinity to a person described by subparagraph (A) or (B) of this paragraph.

(2) Term. The board will appoint the members of the statutory advisory committees to staggered terms of three years.

(3) Meetings. The committees shall meet once a calendar year and such other times as requested by the applicable division director.

(b) Motor Vehicle Advisory Committee.

(1) Purpose. Created pursuant to Transportation Code, §1001.031, the Motor Vehicle Advisory Committee provides a forum for exchange of information between the motor vehicle industry and the general public. The members of the committee are an avenue for interested parties to voice their recommendations or concerns and have that data conveyed for action for system improvement. Advice and recommendations expressed by the committee provide the department and the board with a broader perspective of motor vehicle matters that will be considered in formulating department policies.

(2) Membership. The advisory committee must include a member to represent motor vehicle manufacturers and a member to represent the recreational vehicle industry.

(3) Duties. The committee shall:

(A) advise the board relating to the licensing and regulation of motor vehicle dealers, manufacturers, distributors, converters, representatives, lessors and lease facilitators;

(B) advise the board relating to the compliance with manufacturer's warranties;

(C) advise the board relating to the prevention of fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles; and

(D) perform other duties as determined by order of the board.

(c) Motor Carrier Advisory Committee.

(1) Purpose. Created pursuant to Transportation Code, §1001.031, the Motor Carrier Advisory Committee provides a forum for the exchange of information between the department, the board, and committee members representing the motor carrier industry and the general public. The members of the committee are an avenue for interested parties to voice their recommendations or concerns and have that data conveyed for action for system improvement. Advice and recommendations expressed by the committee provide the department and the board with a broader perspective of motor carrier matters that will be considered in formulating department policies.

(2) Membership. The advisory committee must include a member to represent the motor transportation.

(3) Duties. The committee shall:

(A) advise the board on the needs and problems of the state's motor carrier providers;

(B) advise the board on the regulation of motor carriers, leasing businesses, as defined in §218.2 of this title (relating to Definitions), motor transportation brokers, and household good carriers; and

(C) perform other duties as determined by order of the board.

(d) Vehicle Titles and Registration Advisory Committee.

(1) Purpose. Created pursuant to Transportation Code, §1001.031, the Vehicle Titles and Registration Advisory Committee provides a forum for the exchange of information between the department, the board, and committee members representing those involved with the vehicle titles and registration industry and the general public. The members of the committee are an avenue for interested parties to voice their recommendations or concerns and have that data conveyed for action for system improvement. Advice and recommendations expressed by the committee provide the department and the board with a broader perspective of vehicle title and registration matters that will be considered in formulating department policies.

(2) Duties. The committee shall:

(A) advise the board on the issuance of vehicle titles and regulation;

(B) advise the board on the regulation of salvage vehicle dealers; and

(C) perform other duties as determined by order of 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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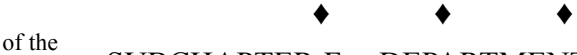

SUBCHAPTER F. DEPARTMENT VEHICLE FLEET MANAGEMENT

43 TAC §206.111

STATUTORY AUTHORITY

The new section is proposed under Transportation Code, §1002.001, which provides the Texas Motor Vehicles Board with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 1001 and 1004.

§206.111. Restrictions on Assignment of Vehicles.

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

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

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

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

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

(c) Regular vehicle assignment. The department may assign a vehicle to an individual administrative or executive employee on a regular or everyday basis only if the executive director makes a written

documented finding that the assignment is important to the needs and mission of the department.

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

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SUBCHAPTER G. ELECTRONIC SIGNATURES

43 TAC §206.131

STATUTORY AUTHORITY

The new section is proposed under Transportation Code, §1002.001, which provides the Texas Motor Vehicles Board with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 1001 and 1004.

§206.131. Digital Certificates.

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

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

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

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

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

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

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

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

(d) Application and issuance of digital certificate.

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

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

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

(B) an unexpired United States passport;

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

(D) an unexpired United States Bureau of Citizenship and Immigration Services document that was issued for a period of at least one year, that is valid for not less than six months from the date it is presented to the department with a completed application, and that contains verifiable data and an identifiable photograph;

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

(F) a foreign passport with a valid or expired visa issued by the United States Department of State with an unexpired United States Bureau of Citizenship and Immigration Services Form I-94:

(i) that was issued for a period of at least one year, is marked valid for a fixed duration, and is valid for not less than six months from the date it is presented to the department with a completed application; or

(ii) that is marked valid for the duration of the person's stay and is accompanied by appropriate documentation.

(3) The department may take actions necessary to confirm that the individual, who signed the request, is authorized to act on behalf of the business entity, including requiring the individual requestor or the person authorizing the request to personally appear at the department location responsible for the issuing of the certificate.

(4) The department will issue a digital certificate only to an individual. Information identifying the business entity that authorized the issuance of the certificate may be embedded in the digital certificate.

(e) Refusal to issue a digital certificate. The department will not issue a digital certificate if the identity of the individual, to whom the certificate is to be issued or the identity of the individual requesting the certificate on behalf of a business entity, cannot be established. The department will not issue a digital certificate if the business entity on whose behalf the request is allegedly being made does not authorize its issuance.

(f) Responsibilities of certificate holder. A certificate holder must:

(1) maintain the security of the digital certificate;

(2) use the certificate solely for the purpose for which it was issued; and

(3) renew the certificate in a timely manner, if continued use is intended.

(g) Responsibilities of business entity. A business entity is responsible for:

(1) determining the individual who may request a certificate for the business entity;

(2) determining the individual to whom a certificate is to be issued; and

(3) requesting within a reasonable time the revocation of its certificate if the security of the certificate has been compromised or if the business entity is changing its certificate holder.

(h) Revocation of certificate. The department will revoke a digital certificate:

(1) on receipt of a written request for its revocation signed by an individual authorized to act on behalf of the business entity for which it was issued;

(2) for suspension or debarment of the individual or business entity; or

(3) if the department has reason to believe that continued use of the digital certificate would present a security risk.

(i) Use of digital certificate.

(1) A digital signature, assigned in a digital certificate issued by the department, must be used for digitally signing electronic documents filed with the department and only such a signature may be used for that purpose. The use of the digital signature is binding on the individual to whom the certificate was issued and the represented business entity, as if the document were signed manually.

(2) The department may use the digital certificate to identify the certificate holder when granting or verifying access to secure computer systems used for electronic commerce.

(j) Forms. The department may prescribe forms to request, modify, or revoke a digital certificate.

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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CHAPTER 207. PUBLIC INFORMATION SUBCHAPTER A. ACCESS TO OFFICIAL RECORDS

43 TAC §§207.1 - 207.5

The Texas Department of Motor Vehicles (department) proposes new Chapter 207, Subchapter A, §§207.1 - 207.5, concerning Access to Official Records.

EXPLANATION OF PROPOSED NEW CHAPTER

New Chapter 207 is necessary to implement the provisions of House Bill 3097, 81st Legislature, Regular Session, 2009, which created the Department of Motor Vehicles (DMV) from the motor carrier, motor vehicle, vehicle titles and registration, and automobile burglary and theft prevention authority divisions of the Texas Department of Transportation. This subchapter establishes access to official records.

New Subchapter A, Access to Official Records, includes §§207.1 - 207.5. New §207.1 establishes the policy of the DMV to provide the public information in a manner that will facilitate and maximize public access, and new §207.2 provides definitions. New §207.3 sets forth the requirements for a request, including the form of the request; a description of the records; where the request may be presented; and where appropriate, a required statement that the requestor will comply with the federal and state Driver Protection and Privacy Acts in accordance with 18 U.S.C. §2721 et seq. and Transportation Code, Chapter 730. This section also sets forth how records will be produced or withheld, and the process for certifying records, manipulating data, and correcting information. This section establishes how a legislative member, agency or committee may request confidential information for legislative purpose. New §207.4 establishes the cost of copies for official records, including personnel and overhead charges. These costs incorporate the costs listed in Title 1, 43 Texas Administrative Code, §3.14. This section also provides a process for payment. New §207.5 provides that the department will provide certain electronic information through a departmental website. The section describes how the information will be made available, lists required terms and conditions, and provides that the department may prohibit the release of personal information in accordance with Transportation Code, §730.016, if the contract's terms and conditions have been violated.

FISCAL NOTE

Brian Ragland, Interim Chief Financial Officer, has determined that for each of the first five years the new chapter as proposed is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the new chapter as the subchapter largely incorporates the subject matter of existing Title 1, Texas Administrative Code, Chapter 3, Subchapter A, Access to Official Records, promulgated by the Texas Department of Transportation.

Jennifer Soldano, Legal Counsel, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the new chapter.

PUBLIC BENEFIT AND COST

Ms. Soldano has also determined that for each year of the first five years the new chapter is in effect, the public benefit anticipated as a result of enforcing or administering the new chapter will be to provide an efficient and effective method of providing public information.

There are no anticipated economic costs for persons required to comply with the new chapter. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the new chapter may be submitted to Jennifer Soldano, Legal Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Building 1, Austin, Texas 78731.

The deadline for receipt of comments is 5:00 p.m. on December 21, 2009.

STATUTORY AUTHORITY

The new sections are proposed under Transportation Code, §1002.001, which provides the Texas Motor Vehicles Board with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Government Code, Chapter 552, and Transportation Code, §502.008 and Transportation Code, Chapter 730.

§207.1. Purpose and Scope.

It is the policy of the Texas Department of Motor Vehicles to provide the public complete information regarding the affairs of the department in a manner that will facilitate and maximize public access. In compliance with the Public Information Act, Government Code, Chapter 552, and other statutes relating to the availability of public information, the sections under this subchapter provide policies and procedures governing public access to official department public records.

§207.2. Definitions.

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

(1) Board--Texas Motor Vehicle Board.

(2) Department--Texas Department of Motor Vehicles.

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

(4) Manipulation--The process of modifying, reordering, or decoding information with human intervention.

(5) Personal information--Information that identifies an individual, including an individual's photograph or computerized image, social security number, driver identification number, personal identification certificate number, name, address other than the postal routing code, telephone number, and medical or disability information. The term does not include information contained in an accident report prepared under Transportation Code, Chapters 550 or 601, driving or equipment-related violations, or driver's license or registration status.

(6) Programming--The process of producing a sequence of instructions that can be executed by a computer.

(7) Political subdivision--A county, municipality, local board, or other governmental body of this state having authority to provide a public service.

(8) Service agreement--A contractual agreement that allows individuals, businesses, or state governmental agencies or institutions to access the department's vehicle registration records.

(9) Vehicle registration record--Information contained in the department's files that reflects, but is not limited to, the make, vehicle identification number, year, model, body style, and license number of a motor vehicle, and the name, address, and social security number of the registered owner.

(10) Written request--A request made in writing, including electronic mail, electronic media, and facsimile transmission.

§207.3. Public Access.

(a) Request for records.

(1) Submittal of request. A person seeking public information shall submit a request in writing to the department.

(A) A request made by other than electronic mail shall be submitted to:

(i) the department's General Counsel;

(ii) the department's Director of Public Information; or

(iii) the division director responsible for the information.

(B) A request made by electronic mail shall be sent via the department's World Wide Web site, located at http://www.dmv.state.tx.us/.

(2) Information required. A request for official records shall include the name, address, and telephone number of the requestor, and a description of the records in sufficient detail to permit efficient gathering of the requested items. The request shall also include the preferred mailing, facsimile transmission, or electronic mail address at which the requestor wishes to receive a cost itemized statement provided pursuant to Government Code, §552.2615(a) and §207.4(d) of this subchapter;

(3) Vehicle title and registration information.

(A) The department will provide certain vehicle registration information by telephone or upon receipt of a written request. Requested information will be released in accordance with 18 U.S.C. §2721 et seq., Transportation Code, §502.008, and Transportation Code, Chapter 730.

(B) The department will provide a written form for requests for motor vehicle registration information. A completed and properly executed form must include, at a minimum:

(i) the name and address of the requestor;

(ii) the Texas license number, title or document number, or vehicle identification number of the motor vehicle about which information is requested;

(iii) a statement that the requested information may only be released if the requestor is the subject of the record, if the requestor has written authorization for release from the subject of the record, or if the intended use is for one of the permitted uses indicated on the form;

(iv) a statement that the information is requested for a lawful and legitimate purpose in accordance with Transportation Code, §502.008;

(v) a certification that the statements made on the form are true and correct; and

(vi) the signature of the requestor.

(C) The department will provide vehicle registration information by license number by telephone only in accordance with 18 U.S.C. §2721 et seq., Transportation Code, §502.008, and Transportation Code, Chapter 730, and only if requested by:

(i) a peace officer acting in an official capacity; or

(ii) an official of the state, city, town, county, special district, or other political subdivision, utilizing the obtained information for tax purposes or for the purpose of determining eligibility for a state public assistance program.

(b) Production of records. Except as provided in subsections (a), (d), (e), and (f) of this section, the department will provide copies, or promptly produce, official department records for inspection, duplication, or both. If the requested information is unavailable for inspec-

tion at the time of the request because it is in active use or otherwise not readily available, the department will certify this fact, in writing, within 10 business days after the date the information is requested to the applicant and specify a date, within a reasonable time when the record will be available for inspection or duplication.

(c) Examination of information.

(1) A person requesting to examine official records in the offices of the department must complete the examination without disrupting the normal operations of the department and not later than the 10th day after the date the records are made available to the person. Upon written request, the department will extend the examination period by increments of 10 days, not to exceed a total of 30 days.

(2) The inspection of records may be interrupted by the department if the records are needed for use by the department. The period of interruption will not be charged against the requestor's 10-day period to examine the records.

(3) A person may not remove an original copy of an official department record from the offices of the department.

(d) Request for opinion. If the department considers that requested records fall within an exception under the Government Code, and that the records should be withheld, the department will ask for a decision from the attorney general about whether the records are within that exception if there has not been a previous determination about whether the records fall within one of the exceptions. The request for a decision from the attorney general will be made by the 10th business day after the date of receiving the written request.

(e) Confidential information and privacy protection.

(1) The department will not provide records considered to be confidential by law or otherwise prohibited from release under the Government Code or other provisions of law.

(2) A legislative member, agency, or committee may request confidential information if the public information requested is for legislative purposes. The department may require the requesting legislative agency or committee, or the member or employee of the requesting entity, to sign a confidentiality agreement that requires the following provisions.

(A) The information shall not be disclosed outside the requesting entity, or within the requesting entity for purposes other than the purpose for which it was received.

(B) The information shall be labeled confidential.

(C) The information shall be kept securely.

(D) The number of copies of the information or the notes taken from the information that are not destroyed or returned to the department remain confidential and subject to the confidentiality agreement.

(f) Repetitious or redundant requests. The department may elect not to provide records if the department has previously furnished the same copies or made the same information available to the requestor. In the event that the department elects not to provide records under this subsection, the department will provide the requestor with a certification that includes:

(1) a description of the information previously made available to the requestor;

(2) the date that the department received the requestor's previous request for the information;

(3) the date that the department previously made the information available to the requestor;

(4) a statement that no subsequent additions, deletions, or corrections have been made to that information; and

(5) the name, title, and signature of the department official responsible for the information.

(g) Certified records. The following officials shall serve as the executive director's authorized representatives for the purpose of certifying official department records.

(1) The department's executive director may certify board orders. The executive director may delegate certification authority to other officials to assure sufficient availability of authorized certifying officials.

(2) Other official records of the department may be certified by the division director or other department official having official custody of the records. A division director may delegate certification authority to other officials to assure sufficient availability of authorized certifying officials.

(h) Programming and manipulation of data.

(1) If responding to a request for information will require programming or manipulation of data, and compliance with the request, is not feasible or will result in substantial interference with the department's ongoing operations, or, if the information could be made available in the requested form only at a cost that covers the programming and manipulation of data, the department will provide a written statement within 20 days after the date of the receipt of the request. The statement will include:

(A) a statement that the information is not available in the requested form;

(B) a description of the form in which the information is available;

(C) a description of any contract or services that would be required to provide the information in the requested form;

(D) a statement of the estimated cost of providing the information; and

(E) a statement of the anticipated time required to provide the information.

(2) If the department gives written notice within 20 days after the date of receipt of the request to the person making the request that additional time is needed, the department may have an additional 10 days to issue the statement in paragraph (1) of this subsection.

(3) The department will not provide the information until the person making the request states in writing that the requestor wants:

(A) the department to provide the information according to the cost and time parameters set out in the statement; or

(B) the information in the form in which it is available.

(i) Correction of Non-license Information. This subsection does not apply to license amendment procedures. An individual may request the correction of information about that individual in the following manner:

(1) A request to correct information may be submitted in writing or through the department's World Wide Web site, located at http://www.dmv.state.tx.us/. The request must be directed to division director responsible for the information.

(2) The request must include the individual's name, address, and telephone number.

(3) The request must identify the record to be corrected with as much specificity as reasonably possible. The department will not process requests that do not identify particular records.

(4) This subsection applies only to a request to correct information that relates directly to an individual, including the individual's name, address, telephone number, and similar information.

(5) The department may contact the individual or take other steps as necessary to verify the individual's identity. The department may also contact the individual or take other steps as necessary to obtain additional information with regard to the record to be corrected, the nature of the correction to be made, the reasons that the current information maintained by the department is incorrect, or other relevant matters.

(6) The division director responsible for the information will determine if the current information, maintained by the department, is incorrect.

(A) If the current information, maintained by the department, is determined to be incorrect, the department's records will be corrected. The division director responsible for the information will determine the manner in which the correction will be made.

(B) If the current information, maintained by the department, is determined to be correct, the request for correction will be noted in connection with the relevant record.

(C) The department may refuse to alter records that were correct at the time they were first prepared, but are no longer correct. If the department refuses to alter a record that was correct at the time it was first prepared, but is no longer correct, the request for correction will be noted in connection with the relevant record.

(7) This subsection does not authorize the cancellation, issuance, or alteration of any official record, including a title, a license, or a permit. Application for a new official record must be made in the manner required by law.

§207.4. Cost of Copies of Official Records.

(a) Standard costs. The following table lists charges for copies and related services.
Figure: 43 TAC §207.4(a)

(b) Personnel and overhead charge. A personnel charge of $15 per hour plus an overhead charge of 20% of the personnel charge will be added to the costs of any request involving:

(1) more than 50 pages;

(2) copying of information located in two or more buildings that are not physically connected with each other;

(3) copying of information located in a remote storage facility;

(4) retrieval of information that is older than five years and will require more than five hours to make available for inspection; or

(5) retrieval of information that will completely fill six or more archival boxes and will require more than five hours to make available for inspection.

(c) Document inspection. If editing of confidential information is required in order to obtain access to a record for inspection, the department may charge for the cost of making copies to edit.

(d) Estimated charges.

(1) If a request will result in the imposition of a charge that exceeds $40, the department will provide the requestor:

(A) an itemized statement detailing all estimated charges; and

(B) an identification of any less costly alternative that is available.

(2) If a less costly alternative is specified, the itemized statement will inform the requestor of the need to contact the department regarding the alternative and will inform the requestor:

(A) that the request will be considered to be automatically withdrawn if the requestor does not, within 10 days of the date of the notice and in writing, accept the charges or modify the request; and

(B) that the requestor may respond by mail, in person, by facsimile transmission, or by electronic mail.

(3) If, before the requested information is made available, it is determined that actual charges will exceed the charges identified in paragraph (1) of this subsection by 20% or more, the department will send the requestor an updated itemized statement detailing all estimated charges that will be imposed.

(4) If an itemized or updated itemized statement is provided under paragraphs (1) or (3) of this subsection, and the requestor does not accept the estimated charges in writing or modify the request in writing within 10 days of the date of the notice, the request will be considered to have been withdrawn by the requestor.

(5) Actual charges will not exceed the estimated charges in the itemized statement provided under paragraph (1) of this subsection by more than 20%, or if an updated itemized statement is provided under paragraph (3) of this subsection, actual charges will not exceed the estimated charges in the updated itemized statement.

(e) Payment.

(1) Payment of charges is due prior to release of copies of records.

(2) Upon release of copies of records, the department will provide to the requestor a statement describing all charges, including the amount of time required for retrieval and copying, when personnel and overhead charges are included. The statement will be signed by an authorized employee with that employee's name typed or printed below the signature.

(f) Waiver.

(1) When an employee files an internal employee grievance, the department will provide copies of relevant records free of charge to an official party to the proceeding. The department's General Counsel will determine which records are relevant under this subsection.

(2) The department may waive or reduce the fees charged under subsections (a) and (b) of this section if the executive director, or the division director with jurisdiction over the records, determines a waiver to be in the public interest because providing the records primarily benefits the general public or because the records can be produced at a minimal expense to the public.

§207.5. Electronic Access to Department Records.

(a) Electronic on-line delivery systems. The department will provide certain information through a departmental World Wide Web Site (http://www.dmv.state.tx.us). Information concerning doing business with the department, news about the department, and motor vehicles-related information will be provided through this web site.

(b) Electronic access to vehicle title and registration information.

(1) Information available. The department will make motor vehicle registration, title, and vehicle ownership information available electronically to an individual, agency, or business in accordance with 18 U.S.C. §2721 et seq., Transportation Code, §502.008, and Transportation Code, Chapter 730 under the terms of a written service agreement.

(2) Agreement with business or individuals. The written service agreement with a business or individual must contain:

(A) the specified purpose of the agreement;

(B) an adjustable account, if applicable, in which an initial deposit and minimum balance is maintained in the amount of:

(i) $200 for an on-line access account; or

(ii) $1,000 for a prepaid account for batch purchase of motor vehicle registration information;

(C) notification regarding the charges provided in §207.4 of this subchapter;

(D) termination and default provisions;

(E) service hours for access to motor vehicle records for on-line access;

(F) the contractor's signature;

(G) a statement that the use of registration information obtained by virtue of a service agreement is conditional upon its being used:

(i) in accordance with 18 U.S.C. §2721 et seq., Transportation Code, §502.008, and Transportation Code, Chapter 730; and

(ii) only for the purposes defined in the agreement; and

(H) the statements required by §207.3(a)(3)(B) of this subchapter.

(3) Agreements with governmental agencies.

(A) The written service agreement with an agency must contain:

(i) the specified purpose of the agreement;

(ii) method of payment;

(iii) notification regarding the charges provided in §207.3 of this subchapter;

(iv) a statement that the use of registration information obtained by virtue of a service agreement is conditional upon its being used in accordance with 18 U.S.C. §2721 et seq., Transportation Code, §502.008, and Transportation Code, Chapter 730, and only for the purposes defined in the agreement;

(v) the statements required by §207.3(a)(3)(B) of this subchapter;

(vi) the signature of an authorized official; and

(vii) an attached statement citing the agency's authority to obtain social security number information, if applicable.

(B) Texas Law Enforcement Telecommunication System (TLETS) access is exempt from the payment of fees.

(c) Ineligibility to receive personal information. The department may prohibit a person, business, or agency from receiving personal information if the department finds a violation of a term or condition of the agreement entered into in accordance with subsection (b) 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 November 5, 2009.

TRD-200905059
Jennifer Soldano
Legal Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: December 20, 2009
For further information, please call: (512) 463-8683

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CHAPTER 208. EMPLOYMENT PRACTICES

The Texas Department of Motor Vehicles (department) proposes new Chapter 208, Employment Practices, Subchapter A, §§208.1 - 208.6, concerning Job Application Procedures; Subchapter B, §§208.21 - 208.27, concerning Sick Leave Pool Program; and Subchapter C, §§208.41 - 208.44, concerning Employee Training and Education.

EXPLANATION OF PROPOSED NEW CHAPTER

New Chapter 208 is necessary to implement the provisions of House Bill 3097, 81st Legislature, Regular Session, 2009, which created the Department of Motor Vehicles (DMV) from the motor carrier, motor vehicle, vehicle titles and registration, and automobile burglary and theft prevention authority divisions of the Texas Department of Transportation. This chapter establishes employment practices for the department.

New Subchapter A, Job Application Procedures, includes §§208.1 - 208.6. New §208.1 establishes the policy of the DMV to promote internal and external equal employment opportunity by prescribing procedures for notifying potential applicants of vacant positions and making applications for employment. New §208.2 provides definitions; new §208.3 describes the content of job vacancy notices; new §208.4 provides the process for notification to employees and the public of vacant positions; and new §208.5 provides the requirements for a job application and how it may be submitted. New §208.6 establishes the veterans employment preference in compliance with Government Code, Chapter 657, setting forth the eligibility, posting, and reporting requirements.

New Subchapter B, Sick Leave Pool Program, includes §§208.21 - 208.27. New §208.21 describes the purpose of the sick leave pool program which is to provide additional sick leave for an employee when the employee or the employee's immediate family member has a catastrophic illness or injury. New §208.22 provides definitions; new §208.23 prescribes the responsibilities of the pool administrator; and new §208.24 provides that an employee with a catastrophic illness or injury is eligible to apply for leave from the pool. New §208.25 provides that contributions cannot be specified for a particular person or work unit and establishes the procedures to contribute to the pool; and new §208.26 allows return of donated leave, if the

pool balance can accommodate the request, if an employee or employee's immediate family suffers an illness or injury, and all accrued sick leave is exhausted. New §208.27 establishes the procedures for certification by a health care provider of the catastrophic illness or injury; requires an employee who has been disciplined for abuse of leave in the preceding 12 months to provide a second opinion; and establishes a maximum number of hours that may be granted at 720 hours or one-third of the balances, whichever is less. The section also provides that an employee, who is entitled to receive workers' compensation coverage, is eligible for pool leave, that the pool administrator may require the patient's condition be recertified; unused leave shall be returned to the pool; and an estate is not entitled to payment of unused sick leave.

New Subchapter C, Employee Training and Education, includes §§208.41 - 208.44. New §208.41 establishes the policy to encourage the professional development of employees through education and training, and new §208.42 provides definitions. New §208.43 requires that an employee be full-time, in good standing with the department, and complete an assistance agreement to be eligible for the program, except that a summer or temporary recruitment employee is eligible for the non-degree program. This section also requires courses to be taken at a public institution unless there is no public institution that can be reasonably attended, no public institution offers the approved courses or degree, the employee cannot meet the admission requirements of a public institution, the private institution would cost less than at a public institution, or the employee agrees the department will only provide the amount of assistance that would have been required if the employee had attended a public institution. An employee may take a correspondence course or an internet course offered by an out-of-state institution only if the course is not available from any private or public institution in Texas. The section sets forth the expenses that are eligible, including tuition, college-level exams, life experience assessments, and required fees and books. The section allows use of state property for course assignments during non-duty hours, and requires an employee to provide grade reports and receipts for all fees. The section allows suspension of participation in the program for disciplinary probation, not meeting an obligation, becoming ineligible, if participation adversely affects job performance, or due to workload requirements. Participation may be cancelled if the employee ceases attending the institution, does not comply with the agreement, or is terminated from the department. The section requires an employee to work for the department in return for assistance. The section sets forth repayment procedures for an employee who voluntary withdraws from the program or does not complete a service requirement. An employee may resume eligibility if the employee demonstrates the cancellation resulted from hardship or two years have elapsed since the cancellation. New §208.44 allows an employee with 12 months of service to be eligible for an undergraduate degree program and at least 24 months of service for a graduate degree. A job related degree must be related to the job duties and a non-job degree must be related to a field in which the department anticipates a need. An employee may change the employee's work status from full-time to part-time with approval of the employee's executive officer. The executive director may defer, extend, reduce, or cancel debt or service requirements if an employee demonstrates hardship. An employee must work for the department for one year after completing a job related program, two years after completing an undergraduate non-job related program, and three years after completing a graduate non-job related program. An employee may take courses in a non-degree program to meet current job requirements.

FISCAL NOTE

Brian Ragland, Interim Chief Financial Officer, has determined that for the first five years the new chapter as proposed is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the new chapter as the subchapter largely incorporates the related subject matter of existing Title 1, TAC Chapter 4, Subchapter B, Job Applications Procedures; Subchapter E, Sick Leave Pool Program; and Subchapter F, Employee Training and Education, promulgated by the Texas Department of Transportation.

Jennifer Soldano, Legal Counsel, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the new chapter.

PUBLIC BENEFIT AND COST

Ms. Soldano has also determined that for each year of the first five years the new chapter is in effect, the public benefit anticipated as a result of enforcing or administering the new chapter will be to provide an equal opportunity for employment positions, provide sick leave for employees in catastrophic situations, and encourage employees to further their education.

There are no anticipated economic costs for persons required to comply with the new chapter. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the new chapter may be submitted to Jennifer Soldano, Legal Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Building 1, Austin, Texas 78731. The deadline for receipt of comments is 5:00 p.m. on December 21, 2009.

SUBCHAPTER A. JOB APPLICATION PROCEDURES

43 TAC §§208.1 - 208.6

STATUTORY AUTHORITY

The new sections are proposed under Transportation Code, §1002.001, which provides the Texas Motor Vehicles Board with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Government Code, Chapters 656, 657, and 661 and Transportation Code, Chapter 1001, Subchapter C.

§208.1. Purpose.

It is the policy and practice of the Texas Motor Vehicles Board and the Texas Department of Motor Vehicles to ensure and promote internal and external equal employment opportunity and to use affirmative action to achieve these ends. In keeping with this policy and with the requirements of Chapters 656 and 657 of the Government Code, this subchapter prescribes the procedures for notifying potential applicants of vacant positions within the department, making applications for employment, and obtaining a veteran's employment preference.

§208.2. Definitions.

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

(1) Competent--The status of a person who has not been adjudicated incompetent through a court action.

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

(3) Established service-connected disability--A disability that has been or may be established by official military records.

(4) Official--Member of the Texas Motor Vehicles Board.

(5) Orphan--An individual whose deceased father or mother was a veteran.

(6) Public entity--A public department, commission, board, or agency.

(7) Veteran--An individual who served in the army, navy, air force, marine corps, or coast guard of the United States or in an auxiliary service of one of those branches of the armed forces.

§208.3. Job Vacancy Notices.

The department will develop and disseminate job vacancy notices that clearly describe the essential functions, minimum qualifications, and knowledge, skills, and abilities required for each vacant position. All job vacancy notices will include a closing date by which date applications must be received by the department.

§208.4. Notification.

The department shall notify its employees and the public of vacant positions by:

(1) distributing internal and external job vacancy information statewide on the department's intranet;

(2) distributing notices of vacancies for all jobs for which the public will be considered, with the Texas Workforce Commission and the department's website; and

(3) publishing vacancy information as appropriate in newspapers and recognized minority publications of general circulation in the state.

§208.5. Application.

(a) An applicant, applying in response to a job vacancy notice, shall:

(1) carefully review the job vacancy notice relative to the qualifications described; and

(2) submit a completed application form and such other information as may be required by the department that responds specifically to the qualifications and location criteria described in the job vacancy notice. A resume may supplement the application form.

(b) An application will not be accepted if the applicant will not be 17 years of age or older upon date of hire.

(c) Applications must be received no later than 5:00 p.m. on the closing day, or postmarked on or before the closing day.

(d) An applicant may submit an application by facsimile or electronically. If the application is submitted electronically and the applicant is invited to interview, the applicant must verify the submission and sign a hard copy of the application when interviewed.

§208.6. Veteran's Employment Preference.

(a) Policy.

(1) In compliance with Government Code, Chapter 657, an individual who qualifies for a veteran's employment preference is entitled to a preference in employment with the department over other applicants for the same position who do not have a greater qualification.

(2) An individual who has an established service-connected disability and is entitled to a veteran's employment preference, is entitled to preference for employment in a position over all other applicants for the same position without a service-connected disability and who do not have a greater qualification.

(3) The veteran's employment preference does not apply to a position:

(A) of private secretary or deputy of an official of the department; or

(B) in which the employee is in a strictly confidential relation to the appointing or employing official.

(b) Eligibility.

(1) A veteran qualifies for a veteran's employment preference if the veteran:

(A) served in the military for not less than 90 consecutive days during a national emergency declared in accordance with federal law or was discharged from military service for an established service-connected disability;

(B) was honorably discharged from military service; and

(C) is competent.

(2) A surviving spouse qualifies for a veteran's employment preference if the:

(A) veteran was killed while on active duty;

(B) veteran served in the military for not less than 90 consecutive days during a national emergency declared in accordance with federal law;

(C) surviving spouse is competent; and

(D) surviving spouse has not remarried.

(3) An orphan qualifies for a veteran's employment preference if the:

(A) veteran was killed while on active duty;

(B) veteran served in the military for not less than 90 consecutive days; and

(C) orphan is competent.

(c) Listing positions with Texas Workforce Commission. The department will provide information regarding an open position that is subject to the veteran's employment preference to the Texas Workforce Commission.

(d) Percentage of workforce requirement.

(1) The department will give preference in hiring to qualified individuals so that at least 40% of the employees of the department are selected from individuals given that preference.

(2) The department will give 10% of the preferences granted under this section to qualified veterans discharged from the armed services of the United States within the preceding 18 months.

(3) The requirements of this subsection do not apply if at least 40% of its employees are entitled to the preference.

(e) Investigation of eligibility.

(1) An applicant, who is given a veteran's employment preference, shall provide proof, in the form of a Department of Defense Form 214 (DD Form 214), of his or her eligibility for such preference to the hiring supervisor.

(2) An applicant with an established service-connected disability shall furnish a document to the hiring supervisor that establishes the disability and which is issued by a branch of the military.

(3) An applicant who is a surviving spouse or orphan shall provide proof in the form of a DD Form 214 and a death certificate for the veteran.

(4) A hiring supervisor, upon receipt of an employment application from a qualified individual, who is entitled to a veteran's employment preference, shall investigate the qualifications of the applicant for the position, by reviewing the information contained on the employment application and obtained during interviews for the position before making an offer of employment.

(f) Reduction in workforce.

(1) An individual entitled to a veteran's employment preference is also entitled to a preference in retaining employment if the department reduces its workforce.

(2) The preference, granted under this subsection, applies only to the extent that a reduction in workforce by the department involves other employees of a similar type or classification.

(g) Reporting requirements. The department shall file quarterly with the comptroller a report that states:

(1) the percentage of the total number of employees hired by the department during the reporting period who are persons entitled to a veteran's employment preference under this section; and

(2) the percentage of the total number of the department's employees who are persons entitled to a veteran's employment preference under this section.

(h) Federal law and grants. To the extent that this section conflicts with federal law or a limitation provided by a federal grant to a public entity, this section will be construed to operate in harmony with the federal law or limitation of the federal grant.

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 November 5, 2009.

TRD-200905060
Jennifer Soldano
Legal Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: December 20, 2009
For further information, please call: (512) 463-8683

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SUBCHAPTER B. SICK LEAVE POOL PROGRAM

43 TAC §§208.21 - 208.27

STATUTORY AUTHORITY

The new sections are proposed under Transportation Code, §1002.001, which provides the Texas Motor Vehicles Board with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Government Code, Chapters 656, 657, and 661 and Transportation Code, Chapter 1001, Subchapter C.

§208.21. Purpose.

The purpose of the sick leave pool program is to provide additional sick leave for an employee when the employee or the employee's immediate family member has a catastrophic illness or injury which causes the employee to exhaust all paid leave. Authority for the creation of the sick leave pool program is contained in Government Code, Chapter 661, Subchapter A, State Employee Sick Leave Pool.

§208.22. Definitions.

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

(1) Catastrophic illness or injury--A severe condition or combination of conditions affecting the mental or physical health of an employee or an employee's immediate family member that requires the services of a health care provider for a prolonged period of time and that forces the employee to exhaust all paid leave earned by that employee.

(2) Contribute--To give sick leave from an employee's personal sick leave account to the department sick leave pool.

(3) Different but related condition--A secondary catastrophic condition that occurs at a later date and is caused by a primary catastrophic condition such as cancer, which spreads from one part of the body to another.

(4) Discipline--Written reprimand, probation, suspension without pay, involuntary demotion, involuntary transfer (lateral), or disciplinary reduction in pay.

(5) Employee--A person, other than the executive director, who is employed by the department.

(6) Health care provider--A medical doctor (MD) or a doctor of osteopathy (DO) who is licensed and authorized to practice in this country or in a country other than the United States in accordance with the law of that country, and who is performing within the scope of his or her practice as defined under applicable law.

(7) Human resources officer--An employee with a human resources business job title and who is responsible for verifying the accuracy of all employee paid leave records. If more than one employee has these responsibilities, their activities will be coordinated for the purpose of this subchapter.

(8) Immediate family--Individuals related by kinship, adoption, or marriage who are living in the same household, foster children living in the same household and certified by the Texas Department of Family and Protective Services, or a spouse, child, or parent of the employee who does not live in the same household and who needs care and assistance as a direct result of a documented medical condition.

(9) Incapacitated--Unable to perform the individual's normal daily activities, including working and activities that are fundamental for self care such as dressing, eating, ambulating, toileting, and hygiene, due to the catastrophic medical condition.

(10) Licensed psychiatrist--A psychiatrist licensed by a state medical licensing board.

(11) Paid Leave--Accrued sick leave, vacation leave, and regular or Fair Labor Standards Act compensatory time earned by an employee.

(12) Pool administrator--The Director of the Human Resources Division or designee who administers the department's sick leave pool program.

(13) Request--An initial application for withdrawal from the sick leave pool or an application for an extension of a withdrawal due to a catastrophic illness or injury.

(14) Severe physical condition--A physical illness or injury that will likely result in death or causes the patient to be incapacitated for 12 continuous weeks or more for the current episode.

(15) Severe psychological condition--A psychological illness that results in:

(A) a patient being suicidal or capable of harming themselves or others and requires five days or more inpatient hospitalization; or

(B) electroshock treatment.

(16) Sick leave--Leave taken when sickness, injury, or pregnancy and confinement prevent the employee's performance of duty or when the employee is needed to care and assist a member of his or her immediate family who is actually ill.

(17) Sick leave pool--A department-wide pool that receives voluntary contributions of sick leave from employees and which transfers approved amounts of sick leave to eligible employees.

(18) Withdrawal--An approved transfer of sick leave hours from the department sick leave pool.

§208.23. Administration of the Pool.

The pool administrator is responsible for developing procedures for the operation of the pool; developing forms for contributing leave to, or requesting leave from the sick leave pool; and issuing interpretations and clarifications of the sick leave pool program.

§208.24. Eligibility.

(a) All employees may participate in the sick leave pool program.

(b) An employee with a catastrophic illness or injury is not required to contribute to the pool before he or she may apply for pool leave.

(c) An employee who has previously contributed to the pool and does not suffer a catastrophic illness or injury may apply to use sick leave from the sick leave pool as specified in §208.26 of this title (relating to Contribution Returns).

§208.25. Contributions.

(a) Restrictions.

(1) An employee may voluntarily contribute any amount of sick leave hours allowed by Government Code, Chapter 661, Subchapter A, State Employee Sick Leave Pool.

(2) Contributions may not be specified for use by a certain individual or within a specific work unit.

(b) Procedures.

(1) The department will encourage all employees, including an employee who is planning to retire, terminate employment, or resign, to contribute sick leave hours.

(2) An employee who wishes to contribute sick leave to the pool shall submit a contribution form prescribed by the pool administrator to his or her human resources officer.

(3) After verifying the accuracy of information on the application, the human resources officer shall sign the application and submit it to the pool administrator.

(4) Once the application is approved by the pool administrator, the pool administrator shall transfer hours from the employee's account to the sick leave pool account.

§208.26. Contribution Returns.

(a) Restrictions.

(1) An employee or employee's immediate family member must suffer an illness or injury, not necessarily catastrophic, to have the employee's contribution returned.

(2) Regardless of the number of requests, the number of hours that may be returned to an employee shall not exceed the total number of hours he or she has contributed since the beginning of the program, November 1, 2009.

(3) All accrued sick leave must be exhausted by the employee before hours will be returned from a previous contribution.

(4) The maximum number of hours that may be returned per request shall not exceed the amount needed. The amount needed is determined from the information provided by the health care provider.

(5) If the pool balance cannot accommodate the amount needed, the employee shall be refunded one-third the balance of the pool.

(6) An employee who is planning to retire and who has contributed sick leave to the pool may not have his or her contributions returned in order to receive a retirement credit.

(b) Procedures.

(1) The employee shall complete a withdrawal of contribution form prescribed by the pool administrator.

(2) The human resources officer shall verify all sick leave balances and the date and time all accrued sick leave was or will be exhausted.

(3) The pool administrator shall review the withdrawal of contribution form and approve or deny the transfer of hours from the sick leave pool to the employee's personal sick leave account.

§208.27. Withdrawals.

(a) Restrictions.

(1) An employee or an employee's immediate family must have a catastrophic illness or injury to be eligible to withdraw from the pool. The patient's health care provider must certify in writing that the illness or injury of the employee or member of the employee's immediate family is catastrophic and that the catastrophic illness is the reason the employee needs to be out of work.

(2) A written certification from a health care provider must be submitted with all requests for withdrawals. Requests related to severe psychological conditions must be certified by a licensed psychiatrist. The certification:

(A) shall include:

(i) the diagnosis and prognosis of the condition or combination of conditions;

(ii) the date the employee or employee's immediate family member will be able to return to activities of daily living;

(iii) the amount of time the employee will be needed to provide primary care if the certification is for the employee's immediate family member; and

(iv) if the certification is for the employee's immediate family member, the specific type of care the employee needs to provide;

(B) shall be in a form prescribed by the pool administrator; and

(C) is confidential, unless otherwise required by law, and may only be released to the human resources officer.

(3) With the request for withdrawal, an employee who has been formally disciplined for abuse of leave in the 12 months preceding the date on which the leave from the pool will be needed must provide, at his or her expense, a second health care provider certification from a different doctor chosen by the department. The pool administrator will deny the request if the second health care provider does not certify that a catastrophic condition exists.

(4) The employee must submit an updated health care provider's certification that certifies that the catastrophic illness or injury still exists, and that it is necessary for the employee to be off work to recover or assist in the recovery from the catastrophic illness or injury before an extension may be approved.

(5) An employee's use of a transfer from the sick leave pool for family members not residing in that employee's household is strictly limited to the time necessary to provide assistance to a spouse, child, or parent of the employee who needs such care and assistance as a direct result of a documented medical condition.

(6) The maximum number of hours that may be granted per catastrophic condition per employee is 720 hours (90 work days) or one third of the pool balance, whichever is less at the time a request is received. If there is a different but related physical catastrophic condition, an employee may receive a second grant of up to 720 hours (90 work days) or one-third of the pool balance, whichever is less at the time the request is received.

(7) When the pool balance is below 7200 hours, an employee may not be transferred more than 340 hours (approximately two months) per request, unless unpaid leave is incurred before the request is approved. If unpaid leave is incurred, the employee may not be transferred more than the sum of the unpaid leave and 340 hours. Additionally, the pool administrator will approve or deny all requests in the order in which they are received.

(8) The time transferred will begin on the date and time the employee exhausted all paid leave or, in cases that are eligible for workers' compensation payments, after the period covered by the last workers' compensation check distributed.

(9) An employee who uses pool sick leave, in accordance with this subchapter, is not required to pay back that leave.

(10) An employee must exhaust all paid leave before using hours approved from the sick leave pool.

(11) All withdrawals from the pool must be used solely for the catastrophic illness or injury for which they were granted.

(12) An employee who is in need of additional sick leave after exhausting all paid leave shall exhaust all available extended sick leave before using time granted from the sick leave pool.

(13) An employee who is injured on the job, who is entitled to receive workers' compensation payments, and who chooses to integrate his or her sick leave, vacation leave, or compensatory time is also eligible to receive a withdrawal in accordance with this subchapter if the claim is for a catastrophic illness or injury.

(14) Hours from the sick leave pool may be granted in a block of time and used on an as needed basis. The pool administrator may require the unused hours to be returned to the pool after such time has expired unless an immediate need for such leave still exists.

(15) The pool administrator may require the patient's condition to be recertified by a health care provider on a monthly basis. If the employee is determined to be able to return to work sooner than indicated on a previous certification, the pool administrator may require the unused portion of a withdrawal to be returned to the pool. If the employee fails to cooperate with recertification requirements and reevaluation procedures, the pool administrator may deny the request or require the unused portion of a withdrawal be returned to the sick leave pool.

(16) Unused sick leave from the pool shall be returned to the pool when the need for such leave ceases to exist or the pool administrator requires it in accordance with this subchapter.

(17) The estate of a deceased employee is not entitled to payment for unused sick leave from the pool.

(b) Procedures.

(1) The employee shall complete the application for withdrawal. The human resources officer shall assist the employee by verifying all paid leave balances and the date and time all paid leave was or will be exhausted.

(2) The employee shall submit the application and the health care provider's certification form and a copy of the employee's functional job description to his or her health care provider no earlier than 15 workdays before the need for the withdrawal. The health care provider will complete the certification form and mail it, with the completed application, directly to the employee's human resources officer.

(3) The pool administrator will consider applications for withdrawal in the order in which they are received and shall approve or deny the request within five working days of that date.

(4) If the pool administrator questions the validity of the certification completed by the employee's health care provider, based on the average expected duration or severity of the condition, the administrator may request a health care provider, contracted by the department, to review the patient's medical records. The contracted health care provider may consult with the patient's health care provider if more information is needed. If the determination of the contracted health care provider differs from the patient's health care provider, the request may be denied. If necessary, the pool administrator may request that the patient's medical records be reviewed by a third health care provider who is not under contract with the department. The pool administrator and the employee must agree on the third health care provider. The determination of the third health care provider is binding. The department will pay for both reviews. If the employee fails to cooperate with the medical records review, the pool administrator may deny the request.

(5) The pool administrator may require that the unused portion of the withdrawal be returned to the sick leave pool if the employee:

(A) fails to cooperate with a medical records review;

(B) submits false information;

(C) remains off work because the employee is not following the doctor's prescribed treatment; or

(D) is abusing sick leave pool hours.

(6) The pool administrator will determine the amount of sick leave transferred for each request based on:

(A) the number of hours requested by the employee;

(B) the health care provider's certification which indicates the approximate date the patient will be able to return to light and normal duties or the amount of time that the employee is needed to provide primary care for the immediate family member;

(C) the date and time all paid leave was or will be exhausted; and

(D) the balance of the pool.

(7) The pool administrator shall approve or deny the transfer of hours from the sick leave pool to the employee's personal sick leave account.

(8) The human resources officer shall inform the pool administrator of the amount of leave the employee used for the illness or injury at the end of each month, and, if the employee has returned to work, the total number of hours used and how many hours are being returned.

(9) The pool administrator shall return all unused hours to the pool.

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 November 5, 2009.

TRD-200905061
Jennifer Soldano
Legal Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: December 20, 2009
For further information, please call: (512) 463-8683

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SUBCHAPTER C. EMPLOYEE TRAINING AND EDUCATION

43 TAC §§208.41 - 208.44

STATUTORY AUTHORITY

The new sections are proposed under Transportation Code, §1002.001, which provides the Texas Motor Vehicles Board with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Government Code, Chapters 656, 657, and 661 and Transportation Code, Chapter 1001, Subchapter C.

§208.41. Purpose.

It is the policy of the Texas Department of Motor Vehicles to encourage the professional development of employees through education and training under the State Employees Training Act, Government Code, Chapter 656, Subchapter C. These programs are designed to increase the job potential of employees, provide financial assistance for continuing education, and introduce new technology and educational methods into the workplace. This subchapter governs the eligibility and obligations of employees under training and education programs.

§208.42. Definitions.

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

(1) Assistance--Financial aid provided by the department to its employees for education expenses.

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

(3) Director--The director of the Human Resources Division or the director's designee not below the level of section director.

(4) Employee's executive officer--An employee's division director or that person's designee.

(5) Executive director--The executive director of the department or the executive director's designee not below the level of assistant executive director.

(6) Good standing--Meeting of all performance standards in an employee's most recent performance evaluation and not being on probation.

(7) Hardship--A serious illness, family emergency, or extenuating circumstance that is beyond the control of the employee and that reasonably precludes the employee from complying with an assistance agreement.

(8) Institution--A college or university accredited by a major regional academic accrediting agency for institutions of higher learning, such as the Southern Association of Colleges and Schools.

§208.43. General Standards.

(a) Applicability. This section establishes standards applicable to all assistance unless different standards are established for a particular program as described in §208.44 of this subchapter (relating to Particular Programs).

(b) Eligibility. An employee must meet the following requirements to be eligible for an assistance program.

(1) The employee must be a full-time employee. Summer employees and temporary recruitment program employees are ineligible, except for the non-degree program.

(2) The employee must be in good standing with the department.

(3) The employee must complete an assistance agreement setting forth the conditions of assistance, including the amount of the assistance, the requirements of continued eligibility, and the employee's repayment responsibilities.

(c) Scope of assistance.

(1) Type of institution.

(A) Assistance will be authorized only for courses and degrees earned through an institution.

(B) All courses, whether offered in person, through correspondence, or over the internet, must be taken if possible from a public institution in Texas.

(C) If an employee is enrolled in a degree program in a private institution in Texas, the employee must earn as many credits as possible at a Texas public institution if that will reduce the amount of required assistance. Courses, whether offered in person, through correspondence, or over the internet, may be taken from a Texas private institution only if:

(i) no public institution offers a comparable course that can reasonably be attended by the employee during non-duty hours;

(ii) no public institution offers the approved courses or degree;

(iii) the employee cannot meet the admission requirements of a public institution;

(iv) the completion of the degree or course at a private institution would cost less than at a public institution; or

(v) the employee agrees the department will only provide the amount of assistance that would have been required if the employee had attended a public institution.

(D) An employee may take a correspondence course or an internet course offered by an out-of-state institution only if the course is not available from any private or public institution in Texas, whether in person, as a correspondence course, or over the internet.

(2) Eligible expenses. The following expenses are eligible for financial assistance:

(A) tuition;

(B) College Level Equivalency Program exams or similar exams if they relate to a course that is part of the employee's approved degree plan and if the employee scores high enough to receive college credit or a waiver of course requirements;

(C) life experience assessments for which the employee obtains a credit if the credit is part of the employee's approved degree plan; and

(D) required fees and books.

(3) Use of state property. An employee participating in a program may use the department's self-service copy machines, typewriters, calculators, copy paper, and microcomputers to complete course assignments during non-duty hours and when use does not interfere with the department's business.

(4) Retaken courses. The department will not pay expenses incurred to retake a course or to take a substitute for a failed course unless the department has been reimbursed for the cost of the failed course.

(d) Conditions of participation.

(1) Grade verification. Each semester an employee shall provide grade reports to the employee's executive officer to verify that the employee received full credit for all courses.

(2) Outside aid. An employee shall provide receipts for all fees and shall promptly report any outside funds received. The department will deduct any amounts received by the employee through grants, scholarships, or other financial aid from the assistance provided to the employee.

(3) Suspension.

(A) The employee's executive officer may suspend an employee for any of the following reasons.

(i) Participation may be suspended indefinitely if an employee is placed on disciplinary probation.

(ii) Participation may be suspended indefinitely if the employee does not meet any obligation or does not maintain eligibility or if the employee's executive officer determines that the employee's participation in an assistance program adversely affects the employee's job performance.

(iii) An employee's participation may be suspended based on extraordinary work requirements as determined by the employee's executive officer.

(B) Suspension will not be considered a failure to remain active in the program.

(e) Service requirement. An employee shall agree to work for the department in return for assistance. This service requirement shall begin 30 days after the date the employee receives the degree if the employee meets all conditions of employment and eligibility at that time.

(f) Repayment.

(1) Circumstances requiring repayment.

(A) An employee who voluntarily withdraws from an assistance program or who separates from department employment while participating in an assistance program shall repay all assistance provided by the department for courses taken under the assistance agreement.

(B) An employee who does not meet all conditions of employment and eligibility during a service requirement or who does not complete a service requirement in its entirety shall repay all assistance provided by the department. Repayment shall not be prorated or reduced because a portion of a service requirement has been fulfilled.

(2) Failure to pass course. An employee who does not pass a course must repay funds provided by the department for that course. If the employee repays the department for the course, the employee may continue in the program. If the employee does not repay the department for the course, no additional assistance will be provided. An employee in a continuing program must repay the debt before the next semester to continue participation in the assistance program.

(3) Repayment schedule. The executive officer will establish a repayment schedule. Employees shall follow the repayment schedule set by the department. The repayment schedule will consist of:

(A) up to 60 equal monthly installments beginning 90 days after employment or participation ceases; and

(B) minimum installments of no less than $20 based on the employee's ability to repay and the amount owed.

(4) Costs of collection. An employee is liable to the department for any reasonable expense incurred in obtaining payment, including reasonable attorney's fees.

(5) Credit agencies. The department may notify credit agencies if an employee does not repay the department.

(g) Cancellation.

(1) Grounds. The department will cancel an employee's participation if the employee:

(A) withdraws from the approved institution;

(B) is removed or prohibited from attending the approved institution;

(C) does not comply with any term of the assistance agreement; or

(D) is terminated from the department while participating in a program or before completion of a service requirement.

(2) Resumption of eligibility. If the department cancels an employee's participation, the employee will no longer be eligible for assistance unless the employee has fully repaid the department and:

(A) the employee demonstrates that the cancellation resulted from hardship; or

(B) two years have elapsed since the employee's participation was canceled.

§208.44. Particular Programs.

(a) Degree programs. The department offers two degree programs, the job-related degree program and the non-job-related degree program. These programs provide assistance to employees who continue to work while earning their degrees.

(1) In general.

(A) Eligibility. An employee must meet the following additional requirements to be eligible for a degree program.

(i) The employee must have at least 12 months of service time with the department for an undergraduate degree and at least 24 months for a graduate degree.

(ii) The employee must have written acceptance from an institution and a degree plan signed by the institution's representative.

(iii) The employee's executive officer must approve the employee's participation. If the employee is seeking a doctoral degree, the executive director must also approve the employee's participation.

(B) Elective courses. An employee's executive officer may reject an elective course if it is not related to the employee's duties unless rejection of the elective will extend the employee's time in the program. Substitutions will not be made for any courses required for a degree.

(C) Conditions of participation. An employee's executive officer will reconsider the employee's participation in the program each semester. An employee must meet the following additional standards to maintain eligibility.

(i) The employee must be enrolled at an approved institution and in a course of instruction leading toward an approved degree.

(ii) The employee must be enrolled at least two semesters per school year. The employee's executive officer may waive this requirement in writing if a copy of the written waiver is sent to the director.

(D) Use of state time. Department duty hours may not be used for attending classes, studying, or other activities associated with a degree program. An employee may use annual leave, flextime, or compensatory time with prior written approval from the employee's supervisor. With the approval of the employee's executive officer, an employee may change the employee's work status from full-time to part-time to accommodate class scheduling.

(E) Repayment. The executive director may approve a deferral or an extension of the repayment period or the reduction or cancellation of debt or service requirements in the best interest of the department or if an employee demonstrates hardship. Deferral or extension of repayment does not relieve the employee of the responsibility to repay the funds owed.

(2) Job-related degree program.

(A) Eligibility. To participate in the job-related degree program, an employee must seek enrollment and participation in a field of study that:

(i) relates to the employee's current assigned work and position;

(ii) enables the employee to meet increased demands of the employee's job assignment; or

(iii) is required for the employee to progress in the employee's career ladder.

(B) Service requirement. An employee shall work for the department for one year after completing the program.

(3) Non-job-related degree program.

(A) Eligibility. To participate in the non-job-related degree program, an employee must seek enrollment and participation in a field of study that meets minimum requirements for an occupation in which the department anticipates staffing needs. The employee must have demonstrated an aptitude through job performance and receive the approval of the employee's executive officer and the concurrence of the director.

(B) Service requirement. An employee shall work for the department for two years after receiving an undergraduate degree and for three years after receiving a graduate degree.

(b) Non-degree program. The department offers a non-degree program, under which an employee may, as part of the employee's developmental plan, take courses to improve the employee's knowledge and skills to meet current job requirements while continuing to work.

(1) Eligibility. Any full-time department employee, including a summer employee or a temporary recruitment program employee, is eligible for the non-degree program with the approval of the employee's executive officer.

(2) Service requirement. There is no service requirement for a course taken under the non-degree program.

(3) Repayment. The executive director may approve a deferral or an extension of the repayment period or the reduction or cancellation of debt or service requirements in the best interest of the department or if an employee demonstrates hardship. Deferral or extension of repayment does not relieve the employee of the responsibility to repay the funds owed.

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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Jennifer Soldano
Legal Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 463-8683

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CHAPTER 209. FINANCE

The Texas Department of Motor Vehicles (department) proposes new Chapter 209, Finance, Subchapter A, §209.1 and §209.2, concerning Collection of Debts; and Subchapter B, §§209.21 - 209.24, concerning Payment of Fees for Department Goods and Services.

EXPLANATION OF PROPOSED NEW CHAPTER

New Chapter 209 is necessary to implement the provisions of House Bill 3097, 81st Legislature, Regular Session, 2009, which created the Department of Motor Vehicles (DMV) from the motor carrier, motor vehicle, vehicle titles and registration, and automobile burglary and theft prevention authority divisions of the Texas Department of Transportation. This chapter establishes the procedure for collecting debts by the department and payment of fees to the department.

New Subchapter A, Collection of Debts, includes §209.1 and §209.2. New §209.1 provides definitions, that the department may subtract a debt from payment to a contractor, and the contents of records retained regarding the delinquent obligation. The section also sets forth the procedure for sending notification of obligation and a series of demand letters. Each demand letter will set forth the nature and amount of the obligation owed to the department and will be mailed by first class mail.

If the obligation remains unpaid, it may be referred for collection to the Office of the Attorney General after considering the expense of collection, the size of the debt, any security, likelihood of collection, resources available to collect, and policy reasons. The department may record a lien or utilize a warrant hold pursuant to Government Code, §402.055.

New §209.2 authorizes the department to seek collection of dishonored checks, and to charge a reasonable processing fee, not to exceed $25. Upon receipt of notice of a refusal to honor a check, the department will send a written notice by certified mail, return receipt requested, to notify the drawer or endorser of the dishonored check and will request payment no later than 10 days after the date of receipt of the notice. The amount must be paid with a cashier's check or money order or with a valid credit card, including the fee required by §209.23(c) of this chapter (relating to Methods of Payment). If payment is not received within 10 days after the date of receipt of the notice, the obligation will be considered delinquent and will be processed in accordance with §209.1 of this subchapter. The department may notify appropriate credit bureaus or agencies, or refer the matter for criminal prosecution.

New Subchapter B, Payment of Fees for Department Goods and Services, includes §§209.21 - 209.24. New §209.21 prescribes acceptable payment methods and requirements for payment; and new §209.22 provides definitions. New §209.23 allows payment with a valid credit card; by electronic funds transfer; with a personal check, business check, cashier's check, or money order; or by cash in person. Except for transactions involving vehicle title and registration division goods and services, payment may be made by credit card only if the transaction involves a charge of at least five dollars. Persons paying by credit card will pay a service charge of one dollar per transaction. New §209.24 exempts motor carrier registration fees under §218.15 of this title (relating to Payment of Fees), motor transportation broker fees under §218.42 of this title (relating to Fees), and fees required for Internet motor vehicle registration under Chapter 217 of this title (relating to Vehicle Titles and Registration) from the subchapter.

FISCAL NOTE

Brian Ragland, Interim Chief Financial Officer, has determined that for each of the first five years the new chapter as proposed is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the new chapter as the subchapter largely incorporates the subject matter of existing Title 1, TAC Chapter 5, Subchapter B, Collection of Debts, promulgated by the Texas Department of Transportation.

Jennifer Soldano, Legal Counsel, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the new chapter.

PUBLIC BENEFIT AND COST

Ms. Soldano has also determined that, for each year of the first five years the new chapter is in effect, the public benefit anticipated as a result of enforcing or administering the new chapter will be to provide an efficient and effective process for collection of debts owed to the department.

There are no anticipated economic costs for persons required to comply with the new chapter. There will be no adverse economic effects on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the new chapter may be submitted to Jennifer Soldano, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Building 1, Austin, Texas 78731. The deadline for receipt of comments is 5:00 p.m. on December 21, 2009.

SUBCHAPTER A. COLLECTION OF DEBTS

43 TAC §209.1, §209.2

STATUTORY AUTHORITY

The new sections are proposed under Transportation Code, §1002.001, which provides the Texas Motor Vehicles Board with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 1001, and Government Code, §2107.002.

§209.1. Collection of Debts.

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

(1) Attorney general--The Office of the Attorney General of Texas.

(2) Debtor--Any person liable for an obligation owed to the department or against whom a claim or demand for payment has been made.

(3) Delinquent--Payment is past due by law or by customary business practice, and all conditions precedent to payment have occurred or been performed.

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

(5) Division--An organizational unit in the department's Austin headquarters.

(6) Obligation--A debt, judgment, claim, account, fee, fine, tax, penalty, interest, loan, charge, or grant.

(7) Person--An individual, corporation, organization, business trust, estate, trust, partnership, association, and any other legal entity.

(8) Security--Any right to have property owned by an entity with an obligation to the department sold or forfeited in satisfaction of the obligation, and any instrument granting a cause of action in favor of the department against another entity or that entity's property, such as bond, letter of credit, or other collateral that has been pledged to the department to secure an obligation.

(b) Collection from contractors. If an obligation of a contractor of the department is delinquent and the department owes payment to that contractor, the department will subtract the amount of the obligation from the payment if practical.

(c) Notification of obligation and demand letters.

(1) The division responsible for determining that an obligation is owed to the department will send to the debtor written notice of the obligation that contains the amount owed and the date payment is due.

(2) If no satisfactory response is received within 30 days after the date that the notice is sent under paragraph (1) of this subsection, the obligation becomes delinquent on the 31st day after the date that notice is sent. The division will send a first demand letter not later than the 30th day after the date on which the obligation becomes delinquent.

(3) If no satisfactory response is received within 30 days after the day on which the first demand letter was sent, the division will send a final demand letter no later than 60 days after the date on which the first demand letter was sent. The final demand letter will include a deadline by which the debtor must respond and, if the department determines in accordance with subsection (e) of this section that the obligation should be referred to the attorney general, a statement that the obligation, if not paid, will be referred to the attorney general.

(4) Each demand letter will set forth the nature and amount of the obligation owed to the department and will be mailed by first class United States mail, in an envelope bearing the notation "address correction requested." If an address correction is provided by the United States Postal Service, the division will resend the demand letter to that address prior to referral to the attorney general.

(d) Records. The department will retain a record of a delinquent obligation. A record shall contain documentation of the following information:

(1) the identity of each person liable on all or any part of the obligation;

(2) the physical address of the debtor's place of business;

(3) the physical address of the debtor's residence, where applicable;

(4) a post office box address where it is impractical to obtain a physical address, or when the post office box address is in addition to a correct physical address;

(5) attempted contacts with the debtor;

(6) the substance of communications with the debtor;

(7) efforts to locate the debtor and the assets of the debtor;

(8) state warrants that may be issued to the debtor;

(9) current contracts with the department;

(10) security interests that the department has against any assets of the debtor;

(11) notices of bankruptcy, proofs of claim, dismissals and discharge orders received from the United States bankruptcy courts; and

(12) other information relevant to collection of the delinquent account.

(e) Referrals of a delinquent obligation to the attorney general.

(1) Prior to referral of a delinquent obligation to the attorney general, the department will:

(A) verify the debtor's address and telephone number;

(B) send a first and final demand letter to the debtor in accordance with subsection (c) of this section;

(C) verify that the obligation is not considered uncollectible under paragraph (2) of this subsection;

(D) prepare and file a proof of claim in the case of a bankruptcy unless the department is represented by the attorney general; and

(E) file a claim in the probate proceeding if the debtor is deceased unless the department is represented by the attorney general.

(2) The department will consider a delinquent obligation uncollectible and will make no further effort to collect if the obligation:

(A) has been dismissed or discharged in bankruptcy;

(B) is subject to an applicable limitations provision that would prevent collection as a matter of law;

(C) is owed by a corporation which has been dissolved, is in liquidation under Chapter 7 of the United States Bankruptcy Code, has forfeited its corporate privileges or charter, or, in the case of a foreign corporation, had its certificate of authority revoked unless circumstances indicate that the account is nonetheless collectible or that fraud was involved;

(D) is owed by an individual who is located out-of-state, or outside the United States, unless a determination is made that the domestication of a Texas judgment in the foreign forum would more likely than not result in collection of the obligation, or that the expenditure of department funds to retain foreign counsel to domesticate the judgment and proceed with collection attempts is justified;

(E) is owed by a debtor who is deceased, where probate proceeding have concluded, and where there are no remaining assets available for distribution; or

(F) is owed by a debtor whose circumstances demonstrate a permanent inability to pay or make payments toward the obligation.

(3) In making a determination of whether to refer a delinquent obligation to the attorney general, the department will consider:

(A) the expense of further collection procedures;

(B) the size of the debt;

(C) the existence of any security;

(D) the likelihood of collection through passive means such as the filing of a lien;

(E) the availability of resources to collect the obligation; and

(F) policy reasons or other good cause.

(4) The department will refer a delinquent obligation to the attorney general for further collection efforts if the department determines, in accordance with this subsection, that the delinquent obligation should be referred.

(f) Supplemental and alternative collection procedures.

(1) Liens. The department, unless represented by the attorney general, will record a lien securing the delinquent obligation in the appropriate records of the county where the debtor's principal place of

business, or, where appropriate, the debtor's residence, is located or in such county as may be required by law as soon as is practicable. Unless the delinquent obligation has been paid in full, any lien securing the indebtedness may not be released without the approval of the attorney representing the department after the matter has been referred to the attorney general.

(2) Warrants. The department will utilize the "warrant hold" procedures of the Comptroller of Public Accounts authorized by Government Code, §403.055, to ensure that no treasury warrants are issued to debtors until the debt is paid.

§209.2. Charges for Dishonored Checks.

(a) Purpose. Business and Commerce Code, §3.506, authorizes the holder of a dishonored check, seeking collection of the face value of the check, to charge the drawer or endorser of the check a reasonable processing fee, not to exceed $25. This section prescribes policies and procedures for the processing of dishonored checks made payable to the department and the collection of fees because of the dishonor of a check made payable to the department.

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

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

(2) Dishonored check--A check, draft, order, or other instrument that is drawn or made upon a bank or other financial institution, and that is not honored upon presentment because the account upon which the instrument has been drawn or made does not exist or is closed, or does not have sufficient funds or credit for payment of the instrument in full.

(c) Processing of dishonored checks. Upon receipt of notice from a bank or other financial institution of refusal to honor a check made payable to the department, the department will process the returned check using the following procedures.

(1) The department will send a written notice by certified mail, return receipt requested, to the drawer or endorser at the drawer or endorser's address as shown on:

(A) the dishonored check;

(B) the records of the bank or other financial institution; or

(C) the records of the department.

(2) The written notice will notify the drawer or endorser of the dishonored check and will request payment of the face amount of the check and a $25 processing fee no later than 10 days after the date of receipt of the notice. The written notice will also contain the statement required by Penal Code, §32.41(c)(3).

(3) The face amount of the check and the processing fee must be paid to the department:

(A) with a cashier's check or money order, made payable to the Texas Department of Motor Vehicles; or

(B) with a valid credit card issued by a financial institution chartered by a state or the United States.

(4) Payments made by credit card must include the fee required by §209.23(c) of this chapter (relating to Methods of Payment).

(5) If payment is not received within 10 days after the date of receipt of the notice, the obligation will be considered delinquent and will be processed in accordance with §209.1 of this subchapter.

(d) Supplemental collection procedures. In addition to the procedures described in §209.1 of this subchapter, the department may notify appropriate credit bureaus or agencies if the drawer or endorser fails to pay the face amount of a dishonored check and the processing fee, or may refer the matter for criminal prosecution.

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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Jennifer Soldano
Legal Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 463-8683

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SUBCHAPTER B. PAYMENT OF FEES FOR DEPARTMENT GOODS AND SERVICES

43 TAC §§209.21 - 209.24

STATUTORY AUTHORITY

The new sections are proposed under Transportation Code, §1002.001, which provides the Texas Motor Vehicles Board with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 1001, and Government Code, §2107.002.

§209.21. Purpose.

This subchapter prescribes acceptable payment methods and requirements for payment by that method.

§209.22. Definitions.

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

(1) Board--The Texas Motor Vehicles Board.

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

(3) Goods and services--Any goods sold or services provided by the department, including the issuance of licenses, permits, and registrations.

(4) VTR--The department's Vehicle Titles and Registration Division.

§209.23. Methods of Payment.

(a) Except as provided in §209.24 of this title (relating to Exceptions), all fees for department goods and services and any fees required in the administration of any department program may be paid to the department:

(1) with a valid credit card issued by a financial institution chartered by a state or the United States;

(2) by electronic funds transfer;

(3) with a personal check, business check, cashier's check, or money order, payable to the Texas Department of Motor Vehicles; or

(4) by cash in person at locations made available for that purpose by the department.

(b) Fees may be paid by credit card only if the transaction involves a charge of at least five dollars, except of transactions involving VTR goods and services.

(c) Persons paying by credit card will pay a service charge of one dollar per transaction along with the applicable fee.

§209.24. Exceptions.
This subchapter does not apply to the payment of:

(1) motor carrier registration fees under §218.15 of this title (relating to Payment of Fees);

(2) motor transportation broker fees under §218.42 of this title (relating to Fees); and

(3) fees required for Internet motor vehicle registration under Chapter 217 of this title (relating to Vehicle Titles and Registration).

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

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Texas Department of Motor Vehicles
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CHAPTER 210. CONTRACT MANAGEMENT

The Texas Department of Motor Vehicles (department) proposes new Chapter 210, Contract Management, Subchapter A, §210.1 and §210.2, concerning Purchase Contracts; Subchapter B, §§210.21, concerning Civil Rights; Subchapter C, §210.41 and §210.42, concerning Historically Underutilized Business Program; and Subchapter D, §§210.61 - 210.65, concerning Disadvantaged Business Enterprise Program.

EXPLANATION OF PROPOSED NEW CHAPTER

New chapter 210 is necessary to implement the provisions of House Bill 3097, 81st Legislature, Regular Session, 2009, which created the Department of Motor Vehicles (DMV) from the motor carrier, motor vehicle, vehicle titles and registration, and automobile burglary and theft prevention authority divisions of the Texas Department of Transportation. This chapter establishes the procedure for contract management.

New Subchapter A, Purchase Contracts, includes §210.1 and §210.2. New §210.1 states the purpose of the subchapter to provide a resolution process for certain contract claims. Government Code, Chapter 2260 applies to purchase contracts of the Texas Department of Motor Vehicles entered into under the State Purchasing and General Services Act. New §210.1 provides definitions and governs the filing, negotiation, and mediation of a claim.

The negotiations will begin no later than the 120th day after the date the claim is received and may be written or oral. The parties may agree to nonbinding mediation, and a department employee will be appointed as mediator. The vendor may request a private mediator, in which case, the costs for the services will be apportioned equally between the department and the vendor.

The executive director will make a final offer. If the vendor is dissatisfied with the final offer, or if the claim is not resolved before the 90th day after negotiations begin, the vendor may petition the executive director for an administrative hearing under the provisions of §206.61 et seq. of this title (relating to Procedures in Contested Cases).

New §210.2 provides definitions and a procedure for vendors to protest purchases made by the department. Purchases made by the Texas Procurement and Support Services division of the Comptroller of Public Accounts office on behalf of the department are addressed in 34 TAC Chapter 20. An actual or prospective bidder or offeror who, is aggrieved in connection with the solicitation, evaluation, or award of a purchase may file a written protest within 10 working days after such aggrieved person knows, or should have known, of the action.

The protest must be sworn and contain the provision of or rule adopted under the Act that the action is alleged to have violated, a description of the alleged violation, a statement of the relevant facts, the issue to be resolved, supportive argument and authorities and a statement that copies of the protest have been mailed or delivered to appropriate parties.

If a protest, or appeal of a protest, has been filed, then the department will not proceed with the solicitation or the award of the purchase unless the department determines that the award of the purchase should be made without delay to protect substantial interests of the department. The department may informally resolve the dispute. If the protest is not resolved by agreement, the department will issue a determination that no violation has occurred, or violation has occurred, and it is necessary to take remedial action.

The determination may be appealed to the executive director no later than 10 working days after the date of the determination. The appeal is limited to a review of the determination. The general counsel shall review the protest, the determination, the appeal, and prepare a written opinion with recommendation to the executive director. The executive director may issue a final written determination or refer the matter to the DMV Board for final determination.

New Subchapter B, Civil Rights, §210.21 requires the department to monitor the operations of recipients and subrecipients of federal funds from the department to ensure compliance with Title VI of the Civil Rights Act of 1964 and its amendments. The department will also monitor the operations of all public and private entities with federally assisted contracts.

New Subchapter C, Historically Underutilized Business Program, includes §210.41 and §210.42. New §210.41 establishes that the purpose of the subchapter establishes policies and procedures consistent with Government Code, Chapter 2161. New §210.42 adopts the rules of the Comptroller of Public Accounts relating to the Historically Underutilized Business (HUB) Program at 34 TAC §§20.11 - 20.28.

New Subchapter D, Disadvantaged Business Enterprise Program, includes §§210.61 - 210.65. New §210.61 provides the purpose of the subchapter to establish policies and procedures

to implement the department's Disadvantaged Business Enterprise (DBE) in compliance with Title 49, Code of Federal Regulations (CFR), Part 26 and to establish policies and procedures for resolving related business complaints. New §210.62 provides definitions.

New §210.63 provides that it is the policy of the department to ensure DBEs an equal opportunity to participate in contracts; create a level playing field on which DBEs can compete; ensure nondiscrimination; ensure that the DBE program is narrowly tailored in accordance with applicable law; ensure that only firms that meet eligibility standards are permitted to participate; help remove barriers to the participation of DBE; and assist in the development of firms that can compete successfully in the market place outside the DBE programs.

New §210.64 applies the DBE program to all contracts and purchases funded with federal funds. The department will establish overall annual DBE participation goals to be published in the *Texas Register* and on the department's Worldwide Website on the Internet. The department will accept public comments regarding the goals and the methods for establishing the goals.

Individual contracts are assigned DBE goals based on the availability of qualified DBEs, work site location, dollar value of the contract, type of work items specified in the contract, and, as necessary, to cumulatively meet the annual DBE goals.

The department will make a good faith effort to meet or exceed the annual goals and the contractor will make a good faith effort to meet the contract goal. When a specific contract goal is not being met by a contractor, the contractor must document the good faith efforts. If the department determines that the contractor has failed to meet the good faith effort requirements, the contractor will be given an opportunity for reconsideration by a director who did not have any role in the original determination. The department will contract with the Texas Department of Transportation to operate its participation in a Unified Certification Program (UCP) pursuant to 49 CFR §26.81. A contract without an assigned goal will include provisions that encourage the use of minority business enterprises and disadvantaged business enterprises; prohibit discrimination; and provide a method for reporting race-neutral DBE participation.

The contractor must furnish a commitment agreement for each certified DBE that will be used to meet the contract goal. The contractor must submit periodic reports and a final report. DBE subcontractors must perform a commercially useful function. The department may conduct an on-site review. If the department determines that a DBE firm is not performing a commercially useful function under the contract, the department may initiate a review of the eligibility of the DBE firm and deny credit. A DBE may not appeal the department's determination regarding CUF to USDOT pursuant to 49 CFR §26.55(c)(5).

A DBE contractor or subcontractor may not subcontract more than 70% of a federal-aid contract. A contractor must request approval from the department to substitute another firm for a DBE firm listed on an approved commitment. Any party, aggrieved by the determination effecting the substitution of subcontractors, may avail itself of the complaint procedures under §210.65 of this subchapter. The prime contractor must promptly pay the DBE, as required by Government Code, §2251.022.

New §210.65 provides a procedure for a person to file a complaint concerning the DBE program. This section does not apply to subcontractor claims for additional payments and time extensions, or a discrimination complaint made against a department employee. A complaint related to a federally funded contract may be filed directly with the U.S. Department of Transportation within 180 days. A complaint to the executive director must be filed within 90 days. The executive director will appoint a division to review the complaint and notify the complainant whether an investigation is warranted. If the finding confirms the complaint, the department will meet with the complainant and respondent to discuss a conciliation agreement. If the parties do not agree to a conciliation agreement, the executive director will make a decision regarding corrective action needed and monitor the corrective action, if any. A firm may file an appeal with the U.S. Department of Transportation at any time pursuant to the process outlined in 49 CFR §26.103, if a firm alleges discrimination on a federally funded contract or is aggrieved by a department determination related to the DBE program. The appeal must be made in writing, signed, dated, and submitted no later than 90 days after the date of the department's final decision. The appeal under 49 CFR §26.103 must be made in writing, signed, dated, and submitted no later than 180 days after the date of the offense or the date on which a continuing course of conduct in violation was discovered. The United States Secretary of Transportation may extend the time for filing or waive the time limit in the interest of justice. The U.S. Department of Transportation appeal process is final.

A final determination of this subchapter may be appealed to the executive director within 10 days after receiving notice of final determination or sanction. The executive director will consider an appeal if the appealing party identifies new information or witnesses that might have changed the outcome; harmful procedural error by the department which could have led to a different conclusion; or a finding contrary to the evidence, department policy, or law. The executive director will give written notice of the determination.

FISCAL NOTE

Brian Ragland, Interim Chief Financial Officer, has determined, that for each year of the first five years the new chapter as proposed is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the new chapter as the subchapter largely incorporates the subject matter of existing 43 TAC Chapter 9, Subchapter A, §9.1, Claims for Purchase Contracts, and §9.3, Protest of Department Purchases under the State Purchasing and General Services Act, §9.4, Civil Rights--Title VI Compliance; and Subchapter D, Business Opportunity Program promulgated by the Texas Department of Transportation.

Jennifer Soldano, Legal Counsel, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the new chapter.

PUBLIC BENEFIT AND COST

Ms. Soldano has also determined, that for each year of the first five years the new chapter is in effect, the public benefit anticipated as a result of enforcing or administering the new chapter will be to provide a fair and equitable process for conducting business and resolving complaints.

There are no anticipated economic costs for persons required to comply with the new chapter. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the new chapter may be submitted to Jennifer Soldano, Legal Counsel, Texas Department of Motor Ve-

hicles, 4000 Jackson Avenue, Building 1, Austin, Texas 78731. The deadline for receipt of comments is 5:00 p.m. on December 21, 2009.

SUBCHAPTER A. PURCHASE CONTRACTS

43 TAC §210.1, §210.2

STATUTORY AUTHORITY

The new sections are proposed under Transportation Code, §1002.001, which provides the Texas Motor Vehicles Board with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Government Code, Chapter 2260.

§210.1. Claims for Purchase Contracts.

(a) Purpose. Government Code, Chapter 2260, provides a resolution process for certain contract claims against the state. Chapter 2260 applies to purchase contracts of the Texas Department of Motor Vehicles entered into under the State Purchasing and General Services Act. This section governs the filing, negotiation, and mediation of a claim.

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

(1) Claim--A claim for breach of a purchase contract between a vendor and the department.

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

(3) Executive director--The executive director of the department or the director's designee not below the level of division director.

(4) Purchase--A procurement action under Government Code, Title 10, Subtitle D, for commodities or non-professional services.

(5) Vendor--An individual, partnership, corporation, or other business entity that is a party to a written contract for a purchase with the department.

(c) Filing of claim. A vendor may file a notice of claim with the executive director within 180 days after the date of the event giving rise to the claim. The claim must contain the:

(1) nature of the alleged breach;

(2) amount the vendor seeks as damages; and

(3) legal theory of recovery.

(d) Negotiation.

(1) The executive director will begin negotiations with the vendor to resolve the claim. The negotiations will begin no later than the 120th day after the date the claim is received.

(2) The negotiation may be written or oral. The executive director may afford the vendor an opportunity for a meeting to informally discuss the disputed matters and provide the vendor an opportunity to present relevant information.

(e) Mediation.

(1) The department and the vendor may agree to nonbinding mediation. The department will agree to mediation if the executive director determines that the mediation may speed resolution of the claim or otherwise benefit the department.

(2) The executive director will appoint a department employee as mediator. The employee must not have had any previous involvement or participation in the administration of the contract or the resolution of the claim.

(3) If the vendor objects to the appointment of a department employee as mediator, the department will select and hire a private mediator from outside the department. The costs for the services of a private mediator will be apportioned equally between the department and the vendor.

(4) The role of a mediator is limited to assisting the parties in attempting to reach an agreed resolution of the issues.

(f) Final offer.

(1) The executive director will make a final offer to the vendor within 90 days of beginning negotiations.

(2) If the disposition is acceptable to the vendor, the vendor shall advise the executive director in writing within 20 days of the date of the final offer. The department will forward an agreed disposition involving payment to the vendor for a final and binding order on the claim.

(g) Contested case hearing. If the vendor is dissatisfied with the final offer, or if the claim is not resolved before the 90th day after negotiations begin, the vendor may petition the executive director for an administrative hearing to litigate the unresolved issues in the claim under the provisions of §206.61 et seq. of this title (relating to Procedures in Contested Cases).

§210.2. Protest of Department Purchases under the State Purchasing and General Services Act.

(a) Purpose. The purpose of this section is to provide a procedure for vendors to protest purchases made by the department. Purchases made by the Texas Procurement and Support Services division of the Comptroller of Public Accounts office on behalf of the department are addressed in 34 TAC Chapter 20.

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

(1) Act--Government Code, Chapters 2151 - 2177, the State Purchasing and General Services Act.

(2) Board--The Texas Motor Vehicles Board.

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

(4) Division--An organizational unit in the department's Austin headquarters.

(5) Executive director--The executive director of the department.

(6) Interested party--A vendor that has submitted a bid, proposal, or other expression of interest for the purchase involved.

(7) Purchase--A procurement action for commodities or non-professional services under the Act.

(c) Filing of protest.

(1) An actual, prospective bidder, or offeror who is aggrieved in connection with the solicitation, evaluation, or award of a purchase, may file a written protest. The protest must be addressed to the attention of the executive director. The protest must be received in the office of the executive director within 10 working days after such aggrieved person knows, or should have known, of the action.

(2) The protest must be sworn and contain:

(A) the provision of or rule adopted under the Act that the action is alleged to have violated;

(B) a specific description of the alleged violation;

(C) a precise statement of the relevant facts;

(D) the issue to be resolved;

(E) argument and authorities in support of the protest; and

(F) a statement that copies of the protest have been mailed or delivered to other identifiable interested parties.

(d) Suspension of award. If a protest or appeal of a protest has been filed, then the department will not proceed with the solicitation or the award of the purchase until the executive director's designee, not below the level of division director, makes a written determination that the award of the purchase should be made without delay to protect substantial interests of the department.

(e) Informal resolution. The executive director's designee may informally resolve the dispute, including:

(1) soliciting written responses to the protest from other interested parties; and

(2) resolving the dispute by mutual agreement.

(f) Written determination. If the protest is not resolved by agreement, the executive director's designee will issue a written determination to the protesting party and interested parties which sets forth the reason of the determination. The designee may determine that:

(1) no violation has occurred; or

(2) a violation has occurred and it is necessary to take remedial action which may include:

(A) declaring the purchase void;

(B) reversing the award; and

(C) re-advertising the purchase using revised specifications.

(g) Appeal.

(1) An interested party may appeal the determination to the executive director. The written appeal must be received in the executive director's office no later than 10 working days after the date of the determination. The appeal is limited to a review of the determination.

(2) The appealing party must mail or deliver copies of the appeal to the executive director's designee and other interested parties with an affidavit that such copies have been provided.

(3) The general counsel shall review the protest, the determination, the appeal, and prepare a written opinion with recommendation to the executive director.

(4) The executive director may:

(A) issue a final written determination; or

(B) refer the matter to the Board for its consideration at a regularly scheduled open meeting.

(5) The Board may consider oral presentations and written documents presented by the department and interested parties. The chair shall set the order and the amount of time allowed for presentation. The Board's determination of the appeal shall be adopted by order and reflected in the minutes of the meeting.

(6) The decision of the Board or executive director shall be final.

(h) Filing deadline. Unless the Board determines that the appealing party has demonstrated good cause for delay or that a protest or appeal raises issues significant to procurement practices or procedures, a protest or appeal that is not filed timely will not be considered.

(i) Document retention. The department shall maintain all documentation on the purchasing process that is the subject of a protest or appeal in accordance with the retention schedule of the department.

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

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Jennifer Soldano
Legal Counsel
Texas Department of Motor Vehicles
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SUBCHAPTER B. CIVIL RIGHTS

43 TAC §210.21

STATUTORY AUTHORITY

The new section is proposed under Transportation Code, §1002.001, which provides the Texas Motor Vehicles Board with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Government Code, Chapter 2260.

§210.21. Civil Rights - Title VI Compliance.

The department will monitor the operations of recipients and subrecipients of federal funds from the department to ensure compliance with department policy implementing Title VI of the Civil Rights Act of 1964 and its amendments. The department will also monitor the operations of all public and private entities with federally assisted contracts with the department to ensure that each entity has implemented equal employment opportunity requirements.

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

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SUBCHAPTER C. HISTORICALLY UNDERUTILIZED BUSINESS PROGRAM

43 TAC §210.41, §210.42

STATUTORY AUTHORITY

The new sections are proposed under Transportation Code, §1002.001, which provides the Texas Motor Vehicles Board with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Government Code, Chapter 2260.

§210.41. Purpose.

This subchapter establishes policies and procedures consistent with Government Code, Chapter 2161.

§210.42. Program.

The Texas Motor Vehicles Board adopts the rules of the Comptroller of Public Accounts relating to the Historically Underutilized Business (HUB) Program at 34 TAC §§20.11 - 20.28.

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

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SUBCHAPTER D. DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

43 TAC §§210.61 - 210.65

STATUTORY AUTHORITY

The new sections are proposed under Transportation Code, §1002.001, which provides the Texas Motor Vehicles Board with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Government Code, Chapter 2260.

§210.61. Purpose.

This subchapter establishes policies and procedures to implement the department's Disadvantaged Business Enterprise (DBE) in compliance with Title 49, Code of Federal Regulations (CFR), Part 26. This subchapter also establishes policies and procedures for resolving business complaints concerning the DBE program.

§210.62. Definitions.

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

(1) Board--The Texas Motor Vehicles Board.

(2) Contractor--Someone who contracts with the department to provide goods or services.

(3) DBE certification--The process governed by 49 CFR Part 26 which verifies an applicant's eligibility to be a DBE.

(4) DBE participation goal--A number representing participation in contracts and purchasing by a DBE firm determined by a percentage of the total cost of the contract or purchase.

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

(6) Director--The chief administrative officer of a division of the department.

(7) Disadvantaged Business Enterprise (DBE)--A business as defined in 49 CFR §26.5.

(8) Division--An organizational unit in the department's Austin headquarters.

(9) Executive director--The executive director of the department or designee not below the level of division director.

(10) Federal-aid contract--A contract between the department and a contractor that is paid for in whole or in part with federal financial assistance.

(11) Good faith efforts--Efforts to achieve a DBE goal that, by their scope, intensity, and appropriateness to the objectives, can reasonably be expected to fulfill the program requirements, even if they are not fully successful.

(12) Race-neutral participation--Any participation by a DBE through customary competitive procurement procedures.

(13) Socially and economically disadvantaged individuals--An individual defined as such in 49 CFR §26.5.

§210.63. Policy.

It is the policy of the department to:

(1) ensure that DBEs shall have an equal opportunity to participate in the performance of contracts;

(2) create a level playing field on which DBEs can compete fairly for contracts and subcontracts;

(3) ensure nondiscrimination on the basis of race, color, national origin, or gender in the award and administration of contracts;

(4) ensure that the DBE program is narrowly tailored in accordance with applicable law;

(5) ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;

(6) help remove barriers to the participation of DBEs, in department contracts;

(7) assist in the development of firms that can compete successfully in the market place outside the DBE programs.

§210.64. Disadvantaged Business Enterprise (DBE) Program.

(a) Applicability. The DBE program is applicable to all department contracts and purchases funded in whole or in part with federal funds.

(b) DBE goals. The department will establish overall annual DBE participation goals. The goals will be published in the *Texas Register* and on the department's Worldwide Website on the Internet. Individual contract goals will be established as necessary to achieve the overall goal.

(1) Annual goals. Each year the department will establish an agency DBE goal pursuant to the two-step process specified in 49 CFR §26.45. The first step will be to establish a base figure for the relative availability of DBEs. The second step will be to examine relevant evidence available in the department's jurisdiction to determine what adjustment, if any, is needed to the base figure in order to arrive at the overall goal. The department will accept public comments regarding the goals and the methods for establishing the goals for at least 45 days from the publication date of the notice in the *Texas Register.* The maximum feasible portion of the department's overall DBE goal will be met using race-neutral means. Quotas will not be used in the administration of the department's DBE program. The annual goal will be consistent with the federal requirements of USDOT and compatible with other applicable state and federal laws.

(2) Contract goals. Individual contracts are assigned DBE goals based on the availability of qualified DBEs, work site location, dollar value of the contract, and type of work items specified in the contract. The department will assign individual contract goals for DBE participation in federal-aid contracts as necessary to cumulatively meet the annual DBE goals that are not being met through race-neutral means.

(c) Good faith effort.

(1) The department will make a good faith effort to meet or exceed the annual goals as described in subsection (b)(1) of this section. A contractor must complete a "Certification of DBE Goal Attainment" statement for all federal-aid proposals which requires the contractor to certify that it will meet the DBE goal or document good faith efforts.

(2) The obligation of the contractor is to make a good faith effort to meet the contract goal. When a specific contract goal is not being met by a contractor, the contractor must document the good faith efforts taken to obtain DBE participation.

(A) The department will consider the contractor to have made a good faith effort when it complies with Appendix A to 49 CFR Part 26.

(B) If the department determines that the contractor has failed to meet the good faith effort requirements, the contractor will be given an opportunity for reconsideration by a director who did not have any role in the original determination. The contractor will be given the opportunity to provide written documentation and/or meet with the division director to discuss the issues. A written determination will be issued to the contractor by the director. The determination is not administratively appealable to USDOT.

(d) DBE certification. The department will contract with the Texas Department of Transportation to operate its participation in a Unified Certification Program (UCP) pursuant to 49 CFR §26.81.

(e) Contractor obligation. Department contracts involving the expenditure of federal funds will include a contract provision addressing DBE requirements.

(1) No assigned goal. A contract without an assigned goal will include provisions that:

(A) encourage the use of minority business enterprises, and disadvantaged business enterprises in subcontracting and material supply activities;

(B) prohibit discrimination; and

(C) provide a method for reporting race-neutral DBE participation.

(2) Assigned goal. A contract with an assigned goal will include a provision which sets forth the requirements of this paragraph.

(A) Commitments. The following requirements must be satisfied by the contractor as a condition of contract award.

(i) Within the time specified in the contract or proposal, the contractor must furnish a commitment agreement for each certified DBE that will be used to meet the contract goal. The commitment agreement must include:

(I) a statement that the contractor intends to provide the DBE the opportunity to perform the subcontract;

(II) the items of work to be performed;

(III) the quantities of work or material;

(IV) the unit measure, unit price, and total cost for each item;

(V) the total amount of the DBE commitment;

(VI) the original signatures of the contractor and the proposed DBE; and

(VII) if the commitment involves a DBE material supplier, an explanation of the function to be performed and a description of any arrangements, including joint check agreements, made with other material suppliers, manufacturers, distributors, hauling firms, or freight companies.

(ii) DBE prime contractors may receive credit toward the DBE goal for work performed by their own forces and work subcontracted to DBEs. A DBE prime contractor must make a good faith effort to meet the goals. In the event a DBE prime contractor subcontracts to a non-DBE contractor, the amount paid to the non-DBE contractor must be reported to the department.

(B) Good faith efforts. If the contractor is unable to meet the goal, the contractor must document good faith efforts taken to obtain DBE participation in accordance with applicable contract provisions and pursuant to Appendix A of 49 CFR Part 26.

(3) Reporting.

(A) The contractor must submit periodic reports at intervals specified in the contract using a report form acceptable to the department that includes, but is not limited to, identification of the DBE by name and vendor number. The report must indicate the actual amount paid to each DBE. The report must include the amounts paid in accordance with the DBE commitment as outlined in paragraph (2)(A) of this subsection and any race neutral participation. The report will also include amounts paid by a DBE to non-DBE subcontractors. The report must be submitted even if no payments were made during the period being reported. When required by the department, the contractor must attach proof of payment including, but not limited to, copies of canceled checks.

(B) The contractor must submit a final report in accordance with the contract, using a form acceptable to the department which shows:

(i) the total paid to each DBE; and

(ii) if the contract goal is not met, a description of good faith efforts taken in accordance with applicable contract provisions.

(4) Credit for expenditures. A contractor awarded a federal-aid contract will receive credit for payments made to a DBE firm in accordance with 49 CFR §26.55.

(5) Commercially useful function (CUF).

(A) DBE subcontractors must perform a commercially useful function required in the contract in order for payments to be credited toward meeting the contract DBE goal. A DBE performs a commercially useful function when it:

(i) is responsible for a distinct element of the work of a contract;

(ii) actually manages, supervises, and controls the materials, equipment, employees, and all other business obligations attendant to the satisfactory completion of contracted work; and

(iii) the CUF otherwise complies with 49 CFR §26.55(c)(1) - (4).

(B) The department may conduct an on-site review of a DBE performance to determine that it is performing a commercially useful function as part of its routine monitoring program or in response to information or allegations that the DBE is not performing a commercially useful function.

(C) If the department determines that a DBE firm is not performing a commercially useful function under the contract, the department may:

(i) initiate a review of the eligibility of the DBE firm; and

(ii) deny all credit if the prime contractor did the work itself or directed another company to do the work, or deny credit from the time the department determined that the DBE did not perform a commercially useful function.

(D) A DBE may not appeal the department's determination regarding CUF to USDOT pursuant to 49 CFR §26.55(c)(5).

(6) Subcontracting.

(A) A DBE contractor or subcontractor may not subcontract more than 70% of a federal-aid contract. The DBE shall perform not less than 30% of the value of the contract work with:

(i) assistance of employees employed and paid directly by the DBE;

(ii) employees leased from an employee leasing company as set forth in 49 CFR §26.71(q); and

(iii) equipment owned or rented directly by the DBE.

(B) A contractor may not furnish work crews to a DBE subcontractor.

(C) A DBE may lease equipment consistent with standard industry practice. A DBE may lease equipment from the prime contractor if a rental agreement, separate from the subcontract specifying the terms of the lease arrangement, is approved by the department prior to the DBE starting the work. However, the cost of supplies purchased or equipment leased from the prime contractor or its affiliates may not be counted toward the DBE goal.

(i) If the equipment is of a specialized nature, the lease may include the operator. If the practice is generally acceptable within the industry, the operator may remain on the lessor's payroll. The operation of the equipment shall be subject to the full control of the DBE, for a short term, and involve a specialized piece of heavy equipment readily available at the job site.

(ii) For equipment that is not specialized, the DBE shall provide the operator and be responsible for all payroll and labor compliance requirements.

(D) The value of the work of any DBE subcontractor (tiered subcontractor) may only be counted toward the DBE goal if the DBE's subcontractor is itself a DBE under 49 CFR §26.55.

(7) Substitutions. A contractor must request approval from the department to substitute another firm for a DBE firm listed on an approved commitment.

(A) A contractor must provide written justification for a request to substitute a DBE firm, including, but not limited to, demonstrating that the original firm is unable or unwilling to carry out the terms of the subcontract.

(B) The department will contact the DBE to be displaced and other parties as needed to determine if the DBE firm to be displaced is willing and able to carry out the terms of the contract.

(i) The term "unable" includes, but is not limited to:

(I) a firm that does not have the resources and expertise to finish the project;

(II) a firm that substantially increases the time to complete the project causing liquidated damages; and

(III) a firm that creates a safety hazard.

(ii) If the displaced firm is unwilling or unable to carry out the terms of the subcontract, the department will notify the contractor in writing within five working days of the request of its consent to the substitution. The contractor must make a good faith effort to substitute another certified DBE firm for the one being displaced if the cancellation of the DBE subcontract results in the prime not meeting the contract goal.

(iii) If the firm to be displaced is willing and able to carry out the terms of the subcontract, the department will deny the substitution.

(C) Any party aggrieved by the determination affecting the substitution of subcontractors may avail itself of the complaint procedures under §210.65 of this subchapter.

(8) Prompt payment. The prime contractor must comply with the contract clause requiring payment to subcontractors for satisfactory performance of its contracts no later than 10 days from receipt of the department's scheduled payment to the prime contractor, as required by Government Code, §2251.022.

§210.65. DBE Program Complaints.

(a) Purpose. The purpose of this section is to provide a procedure for an aggrieved person to file a complaint concerning the DBE program. This section does not apply to:

(1) subcontractor claims for additional payments and time extensions; or

(2) a discrimination complaint made against a department employee since that type of complaint is handled in accordance with the department's Human Resources Manual.

(b) Federal aid contracts. A complaint related to a federally funded contract may be filed directly with the U.S. Department of Transportation at any time within 180 days of the date:

(1) of an alleged discrimination or a violation of the DBE Program; or

(2) on which a continuing course of conduct in violation of the DBE program was discovered.

(c) Program complaints. An aggrieved person or firm may file a written complaint that there has been a violation of a DBE program,

including a discrimination claim. A complaint may also be filed on behalf of another person or any specific class of individuals.

(1) Filing. The complaint must be made in writing to the executive director within 90 calendar days:

(A) of an alleged discrimination or a violation of the DBE program; or

(B) after the date on which a continuing course of conduct in violation of a DBE program was discovered.

(2) Review and investigation. The executive director will appoint a division to review the complaint and notify the complainant:

(A) of the reasons an investigation is warranted; or

(B) that an investigation is not necessary.

(3) Determination and conciliation.

(A) The reviewing division will forward the written findings to the complainant and respondent.

(B) If the finding confirms the complaint, the reviewing division will meet with the complainant and respondent to discuss a conciliation agreement.

(C) If the parties concur, the reviewing division will prepare a conciliation agreement for execution, and monitor the agreement to completion.

(D) If the parties do not agree to a conciliation agreement, the executive director will make a decision regarding corrective action needed and monitor the corrective action, if any.

(d) Appeal.

(1) Appeal to U.S. Department of Transportation.

(A) A firm may file an appeal with U.S. Department of Transportation at any time pursuant to the process outlined in 49 CFR §26.103, if a firm alleges discrimination on a federally funded contract or is aggrieved by a department determination related to the DBE program.

(B) The appeal must be made in writing, signed and dated, no later than 90 days after the date of the department's final decision. The appeal under 49 CFR §26.103 must be made in writing, signed, and dated, no later than 180 days after the date of the offense or the date on which a continuing course of conduct in violation was discovered. The Secretary of Transportation may extend the time for filing or waive the time limit in the interest of justice.

(C) The outcome of the U.S. Department of Transportation appeal process is final.

(2) Department appeals.

(A) A final determination of this subchapter may be appealed to the executive director within 10 days after receiving notice of final determination or sanction. If an appeal is not timely filed, the determination or sanction is final and further administrative appeal will be barred.

(B) The executive director will consider an appeal if the appealing party identifies:

(i) new information or witnesses that, if considered, might have changed the outcome;

(ii) harmful procedural error by the department which, had it not been made, could have led to a different conclusion; or

(iii) a finding contrary to the evidence, department policy, or law.

(C) The executive director will:

(i) review the sanction or determination;

(ii) consult with witnesses and review evidence, if necessary; and

(iii) review the appealing party's written rebuttal of the proposed sanction or determination.

(D) The executive director will give written notice of the determination.

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 November 5, 2009.

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CHAPTER 215. MOTOR VEHICLE DISTRIBUTION

The Texas Department of Motor Vehicles (department) proposes new Chapter 215, Motor Vehicle Distribution, to include the following subchapters: Subchapter A, General Provisions, §§215.1 - 215.6; Subchapter B, Adjudicative Practice and Procedure, §§215.21 - 215.57; Subchapter C, Licenses, Generally, §§215.81 - 215.87; Subchapter D, Franchised Dealers, Manufacturers, Distributors, and Converters, §§215.101 - 215.115; Subchapter E, General Distinguishing Numbers, §§215.131 - 215.159; Subchapter F, Lessors and Lease Facilitators, §§215.171 - 215.181; Subchapter G, Warranty Performance Obligations, §§215.201 - 215.210; Subchapter H, Advertising, §§215.241 - 215.270; and Subchapter I, Practice and Procedure for Hearings Conducted by the State Office of Administrative Hearings (SOAH), §§215.301 - 215.317.

EXPLANATION OF PROPOSED NEW CHAPTER

New Chapter 215 is proposed to implement the provisions of House Bill 3097, 81st Legislature, Regular Session, 2009 that created the new state agency, the Texas Department of Motor Vehicles, from the motor carrier, motor vehicle, vehicle titles and registration, and automobile burglary and theft prevention authority divisions of the Texas Department of Transportation. This chapter establishes procedures that enable the department to engage in the regulation of motor vehicle dealers, manufacturers, distributors, converters, representatives, lessors, and lease facilitators as required by Occupations Code, Chapter 2301, and Transportation Code, Chapter 503.

In addition to the creation of the new agency, the legislature made numerous changes to the Occupations Code, Chapter 2301, and Transportation Code, Chapter 503 in various bills. Changes to this chapter are made pursuant to these bills and are explained more fully below.

New Chapter 215 incorporates the content of Title 43, Chapter 8, Subchapters A through I, with changes. Throughout this chapter, "Board" was substituted for "director" or "division" wherever appropriate to indicate the authority of the Board of the department as the final decision-maker in cases brought pursuant to 43 TAC Chapter 215, Occupations Code, Chapter 2301, and Transportation Code, Chapters 503 and 1000 through 1005, in accordance with House Bill 3097. Also, references to the Texas Transportation Commission were struck and replaced with "Board." The proposed new rules also add references where appropriate to Transportation Code, Chapters 1000 through 1005, which reference the creation of the Department of Motor Vehicles and its Board.

Throughout the chapter, the proposed new sections attempt to recognize the advances in technology that improve the operation of business and state government as a whole. In recognition of this fact, these new sections propose to allow documents to be filed with the Motor Vehicle Division in person, or by electronic document transfer, which includes both facsimile and e-mail or other electronic methods of document exchange. The Board will designate particular facsimile numbers or e-mail addresses to serve this function.

New §215.2, Definitions; Conformity with Statutory Requirements, is proposed with changes from 43 TAC Chapter 8 that will conform definitions in the new sections to the statutory changes made in House Bill 3097. Additionally, the definition of "director" is proposed with changes from the original version under 43 TAC Chapter 8, which clarifies that "director" may also mean any personnel to whom the director delegates an assigned duty under the chapter. Allowing "director" to be defined in this way will streamline division operations, so that duties may be delegated to key personnel in the director's absence, or for other reasons, such as to increase efficiency. References to the "director's designee" have been struck throughout the chapter as a result of this change. Additionally, a definition has been added to clarify that any references to Chapters 1000 through 1005 are Transportation Code references. Furthermore, a definition of "hearing officer" has been added to this subchapter because it is used throughout the chapter and has not been previously defined. Similarly, the proposed new section adds a definition for the "division's offices" that will clarify where documents are officially received by the division. These proposed new definitions are intended to clarify the rules for readers, and encourage efficient transition to the new agency.

New §215.4, Formal Opinions, is proposed with changes from the original version found in 43 TAC Chapter 8 with minor grammatical changes and the addition of references to Transportation Code, Chapters 1000 through 1005 to increase clarity.

New §215.5, Informal Opinions, is proposed with changes from the original version found in 43 TAC Chapter 8. New proposed §215.5 makes clear that no opinion offered by any staff member of the department shall bind the Board in a proceeding brought under the Occupations Code, Chapter 2301, or the Transportation Code, Chapters 503 and 1000 through 1005, (referred to as the "Codes") or this chapter.

New §215.22, Prohibited Disclosures and Communications, is proposed with changes from the original version found in 43 TAC Chapter 8, adding language clarifying that ex parte communications may not be made with the Board or division staff in violation of Government Code, §2001.061. The proposed new section allows the Board to cure an ex parte communication by reporting it and providing the communication or a summary to all parties to a proceeding. The proposed new section also clarifies that the Board may take further action as allowed by law.

New §215.23, Appearances, is proposed with general grammatical changes from the original version found in 43 TAC Chapter 8 to remove unnecessary gender references or other references to in-house hearing officers. New §215.24, Petitions, and §215.25, Affidavits, are proposed with minor grammatical changes from the original version found in 43 TAC Chapter 8.

New §215.26, Form of Petitions, Pleadings, and the Like, is proposed with a change from the original section found in 43 TAC Chapter 8. It updates the description of documents submitted from "typewriting" to "text" to reflect current usage.

New §215.28, Docket, is proposed with changes to reflect that dockets will be assigned an alpha-numeric identifier by the division. The term "docket number" is removed as it is not consistent with current practice.

New §215.30, Filing of Documents, is proposed with changes from the original version found in 43 TAC Chapter 8. In subsection (a), the language clarifies that all documents and filings involving motor vehicle industry licensing must be filed with the offices of the Motor Vehicle Division, rather than the offices of the Board itself. The section is also changed to allow electronic filings for proceedings under Chapter 215. These changes are intended to provide clarification and flexibility to licensees and litigants regarding where filings must be made to avoid unintended delays in licensing or hearings. Subsection (e) includes language clarifying that the rulings on whether documents are timely filed may be made by department staff as designated by the Board.

New §215.31, Cease and Desist Orders, §215.41, Presiding Officials, §215.44, Evidence, and §215.47, Motions, are proposed with general grammatical changes from 43 TAC Chapter 8 to improve the clarity of the text and to eliminate gender references.

New §215.49, Service of Pleading, Petitions, Briefs, and the Like, is proposed with grammatical changes from 43 TAC Chapter 8 to clarify the section, and to allow electronic filings, including facsimile and e-mail or other electronic methods of document exchange. The changes provide greater flexibility to licensees of and litigants before the Board to capitalize on advances in technology that benefit the State of Texas and the public at large.

New §215.51, Findings and Recommendations of Hearing Officer, new §215.52, Filing of Exceptions, new §213.53, Form of Exceptions, and new §215.54, Replies to Exceptions, are proposed with grammatical changes from 43 TAC Chapter 8 intended to clarify the sections.

New §215.57, Format for Documents Filed with the Board Subsequent to the Issuance of a Proposal for Decision, is proposed with changes from the original version found in 43 TAC Chapter 8 designed to recognize the fact that word processing is now the primary method by which people create and submit written documents. Also, references to "examiner" have been removed, and in some cases replaced with "hearing officer," to reflect that the term "examiner" is not used in 43 TAC Chapter 215 or by the division.

Former 43 TAC §8.34, Institution of Adjudicative Proceedings, is not proposed here as it is no longer necessary for efficient Board proceedings. The remaining sections were renumbered accordingly.

Former 43 TAC §8.88, Transition Period for the issuance of Two-Year Licenses, is not proposed here because the transition period to two-year licenses is substantially complete, and the section is no longer necessary.

In Subchapter D, Franchised Dealers, Manufacturers, Distributors, and Converters, new §215.101 is proposed with changes from the original version in 43 TAC Chapter 8, to add references to enabling statutes, Transportation Code, Chapters 503, and 1000 through 1005.

New §215.104, Changes to Franchised Dealer License, is proposed with changes to subsections (a) and (b) from the original version found in 43 TAC Chapter 8. These changes clarify the requirements for a licensee who sells or assigns all or a portion of a licensed franchised entity, or who makes changes to a franchise for a currently licensed showroom. Under the original version found in 43 TAC §8.104, a franchised dealer must file an amendment to a motor vehicle dealer license only where the change in ownership is 10 percent or more of the franchised entity. Proposed new §215.104(a) makes clear that each showroom at a location is licensed, and thus changes to add or alter a location require an amendment application. Proposed new §215.104(b) states that all franchised dealers must amend licenses when any change in ownership occurs. The only exception to this provided in the section is for publicly-held corporations, which states that an amendment need only be filed if one person or entity acquires 10 or more percent of the licensed entity. New §215.104(c) adds "dealer principal" to the categories of change in management. Also, new §215.104(f) clarifies that a franchised dealer must obtain approval before relocating an existing dealership or opening an additional location. Similarly, new proposed subsection (f) clarifies that a licensee must notify the division when closing an existing location. The proposed new section will conform to existing practice of the division and provide better explanation of the existing practice of the division, rather than the original version found in 43 TAC Chapter 8.

New §215.105, Notification of License Application; Protest Requirements, is proposed with changes from the original version found in 43 TAC Chapter 8 to allow the section to conform to division practice and to address changes made to the Occupations Code, Chapter 2301, by House Bill 2640, 81st Legislature, Regular Session, 2009. Under the terms of HB 2640, a franchised dealer may now move a dealership up to two miles from an existing location without risk of protest, provided that the dealership application is received after the effective date of the bill. The former version of this statute allowed a dealership to relocate only one mile from an existing location. This section states that only those dealers who have standing to protest a new or relocation application under the statute will be given notice that the new or relocation franchised dealer application was filed. This proposed new language reflects existing practice and interpretation of the Board's duty under the Occupations Code, and eliminates the necessity of describing the circumstances that will cause a dealer to be eligible to protest, which might not be the same for each dealer, depending on the date the application is received by the division.

New §215.110, Evidence of Franchise, is proposed with minor changes from the original version found in 43 TAC Chapter 8 to conform to current terminology used by the division to describe this process.

New §215.113, Manufacturer Ownership of Franchised Dealer; Good Cause Extension; Dealer Development, is proposed with minor, non-substantive changes from the original version found in 43 TAC Chapter 8. Under §215.113(c), changes are proposed to correct a citation to the Occupations Code, and also, grammatical changes were made to that section to clarify language.

New §215.115, Manufacturer, Distributor, and Converter Records, is a new section not previously adopted under 43 TAC Chapter 8. It requires manufacturers and distributors to maintain records of all vehicles they sell to Texas dealers for 48 months, and to make records for the preceding 24 months available for inspection by the department during business hours. New §215.115(b) also contains a records requirement for converters, so that they are required to maintain records on conversions that are sold in Texas for 48 months, as well as records on-site for 24 months. The new section also defines what records must be kept and defines how and when they may be kept off-site, including the ability to use electronic document storage. These record requirements are similar to those for general distinguishing number (GDN) holders, and are proposed pursuant to Occupations Code, §2301.153(b) that specifically allows the department to inspect these documents. These proposed sections will improve the department's ability to regulate the motor vehicle industry, by improving accessibility to transaction records for longer time periods. The proposed new language also is similar to the requirements for maintaining records as required by the Texas Comptroller of Public Accounts (CPA).

In Subchapter E, General Distinguishing Numbers, new §215.132, Definitions, is proposed with changes from the original version found in 43 TAC Chapter 8. New §215.132 eliminates the definition of the terms "agent of foreign motor vehicle dealer," "foreign motor vehicle dealer," and "Mexican motor vehicle dealer," which were found in 43 TAC Chapter 8, but are now no longer necessary with the proposal of new §215.147, Export Sales.

New §215.133 clarifies that an applicant for a general distinguishing number may provide "proof of" a surety bond with an application for a GDN. The original version of this section found in 43 TAC Chapter 8 stated that an application had to be accompanied by a bond. The new proposed section will allow the division to accept another method of proof of bond, rather than the actual bond, at the division's election, to facilitate the licensing process. Also, it will decrease the amount of record-storage that the division must maintain as the result of the existing bond requirement.

New §215.137 is proposed with changes from the original version found in 43 TAC Chapter 8. Proposed new §215.137(a) clarifies that all GDN holders, including wholesale motor vehicle dealers, must maintain a security bond unless otherwise exempted from the requirement in proposed new §215.137(d). The new proposed section also eliminates references to recovery against alternative surety sources, as those are not legal forms of surety under Federal law, which were purportedly allowable under the original version in 43 TAC Chapter 8.

The proposed new section further clarifies in §215.137(a)(2) that the bond must be issued in the business name of the licensed entity, and must contain the complete physical address of each dealership location covered by the bond. This is proposed to ensure that a dealer maintains adequate security for each of its locations to provide protection for the public, pursuant to Transportation Code, §503.033.

New §215.139, Metal Dealer Plate Allocation, is proposed with changes from the original version found in 43 TAC Chapter 8.

The language of this section states that a dealer may receive additional metal plates above its initial allocation granted in §215.139(b), provided that the dealer shows proof of vehicle sales that justify additional allocation. Also, the language in the section allows waivers of plate restrictions to be valid for four years, rather than three years. This proposed language reflects the fact that licenses are now issued for two-year terms, rather than one, and thus the waiver expiration will occur in conjunction with the expiration of a license instead of mid-term. Additional grammatical changes were made to the section from the original version in 43 TAC Chapter 8 to clarify that plate allocation waivers apply to new and renewing license applicants and to give the director more flexibility in what information may be considered in evaluating a waiver request. This proposed language will streamline the issuance of metal plates to new and renewing dealers who seek to obtain additional allocation of metal dealer plates.

New §215.141, Sanctions, is proposed with changes from the original version found in 43 TAC Chapter 8. Under subsection (a), the language clarifies that any person who violates the rule is subject to the assessment of civil penalties pursuant to Transportation Code, §503.095. The original section in 43 TAC Chapter 8 appeared to apply only to those who held GDNs. Thus, those individuals who act as motor vehicle dealers without a license may be subject to civil penalties for violations of the rule, as are those entities that hold a license, consistent with statutory intent.

New §215.141(a)(3)(B) is proposed with changes from its original version found in 43 TAC Chapter 8. The new proposed section states that a dealer's GDN may be subject to sanction under the section if the dealer fails to comply with a request for records made by the division. This language makes available to the division other ways to make records requests than by certified letter alone, and thus will facilitate regulation of dealers, taking advantage of technological advances that improve government operation.

Also, new §215.141(a)(5) is proposed with changes from the original version found in 43 TAC Chapter 8 to clarify that anyone may be sanctioned under this section for offering to sell a type of vehicle one is not licensed to sell. The original version of this section found in 43 TAC Chapter 8 applied only to trailer dealers found to be selling motor vehicles. The new proposed version clarifies that any person or licensee who offers vehicles for sale without the appropriate license commits a violation of this section, as well as the statute. This is intended to increase clarity of the application of the section from the original version in 43 TAC Chapter 8, consistent with the statutory scheme, and to deter unlicensed sales.

New §215.141, Sanctions, paragraphs (a)(8), (a)(10), (a)(11), (a)(21), and (a)(22) are proposed with changes from the original version found in 43 TAC Chapter 8 to reflect amendments to the Transportation Code, Chapter 503, which delete references to cardboard tags. Also, new §215.141, subsection (a)(8), is proposed with changes from 43 TAC Chapter 8 based upon statutory amendments referencing the time a buyer's temporary tag is valid after a vehicle is sold, from 21 days to 60 days, to track recent legislative amendments. Senate Bill 1235, 81st Legislature, Regular Session, 2009, amended Transportation Code, Chapter 503, deleting the term "cardboard" used to describe temporary tags throughout the chapter and changing the time period a buyer's temporary tag is valid. This allows the use of other materials for the creation of temporary tags issued by dealers under the authority of the statute, rather than the previous language requiring the use of cardboard.

New §215.141(a)(9) is proposed with changes from the original version found in 43 TAC Chapter 8, removing the modifier "out-of-state" from the language requiring plates to be removed from vehicles displayed from sale. This clarifies that any license plate, not just an out-of-state license plate, should be removed from a motor vehicle as required by law. New §215.141(a)(12) is also proposed with minor changes to correct references to section numbers that are changed from the version in 43 TAC Chapter 8 to accommodate the re-adoption by the Board under this new chapter.

New §215.141, subsection (b), is proposed with minor grammatical changes from the original version found in 43 TAC Chapter 8.

New §215.141, subsection (c), is proposed with changes from 43 TAC Chapter 8, to change a reference in the text from "presanction citation" to "warning letter," which reflects the current practice and language used by the division for this regulatory function.

New §215.144, Record of Sales and Inventory, is proposed with a number of changes from the original version of this section found in 43 TAC §8.144. In general, the new language extends the length of time that a dealer must maintain records of purchase and sales at the dealership so that they may be available for inspection. Additionally, the proposed new section expands the methods by which the department may request access to these records. Other proposed new language includes the addition of required notifications to the purchasers of travel trailers, and the addition of records requirements specifically for wholesale auctions.

New §215.144(a), Purchase and sales records, is proposed with changes from the original version of 43 TAC Chapter 8. Under the new proposed language, GDN holders must keep records for sales for 48 months, rather than the 24 months required under 43 TAC Chapter 8. The proposed new language allows the Board's rules to conform to the record retention requirements of the Texas Comptroller of Public Accounts (CPA) and the Office of the Consumer Credit Commissioner (OCCC). The added time requirement for maintenance of records also provides greater ability to conduct investigations of complaints made by consumers, because the records are maintained at the dealership for a longer period of time, and thus, benefits the public at large.

New §215.144(c) is proposed with changes from the original version found in 43 TAC Chapter 8. Under this proposed new section, dealers must maintain records for purchases and sales that occurred in preceding 24 months at the licensed location. In the original version of this section found in 43 TAC Chapter 8, dealers were required to keep these records at the location for only 13 months after the date of sale. Also, the proposed new language expands the ways the division may communicate a request for records from a dealer. This new proposed version allows the division to make a request for dealer records by mail, facsimile, or electronic mail. The proposed language will streamline the division's ability to request records, using alternate methods of technology that are cheaper and more efficient than certified mail. Additionally, the new proposed language opens the possibility for the department to allow submission of the records electronically, as well. That will also result in savings of time, effort,

and mailing costs for licensees who use electronic methods for storing and sending records, as well as the division.

New §215.144 (d), originally found as the last sentence of 43 TAC §8.144(c), is proposed to clarify that any records required to be kept may be requested for department review. The remaining proposed new subsections are numbered accordingly.

New §215.144(e) is proposed with minor grammatical changes from the original version found in 43 TAC Chapter 8. Subsection (e)(10) is proposed with changes from 43 TAC Chapter 8 pursuant to House Bill 2918, which amended the Occupations Code, Chapter 2301 to require notice to motor home or towable recreational vehicle purchasers if the vehicle is subject to certain inspection requirements under the Transportation Code, Chapter 548.

New §215.144(f), Title assignments, is proposed with changes from the original version under 43 TAC Chapter 8. The general statutory requirement is that a motor vehicle dealer must file motor vehicle registration with the State of Texas reporting the purchase of a motor vehicle within 20 working days of sale. Senate Bill 1235, 81st Legislature, Regular Session, 2009, amends the Tax Code, §152.069 and changes the deadline for registration of a vehicle in a sale where the dealer finances the purchase of the motor vehicle. For a dealer-financed sale, the selling dealer now has up to 45 days after the date of sale to apply for title in the name of the purchaser with the appropriate taxing entity. The language in this new subsection is proposed to conform to this statutory change.

New §215.144(g) is proposed with changes from the original version found in 43 TAC Chapter 8. The proposed new subsection is named "Out-of-State Sales" to clarify that the language of this subsection applies to the treatment of sales involving vehicles to be transferred out-of-state. This subsection also clarifies that a dealer has 20 working days from the date of sale to deliver assigned evidence of ownership to a purchaser. Additional changes from the original version of this section found in 43 TAC Chapter 8 include the elimination of language that defines "Notification to the department." This language is eliminated because it is defined within the Transportation Code, and is not necessary to be included in this rule.

New §215.144(h), Consignment Sales, is proposed with changes from the original version found in 43 TAC Chapter 9. The proposed new subsection requires dealers handling consignment sales to keep records for consigned vehicles for a minimum of 48 months, rather than the 13 months required by 43 TAC Chapter 8. This change causes the records requirements governing consignment sales to conform to the general record-keeping requirements for GDN holders as proposed, and to conform to requirements of the Texas CPA and OCCC.

Proposed new §215.144(j), Wholesale Auction Records, defines requirements for wholesale auctions to keep records of purchases and sales, and defines the required information to be kept in those records, and was not found in 43 TAC Chapter 8. Similar to GDN holders, this language requires wholesale auctions to maintain records on purchase and sales transactions for at least 48 months, and a minimum of 24 months of records must be kept at the licensed location and available for inspection during business hours. As previously stated, the time requirements conform to records requirements by the Texas CPA and OCCC. Also, the maintenance of these records serves as an additional way for the department to protect the public, as it eases the department's ability to investigate complaints on prior transactions.

Proposed new §215.144(k), Electronic Records, states that a licensee may keep any required records in an electronic format, so long as any records that must be kept on-site can be printed at the licensed location upon request for inspection by a representative of the department. Original documents can be stored in secure on-site storage or within the county where the dealer is located. This section is proposed to recognize technological advances in record-keeping that allow licensees to maintain proper records electronically in a more efficient, and cost-effective manner, without compromising the department's ability to investigate complaints. This is a change from the original version of this section found in 43 TAC Chapter 8.

Proposed new §215.145, Change of Dealer's Status, contains changes from the original version under 43 TAC Chapter 8. The titles for each subsection have been deleted as unnecessary. Also, subsection (b) is proposed to explain that any dealer that undergoes a change in entity must amend its license within ten days of the change. For a change in entity, a new license application must be filed. The proposed new language allows an exception to this practice for publicly-held corporations whose change in ownership amounts to less than ten percent of the entity. This language is exactly the same as the language in proposed new §215.104. The proposed language conforms to existing licensing practices to achieve greater clarity of the process for licensees.

Proposed new §215.147, Export Sales, is a new subsection not found in 43 TAC Chapter 8, and announces departmental requirements for sales of vehicles intended to be exported outside the United States. It requires a dealer who sells a vehicle to a foreign-national for export to collect proper identification and documentation from the purchaser, and to stamp the title of the vehicle with the phrase "For Export Only" in a particular manner, retaining copies of each. The proposed new section also contains a requirement for the wholesale auction to keep a file copy of the Texas Motor Vehicle Sales Tax Exemption Certificate for Vehicles Taken Out of State, for each vehicle sold for export to a foreign country. The new proposed section also requires a dealer to issue a buyer's temporary tag for the sale. By entering the required information into the department database for the tag, and checking a "for export" box, the dealer provides notification to the department for the sale of the vehicle as export-only. This proposed new section intends to provide the department with a better method to track and regulate export sales. These requirements mirror the original requirements under 43 TAC Chapter 8, although now they apply to any vehicle bought for export, not just those for export to the closest international border.

New §215.148 is proposed with minor grammatical changes from the original version found in 43 TAC Chapter 8. The proposed new language clarifies that records may be requested by a division's representative, and not necessarily strictly by the division director. Proposed new §215.149, Independent Mobility Motor Vehicle Dealers, changes the reference to Occupations Code, §2301.361(a)(3) to §2301.362, which was found in 43 TAC Chapter 8, to conform with the legislative correction of the numbering of that provision, pursuant of Senate Bill 1969, 81st Legislature, Regular Session, 2009.

New §215.150, Authorization to Issue Temporary Tags, is proposed with changes from the original version in 43 TAC Chapter 8, eliminating references to "initial" and "supplemental" buyer's

temporary tags pursuant to Senate Bill 1235, 81st Legislature, Regular Session, 2009. This legislation eliminates the supplemental buyer's tag for use by motor vehicle dealers. Instead, the legislation altered the time period for which a temporary buyer's tag is valid. Previously, buyer's temporary tags could be issued for no longer than 21 days following the date the buyer purchased a vehicle. The statute, under certain circumstances, allowed dealers to issue what was known as a "supplemental buyer's tag" for an additional 20 working days, should there be a problem with a prior lien on a vehicle that caused the registration to be delayed. With this statutory change, the buyer's temporary tag may be valid for up to 60 days, which will simplify and streamline the temporary tag issuance process for both dealers and the department.

New §215.151, Temporary Tags, General Use Requirements, and Prohibitions, is proposed with changes from the original version found in 43 TAC Chapter 8, to track legislative changes made in Senate Bill 1235, 81st Legislature, Regular Session, 2009. As previously noted, this bill amended the Transportation Code, Chapter 503, eliminating the requirement that buyer's temporary tags be made of cardboard. Proposed new §215.151(a) states that temporary tags must be secured to the vehicle so that the tag is legible at all times, even when operated at highway speeds. Subsection (b) is changed to state that the tag may not be obstructed by any device or other material. This language is proposed to ensure that law enforcement will be able to read the tags at all times, as a safety measure, should an officer need to investigate the origin of the unregistered vehicle using a temporary tag. The new proposed section also eliminates references to the "For Off-Highway Use Only" tag which existed in the original version of the section under 43 TAC Chapter 8. Those types of tags are not used, and thus this language was eliminated in the proposed new section to reflect current practices.

New §215.152, Obtaining Numbers for Issuance of Temporary Tags, eliminates references to 43 TAC §8.155 and §8.156 as unnecessary.

New §215.153, Specifications for All Temporary Tags, is proposed with changes from the original version of this section in 43 TAC Chapter 8. This proposed new language eliminates references to temporary tag specifications that are tied to the use of cardboard to print temporary tags. The new section also specifies a dealer must use black ink on a white background to print the tags. The language in proposed new §215.153(c) gives the required dimensions for temporary tags. Also, subsection (d) from the original 43 TAC §8.153 is eliminated, because it refers to when dealers should begin using the E-tag database to print temporary tags. This process is already in use, and therefore, the language is no longer necessary in the proposed new section. Additional deletions from the original version of this section under 43 TAC Chapter 8 are proposed to conform to the statutory changes made pursuant to Senate Bill 1235.

New §215.154, Dealer Temporary Tags, is proposed pursuant to changes made to Transportation Code, Chapter 503, found in Senate Bill 1235, 81st Legislature. This bill added a circumstance for which a dealer temporary tag may be issued for use on an unregistered motor vehicle. The bill now allows a dealer temporary tag to be used on a dealership vehicle a customer borrows while the customer's vehicle is being repaired. Subsection (b)(4) incorporates this statutory change, and states that the dealer must use a vehicle-specific dealer temporary tag for this purpose.

New §215.154(e) is proposed with grammatical changes from the original version found in 43 TAC Chapter 8 to clarify that a purchasing dealer may place its dealer temporary tag or dealer metal plate on an unregistered vehicle purchased from another dealer. The original version of the rule in 43 TAC Chapter 8 stated that the selling dealer could attach its temporary tag to the unregistered vehicle. The proposed new section ensures that the rule comports with the statutory scheme, because a buyer's tag may not be used for a wholesale transaction pursuant to §215.155(b).

New §215.154(f) is proposed stating that dealer temporary tags may not be displayed on laden commercial vehicles, or dealer service or work vehicles. The new §215.154(f) eliminates language found in the original version of 43 TAC Chapter 8 that exempts buyer tags on commercial laden vehicles or vehicles loaned to charitable organizations or schools, as not subject to this subsection. The proposed new section applies to the use of dealer temporary tags, not to buyer's temporary tags. Therefore, the language regarding buyer's tags is not germane to this section, and in fact, not necessary since there are no laden-vehicle restrictions to the proper use of buyer temporary tags. Additionally, the eliminated language referencing charities and schools found originally in 43 TAC Chapter 8 is not necessary, because vehicles loaned to these entities are not in commerce, and thus are not subject to the restrictions enumerated in this subsection. The proposed new subsection will provide clearer guidance to dealers regarding the uses and restrictions on tag use for commercial vehicles.

New §215.155, Buyer's Temporary Tags, is proposed with changes made to Transportation Code, Chapter 503, pursuant to Senate Bill 1235, 81st Legislature, which eliminated "supplemental" buyer's tags. The proposed new section also eliminates any reference to these tags, and clarifies that temporary buyer's tags are valid until a vehicle is registered, or until the 60th day after the date of purchase, whichever occurs first that were found in its original version under 43 TAC Chapter 8.

New §215.156, Buyer's Temporary Tag Receipt, is proposed with changes from the original version found in 43 TAC Chapter 8. The new section eliminates a reference to an "emergency" tag. The rule also removes requirements throughout the section for the dealer to cause a buyer to sign a buyer's temporary tag receipt, and maintain the signed receipt in the dealer's records. Additionally, subsections (b) and (c), describing this process, are eliminated as unnecessary. The changes in this section from the original version found in 43 TAC Chapter 8 are proposed to eliminate the use of the emergency temporary tag in favor of the Internet-down tag provided by statute. The department has made programming changes for the use of the Internet-down tags to facilitate a dealer's ability to replenish its stock. Before the amendments to the statute made pursuant to Senate Bill 1235, along with this proposed new section, a dealer had a number of different tags with different purposes to use in the course of business. However, each tag had significant limitations on its use, which made tag selection confusing to dealers. This proposed new language is intended to work with the statutory amendments to simplify tag use and selection by reducing the number of choices and broadening the use of the remaining types of tags. The overall number of tags available to dealers for legitimate use with customers will not be negatively affected.

New §215.157, Advance Numbers, Internet-down Buyer's Temporary Tags, is proposed with changes from the original version found in 43 TAC Chapter 8. The new proposed section contains

language stating that, when access to the Internet interrupts ability to access buyer's temporary tags, the dealer will complete a receipt and keep a copy. The transaction must be entered on-line by the close of the next business day that Internet access is restored to the dealership. Also, the dealer must state on the buyer's receipt that the dealer was unable to access the Internet or the temporary tag database at the time the receipt was signed. This will assist the division in controlling the use of Internet-down tags.

43 TAC §8.158, Advance Numbers, Emergency Buyer's Temporary Tags, is not proposed for adoption as a new section. New §215.158, General Requirements and Allocation of Internet-down Tag Numbers, is proposed with changes from the original version found in 43 TAC §8.159. Throughout the proposed new section, references to "emergency" numbers that were a part of the original 43 TAC §8.159 are eliminated as unnecessary. Pursuant to the explanation provided above for proposed new §215.156, this proposed new language will simplify the use of temporary tags for licensees, not further restrict the use or amount of tags.

The formula for the allocation of Internet-down tags is contained in the proposed new 43 TAC §215.158(c). The formula in the proposed language reflects the actual practice of the division, which allows each dealer at least three Internet-down advance numbers, or an amount of numbers equaling 1/52nd of a dealership's total annual sales available to a dealer at any given time, whichever amount is more.

The former subsections (e) and (f), which were found in 43 TAC Chapter 8, are eliminated as unnecessary since the "emergency" tag has been eliminated. Instead, the new §215.158(d) describes the number of Internet-down advance numbers during the first license term of a licensee. New proposed subsection (e) explains that a newly-licensed dealer who has previously held a license with the division is not subject to the limits described in proposed subsection (d), provided that the dealer is a franchised dealer that has been the subject of a buy-sell agreement, regardless of a change in entity or ownership. Also, any type of dealer who has been licensed for one year or longer, and relocates may not be subject to the limitations described in Subchapter D. Again, the purpose behind these changes is to streamline the use of temporary tags, so dealers have fewer types of tags to manage, and there are fewer restrictions for each particular type of tag used.

New proposed subsection (f) clarifies that a dealer can obtain more Internet-down numbers during its first year of licensure by making a request to the director, who will approve or deny the request, based on certain enumerated factors. This proposed section will simplify the process by which a dealer may request additional Internet-down tags. All of these proposed changes from the original version found in 43 TAC Chapter 8 are designed to facilitate the use of Internet-down temporary tags, which will replace "emergency" temporary tags.

The former 43 TAC §8.160 was renumbered and is proposed as new section §215.159, Converter's Temporary Tags.

New Subchapter F, Lessors and Lease Facilitators, is proposed with changes from its original version under 43 TAC Chapter 8. New §215.174, Application for a License, proposed new subsection (b)(2) states that each owner and officer of an applicant must provide information on criminal background, should they have any. The language improves clarity of the original version of the section under 43 TAC Chapter 8. New subsection (b)(8), is proposed with language explaining that an applicant for a lessor license must present business background information for one of the following: a president, general manager, or owner of the applicant entity. The original version of the section under 43 TAC Chapter 8 required that the applicant entity provide business background information for each principal or officer required to be listed on the application. The proposed new language simplifies and streamlines the licensing process for both the applicants and the department, while using due diligence to verify the business integrity, ability and experience of all licensees. New §215.174(c), which applies to lease facilitators, is proposed with similar language establishing parallel licensing requirements for lessors.

New §215.175, Sanctions, is proposed with changes to subsection (a)(2)(B) from the original version found in 43 TAC Chapter 8, designed to broaden the methods by which the division may request records. The original version of this section under 43 TAC Chapter 8 stated that a lessor or lease facilitator must respond to a request for records sent by certified letter. The proposed new language allows the division other ways to make records requests to facilitate regulation of dealers and to recognize technological advances that streamline government operation.

New §215.177, Established and Permanent Place of Business is proposed with changes from the original version under 43 TAC Chapter 8. Proposed new §215.177(a)(1)(B) mandates that a lessor or lease facilitator location must conform to certain requirements regarding the structure where the office is located. These requirements are proposed to ensure that the lessor or lease facilitator maintains a legitimate, permanent office structure that follows all local zoning ordinances, and that is genuinely open to the public. Similarly, new §215.177(a)(1)(C) is proposed to clarify that an office may not be situated in a movable trailer. The new requirements proposed in these subsections mirror the GDN rules, so that the requirements for these types of licensees will be parallel. The changes will also help ensure that lessor and lease facilitator locations will be permanent and accessible to the general public. Similar language is proposed in new §215.177(b), governing lessors located in other states.

New §215.178, Records of Leasing, is proposed with changes from the original version under 43 TAC Chapter 8. The new proposed section extends the time period that lessors and lease facilitators must keep certain records on-site from 13 months to 24 months. Additionally, the new proposed section broadens the methods by which the department may request copies of those records from lessors or lease facilitators to allow the use of e-mail or facsimile to communicate records requests. Also, the proposed new section clarifies that the division does allow for the electronic storage of records required to be kept under the section, provided the records can be easily accessed if requested. The proposed new language will simplify the procedures for maintaining records for licensees. Additionally, it will simplify the procedures for requesting records by department personnel, which improve its ability to regulate the industry for the benefit of the public at large.

New Subchapter G, Warranty Performance Obligations, is proposed with changes from the original version under 43 TAC Chapter 8. Under new §215.202, Filing of Complaints, the proposed section states how one may file a lemon law complaint under the subchapter. The proposed new language will allow someone the option of filing a complaint in person, by mail, or by other electronic means. This proposed language will

provide greater flexibility to complainants, and reflect advances in technology that benefit the State of Texas and its customers.

Proposed new §215.203, Review of Complaints, is also offered with changes from the original version under 43 TAC Chapter 8. The proposed new language states that the division will evaluate a consumer complaint to determine if it meets the requirements of the lemon law, or other available relief, and notify a complainant, if not. The proposed new language clarifies that the division will not place itself in the position of rejecting a complaint, in the place of the Board or a hearing examiner whose position it is to evaluate these claims. The remaining subsections were renumbered accordingly.

New §215.206, Hearings, is proposed with changes under paragraph (5) from the original version found in 43 TAC Chapter 8, to clarify that parties who intend to be represented by counsel at hearing must notify the hearing officer, as well as the division and the other party.

New §215.207, Contested Cases: Decisions and Final Orders, is proposed with changes from the original version found in 43 TAC Chapter 8 to clarify that decisions shall be issued according to the procedures in this subchapter, and also the rules promulgated by SOAH contained in 1 TAC Chapter 155.

Minor grammatical changes were made to new proposed §215.208, Decisions, and §215.210, Compliance with Order Granting Relief, from the original sections in 43 TAC Chapter 8 that are intended to improve clarity of these sections.

New Subchapter H, Advertising, is proposed without substantive changes from the original version contained in 43 TAC Chapter 8.

New Subchapter I, Practice and Procedure for Hearings Conducted by the State Office of Administrative Hearings, is proposed with changes from the original version under 43 TAC Chapter 8. New §215.305, Filing of Complaints, Protests, and Petitions, is proposed with language that parallel those made in Subchapters A and G. The proposed new language will now allow for filings made to the division to be made in person, by mail, or by electronic document transfer. These changes are proposed to provide greater flexibility to complainants and litigants, and to reflect advances in technology that benefit the State of Texas and the public at large.

New §215.308 is proposed with changes from the original version under 43 TAC §8.308, stating in subsection (d) that if a party does not appear at hearing, then the allegations contained in a petition may be deemed admitted against that party, and a default order may be issued against that person pursuant to SOAH rule 1 TAC §155.501. Under the original 43 TAC §8.308(d), a respondent could have allegations deemed admitted against that party only if the respondent failed to file a reply and then failed to appear at hearing. The department believes that there are only a small number of respondents that do file replies, and then fail to show for a properly-noticed hearing. However, it believes that this proposed change in language will streamline the process of dealing with such respondents because it will conform more closely to SOAH rules, and thus cause the hearing process to work more efficiently overall for both the agency and SOAH.

FISCAL NOTE

Brian Ragland, Interim Chief Financial Officer, has determined that for each year of the first five years the new chapter as proposed is in effect, there will be no fiscal implications for state and local governments as a result of enforcing or administering any of these sections.

Jennifer Soldano, Legal Counsel, has certified that there will not be a significant impact on local economies or overall employment as a result of enforcing or administering the new chapter.

PUBLIC BENEFIT AND COST

Ms. Soldano has also determined that for each year of the first five years the new chapter is in effect, the public benefit anticipated as a result of enforcing or administering the sections incorporated from 43 TAC Chapter 8 is an efficient transition of the responsibilities of the Texas Department of Transportation for this chapter to the new Texas Department of Motor Vehicles, and effective regulation of the motor vehicle industry.

There were a number of changes in these proposed sections that will provide a general public benefit to licensees and the public at large. Grammatical improvements result in a benefit to the public by improving the clarity to the rules. Removing unnecessary sections from this subchapter also benefits the public by increasing clarity and reducing ineffective regulation. Ensuring that premises requirements and records requirements are as uniform as possible across different license types improves clarity for licensees and promotes the efficient use of resources for the department. Also, many changes are proposed pursuant to legislative enactments affecting the department's enabling legislation, and thus the promulgation of those proposed new sections will benefit the public by having a uniform regulatory scheme.

There could be some minimal economic costs for persons required to comply with some sections as proposed. Under the proposed new sections, all licensees will be required to store records related to the regulated industry for longer periods of time. Additionally, licensees will see a change in the differing types of tags available for use with customers. Furthermore, lessors and lease facilitators will be required to comply with premises and records regulations similar to those of GDN holders.

Any costs relating to changes in the types of tags available to motor vehicle dealers pursuant to proposed new §§215.150 - 215.155 relating to regulation of dealer temporary tags, are the result of enactment of Senate Bill 1235, 81st Legislature, Regular Session, 2009, and not the result of adoption, enforcement, or administration of the proposed amendments, and thus do not require an analysis under Government Code, Chapter 2006. The department notes, however, that it has proposed changes from the previous sections under 43 TAC Chapter 8, which are described above in §215.155, eliminating the "emergency tag" and broadening the use of the remaining types of tags, so that the overall number of tags available to dealers for legitimate customer use will not be negatively impacted and that the tags are easier to use. The department does not see that this will have any adverse economic effect on small businesses.

Government Code, §2006.002 requires that before adopting a rule that may have 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 pro-

prietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has not more than 20 employees. The department does not maintain data of a nature that would allow the categorization of a particular licensee under Government Code, Chapter 2006. The nature of the motor vehicle industry, however, would indicate that nearly all franchised dealer licenses, general distinguishing number holders, and lease facilitators would be categorized as "small businesses" since such businesses are categorized as businesses employing fewer than 100 employees, or earning gross receipts of less than $6 million dollars. A relatively small percentage of licensees, such as manufacturers, distributors, lessors, and large franchised dealers, would be classified as other than "small businesses" because they earn more than $6 million dollars in gross receipts and employ more than 100 employees. Also, a great many of GDN licensees would also qualify as "micro-businesses," or those who employ 20 or fewer people. But, for the purposes of this impact statement, the distinction between small or micro-businesses is irrelevant.

Proposed new §215.177, establishes new office requirements for lessors and lease facilitators such that their offices have at least 100 square feet with a seven foot ceiling. Under the previous version of this rule, an office was required to be of sufficient size to allow for basic office equipment such as a desk and chairs. The department believes that to comply with the existing requirements, a licensee would have to have at least 100 square feet to comply with those requirements. Similarly, the seven foot ceiling requirement would not impose a stringent economic burden since the standard ceiling height for any type of building structure intended for human occupation is over seven feet. The proposed new requirements also require that a lessor or lease facilitator office must comply with applicable local zoning ordinances and restrictions. A licensee would have to comply with such ordinances to obtain a certificate of occupancy, or meet other local fire and health regulations, in order to be open to the public. Also, the proposed language prohibits a licensee from using a storeroom, closet, stock room, or the like, as an office. None of these types of rooms would likely qualify for a certificate of occupancy for a business to be open to the public, or have a physical address recognized by the U.S. Postal Service, which is another requirement. To be a business open to the public in any municipality, a licensee would likely already have to comply with similar regulations, and possibly more stringent requirements under federal regulations like the Americans with Disabilities Act. So, the department believes that these additional proposed premises requirements would not result in significant added economic impact to small business, if any.

With regard to proposed new §215.144, which will extend the amount of time that records must be retained by dealers; proposed new §215.115, which establishes records retention requirements for manufacturers, distributors, and converters; and new §215.178, which will extend the amount of time that records must be retained by lessors and lease facilitators, the department believes that no additional adverse economic impact will result from complying with these proposed regulations. Under the Tax Code, §152.063, motor vehicle sellers must keep at their "principle office" a complete record of each retail sale of a motor vehicle for at least 48 months from the date of sale, including pertinent information related to the sale. Similar regulations have been promulgated by the Office of Consumer Credit Commissioner, and other agencies that regulate vehicle sales and vehicle installment sales. The department believes these regulations could be broad enough to apply to other licensees regulated by the division. Proposed §§215.115, 215.144, and 215.178 require that licensees maintain these records for 24 months, and since this time period is less than the 48 months required under the Tax Code and other similar regulations, the department believes its proposed new language will be less onerous on small business than those other similar existing statutory and rule-based requirements.

The department considered alternative methods of achieving the purposes of these proposed sections that could possibly have some adverse economic impact. For instance, it considered whether the increase in record retention requirements, or the institution of more stringent premises requirements for lessors and lease facilitators, would yield the desired regulatory benefits, or if these could be achieved under the former regulatory structure. Ultimately, the department determined that any burden on licensees that would result from compliance already existed under current statutes and rules, mainly promulgated by other state agencies or local municipalities, and thus no additional adverse economic impact would occur as the result of these proposed new sections.

SUBMITTAL OF COMMENTS

Written comments on the new chapter may be submitted to Brett Bray, Director, Motor Vehicle Division, Texas Department of Motor Vehicles, P.O. Box 2293, Austin, Texas 78768. The deadline for receipt of comments is 5:00 p.m. on December 21, 2009.

SUBCHAPTER A. GENERAL PROVISIONS

43 TAC §§215.1 - 215.6

STATUTORY AUTHORITY

The new sections are proposed under Transportation Code, §1002.001, which provides the Texas Motor Vehicles Board with the authority to establish rules for the conduct of activities regulated by the department.

CROSS REFERENCE TO STATUTE

Occupations Code, Chapter 2301, and Transportation Code, Chapters 503 and 1000 - 1005.

§215.1. Scope and Purpose.

Occupations Code, Chapter 2301, and Transportation Code, Chapters 503 and 1000 through 1005, require the Department of Motor Vehicles to license and regulate motor vehicle dealers, manufacturers, distributors, converters, representatives, lessors and lease facilitators, in order to ensure a sound system of distributing and selling motor vehicles, provide for compliance with manufacturer's warranties, prevent fraud, unfair practices, discrimination, impositions, and other abuses of the people of this state in connection with the distribution and sale of motor vehicles. The sections under this chapter prescribe the policies and procedures for regulating motor vehicle dealers, manufacturers, distributors, converters, representatives, lessors and lease facilitators, by regulating licensing, warranty performance obligations, advertising, enforcement, and providing for adjudicative proceedings.

§215.2. Definitions; Conformity with Statutory Requirements.

(a) The definitions contained in Occupations Code, Chapter 2301, and Transportation Code, Chapters 503 and 1000 through 1005 govern this chapter. All matters of practice and procedure set forth in the Codes shall govern and these rules shall be construed to conform with the Codes in every relevant particular, it being the intent of these rules only to supplement the Codes and to provide procedures to be followed in instances not specifically governed by the Codes. In the event of a conflict, the definition or procedure referenced in Occupations Code, Chapter 2301 shall control.

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

(1) ALJ--An Administrative Law Judge of the State Office of Administrative Hearings.

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

(3) Chapter 503--Transportation Code, Chapter 503.

(4) Chapter 1000 through 1005--Transportation Code, Chapter 1000 through 1005.

(5) Code--Occupations Code, Chapter 2301.

(6) Codes--Occupations Code, Chapter 2301, and Transportation Code, Chapters 503 and 1000 through 1005.

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

(8) Director--The director of the Motor Vehicle Division of the Texas Department of Motor Vehicles. For purposes of this chapter, the definition of "director" also includes any personnel to whom the director delegates any duty assigned under this chapter.

(9) Division--The Motor Vehicle Division of the Texas Department of Motor Vehicles.

(10) Executive director--The executive director of the Texas Department of Motor Vehicles.

(11) Governmental agency--All other state and local governmental agencies and all agencies of the United States government, whether executive, legislative, or judicial.

(12) Hearing officer--An ALJ under this chapter, or any other person designated by the Board, or formerly hired or appointed, to hold hearings, administer oaths, receive pleadings and evidence, issue subpoenas to compel the attendance of witnesses, compel the production of papers and documents, issue interlocutory orders and temporary injunctions, make findings of fact and conclusions of law, and issue proposals for decision and recommended final orders.

(13) License purveyor--Any person who for a fee, commission, or other valuable consideration, other than a certified public accountant or a duly licensed attorney at law, assists an applicant in the preparation of a license application or represents an applicant during the review of the license application.

(14) Party in interest--A party against whom a binding determination cannot be had in a proceeding before the department without having been afforded notice and opportunity for hearing.

(15) SOAH--The State Office of Administrative Hearings.

(c) The "division's offices," when referenced in this chapter, are defined as the offices of the Motor Vehicle Division in Austin, Texas that are designated for receipt of filings under this chapter.

§215.3. Duties and Powers of Board.

In accordance with the Codes, the Board shall:

(1) enforce and administer the Codes;

(2) establish the qualifications of license holders;

(3) ensure that the distribution, sale, and lease of motor vehicles is conducted as required by the Codes and this chapter;

(4) provide for compliance with warranties;

(5) prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles.

§215.4. Formal Opinions.

(a) General. Any person may request a formal opinion from the Board on any matter within the jurisdiction of Occupations Code, Chapter 2301, or Transportation Code, Chapters 503 and 1000 through 1005. It is the policy of the Board to consider requests for formal opinions and, where practicable, to inform the requesting party of the Board's views; provided, however, that a request will be considered inappropriate for a formal opinion where the request involves a matter which is under investigation or is the subject of a current proceeding by the Board or another governmental agency, or where the request is such that an informed opinion thereon can be given only after extensive investigation, research, or collateral inquiry.

(b) Procedure. Requests for formal opinions are to be submitted to the Board in writing and shall include full and complete information on the matter with respect to which the formal opinion is requested. The request must affirmatively state that the matter involved is not the subject of an investigation or other proceeding by the Board or any other governmental agency. The submission of additional information may be required by the Board.

(c) Formal opinions rendered without prejudice. Any formal opinion so given is without prejudice to the right of the Board to reconsider the matter and, where the public interest requires, to modify or revoke a previously issued formal opinion. Notice of such modification or revocation will be given to the party who originally requested the opinion so that the requestor may modify or discontinue any action which may have been taken pursuant to the Board's formal opinion. The Department will not proceed against such party with respect to any action taken in good faith reliance upon the Board's formal opinion where all relevant facts were fully, completely, and accurately presented to the Board and where such action was promptly discontinued or appropriately modified upon notification of the Board's modification or revocation of the formal opinion.

(d) Publication. Texts or digests of formal opinions of general interest will be made available to any person upon written request to the Department, subject to statutory and other restrictions against disclosure.

§215.5. Informal Opinions.

Any other advice, opinion, or information received from the Department or its staff in response to an inquiry is not a formal opinion of the Board and shall be considered an informal opinion. No informal opinion, whether written or oral, by the director, or any Department employee will be binding upon the Board in any subsequent proceeding involving the same or similar issue.

§215.6. Exempted Actions.

General statements of policy, informal opinions, or formal opinions are not construed to be rulemaking proceedings under Government Code, Chapter 2001.

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-200905071

Jennifer Soldano
Legal Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: December 20, 2009
For further information, please call: (512) 463-8683

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SUBCHAPTER B. ADJUDICATIVE PRACTICE AND PROCEDURE

43 TAC §§215.21 - 215.57

STATUTORY AUTHORITY

The new sections are proposed under Transportation Code, §1002.001, which provides the Texas Motor Vehicles Board with the authority to establish rules for the conduct of activities regulated by the department.

CROSS REFERENCE TO STATUTE

Occupations Code, Chapter 2301, and Transportation Code, Chapters 503 and 1000 - 1005.

§215.21. Objective.

This subchapter governs practice and procedure in contested cases filed before September 1, 2007. Practice and procedure in contested cases filed on or after September 1, 2007 and heard by SOAH are addressed in Subchapter I of this chapter (relating to Practice and Procedure for Hearings Conducted by the State Office of Administrative Hearings) and this subchapter where not in conflict with SOAH rules. The objective of these rules is to insure fair, just, and impartial adjudication of the rights of parties in all matters within the jurisdiction of Occupations Code, Chapter 2301, and Transportation Code, Chapters 503 and 1000 through 1005, hereinafter referred to as the "Codes" and to insure fair, just, and effective administration of said Codes in accordance with the intent of the legislature as declared in Occupations Code, §2301.001 and Occupations Code, §2301.152. This subchapter shall apply only as reasonably practicable to cases brought before September 1, 2007 under Occupations Code, Subchapter M, §§2301.601 - 2301.613 (the Lemon Law) or Occupations Code, §2301.204 (warranty performance).

§215.22. Prohibited Disclosures and Communications.

(a) No party in interest, his attorney, or authorized representative in any proceeding shall submit, directly or indirectly, any ex parte communication, in violation of Government Code, §2001.061, concerning the merits of such proceeding to the Board, or any employee of the division who is assigned to render a decision or make findings of fact and conclusions of law in a contested case.

(b) Violations of this section shall be promptly reported and a copy or summary thereof shall be filed with the record of such proceeding and a copy forwarded to all parties of record, and/or any other appropriate action otherwise provided by law.

§215.23. Appearances.

(a) General. Any party to a proceeding before the Board may appear to represent, prosecute, or defend any rights or interests, either in person, by an attorney, or by any other authorized representative. Any individual may appear pro se; and any member of a partnership which is a party to a proceeding or any bona fide officer of a corporation or association may appear for the partnership, corporation, or association. An authorized full time employee may enter an appearance for his employer.

(b) Agreements of representation. The Board may require agreements between a party in interest and an attorney or other authorized representative concerning any pending proceeding to be in writing, signed by the party in interest, and filed as a part of the record of the proceeding.

(c) Lead counsel. The attorney or other authorized representative of a party in interest shall be considered that party's lead counsel in any proceeding and, if present, shall have control in the management of the cause pending before the Board.

(d) Intervention. Any public official or other person having an interest in a proceeding may, upon request to the Board, be permitted to intervene and present any relevant and proper evidence, data, or argument bearing upon the issues involved in the particular proceeding. Any person desiring to intervene in a proceeding may be required to disclose his interest in the proceeding before permission to appear will be granted.

(e) Limitation on appearances. The Board may limit or exclude entirely an attempt by persons to appear in a proceeding when such appearance would be irrelevant or would unduly broaden the scope of the proceeding.

§215.24. Petitions.

Petitions for relief under the Codes or complaints filed alleging violations of the Codes other than those specifically provided for in these rules shall be in writing, shall state clearly and concisely the petitioner's grounds of interest in the subject matter, the facts relied upon, and the relief sought, and shall cite by appropriate reference the article of the Codes or other law relied upon for relief and, where applicable, the proceeding to which the petition refers.

§215.25. Affidavits.

Whenever it may be necessary or proper for any party to make an affidavit, it may be made either by such party or by his authorized agent; provided, however, that the affidavit of any such agent must show the relationship of the agent to the party and state in what capacity he is authorized to make the affidavit. All affidavits shall affirmatively show that the affiant has personal knowledge of the matters sworn.

§215.26. Form of Petitions, Pleadings, and the Like.

The original copy of every petition, pleading, motion, brief, or other instrument permitted or required to be filed with the division in a contested case proceeding shall be signed by the party in interest, his attorney, or his authorized representative. All pleadings filed in any proceeding shall be printed or typed on 8-1/2 inch by 11 inch bond paper in no smaller than 11 point type with margins of at least one inch at the top, bottom, and each side. Pages shall be numbered in the 1 inch margin at the bottom of each page. All text except block quotations and footnotes shall be double spaced.

§215.27. Complaints.

All complaints alleging violations of the Codes shall be in writing addressed to the division and signed by the complainant. Complaint forms will be supplied and assistance may be afforded by the division for the purpose of filing complaints. A complaint shall contain the name and address of the complainant, the name and address of the party against whom the complaint is made, and a brief statement of the facts forming the basis of the complaint. If requested by the division, complaints shall be under oath, and before initiating an investigation or other proceeding to determine the merits of the complaint, the division may require from the complainant such additional information as may be necessary to evaluate the merits of the complaint.

§215.28. Docket.

The division will maintain a docket containing a record of all proceedings instituted. The docket shall be a public file and shall be open for inspection at all reasonable times. An alpha-numeric identifier assigned

by the division to any proceeding will be carried forward throughout the proceeding.

§215.29. Computing Time.

In computing any period of time prescribed or allowed by this chapter, by order of the Board, or by any applicable statute, the date of the act or event after which the designated period of time begins to run is not to be included; but the last day of the period so computed is to be included unless it be a Saturday, Sunday, or legal holiday in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.

§215.30. Filing of Documents.

(a) Every document required or permitted to be filed with the Motor Vehicle Division shall be filed - either in person at the division's offices, or by mail to the address of the division, or by electronic document transfer at a destination designated for receipt of those documents.

(b) Except as provided in subsection (e) of this section, delivery by mail shall be complete upon deposit of the document, enclosed in a postpaid, properly addressed wrapper, in a post office or official depository under the care and custody of the United States Postal Service.

(c) Except as provided in subsection (e) of this section, with respect to a document which, to be timely filed under these rules, must be filed on or before a specified date, delivery by mail shall be complete only if such deposit is made on or before said date and the document is received in hand by the division at its office in Austin not later than the fifth business day after the date of such deposit. Delivery by electronic document transfer after 5 p.m. local time of said office shall be deemed delivered on the following day. Where the filing of a document is made by mail but the document is not received by the division within five business days after the date of deposit of the document in the mail, nothing herein shall preclude the delivery of the document to the division's office by other means of delivery, such as delivery in person or by electronic document transfer, within the said five day period, provided that the party filing the document furnishes the division with proof of deposit of the document in the mail prior to the filing date, as provided herein.

(d) Such document may be delivered by a party to a matter, an attorney of record, or by any other person competent to testify. A certificate by an attorney of record or the affidavit of any person competent to testify, showing timely delivery of a document in a manner described in this section shall be prima facie evidence of the fact of timely delivery, although nothing herein shall preclude the division or any party from offering proof that the subject document was not timely delivered.

(e) Notwithstanding the foregoing, where by statute, rule, or order of the Board, a document, to be timely filed, must be received in the division's office by a specified time, then the requirements of such statute, rule, or order shall govern the filing of that document, and any such document received at the division's office after the specified time, notwithstanding the date of mailing or other means of delivery, shall be deemed not timely filed.

§215.31. Cease and Desist Orders.

(a) Whenever it appears to the Board that any person is violating any provision of the Codes or this chapter, the Board may, directly or through its representative, enter an interlocutory order requiring such person to cease and desist.

(1) No interlocutory cease and desist order shall be granted without notice to the person against whom the order is requested unless it clearly appears from specific facts shown by affidavit or by the verified complaint that one or more of the situations enumerated in Occupations Code, §2301.802(b)(1) - (5) will occur before notice can be served and a hearing had thereon;

(2) Every interlocutory cease and desist order granted without notice shall include the date and hour of issuance; shall state which of the situations enumerated in Occupations Code, §2301.802(b)(1) - (5) is found to necessitate the issuance of the order without notice; and shall set a date certain for a hearing as provided in these rules relating to adjudicative proceedings to determine the validity of the order and to allow the person against whom the order is issued to show good cause why the order should not remain in effect during the pendency of the proceeding;

(3) The person against whom the interlocutory cease and desist order has been issued without notice may request that the hearing to determine the validity of the order be held earlier than the date set by the order;

(4) Every cease and desist order granted with or without notice shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail and not by reference to the complaint or other document the act or acts sought to be restrained;

(5) No cease and desist order, whether interlocutory or permanent, shall be granted unless the person requesting the order shall present a petition or complaint to the Board verified by affidavit and containing a plain and intelligible statement of the grounds for such relief.

(b) The interlocutory decision on a request for cease and desist order shall be sufficient for a complaining party to seek judicial review of the matter as set out in Occupations Code, §2301.802(c) - (e). Upon appeal of an order issued pursuant to this subsection to the district court, as provided in the Code, the order may be stayed by the Board upon a showing of good cause by a party of interest.

§215.32. Enlargement of Time.

(a) When by these rules or by a notice given thereunder or by order of the Board or the hearing officer having jurisdiction, as the case may be, an act is required or allowed to be done at or within a specified time, except as provided in subsection (b) of this section, the Board or the hearing officer for cause shown may, at any time in the Board's or the hearing officer's discretion:

(1) with or without motion or notice, order the period enlarged if application therefore is made before the expiration of the period originally prescribed or as extended by a previous order; or

(2) upon motion permit the act to be done after the expiration of the specified period where good cause is shown for the failure to act.

(b) Notwithstanding anything contained in subsection (a) of this section, neither the Board nor a hearing officer may enlarge the time for filing a document where by statute or rule, the document, to be timely filed, must be received in the division's offices by a specified time, and the requirements of such statute or rule shall govern the filing of that document and any such document received at the division's offices after the specified time, notwithstanding the date of mailing or other means of delivery, shall be deemed not timely filed.

§215.33. Expenses of Witness or Deponent.

A witness or deponent in a contested case who is not a party and who is subpoenaed or otherwise compelled to attend a hearing or proceeding to give testimony or a deposition or to produce books, records, papers, or other objects that may be necessary and proper for the purposes of a proceeding under the Codes is entitled to receive expenses pursuant to provisions of the Government Code, Chapter 2001. Such witness or

deponent is entitled to receive reimbursement for mileage at the current state employee rate for each mile, for going to and returning from the place of the hearing or deposition, if the place is more than 25 miles from the person's place of residence and the person uses a personally owned or leased motor vehicle for the travel.

§215.34. Notice of Hearing in Adjudicative Proceedings.

(a) In any adjudicative proceeding before the Board, the notice of hearing shall state:

(1) the name of the party or parties in interest;

(2) the time and place of the hearing;

(3) the docket number assigned to the hearing;

(4) any special rules deemed appropriate for such hearing; and

(5) a clear and concise factual statement sufficient to identify with reasonable definiteness the matters at issue. This can be satisfied by attaching and incorporating by reference the complaint or amended complaint.

(b) Notice of hearing shall be served upon the parties in interest either in person or by certified mail, return receipt requested, addressed to the parties in interest or their agents for service of process.

(c) Notice of hearing shall be presumed to have been received by a person if notice of the hearing was mailed by certified mail, return receipt requested, to the last known address of any person known to have legal rights, duties, or privileges that could be determined at the hearing.

(d) Notice of hearing may be amended at the hearing or at any time prior thereto.

§215.35. Reply.

Within 20 days after service of notice of hearing, or within 10 days after service of amended notice of hearing, a responding party may file a reply thereto in which the matters at issue are specifically admitted, denied or otherwise explained.

(1) Form and filing of replies. All replies shall include a reference to the docket number of the hearing and shall be sworn to by the responding party or his attorney of record. The original of the reply shall be filed with the Board, and one copy shall be served upon other parties to the proceeding, if any.

(2) Amendment. A responding party may amend his reply at any time prior to the hearing, and in any case where the notice of hearing has been amended at the hearing, a responding party shall be given an opportunity to amend his reply.

(3) Extension of time. Upon the motion of a responding party, with good cause shown, the Board may extend the time within which the reply may be filed.

(4) Default. All allegations shall be deemed admitted by any party who does not appear at the hearing on the merits.

§215.36. Hearings To Be Public.

Hearings in adjudicative proceedings shall be open to the public.

§215.37. Recording and Transcriptions of Hearing Cost.

(a) Except as provided in Subchapter G of this chapter (relating to Warranty Performance Obligations), hearings in contested cases will be transcribed by a court reporter or recorded electronically at the discretion of the hearing officer. Any request regarding recording or transcription must be made to the hearing officer at least two days prior to the hearing.

(b) In those contested cases in which the hearing is transcribed by a court reporter, the costs of transcribing the hearing and for the preparation of an original transcript of the record for the Board shall be assessed equally among all parties to the proceeding, unless ordered otherwise by the Board.

(c) Copies of tape recordings of a hearing will be provided to any party upon written request and upon payment for the cost of the tapes.

(d) In the event a final decision of the Board is appealed to the court and the Board is required to transmit to the court the original or a certified copy of the record, or any part thereof, the appealing party shall, unless waived by the Board, pay the costs of preparation of the record that is required to be transmitted to the court.

§215.38. Joint Record.

No adjudicative proceedings embracing two or more complaints or petitions shall be heard on a joint record without the consent of all parties in interest unless the hearing officer shall find, prior to the consolidation of the proceedings, that justice and efficiency are better served by the consolidation.

§215.39. Waiver of Hearing.

Subsequent to the issuance of a notice of hearing as provided in §215.35 of this subchapter (relating to Reply), a responding party may waive such hearing and consent to the entry of an agreed order by the Board. Agreed orders proposed by the parties remain subject to Board approval.

§215.40. Postponement of Hearing.

After a case has been called on the date assigned for hearing in a proceeding, pursuant to notice, postponement of the case will be granted only in exceptional circumstances. All motions for postponement of a hearing shall be filed sufficiently in advance of the date of hearing to permit notice to all parties if postponement should be granted.

§215.41. Presiding Officials.

The Board may preside or may designate any other person to preside over any hearing held in any adjudicative proceeding. The term "hearing officer" as used in this section includes the Board when presiding over a hearing.

(1) Powers and duties. Hearing officers shall have the duty to conduct fair and impartial hearings, and the power to take all necessary action to avoid delay in the disposition of proceedings and to maintain order. Hearing officers shall have all powers necessary to these ends, including the authority to administer oaths; to examine witnesses; to rule upon the admissibility of evidence; to rule upon motions; and to regulate the course of the hearing and the conduct of the parties and counsel.

(2) Disqualification. If hearing officers determine they should be recused from a particular hearing, they shall withdraw from the proceeding by giving notice on the record and by notifying the Board of the withdrawal. Whenever any party shall deem the hearing officer to be disqualified to preside in a particular hearing, the party may file with the Board a motion to disqualify and remove the hearing officer which motion shall be supported by affidavits setting forth the alleged grounds for disqualification. A copy of the motion shall be served by the Board on the hearing officer who shall have 10 days within which to reply. If the hearing officer contests the alleged grounds for disqualification, the Board shall promptly determine the validity of the grounds alleged, such decision being determinative of the issue.

(3) Substitution of hearing officer. If the hearing officer is disqualified, dies, becomes disabled, or withdraws during any proceeding, the Board may appoint another hearing officer who may perform

any function remaining to be performed without the necessity of repeating any proceedings in the case.

§215.42. Conduct of Hearing.

Each party in interest shall have the right in an adjudicative hearing to due notice, cross examination, presentation of evidence, objection, motion, argument, and all other rights essential to a fair hearing. Procedures in such hearings, except where otherwise provided by these rules or in the notice of hearing, shall be insofar as reasonably practicable in accordance with the Texas Rules of Civil Procedure applicable in district and county courts in civil actions heard before the court without a jury.

§215.43. Conduct and Decorum.

Every party, witness, attorney, or other representative shall comport himself in all proceedings with proper dignity, courtesy, and respect for the Board, the hearing officer, and all other parties. Disorderly conduct will not be tolerated. Attorneys and other representatives of parties shall observe and practice the standards of ethical behavior prescribed for attorneys at law by the Texas Disciplinary Rules of Professional Conduct and Texas Lawyer's Creed. No party to a pending case, and no representative or witness of such a party, shall discuss the merits of such case with the hearing officer outside of the presence of all other parties, or their representatives. Upon violation of this section, any party, witness, attorney, or other representative may be excluded from any hearing for such period and upon such conditions as are just; or may be subject to such other just, reasonable, and lawful disciplinary action as the hearing officer or Board may prescribe.

§215.44. Evidence.

(a) General. The Texas Rules of Evidence shall be applied in all adjudicative hearings to the end that needful and proper evidence shall be conveniently, inexpensively, and speedily adduced while preserving the rights of the parties to the proceeding.

(b) Admissibility. All relevant, material, and reliable evidence shall be admitted. Irrelevant, immaterial, unreliable, and unduly repetitious or cumulative evidence shall be excluded. Immaterial or irrelevant parts of an otherwise admissible document shall be segregated and excluded so far as practicable.

(c) Official records. An official document or record, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having legal custody of the record, or by the officer's deputy, and accompanied by a certificate to such effect. This section does not prevent and is not intended to prevent proof of any official record, the absence thereof or official notice thereof by any method authorized by any applicable statute or any rules of evidence in district and county courts.

(d) Entries in the regular course of business. Any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence, or event, will be admissible as evidence thereof if it appears that it was made in the regular course of business. This section does not prevent and is not intended to prevent proof of any business writing or record by any method authorized by any applicable statute or any rules of evidence in district and county courts.

(e) Documents in division files. Documents or information in the licensing files of the division may be officially noticed and may be admitted and considered by the hearing officer, as described in Government Code, Chapter 2001.

(f) Abstracts of documents. When documents are numerous, the hearing officer may refuse to receive in evidence more than a limited number of said documents which are typical and representative, but may require the abstraction of the relevant information from the documents and the presentation of the abstract in the form of an exhibit; provided, however, that before admitting such abstract the hearing officer shall afford all parties in interest the right to examine the documents from which the abstract was made.

(g) Exhibits. Exhibits shall be limited to facts with respect to the relevant and material issues involved in a particular proceeding. Exhibits of documentary character shall not unduly encumber the record of the proceeding. Where practicable, the sheets of each exhibit shall not be more than 8 1/2 inches by 11 inches in size, and shall be numbered and labeled. The original and one copy of each exhibit offered shall be tendered to the reporter or hearing officer for identification, and a copy shall be furnished to each party in interest. In the event an exhibit has been identified, objected to, and excluded, the hearing officer shall determine whether or not the party offering the exhibit withdraws the offer, and if so, return the exhibit. If the excluded exhibit is not withdrawn, it shall be given an exhibit number for identification and be included in the record only for the purpose of preserving the exception together with the hearing officer's ruling.

§215.45. Stipulation of Evidence.

Evidence may be stipulated by agreement of all parties in interest.

§215.46. Objections and Exceptions.

Formal exception to the ruling of the hearing officer is not necessary. It is sufficient that the party in interest at the time the ruling is made, or sought, make known to the hearing officer the action desired.

§215.47. Motions.

Every motion relating to a pending proceeding shall, unless made during a hearing, be written, and shall set forth the relief sought and the specific reasons and grounds. If the motion is based upon matters which do not appear of record, it must be supported by affidavit. Any motion not made during a hearing shall be filed with the hearing officer.

§215.48. Briefs.

Briefs may be filed in any pending adjudicative proceeding at such time as may be specified by the hearing officer.

§215.49. Service of Pleading, Petitions, Briefs, and the Like.

A copy of every document filed in any adjudicative proceeding, after appearances have been entered, shall be served upon all other parties in interest or their lead counsel, and upon the division by sending a copy properly addressed to each party by first class United States mail, postage prepaid, by actual delivery, or by electronic document transfer to a fax number, e-mail address, or website designated for the receipt of those filings. A certificate of such fact shall accompany the document filed with the division.

§215.50. Submission.

Adjudicative proceedings will be deemed submitted to the hearing officer as soon as the hearing and record are completed and briefs, if any, are filed. At the discretion of the hearing officer, parties or their attorneys, in lieu of oral closing arguments or closing statements at the conclusion of an adjudicative proceeding, shall file a written summation or brief containing the statements, arguments and conclusions, together with references to supporting authorities, which might normally be presented orally at the conclusion of such hearing. A schedule for submission of written closing summations or briefs will be established by the hearing officer at the conclusion of the hearing on the merits.

§215.51. Findings and Recommendations of Hearing Officer.

As soon as practicable after the submission of the proceeding, the hearing officer shall prepare certify and file with the Board a copy

of the hearing officer's findings of fact, conclusions of law and a recommended decision and order. A copy of this proposal for decision shall be served by the hearing officer upon all parties or their lead counsel.

§215.52. Filing of Exceptions.

Any party in interest may file exceptions to the proposal for decision within 20 days after the date of service on that party. Requests for extension of time to file exceptions shall be filed with the hearing officer and a copy shall be served on all other parties in interest. The hearing officer shall promptly notify the parties of a ruling on the request and shall allow additional time only in extraordinary circumstances where the interest of justice so requires.

§215.53. Form of Exceptions.

Exceptions to findings of fact, conclusions or to any other matters of law in any recommended decision and order of a hearing officer shall be specific and shall be stated and numbered separately. When exception is taken to a statement of fact, specific reference must be made to the evidence relied upon to support the specification of error and a statement in the form claimed to be correct must be suggested. When exception is taken to a particular finding or conclusion, whether of fact, law, or a mixed question of fact and law, the evidence, if any, and the law relied upon to support the specification of error must be suggested.

§215.54. Replies to Exceptions.

Replies to exceptions may be filed within 10 days after the date of filing those exceptions. It is within the hearing officer's discretion, upon notice to all parties in interest, to extend the time for filing such reply. No further written responses or replies are allowed.

§215.55. Final Decision.

In all contested cases except those brought under Occupations Code, §2301.204 and Occupations Code, §§2301.601 - 2301.613 brought before September 1, 2007, after a matter has been heard and submitted to the Board for decision, and the Board has considered all exceptions and replies and has issued the order on the matter, the order shall be deemed final and binding on all parties and all administrative remedies are deemed to be exhausted as of the effective date, unless a motion for rehearing is filed as provided by law.

§215.56. Submission of Amicus Briefs.

Any interested party wishing to file an amicus brief for consideration by the Board regarding a contested case should file its brief no later than the deadline for exceptions. A party may file one written response to the brief filed by the amicus curiae no later than the deadline for replies to exceptions. Any amicus brief, or response to that brief, not filed within such time will not be considered by the Board, unless good cause may be shown why this deadline should be waived or extended.

§215.57. Format for Documents Filed with the Board Subsequent to the Issuance of a Proposal for Decision.

(a) The total number of pages of a party's exceptions to proposals for decision and motions for rehearing must not exceed the total number of pages of the proposal for decision, and the total number of pages of a party's replies to exceptions and replies to motions for rehearing must not exceed three-fourths of the total number of pages of the proposal for decision, exclusive of pages containing the cover, index, table of authority, and attachments. The total number of pages of amicus briefs must not exceed three-fourths of the total number of pages of the proposal for decision, exclusive of pages containing the cover, index, table of authority, and attachments. In no event, such as when the proposal for decision is less than 15 pages, will this rule be construed to limit the length of a party's exception to a proposal for decision, motion for rehearing, or response thereto, to less than 10 pages.

(b) Exceptions, motions for rehearing, replies to exceptions, replies to motions for rehearing, and amicus briefs shall be printed on 8 1/2 inch by 11 inch paper in no smaller than 11 point type with margins of at least one inch at the top, bottom, and each side. Pages shall be numbered in the 1 inch margin at the bottom of each page. All text except block quotations and footnotes shall be double spaced.

(c) Where applicable, when the exceptions, motions for rehearing, replies to exceptions, and replies to motions for rehearing refer to facts or testimony from the evidentiary record, these statements must be followed by a reference to the specific exhibit or page number in the transcript where the fact or testimony is found.

(d) Each party or interested person shall file an original and three copies of its exceptions, motions for rehearing, replies to exceptions, replies to motions for rehearing, and amicus briefs.

(e) Other than document length, the requirements in subsections (a) - (d) of this section are not to be strictly construed in cases brought under Occupations Code, §§2301.601 - 2301.613 (the Lemon Law) and §2301.204 (warranty performance) or where a party appears pro se.

(f) The hearing officer or Board has the sole right to examine and determine whether documents meet the requirements of this section. If a document fails to meet the requirements of this section, the hearing officer or Board has the discretion to accept the document as written, consider only those pages which meet the requirements of this section, or direct the party to make whatever modifications necessary to substantially conform the document to the requirements of this section. No motion or request to strike a document for failure to meet the requirements of subsections (a) - (d) of this section will be considered by the hearing officer or 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.

Filed with the Office of the Secretary of State on November 5, 2009.

TRD-200905072
Jennifer Soldano
Legal Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: December 20, 2009
For further information, please call: (512) 463-8683

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SUBCHAPTER C. LICENSES, GENERALLY

43 TAC §§215.81 - 215.87

STATUTORY AUTHORITY

The new sections are proposed under Transportation Code, §1002.001, which provides the Texas Motor Vehicles Board with the authority to establish rules for the conduct of activities regulated by the department.

CROSS REFERENCE TO STATUTE

Occupations Code, Chapter 2301, and Transportation Code, Chapters 503 and 1000 - 1005.

§215.81. Objective.

The objective of this subchapter is to implement the intent of the legislature as declared in Occupations Code, Chapter 2301, and Transportation Code, Chapter 503, by prescribing rules to regulate businesses requiring licenses under those chapters.

§215.82. Administration of Licensing Fees.

(a) When a license is voluntarily or involuntarily cancelled by the Board, no refund of fees will be made.

(b) The division shall charge a processing fee of $50 for each duplicate license issued to any licensee.

(1) A request for a duplicate license must be made on a form prescribed by the division and state the reason a duplicate license is needed.

(2) A licensee may request one duplicate license at no charge if the licensee did not receive the original license and makes the request within 45 days of the time the license was mailed to the licensee.

(c) Prior to the issuance of a license, an applicant may withdraw its application and, upon written request, receive a refund of the application fees.

(d) Should an applicant fail to submit a complete new or amendment application not later than 180 days after the initial submission, the department may retain any monies paid by the applicant as earned fees. The 180-day time period may be tolled by the division for good cause.

(e) Should a licensee fail to submit a complete renewal application not later than 90 days after the expiration of its prior license, the department may retain any monies paid by the licensee as earned fees.

§215.83. Renewal of Licenses.

(a) A licensee must file a complete renewal application prior to the expiration of its existing license.

(b) If the licensee has not submitted to the division a renewal application with all required information and applicable fees within 90 days after license expiration, including late fees as provided by Occupations Code, §2301.264(b), the licensee must apply for a new license.

§215.84. Brokering, New Motor Vehicles.

(a) Under Occupations Code, §§2301.002, 2301.006, 2301.251 and 2301.252, the definition of "arranges or offers to arrange a transaction" is construed as soliciting or referring buyers for new motor vehicles for a fee, commission, or other valuable consideration. Advertising would not be included in this definition as long as the person's business primarily includes the business of broadcasting, printing, publishing, or advertising for others in their own names.

(b) A buyer referral service, program, plan, club, or any other entity that accepts fees for arranging a transaction involving the sale of a new motor vehicle is a broker. The payment of a fee to such an entity is aiding and abetting brokering. However, any referral service, program, plan, club, or other entity that forwards referrals to dealerships may lawfully operate in a manner that includes all of the following conditions:

(1) There are no exclusive market areas offered to dealers by the program. All dealers are allowed to participate on equal terms.

(2) Participation by dealers in the program is not restricted by conditions such as limiting the number of franchise lines or discrimination by size of dealership or location. Total number of participants in the program may be restricted if the program is offered to all dealers at the same time with no regard to the franchise line.

(3) All participants pay the same fee for participation in the program that shall be a weekly, monthly, or annual fee, regardless of the size, location, or line-make of the dealership.

(4) A person is not to be charged a fee on a per referral fee basis or any other basis that could be considered a transaction-related fee.

(5) The program does not set or suggest to the dealer any price of vehicles or trade-ins.

(6) The program does not advertise or promote its plan in a manner that implies that the buyer, as a customer of that program, receives a special discounted price that cannot be obtained unless the customer is referred through that program.

(c) The provisions of subsections (a) and (b) of this section do not apply to any person or entity which is exempt from the broker definition in Occupations Code, §2301.002(3).

(d) All programs must comply with Subchapter H of this chapter (relating to Advertising).

§215.85. Brokering, Used Motor Vehicles.

(a) Transportation Code, §503.021, prohibits persons from engaging in the business as a dealer, directly or indirectly, including by consignment without a general distinguishing number. "Directly or Indirectly" includes the practice of arranging or offering to arrange a transaction involving the sale of a used motor vehicle for a fee, commission or other valuable consideration.

(b) A buyer referral service, program, plan, club, or any other entity that accepts fees for arranging a transaction involving the sale of a used motor vehicle is required to meet the requirements for and obtain a general distinguishing number unless the referral service, program, plan, or club is operated in the following manner:

(1) There are no exclusive market areas offered to dealers by the program. All dealers are allowed to participate on equal terms.

(2) Participation by dealers in the program is not restricted by conditions such as limiting the number of franchise lines or discrimination by size of dealership or location. Total number of participants in the program may be restricted if the program is offered to all dealers at the same time with no regard to the franchise line.

(3) All participants pay the same fee for participation in the program that shall be a weekly, monthly, or annual fee, regardless of the size, location, or line-make of the dealership.

(4) A person is not to be charged a fee on a per referral fee basis or any other basis that could be considered a transaction-related fee.

(5) The program does not set or suggest to the dealer any price of vehicles or trade-ins.

(6) The program does not advertise or promote its plan in a manner that implies that the buyer, as a customer of that program, receives a special discounted price that cannot be obtained unless the customer is referred through that program.

(c) All programs must comply with Subchapter H of this chapter (relating to Advertising).

§215.86. Processing of License Applications, Amendments, or Renewals.

(a) Any application for a license, amendment of a license, or renewal of a license issued by the division must conform to the procedures set out in paragraphs (1) and (2) of this subsection.

(1) Applications for licenses, amendments of licenses, and renewals of licenses will be accepted for processing only if filed by the applicant, licensee, or that person's designated attorney or certified public accountant; and

(2) Application, amendment, or renewal fees paid by check, credit or debit card, or electronic transfer, must be drawn from an account held by the applicant, licensee, or from a trust account of the applicant's designated attorney or certified public accountant.

(b) Information concerning the status of an application, application deficiencies, or new license numbers will not be provided telephonically to license purveyors.

(c) Attorneys and certified public accountants that file applications on behalf of applicants may be required to provide proof of authority to act on behalf of an applicant.

§215.87. 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.

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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Jennifer Soldano
Legal Counsel
Texas Department of Motor Vehicles
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SUBCHAPTER D. FRANCHISED DEALERS, MANUFACTURERS, DISTRIBUTORS, AND CONVERTERS

43 TAC §§215.101 - 215.115

STATUTORY AUTHORITY

The new sections are proposed under Transportation Code, §1002.001, which provides the Texas Motor Vehicles Board with the authority to establish rules for the conduct of activities regulated by the department.

CROSS REFERENCE TO STATUTE

Occupations Code, Chapter 2301, and Transportation Code, Chapters 503 and 1000 - 1005.

§215.101. Objective.

The objective of these rules is to implement the intent of the legislature as declared in Occupations Code, Chapter 2301, and Transportation Code, Chapters 503 and 1000 through 1005, by prescribing rules to regulate businesses requiring licenses under the Code.

§215.102. Representatives.

(a) To effectuate Occupations Code, §2301.002(29), the definition of the term "representative" is construed to be sufficiently broad to include regional, zone, or district executive personnel whose area of responsibility includes Texas, and whose duties include contacting motor vehicle dealers or dealership personnel, and every other person employed by a motor vehicle manufacturer, distributor or converter, directly or indirectly, to call upon or contact motor vehicle dealers or dealership employees concerning new motor vehicle sales, advertising, service, parts, business management, used motor vehicle sales, and for any other purpose.

(b) The statutory definition is construed to not include office or clerical personnel, production personnel, etc., whose duties do not include contacting motor vehicle dealers or dealership employees.

(c) A "person" who meets the definition of representative can also be other than a natural person such as a corporation. Employees of an entity licensed as a representative that perform representative functions in the scope of their employment for the licensed representative are required to obtain a representative's license in their individual capacity, except for the president/chief executive officer of the corporation. A licensed representative may identify and perform representative functions for more than one manufacturer, distributor, or converter.

§215.103. Service-Only Facility.

(a) A service-only facility is a location occupied and operated by a franchised dealer that is a completely separate, non-contiguous site, from the franchised dealer's new vehicle sales and service or sales only location, where the franchised dealer will only perform warranty and non-warranty repair services. Except as allowed in subsection (d) of this section, warranty repair services may only be performed at either a licensed dealership or a licensed service-only facility.

(b) A franchised dealer must obtain a license to operate a service-only facility. The dealer may not obtain a service-only facility license to service a particular line of new motor vehicles, unless the dealer is franchised and licensed to sell that line.

(c) A service-only facility is considered a dealership under Occupations Code, §2301.002(8), and is therefore subject to protest under Occupations Code, §2301.652.

(d) Upon the manufacturer's or distributor's prior written approval, which cannot be unreasonably withheld, only a franchised dealer of the manufacturer or distributor may contract with another person as a sub-contractor to perform warranty repair services the dealer is authorized to perform under a franchise agreement with a manufacturer or distributor. Payment shall be made by the franchised dealer to the sub-contractor and not by the manufacturer or distributor to the sub-contractor.

(e) A person with whom a franchised dealer contracts, as described in subsection (d) of this section, to perform warranty repair services is not eligible to obtain a service-only facility license and may not advertise to the public the performance of warranty repair services in any manner.

§215.104. Changes to Franchised Dealer License.

(a) To effectuate Occupations Code, §2301.356, every licensed dealer who proposes to conduct business at a currently licensed showroom under a franchise that is additional to or that differs from the franchise or franchises on which the license is then based shall file an application to amend the license on the form prescribed by the division, attaching a copy of the franchise agreement. The amended application will be considered as if it were an original application to operate under the additional franchise as to all matters except those reflected by the license as issued.

(b) A licensed dealer who proposes to sell and/or assign to another any interest in the licensed entity, whether a corporation or otherwise, so long as the physical location of the licensed entity remains the

same, shall notify the division in writing within ten days of the change by filing an application to amend the license. If the sale or assignment of any portion of the business results in a change of entity, then the purchasing/assignee entity must apply for and obtain a new license. Publicly-held corporations need only inform the division of a change in ownership if one person or entity acquires 10% or greater interest in the licensee.

(c) In the event of a change in management reflected by a change of the general manager, dealer principal, or other person who is in charge of a licensee's business activities, whether a managing partner, officer, or director of a corporation, or otherwise, the division shall be advised by means of an application for an amended license.

(d) If a licensed new motor vehicle dealer changes or converts from one type of business entity to another without changing ownership of the dealership, the submission of a franchise agreement in the name of the new entity is not required in conjunction with an application. The franchise agreement on file with the division prior to the change or conversion of the dealer's business entity applies to the successor entity until the parties agree to replace the franchise agreement.

(e) If a dealer adopts a plan of conversion under a state or federal law that allows one legal entity to be converted into another legal entity, only an application to amend the license is necessary to be filed with the division. The franchise agreement on file with the division continues to apply to the converted entity. If the entity change is accomplished by any means other than conversion, a new application is required, subject to subsection (d) of this section.

(f) A licensee shall obtain division approval prior to the opening of a supplemental location, or the relocation of an existing location. A licensee must notify the division when closing an existing location.

§215.105. Notification of License Application; Protest Requirements.

(a) Upon receipt of an application for a new motor vehicle dealer's license, including an application filed with the division by reason of the relocation of an existing dealership, the division shall give notice of the filing of the application to all dealer licensees who have standing to protest the application under Occupations Code, §2302.652. If no dealers with standing to protest are represented in the county or applicable 15-mile area, then no notice shall be given. Any such dealer licensee holding a franchise for the sale of the same line-make of a new motor vehicle as proposed for sale in the subject application may file with the division a notice of protest in opposition to the application and the granting of a license pursuant thereto, which notice shall be given in the following manner.

(1) The notice of protest shall be in writing and shall be signed by an authorized officer or other official authorized to sign on behalf of the licensee filing the notice.

(2) The notice of protest shall state the basis upon which the protest is made under Occupations Code, §2301.652(a), and shall state the reasons or grounds for the protest.

(3) The notice of protest shall state that the protest is not made for purposes of delay or for any other purpose except for justifiable cause under Occupations Code, §2301.652(a).

(b) The provisions of this section shall not be applicable to any application filed with the division for a dealer license as a result of the purchase or transfer of an existing entity holding a current franchise license which does not involve any physical relocation of the purchased or transferred line-makes.

§215.106. Time for Filing Protest.

Notices of protest must be received in the division offices in Austin not later than 5:00 p.m. on the date 15 days from the date of mailing of the division's notification to the licensees of the filing of the application. Any notice of protest received after such date shall be deemed not timely filed and shall not be considered by the Board. A notice of protest may be filed by telegram, mailgram, electronic document transfer, or other similar means of communication, provided that a notice of protest in conformance with §215.105 of this subchapter (relating to Notification of License Application; Protest Requirements) is filed with the division not later than 5:00 p.m. on the date five days following the filing of the notice, and is accompanied by the statutory protest filing fee. Failure to file a formal notice of protest within the specified time period shall result in the disallowance of the protest.

§215.107. Hearing.

Upon receipt of a notice of protest, timely filed in accordance with the provisions of §215.106 of this subchapter (relating to Time for Filing Protest), the Board shall promptly set a public hearing for the taking of evidence and for the consideration of the matters set forth in Occupations Code, §2301.652(a).

§215.108. Addition or Relocation of Line Make.

An application for the amendment of an existing new motor vehicle dealer's license by the addition of another line-make at the existing dealership or for the relocation of a line-make to the existing dealership shall be deemed to be an "application to establish a dealership" insofar as the line-make to be added is concerned, and shall be subject to the provisions of §§215.105 - 215.107 of this subchapter (relating to Notification of License Application; Protest Requirements; Time for Filing Protest; and Hearing).

§215.109. Replacement Dealership.

An application for a new motor vehicle dealer's license for a dealership intended as a replacement for a previously existing dealership shall be deemed to be an application for "replacement dealership" required to be established pursuant to Occupations Code, §2301.453, and shall not be subject to protest under the provisions of §215.105 of this subchapter (relating to Notification of License Application; Protest Requirements), provided that:

(1) the application states that the applicant is intended as a replacement dealership and identifies the prior dealership to be replaced;

(2) the franchisor of the line-make vehicle to be sold shall have given notice to the division and to its other dealers in the area within 60 days following the closing of the prior dealership, that it intends to replace the prior dealership;

(3) the application is filed with the division not later than one year following the closing of the prior dealership; and

(4) the location of the applicant's proposed dealership is not greater than one mile from the location of the prior dealership.

§215.110. Evidence of Franchise.

(a) Upon application for a new motor vehicle dealer license, or application for amendment of existing new motor vehicle dealer license to add a line-make, in addition to other attachments required to be submitted with the application, the applicant must submit a photocopy of those pages of the franchise agreement(s) which reflect the parties to the agreement(s) and the authorized signatures of the parties to the agreement(s) for each line of motor vehicle listed in the application. A form prescribed by the division and completed by the manufacturer/distributor may be submitted with the application in lieu of the information described in this subsection to meet this requirement temporarily, for purposes of application processing. The applicant must submit the required photocopies of the franchise agreement(s), as described in this subsection, immediately upon receipt.

(b) Upon application to relocate a new motor vehicle dealership, in addition to other attachments required to be submitted with the application, the applicant must submit a form prescribed by the division and completed by the manufacturer/distributor that identifies the licensee and the new location.

§215.111. Notice of Termination or Noncontinuance of Franchise and Time for Filing Protest.

A notice of termination or noncontinuance of a dealer's franchise shall be given by a manufacturer or distributor in accordance with the requirements of Occupations Code, §2301.453, not less than 60 days prior to the effective date thereof. A notice of protest of the franchise termination or noncontinuance by a dealer pursuant to Occupations Code, §2301.453, shall be in writing and shall be filed in the Board's office in Austin, prior to the effective date of franchise termination or noncontinuance as stated in the notice from the manufacturer or distributor.

§215.112. Motor Home Show Limitations and Restrictions.

(a) A dealer licensed by the division who is authorized to sell new motor homes may attend and sell at any motor home show that has been approved by the division.

(b) The scope of this rule is expressly limited to new motor home shows and exhibitions. It does not apply to other types of motor vehicle distribution activities, static displays or any other provision of Occupations Code, Chapter 2301 other than §2301.355 and §2301.358. Other motor vehicle shows, exhibitions, or static displays will be reviewed by division staff on a case by case basis.

(c) Approval must be sought by the show coordinator/promoter no less than 30 days and no more than 90 days prior to the proposed show date. All applications for motor home shows must be submitted on the forms and in the manner prescribed by the division, and must be accompanied by all other required attachments. If the coordinator/promoter is not a licensee or an association or organization of licensees, the application must be accompanied by a $25,000 surety bond to assure compliance with Occupations Code, Chapter 2301 and rules, as well as other regulations pertaining to the sale of new motor vehicles.

(d) There must be at least three dealers participating in the show, representing at least three different line-makes at the show, for the show to qualify for approval. Each participating new motor vehicle dealer must have a current, valid, Texas new motor vehicle dealer's license to sell the particular line of motor home to be shown.

(e) The duration of any motor home show shall not exceed six days. If a show extends over a Saturday and a Sunday, sales will be suspended by all motor vehicle dealers on the same day to achieve uniform compliance with the Blue Law.

(f) No motor home show shall occur in a county within 90 days of a previous motor home show within that county. Upon a showing of good cause, the division may authorize additional motor home shows in any county. Any motor home dealer may attend a motor home show so long as no like line dealership is located within 70 miles of the show site, unless a written waiver is obtained from the like line dealer or dealers located within 70 miles of the show site. Any like line dealer within 70 miles of the show site has a superior and exclusive right to represent that line at the proposed show. If there are two or more like line dealers located within 70 miles of the show site, each has equal right to participate in the proposed show.

§215.113. Manufacturer Ownership of Franchised Dealer; Good Cause Extension; Dealer Development.

(a) An application for a new motor vehicle dealer's license in which a manufacturer or distributor, as those terms are defined in Occupations Code, Chapter 2301, owns any interest in or has control of the dealership entity must be submitted to the division no later than 30 days before the opening of the dealership, close of the buy-sell agreement, or the expiration of the current license, whichever is the case.

(b) If a manufacturer or distributor applies for a new motor vehicle dealer's license in which the manufacturer or distributor holds an ownership interest in or has control of the dealership entity under the terms of Occupations Code, §2301.476(d), the license application must contain a sworn statement from the manufacturer or distributor that the dealership was purchased from a franchised dealer and is for sale at a reasonable price and under reasonable terms and conditions, and that the manufacturer or distributor intends to sell the dealership to a person not controlled or owned by the manufacturer or distributor within 12 months of acquiring the dealership, except as provided in subsection (h) of this section.

(c) A request for an extension of the initial 12 month period for manufacturer or distributor ownership or control of a new motor vehicle dealership in accordance with Occupations Code, §2301.476(e) must be submitted in accordance with subsection (a) of this section, along with a complete application to renew the new motor vehicle dealer's license. The request must contain a detailed explanation, including appropriate documentary support, to show the manufacturer's or distributor's good cause for failure to sell the dealership within the initial 12 month period. The director of the Motor Vehicle Division will evaluate the request and determine whether the license should be renewed for a period not to exceed 12 months or deny the renewal application. If the renewal application is denied, the manufacturer or distributor may request a hearing on the denial to be conducted in accordance with Occupations Code, §2301.701 - 2301.713.

(d) Requests for extensions after the first extension is granted, as provided in Occupations Code, §2301.476(e), must be submitted at least 120 days before the expiration of the current license. Upon receipt of a subsequent request, the Board will initiate a hearing in accordance with Occupations Code, §2301.701 - 2301.713, at which the manufacturer or distributor will be required to show good cause for the failure to sell the dealership. The manufacturer or distributor has the burden of proof and the burden of going forward on the sole issue of good cause for the failure to sell the dealership.

(e) The division will give notice of the hearing described in subsection (d) of this section to all other dealer licensees holding franchises for the sale and service or service only of the same line-make of new motor vehicles who are located in the same county in which the dealership owned or controlled by the manufacturer or distributor is located or in an area within 15 miles of the dealership owned or controlled by the manufacturer or distributor. Such dealers, if any, will be allowed to intervene and protest the granting of the subsequent extension. Notices of intervention by dealers afforded a right to protest under Occupations Code, §2301.476(e), must be filed with the Docket Clerk within 15 days of the date of mailing of the notice of hearing, with a copy provided to the manufacturer or distributor. Failure to file a formal notice of intervention within the specified time period will result in the disallowance of the intervention.

(f) A hearing under subsections (d) and (e) of this section will be conducted as expeditiously as possible, but not later than 120 days after receipt of the subsequent request for extension from the manufacturer or distributor. A hearings officer will prepare a written decision and proposed order as soon as possible, but not later than 60 calendar days after the hearing is closed. The new motor vehicle dealer's license that is the subject of the hearing will continue in effect until a final decision is rendered on the request for a subsequent extension.

(g) The procedure described in subsections (d) - (f) of this section will be followed for all extensions requested by the manufacturer or distributor after the initial extension.

(h) An application for a new motor vehicle dealer's license in which a manufacturer or distributor owns any interest in the dealership entity under the terms of Occupations Code, §2301.476(g), must contain sufficient documentation to show the following:

(1) that the dealer development candidate is part of a group of persons who have historically been underrepresented in the manufacturer's or distributor's dealer body or is an otherwise qualified person who lacks the resources to purchase a dealership outright;

(2) that the manufacturer or distributor is in a bona fide relationship with the dealer development candidate;

(3) that the dealer development candidate has made a significant investment in the dealership, subject to loss;

(4) that the dealer development candidate has an ownership interest in the dealership; and

(5) that the dealer development candidate operates the dealership under a plan to acquire full ownership of the dealership within a reasonable time and under reasonable terms and conditions.

§215.114. Sale of Vehicles by Manufacturer/Distributor at Wholesale Auction.

A manufacturer or distributor who is licensed under Occupations Code, Chapter 2301, or a wholly-owned subsidiary of a manufacturer or distributor, may sell vehicles it owns to dealers through a licensed Texas wholesale motor vehicle auction. General distinguishing numbers currently issued to licensed manufacturers, distributors, or their wholly-owned subsidiaries shall be cancelled on the date this rule becomes effective, except where otherwise allowed under the Code.

§215.115. Manufacturer, Distributor, and Converter Records.

(a) Manufacturers and distributors must keep records of all vehicles they sell to any person in this state for a minimum period of 48 months. These records shall be made available for inspection and copying by a representative of the department during business hours.

(b) Converters must keep records of all vehicles converted and distributed to Texas franchised dealers for a minimum period of 48 months. These records shall be made available for inspection and copying by a representative of the department during business hours.

(c) Records reflecting purchases, sales, or conversions for at least the preceding 24 months must be maintained at the licensed location. Records for prior time periods may be kept off-site.

(d) Upon receipt of a request sent by mail or electronic document transfer from a representative of the department, a manufacturer, distributor, or converter must submit copies of specified records to the address listed in the request within 15 days.

(e) Records required to be kept and made available to the department shall contain the following information:

(1) the date of sale or conversion of the vehicle;

(2) the vehicle identification number;

(3) the name and address of the purchasing dealer or converter;

(4) copies of or records with the information contained in the Manufacturer's Certificate of Origin or title;

(5) information regarding the prior status of the vehicle such as the Reacquired Vehicle Disclosure Statement;

(6) the repair history of any vehicle subject to a warranty complaint;

(7) technical service bulletins or equivalent advisories; and,

(8) audits of dealerships.

(f) Electronic records. Any records required to be kept may be kept in an electronic format, if the electronic records can be printed at the licensed location upon request by a representative of the department.

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

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Jennifer Soldano
Legal Counsel
Texas Department of Motor Vehicles
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SUBCHAPTER E. GENERAL DISTINGUISHING NUMBERS

43 TAC §§215.131 - 215.159

STATUTORY AUTHORITY

The new sections are proposed under Transportation Code, §1002.001, which provides the Texas Motor Vehicles Board with the authority to establish rules for the conduct of activities regulated by the department.

CROSS REFERENCE TO STATUTE

Occupations Code, Chapter 2301, and Transportation Code, Chapters 503 and 1000 - 1005.

§215.131. Objective.

The objective of this subchapter is to implement the intent of the legislature as declared in Transportation Code, Chapter 503, and Occupations Code, Chapter 2301, by prescribing rules to regulate businesses requiring general distinguishing numbers.

§215.132. Definitions.

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

(1) Barrier--A material object or set of objects that separates or demarcates.

(2) Charitable organization--An organization that is established and exists for the purpose of relieving poverty, the advancement of education, religion, or science, the promotion of health, governmental, or municipal purposes, or other purposes beneficial to the community without financial gain.

(3) Consignment sale--The sale of a vehicle by a person other than the owner, under the terms of a written authorization from the owner.

(4) Dealer--Any person who is regularly and actively engaged in the business of buying, selling, or exchanging new or used motor vehicles, motorcycles, motor homes, mobility motor vehicles, house trailers, or trailers or semitrailers as defined in Transportation Code, §501.001 et seq., or Transportation Code, §502.001 et seq., at either wholesale or retail, either directly, indirectly, or by consignment.

(5) Independent mobility motor vehicle dealer--A nonfranchised dealer who:

(A) holds a general distinguishing number issued by the department under Transportation Code, Chapter 503;

(B) holds a converter's license issued under Occupations Code, Chapter 2301;

(C) is engaged in the business of buying, selling, or exchanging mobility motor vehicles and servicing or repairing the devices installed on mobility motor vehicles at an established and permanent place of business in this state; and

(D) is certified by the manufacturer of each mobility device that the dealer installs, if the manufacturer offers that certification.

(6) License--A dealer's general distinguishing number assigned by the division for the location from which the person engages in business.

(7) Mobility motor vehicle--A motor vehicle that is designed and equipped to transport a person with a disability and that:

(A) has a chassis that contains:

(i) a permanently lowered floor or lowered frame; or

(ii) a permanently raised roof and raised door;

(B) contains at least one of the following:

(i) an electronic or mechanical wheelchair, scooter, or platform lift that enables a person to enter or exit the vehicle while occupying a wheelchair or scooter;

(ii) an electronic or mechanical wheelchair ramp; or

(iii) a system to secure a wheelchair or scooter to allow for a person to be safely transported while occupying the wheelchair or scooter; and

(C) is installed as an integral part or permanent attachment to the motor vehicle's chassis.

(8) Person--Any individual, firm, partnership, corporation, or other legal entity.

(9) Sale--With regard to a specific vehicle, the transfer of possession of that vehicle to a purchaser for consideration.

(10) Temporary tag--A buyer tag, converter tag, or dealer tag.

(11) Wholesale dealer--A licensed dealer who only sells or exchanges vehicles with other licensed dealers.

§215.133. General Distinguishing Number.

(a) No person may engage in business as a dealer unless that person has a currently valid general distinguishing number assigned by the 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 §215.35 of this chapter (relating to Reply); 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 division properly completed by the applicant showing all information requested thereon and shall be submitted to the division accompanied by the following:

(1) proof of a $25,000 surety bond as provided in §215.137 of this subchapter (relating to Security Requirements);

(2) a lease for the term of the license as cited in §215.140 of this subchapter (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;

(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 Office of the Secretary of State or county clerk, and the assumed name of such legal entity shall be recorded on the application using the letters "DBA."

(e) If the general distinguishing number is issued to a corporation, the dealer's name, as it appears on file with the Office of 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 §215.140 of this subchapter (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) 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.

§215.134. House Trailer; Travel Trailer; Towable Recreational Vehicle.

The terms "house trailer" or "travel trailer," for the purpose of the sections under this subchapter, shall mean a vehicle without automotive power designed for human habitation and for carrying persons and property upon its own structure and for being drawn by a motor vehicle. Towable recreational vehicles as defined in Occupations Code, §2301.002, are included in the terms "house trailer" or "travel trailer."

§215.135. More than One Location.

(a) A dealer holding a general distinguishing number for a particular type of vehicle may operate from more than one location within the limits of a city, provided each such location is operated by the same legal entity and meets the requirements of §215.140 of this subchapter (relating to Established and Permanent Place of Business).

(b) Additional locations which are not located within the limits of the same city of the initial dealership are required to obtain a separate license and security unless the location is exempt from the security requirement by statute.

(c) Dealerships that are relocated from a point outside the limits of a city, or relocated to a point not within the limits of the same city of the initial location are required to obtain a new license and provide new security reflecting the new address unless the location is exempt from the security requirement by statute.

(d) A dealer shall notify the division in writing within 10 days of the opening, closing, or relocation of any dealership location. Each new location must meet requirements of §215.140 of this subchapter.

§215.136. Off-site Sales.

Unless otherwise authorized by statute, a dealer is not permitted under Transportation Code, §503.001 et seq. to sell or offer for sale vehicles from a location other than an established and permanent place of business which has been approved by the division and for which a general distinguishing number has been issued to that dealer.

§215.137. Security Requirements.

(a) Unless exempt pursuant to subsection (d) of this section, a dealer shall maintain a $25,000 bond conditioned on the dealer's payment of all valid bank drafts drawn by the dealer for the purchase of motor vehicles and the dealer's transfer of good title to each motor vehicle the dealer offers for sale. The bond must be valid for the same period of time as the dealer's license and is subject to the following:

(1) The bond shall be on a form which is prescribed by the division and approved by the attorney general and issued by a company duly authorized to do business in the state of Texas.

(2) The bond shall be in the business name in which the dealer's license will be issued and contain the complete physical address of each dealership location licensed under the general distinguishing number that the bond is intended to cover.

(3) A bond executed by an agent who represents a bonding company or surety must be supported by an original power of attorney from the bonding company or surety.

(b) Recovery against the bond may be made by any person who obtains a court judgment assessing damages and/or attorneys fees for an act or omission on which the bond is conditioned. If the person seeking to obtain such a court judgment is a dealer, that dealer shall notify the division of the claim immediately upon filing suit on the bond.

(c) Payment of any judgment by the bonding company shall be immediately reported to the division in writing.

(d) The provisions of subsection (a) of this section do not apply to a:

(1) franchised motor vehicle dealer who is licensed by the division;

(2) franchised motorcycle dealer who is licensed by the division;

(3) house trailer or travel trailer dealer; or

(4) trailer/semitrailer dealer.

§215.138. 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.

§215.139. Metal Dealer Plate Allocation.

(a) The number of metal dealer plates a dealer may order for business use is allocated based on the type of license applied for and the number of vehicles sold during the previous year. New license applicants are allotted a predetermined number of metal dealer plates during the first license term.

(b) The maximum number of metal dealer plates issued to a new license applicant during the first license term is, unless otherwise qualified to receive more:

(1) Franchised motor vehicle dealer - 5;

(2) Franchised motorcycle dealer - 5;

(3) Independent motor vehicle dealer - 2;

(4) Independent motorcycle dealer - 2;

(5) Franchised or independent travel trailer dealer - 2;

(6) Utility trailer or semi-trailer dealer - 2;

(7) Independent mobility vehicle dealer - 2; and

(8) Wholesale dealer - 1.

(c) A newly licensed dealership with a previous license status is not subject to the initial allotment limits described in subsection (b) of this section, and may rely on that previous license status to obtain dealer plates, if it is:

(1) a franchised dealership that has been subject to a buy-sell agreement, regardless of a change in the entity or ownership; or

(2) any type of dealer that relocates and has been licensed for a period of one year or longer.

(d) The maximum number of dealer plates issued to a motor vehicle dealer per license term is:

(1) Franchised motor vehicle dealer - 30;

(2) Franchised motorcycle dealer - 10;

(3) Independent motor vehicle dealer - 3;

(4) Independent motorcycle dealer - 3;

(5) Franchised or independent travel trailer dealer - 3;

(6) Utility trailer or semi-trailer dealer - 3;

(7) Independent mobility vehicle dealer - 3; and

(8) Wholesale dealer - 1.

(e) A dealer may obtain more than the maximum number of plates set out in subsections (b) or (d) of this section, by submitting proof of sales that justifies additional allocation.

(1) The dealer may receive the following additional plates:

(A) Wholesale dealers - 1;

(B) Dealers selling fewer than 50 vehicles - 1;

(C) Dealers selling 50 to 99 vehicles - 2;

(D) Dealers selling 100 to 200 vehicles - 5; or

(E) Dealers selling more than 200 vehicles may receive any number of dealer plates at the dealer's discretion.

(2) For purposes of this subsection and subsection (f) of this section, proof of sales may consist of a copy of the most recently filed Vehicle Inventory Tax Declaration or monthly statements duly filed with the proper taxing authority in the county of the dealership's location. Each copy must be stamped received by the tax authority. Any franchised dealer's renewal license application that indicates sales of more than 200 units is considered to be proof of sales of more than 200 units and no additional proof is required.

(f) The director may waive the dealer plate issuance restrictions in accordance with this subsection if the waiver is essential for the continuation of the business. The director will base the determination of the number of dealer plates the dealer will receive on the dealer's past sales, inventory, and any other factors that the director determines pertinent.

(1) A request for a waiver must be in writing and specifically state why the additional plates are necessary for the continuation of the applicant's business.

(2) A request for a waiver must be accompanied by proof of the dealer's sales for the previous year if applicable.

(3) A wholesale dealer may not apply for waiver of dealer plate issuance restrictions.

(4) A waiver granted under this subsection for a specific number of plates is valid for four years.

§215.140. 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 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 re-

quirements 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 director.

(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.

§215.141. Sanctions.

(a) Revocation/Denial. The Board may deny, revoke or suspend a dealer's license (general distinguishing number) or assess civil penalties against any person if that person:

(1) fails to maintain a good and sufficient bond in the amount of $25,000 if required;

(2) fails to maintain an established and permanent place of business conforming to the regulations pertaining to office, sign, and display space requirements;

(3) refuses to permit or fails to comply with a request by a representative of the department to examine the sales records required to be kept under §215.144 of this subchapter (relating to Record of Sales and Inventory) and ownership papers for vehicles owned by that dealer or under that dealer's control, and evidence of ownership or lease rights on the property upon which the dealer's business is located:

(A) during posted working hours, as required in §215.140(1)(A) of this subchapter (relating to Established and Permanent Place of Business), at the dealer's licensed location, or

(B) through a request made by the division pursuant to these rules;

(4) holds a wholesale dealer license and, without notifying the division and meeting the vehicle display space requirements of §215.140 of this subchapter, is found to be selling or offering to sell a vehicle to someone other than a licensed dealer, unless authorized by statute;

(5) sells or offers to sell a type of vehicle that the person is not licensed to sell;

(6) fails to notify the division of a change of physical or mailing address and/or telephone number within 10 days after such change;

(7) fails to notify the division of a dealer's name change or ownership within 10 days after such change;

(8) except as provided by law, issues more than one buyer's temporary tag for the purpose of extending the purchaser's operating privileges for more than 60 days;

(9) fails to remove license plates as required by law from a vehicle that is displayed for sale;

(10) misuses a metal dealer license plate or a temporary tag;

(11) fails to display dealer license plates or tags in a manner conforming to the regulations pertaining to the display of such plates and tags;

(12) fails to satisfy the notification requirements of §215.144 of this subchapter;

(13) holds open titles or fails to take assignment of all certificates of title, manufacturer's certificates, or other basic evidence of ownership for vehicles acquired by the dealer or fails to assign the certificate of title, manufacturer's certificate, or other basic evidence of ownership for vehicles sold. (All certificates of title, manufacturer's certificates, or other basic evidence of ownership for vehicles owned by a dealer must be properly executed showing transfer of ownership into the name of the dealer.);

(14) fails to remain regularly and actively engaged in the business of buying, selling, or exchanging vehicles of the type for which the general distinguishing number is issued;

(15) violates any of the provisions the Codes, or any rule or regulation of the department, including advertising rules set out in Subchapter H of this chapter (relating to Advertising);

(16) has not assigned at least five vehicles in the prior 12 months, provided the dealer has been licensed more than 12 months;

(17) files a false or forged title or tax document, including sales tax statement or application for a certified copy of a title;

(18) uses or allows use of that dealer's license or location for the purpose of avoiding the provisions of the dealer law or other laws;

(19) makes a material misrepresentation in any application or other information filed with the division;

(20) fails to remit payment for civil penalties assessed by the Board;

(21) sells new motor vehicles without a franchised dealer's license issued by the division;

(22) utilizes a temporary tag that fails to meet specifications as cited in §215.138 of this subchapter (relating to Use of Metal Dealer License Plates); or

(23) violates any state or federal law or regulation relating to the sale of a motor vehicle.

(b) Civil penalties. The Board may assess a civil penalty of not less than $50 nor more than $1,000 against a person that is found to have engaged in conduct described in subsection (a) of this section, and in determining the amount of any such penalty may consider the relevant circumstances, including but not limited to the factors enumerated in Occupations Code, §2301.801(b).

(c) Warning letter. In lieu of imposing sanctions under subsections (a) or (b) of this section, the division may issue a warning letter to a person notifying that person of the nature of the violation, and specifying the date by which corrective action is to be completed and full compliance is to be met; provided, however, that the Board may not issue a warning letter in more than three subsequent violations of the same or similar nature by that person in the same calendar year.

§215.142. GDN Sanction and Qualification Hearing.

(a) The Board or division may initiate and conduct a formal administrative hearing pursuant to Occupations Code, §§2301.701 - 2301.713, and Transportation Code, §503.009, and Subchapter B of this chapter (relating to Adjudicative Practice and Procedure), concerning contested cases before the Board, to determine any of the following matters:

(1) whether a licensee has violated any provision of this subchapter or Transportation Code, §503.001 et seq.;

(2) the amount of the civil penalty to be assessed, if any, from not less than $50 up to $1,000 for each alleged violation of the provisions of this subchapter or Transportation Code, §503.001 et seq.;

(3) whether the licensee's general distinguishing number should be canceled or suspended; and

(4) whether an application for a new general distinguishing number or the renewal of a general distinguishing number should be denied.

(b) For purposes of assessing civil penalties under this section, each act in violation of any provision of this subchapter or Transportation Code, §503.001 et seq. is a separate violation, and each day of a continuing violation is a separate violation.

(c) Notice of any hearing initiated under subsection (a) of this section may be waived by any person.

§215.143. Manufacturers License Plates.

(a) Manufacturers that distribute, manufacture, or assemble new vehicles may apply for and secure manufacturers license plates for display on unregistered vehicles.

(b) Manufacturers license plates must be used exclusively for the purpose of testing such vehicles or loaning a vehicle to a consumer in accordance with Occupations Code, §§2301.601 - 2301.613.

§215.144. Record of Sales and Inventory.

(a) Purchase and sales records. A dealer must keep a complete record of all vehicle purchases and sales for a minimum period of 48 months and make those records available for inspection and copying by a representative of the department during business hours.

(b) An independent mobility vehicle dealer must keep complete written records relating to a vehicle purchase or sale and any adaptive work performed on the vehicle for a minimum period of 36 months after the date the adaptive work is performed on the vehicle.

(c) Records reflecting purchases and sales for at least the preceding 24 months must be maintained at the dealer's location. Records for prior time periods may be kept off-site at a location within the same county.

(d) Upon receipt of a request sent by mail or electronic document transfer from the division, a dealer must produce copies of specified records to the address listed in the request within 15 days.

(e) Content of records. As used in this subsection, a complete record of vehicle purchases and sales shall contain the following information or documents:

(1) date of purchase;

(2) date of sale;

(3) vehicle identification number;

(4) name and address of person selling to the dealer;

(5) name and address of person purchasing from the dealer;

(6) name and address of selling dealer if vehicle is offered for sale by consignment;

(7) except in a purchase or sale by a wholesale dealer, copy of the Tax Collector's Receipt for Title Application/Registration/Motor Vehicle Tax, Form 31;

(8) copies of any and all documents, forms, and agreements applicable to a particular sale, including, but not limited to title applications, work-up sheets, Manufacturer's Certificates of Origin, titles or photocopies of the front and back of titles, factory invoices, sales contracts, retail installment agreements, buyer's orders, bills of sale, waivers, or other agreements between the seller and purchaser;

(9) dealer's monthly Motor Vehicle Seller Financed Sales Returns, if any; and

(10) if the vehicle sold is a motor home or a towable recreational vehicle, subject to inspection under Transportation Code, Chapter 548, a copy of the written notice provided to the buyer at the time of sale notifying the buyer that the vehicle is subject to inspection requirements.

(f) Title assignments. All certificates of title, manufacturer's certificates, or other evidence of ownership for vehicles offered for sale or which have been acquired by a dealer must be properly assigned into the dealer's name. A dealer must apply in the name of the purchaser of a motor vehicle for the registration of the motor vehicle with the appropriate county tax assessor-collector as selected by the purchaser. To be in compliance with Transportation Code, §501.0234(f), and considered filed within a reasonable time, a registration filed in Texas must be filed within 20 working days of the date of sale. For a transaction that is dealer-financed, a registration filed in Texas within 45 days of the date of sale will be considered filed within a reasonable time. The dealer shall provide to the purchaser the receipt for the application and maintain a copy of the receipt for application in the sales file.

(g) Out-of-state sales. When a sales transaction involves a vehicle to be transferred out of state, the dealer must, within 20 working days of the date of sale, either file the application for certificate of title for the purchaser or deliver the properly assigned evidence of ownership to the purchaser. In such instance, a photocopy of the completed sales tax exemption form for out-of-state sales approved by the Comptroller of Public Accounts' shall be maintained on file at the dealer's business location.

(h) Consignment sales. A dealer offering a vehicle for sale by consignment shall have a written consignment agreement for the vehicle or a power of attorney covering the vehicle and shall maintain a record of each such vehicle by vehicle identification number and owner of each such vehicle handled on consignment for a minimum of 48 months.

(i) Public motor vehicle auctions.

(1) A general distinguishing number holder who acts as a public motor vehicle auction must comply with the requirements relating to consignment sales as set out in subsection (g) of this section.

(2) A public motor vehicle auction is not required to take assignment of title of vehicles it offers for sale, but must take assignment of title of a vehicle from a consignor prior to making application for title on behalf of the buyer.

(3) A public motor vehicle auction must make application for title on behalf of the purchaser within 20 working days of the sale of the motor vehicle.

(j) Wholesale auction records. A wholesale auction must keep a complete record of all vehicle purchases and sales occurring through the auction for a minimum period of 48 months and such records shall be made available for inspection and copying by a representative of the department during business hours.

(1) Records reflecting purchases and sales for at least the preceding 24 months must be maintained at the licensed location. Records for prior time periods may be kept off-site at a location within the same county.

(2) Upon receipt of a request sent by mail, or electronic document transfer from a representative of the department, a wholesale auction must submit copies of specified records to the address listed in the request within 15 days.

(3) The records required to be kept by a wholesale auction shall at a minimum provide the following information:

(A) date of sale;

(B) vehicle identification number;

(C) name and address of person selling the vehicle;

(D) name and address of person purchasing the vehicle;

(E) the dealer license number of both seller and buyer unless either is exempt from holding a license;

(F) all information necessary to comply with the Truth in Mileage Act;

(G) auction access documents, including the written authorization and cancellation of authorization for agents, employees, or representatives required by §215.148 of this subchapter (relating to Dealer Agents);

(H) invoices, bills of sale, checks, drafts, or other documents that identify the vehicle, the parties, or the purchase price;

(I) any information regarding the prior status of the vehicle such as the Reacquired Vehicle Disclosure Statement or other lemon law disclosures; and

(J) copies of any written authorizations allowing an agent of a dealer to enter the auction.

(k) Electronic records. Any records required to be kept by a licensee may be kept in an electronic format, if the electronic records can be printed at the licensed location upon request by a representative of the department. Original hard copy titles or photocopies of the front and back of titles of vehicles in a dealer's inventory shall be kept in a secure location at the licensed location or within the same county as the licensed location.

§215.145. Change of Dealer's Status.

(a) A dealer's name change shall require a new bond or a rider to the existing bond reflecting the new dealer name. The dealer may retain the same general distinguishing number.

(b) A dealer shall notify the division in writing within 10 days if there is any change of ownership. A licensed dealer who proposes to sell and/or assign to another any interest in the licensed entity, whether a corporation or otherwise, so long as the physical location of the licensed entity remains the same, shall notify the division in writing within ten days of the change by filing an application to amend the license. If the sale or assignment of any portion of the business results in a change of entity, then the new entity must apply for and obtain a new license.

Publicly-held corporations need only inform the division of a change in ownership if one person or entity acquires 10 percent or greater interest in the licensee.

(c) If a dealership is operated as a sole proprietorship and the sole proprietor dies, the surviving spouse of the deceased dealer, or other individual deemed qualified by the division, shall submit to the division a bond rider adding his or her name to the bond for the remainder of the bond and license term. That person may continue dealership operations under the current dealer license until its expiration. In the event the qualifying individual is a surviving spouse, he or she may change the ownership of the dealership upon renewal of the license without applying for a new general distinguishing number by submitting additional information regarding ownership, business background, and financial responsibility as required for a new application.

§215.146. 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 converter's 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.

§215.147. Export Sales.

(a) Before selling a motor vehicle for export from the United States to another country, a dealer must obtain a legible photocopy of the buyer's government-issued photo identification document. The identification document must be issued by the jurisdiction where the buyer resides and may consist of:

(1) a passport;

(2) a driver's license;

(3) a consular identity document;

(4) a national identification certificate or identity document; or

(5) other identification issued by the jurisdiction where the buyer resides that is able to be verified by law enforcement and includes the name of the issuing jurisdiction, the buyer's full name, foreign address, date of birth, photograph, and signature.

(b) All licensees that sell a vehicle for export from the United States shall stamp in black ink on the back of the title in all unused dealer reassignment spaces the words "For Export Only" and their General Distinguishing Number. The licensee shall also place the stamp on the front of the title in a manner that does not obscure any names, dates, mileage statements or other information printed on the title. The stamp must be at least two inches wide, and all text and the license number must be clearly legible.

(c) In addition to the records required to be maintained by §215.144(d) and (i) of this subchapter (relating to Record of Sales and Inventory), a licensee shall maintain the following records in the sales file for each vehicle sold for export and shall make those records available upon request by a representative of the department:

(1) A completed copy of the Texas Motor Vehicle Sales Tax Exemption Certificate for Vehicles Taken Out of State for each vehicle sold, indicating that the vehicle has been purchased for export to a foreign country;

(2) A copy of the front and back of the title to the vehicle, showing the "For Export Only" stamp and the General Distinguishing Number of the auction or dealer;

(3) A legible copy of each buyer's photo identification document; and

(4) If applicable, an Export-only Sales Record Form, listing each motor vehicle sold for export only.

(d) A dealer, at the time of sale of a vehicle for export, shall issue a temporary buyer's tag as required by Transportation Code, §503.063 after entering the information in the database as required by Transportation Code, §503.061, and report the sale as for export.

§215.148. Dealer Agents.

(a) In regard to the duties and obligations of a dealer, a dealer is responsible for the acts and omissions of any agent, representative, or employee if that dealer has given authority to any person for that agent, representative, or employee to act on the behalf of the dealer. This section is not to be construed in any manner to allow retail sales by any dealer agent or representative. The term "employee" used in this section includes only those persons paid by the licensee and reported on the federal form W-2, Wage and Tax Statement.

(b) A dealer must provide written authorization to any person buying or selling motor vehicles for resale or operating a licensed auction for the sale of motor vehicles for resale with which an agent, representative, or employee will be conducting business or acting on the dealer's behalf.

(1) Once a dealer has given written authorization for an agent, representative, or employee to buy and sell motor vehicles for resale for that dealer, the dealer shall be liable for any acts or omissions regarding duties and obligations of dealers caused by that agent, representative, or employee unless and until either the earlier of written notification of revocation of the agent's, representative's or employee's authority or revocation of the dealer's license.

(2) Written authorization shall be a letter on the dealership letterhead of the dealer authorizing buying or selling, or on a form approved by the director, and stating that the dealer is liable for any acts or omissions regarding duties and obligations of dealers, caused by that agent, representative, or employee including any financial considerations to be paid for the vehicle unless and until the recipient is notified in writing of the revocation of the authority. The letter or form shall be signed by the dealer principal or person in charge of daily activities of the dealership.

(3) The written authorization shall include the employee, agent or representative's name; current mailing address; phone number; the business name, address, and license number of the dealer with whom the employee or agent is associated. The written authorization is a record that must be kept as all other records set out in §215.144 of this subchapter (relating to Record of Sales and Inventory) and shall be made available to a division representative upon request.

(c) Any licensee, including wholesale auctions who act on behalf of others, who buys and sells vehicles on a wholesale basis, including by sealed bid, is required to verify the authority of any person claiming to be either an employee, agent or representative who represents they are buying or selling motor vehicles on behalf of a licensed dealer.

(d) Titles to vehicles bought by an employee, agent or representative of a dealer shall be reassigned to the dealer by the seller or auction and shall not be delivered to the agent or representative but delivered only to the dealer, the dealer's employee, or the dealer's financial institution. Notwithstanding the prohibitions in this section, an authorized agent, representative or employee may sign any required odometer statements.

(e) Only checks or drafts drawn on the purchasing dealer's account, or cashiers checks in the name of the dealer, or wire transfers from the dealer's bank account shall be accepted for motor vehicles purchased in a wholesale transaction.

§215.149. Independent Mobility Motor Vehicle Dealers.

In accordance with Occupations Code, §2301.362, a transaction occurs through or by a franchised dealer of the motor vehicle's chassis line make if the franchised dealer applies for title and registration of the mobility motor vehicle in the name of the purchaser. An independent mobility dealer may prepare the documentation necessary for a franchised dealer to comply with the requirements of Transportation Code, §501.0234 in connection with the sale of a mobility motor vehicle.

§215.150. Authorization to Issue Temporary Tags.

(a) Dealers who hold a General Distinguishing Number license may issue dealer temporary tags, buyer's temporary tags, and Internet-down temporary tags for each type of vehicle the dealer is licensed to sell. A converter who holds a converter's license under Occupations Code, Chapter 2301 may issue converter temporary tags.

(b) Licensees may issue applicable temporary dealer, buyer's, or converter tags until a license is cancelled, revoked, or suspended in accordance with law.

(c) A dealer's authorization to obtain numbers in advance for use on Internet-down tags may be modified, suspended, or revoked after opportunity for hearing in accordance with Occupations Code, Chapter 2301 and Government Code, Chapter 2001, if the dealer has misused the tags or failed to comply with the requirements for issuance and recordkeeping in Transportation Code, §503.067 or this subchapter.

§215.151. Temporary Tags, General Use Requirements, and Prohibitions.

(a) All temporary tags shall be displayed in the rear license plate display area of the vehicle. The tag must be secured to the vehicle so that the entire tag remains visible and legible at all times.

(b) All printed information on a temporary tag must be visible and may not be covered or obstructed by any plate holder or other device or material.

(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.

§215.152. Obtaining Numbers for Issuance of Temporary Tags.

(a) Dealers and converters must have Internet access to connect to the temporary tag databases maintained by the department.

(b) Except as provided by §215.157 of this subchapter (relating to Advance Numbers, Internet-down Buyer's Temporary Tags), the dealer or converter must enter into the database information about the vehicle, dealer, converter, or buyer, as appropriate, and obtain a specific number for the tag before a temporary tag may be issued and displayed on a vehicle.

§215.153. Specifications for All Temporary Tags.

(a) Information printed or completed on all temporary tags must be in black ink on a white background. For vehicles, other than motorcycles, a completed buyer, dealer, converter, and Internet-down temporary tag shall be 6 inches high by 11 inches wide. For motorcycles, the completed buyer, dealer, converter, and Internet-down temporary tag shall be 4 inches high by 7 inches wide.

(b) All temporary tags must be composed of plastic or other durable, weather-resistant material, or must be sealed in a 2 mil clear poly bag that encloses the entire tag. A dealer or converter may manually copy the information provided from the database to a pre-printed temporary tag template in accordance with the specifications of the appropriate appendix listed in subsection (c) of this section. Temporary tags completed by hand must have the information drawn in letters and numerals with a permanent thick black marking pen.

(c) If a dealer uses the option provided by subsection (b) of this section, 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; see Figure 43 TAC §215.153(c)(1);
Figure: 43 TAC §215.153(c)(1)

(2) Appendix A-2 - Dealer - Assigned to Agent; see Figure 43 TAC §215.153(c)(2);
Figure: 43 TAC §215.153(c)(2)

(3) Appendix B-1 - Buyer; see Figure 43 TAC §215.153(c)(3);
Figure: 43 TAC §215.153(c)(3)

(4) Appendix B-2 - Internet-down Tag; see Figure 43 TAC §215.153(c)(4); and
Figure: 43 TAC §215.153(c)(4)

(5) Appendix C-1 - Converter. see Figure 43 TAC §215.153(c)(5).
Figure: 43 TAC §215.153(c)(5)

§215.154. 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;

(F) to road test the vehicle;

(3) use the vehicle for or allow its use by a charitable organization or use the vehicle or allow its use in parades; or

(4) permit a customer to temporarily operate a vehicle while the customer's vehicle is being repaired. A vehicle-specific type dealer temporary tag shall be used for this purpose.

(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 its dealer temporary tag. The purchasing dealer may display its dealer temporary tag or its 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.

(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.

§215.155. Buyer's Temporary Tags.

(a) A temporary 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 wholesale transaction in which the purchasing dealer places its own dealer temporary tag or the purchasing dealer's metal dealer plate on the vehicle.

(c) Temporary buyer's tags are valid until the earlier of the date on which the vehicle is registered or the 60th day after the date of purchase.

(d) The dealer must ensure that the following information is placed on a buyer's temporary 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.

§215.156. Buyer's Temporary Tag Receipt.

A dealer must provide a buyer's temporary tag receipt to the buyer of each vehicle to which a buyer's temporary tag is issued regardless of whether the tag is issued in the ordinary course of business or is an Internet-down temporary tag. The dealer may print the image of the receipt issued from the database or construct the form using the same information. The dealer shall instruct the buyer to keep a copy of the receipt in the vehicle until the vehicle is registered in the buyer's name and metal plates are affixed to the vehicle. The receipt must include the following information.

(1) the issue date of the buyer's tag;

(2) the year, make, model, body style, color, and vehicle identification number (VIN) of the vehicle sold;

(3) the vehicle-specific tag number;

(4) the expiration date of the tag;

(5) the date of the sale;

(6) the name of the issuing dealer and the dealer's license number; and

(7) the buyer's name and mailing address.

§215.157. Advance Numbers, Internet-down Buyer's Temporary Tags.

(a) In accordance with Transportation Code, §503.0631(d), a dealer may obtain an advance supply of specific numbers to issue buyer's temporary tags if the dealer is unable to access the Internet.

(b) If a dealer is unable to access the Internet at the time of sale, the dealer must complete and sign the buyer's receipt, retain a copy of the signed buyer's receipt, and enter the required information on the sale into the database not later than the close of the next business day that the dealer has access to the Internet. The receipt must have a statement that the dealer has Internet access, but at the time of the sale the dealer was unable to access the Internet or the temporary tag database.

§215.158. General Requirements and Allocation of Internet-down Tag Numbers.

(a) Advance Internet-down numbers shall be kept in a locked, secure place. The dealer is responsible for the safekeeping of those numbers and shall report any loss, theft, or destruction of those numbers to the department within 24 hours of the time of an event.

(b) Advance Internet-down numbers may be used up to 12 months after the date of issuance from the database. As a dealer uses the Internet-down numbers, or the numbers expire, a dealer at any time may download additional Internet-down advance numbers up to the maximum allowed.

(c) The number of Internet-down advance numbers a dealer may download is equal to the greater of three or 1/52 of the dealer's total annual sales.

(d) A new license applicant will be allotted a predetermined number of Internet-down advance numbers during the first license term in accordance with the following schedule:

(1) franchised motor vehicle dealer - 25;

(2) franchised motorcycle dealer - 10;

(3) independent motor vehicle dealer - 3;

(4) independent motorcycle dealer - 3;

(5) franchised or independent travel trailer dealer - 3;

(6) utility trailer or semi-trailer dealer - 3; and

(7) independent mobility vehicle dealer - 3.

(e) A newly licensed dealer with a previous license status is not subject to the initial allotment limits described in subsection (d) of this section and may rely on that previous license status to obtain advance Internet-down numbers if it is:

(1) a franchised dealership that has been subject to a buy-sell agreement, regardless of a change in the entity or ownership; or

(2) any type of dealer that relocates and has been licensed for a period of one year or longer.

(f) For good cause shown, a dealer may obtain more than the maximum number of Internet-down numbers for the first license term. The director may approve in accordance with this paragraph an additional amount of Internet-down numbers for a dealer if the additional amount is essential for the continuation of the business. The director will base the determination of the amount of advance numbers the dealer will receive on the dealer's past sales, inventory, and any other factors that the director determines pertinent such as an emergency. A request for additional advance numbers must specifically state why the additional advance numbers are necessary for the continuation of the applicant's business.

§215.159. 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 proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER F. LESSORS AND LEASE FACILITATORS

43 TAC §§215.171 - 215.181

STATUTORY AUTHORITY

The new sections are proposed under Transportation Code, §1002.001, which provides the Texas Motor Vehicles Board with the authority to establish rules for the conduct of activities regulated by the department.

CROSS REFERENCE TO STATUTE

Occupations Code, Chapter 2301, and Transportation Code, Chapters 503 and 1000 - 1005.

§215.171. Objective.

The objective of this subchapter is to implement the intent of the legislature as declared in Occupations Code, Chapter 2301, and in particular, §§2301.251, 2301.253, 2301.254, 2301.261, 2301.262, 2301.357, and 2301.551 - 2301.556, by prescribing rules to regulate the business of leasing motor vehicles in this state.

§215.172. Definitions.

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

(1) Motor vehicle lease--A transfer of the right to possession and use of a motor vehicle for a term in excess of 180 days, in return for consideration.

(2) Motor vehicle lease facilitator--A person, other than a franchised dealer or a bona fide employee of a dealer, or a vehicle lessor or a bona fide employee of a vehicle lessor, who:

(A) holds himself out to any person as a "motor vehicle leasing company" or "motor vehicle leasing agent" or uses a similar title, for the purpose of soliciting or procuring a person to enter into a contract or agreement to become the lessee of a vehicle that is not, and will not be, titled in the name of and registered to the lease facilitator; or

(B) otherwise solicits a person to enter into a contract or agreement to become a lessee of a vehicle that is not, and will not be, titled in the name of and registered to the lease facilitator, or who is otherwise engaged in the business of securing lessees or prospective lessees of motor vehicles that are not, and will not be, titled in the name of and registered to the facilitator.

(3) Motor vehicle lessor--A person who, pursuant to the terms of a lease, transfers to another person the right to possession and use of a motor vehicle titled in the name of the lessor.

§215.173. License.

(a) No person may engage in business as a lessor or a lease facilitator unless that person has a currently valid license assigned by the division, or is otherwise exempt by law from obtaining such a license.

(b) Any person who facilitates leases on behalf of a lease facilitator must:

(1) be on the lease facilitator's payroll and receive compensation in which Social Security, Federal Unemployment Tax, and all other appropriate taxes are withheld from the representative's paycheck and said taxes are paid to the proper taxing authority; and

(2) have work details such as when, where, and how the final results are achieved, directed and controlled by the lease facilitator.

§215.174. Application for a License.

(a) Application for a lessor's or lease facilitator's license shall be on a form prescribed by the division, properly completed by the applicant, and shall be submitted with supporting documentation showing all information requested.

(b) The supporting documentation for a lessor's license shall include:

(1) a letter of appointment for each lease facilitator or acceptable substitute as designated by the division;

(2) a verification of the criminal background of each owner and officer of the applicant, if applicable;

(3) the fee for the license as prescribed by law for each type of license required;

(4) photographs clearly depicting the overall appearance of the interior and exterior of the applicant's office;

(5) verification of all assumed name(s), if applicable, in the form of assumed name certificate(s) on file with the appropriate recording entity, such as the Office of the Secretary of State or the county clerk;

(6) verification of the business entity, such as a copy of the Certificate of Incorporation on file with the Office of the Secretary of State, or the partnership agreement;

(7) a sample copy of the agreement between the lessor and a lessee; and

(8) business background information for either the president, general manager, or owner of the entity required to be listed on the application.

(c) The supporting documentation for a lease facilitator's license shall include:

(1) a letter of appointment from each lessor or acceptable substitute as designated by the division;

(2) a verification of the criminal background of each owner and officer of the applicant, if applicable;

(3) the fee for the license as prescribed by law for each type of license required;

(4) photographs clearly depicting the overall appearance of the interior and exterior of the applicant's office;

(5) verification of all assumed name(s), if applicable, in the form of assumed name certificate(s) on file with the appropriate recording entity, such as the Office of the Secretary of State or the county clerk;

(6) verification of the business entity, such as a copy of the Certificate of Incorporation on file with the Office of the Secretary of State, or the partnership agreement;

(7) a sample copy of the agreement between the lease facilitator and a lessee;

(8) a list of all lessors, including names and addresses, with whom any lease facilitator executes leases. This list must be updated in writing upon renewal of a license, and within ten days of the addition of any lessor to this list; and

(9) business background information for either the president, general manager, or owner of the entity required to be listed on the application.

§215.175. Sanctions.

(a) Revocation/Denial. The Board may revoke, deny or suspend a lessor or lease facilitator's license, or assess civil penalties, if that lessor or lease facilitator:

(1) fails to maintain an established and permanent place of business conforming to §215.177 of this subchapter (relating to Established and Permanent Place of Business);

(2) refuses to permit or fails to comply with a request by a representative of the division to examine the current and previous year's leasing records required to be kept under §215.178 of this subchapter (relating to Records of Leasing) and ownership papers for vehicles owned, leased, or under that lessor or lease facilitator's control, and evidence of ownership or lease agreement for the property upon which the business is located:

(A) during normal working hours at the lessor's or lease facilitator's permanent place of business, or

(B) through a request made by the division pursuant to these rules;

(3) fails to notify the division of a change of address within ten days after such change;

(4) fails to notify the division of a change of lessor/lease facilitator's name or ownership within ten days after such a change;

(5) fails to observe the fee restrictions as described in Occupations Code, §2301.357 and §§2301.551 - 2301.556;

(6) fails to maintain leasing and/or advertisement records as described in these rules;

(7) fails to remain regularly and actively engaged in the business of leasing vehicles or facilitating the leasing of vehicles for which the license is issued;

(8) violates any law relating to the sale, lease, distribution, financing or insuring of motor vehicles;

(9) uses or allows use of a lessor or lease facilitator license for the purpose of avoiding any provisions of Occupations Code, Chapter 2301;

(10) makes a material misrepresentation in any application or other information filed with the division;

(11) fails to update in writing the list of lessors, including names and addresses, with which any lease facilitator executes leases within ten days of any changes to this list and upon renewal of the license;

(12) violates any state or federal law relating to the leasing of new motor vehicles.

(b) Referral fees prohibited. A lessor or lease facilitator may not, directly or indirectly, accept a fee from a dealer for referring customers who purchase or consider purchasing vehicles.

§215.176. More Than One Location.

(a) Lease facilitators must be licensed separately for each business location.

(b) Lessors or lease facilitators that relocate from a point outside the limits of a city, or relocate to a point not within the limits of the same city of the initial location are required to obtain a new license.

(c) Lessors are required to obtain a license for their primary locations. Lessors must provide the address, telephone number, and the name of a contact person for all other satellite offices that conduct business in the state of Texas.

§215.177. Established and Permanent Place of Business.

(a) A lessor or lease facilitator operating within the state of Texas must meet the following requirements at each location where vehicles are leased or offered for lease.

(1) Physical location requirements.

(A) A lessor or lease facilitator within Texas must be open to the public during normal working hours. The lessor or lease facilitator's business hours for each day of the week must be posted at the main entrance of the office, and the owner or an employee of the lessor or lease facilitator must be at the location during the posted business hours for the purpose of leasing vehicles. In the event the owner or an employee is not available to conduct business during the posted business hours, a separate sign must be posted indicating the date and time such owner or employee will resume leasing operations. The structure must be of sufficient size to accommodate and must be equipped with a desk and chairs from which the lessor or lease facilitator transacts his business. The office also must be equipped with a working land-based telephone instrument listed in the name under which the lessor or lease facilitator does business.

(B) A lessor or lease facilitator that files an application for a new license or a supplemental location must conform to the following requirements:

(i) The office 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.

(ii) The office must comply with all applicable local zoning ordinances and deed restrictions.

(iii) The office may not be located within a residence, apartment, hotel, motel, rooming house, or eating establishment.

(iv) The office may not be located within a storeroom, closet, stock room, or any other space that is not open to the public.

(v) The physical address of the office must be recognized by the U.S. Postal Service or capable of receiving U.S. mail.

(C) A portable-type office structure may qualify, provided it meets the minimum requirements of this section and is not a readily moveable trailer or other such vehicle.

(D) In those instances when two or more lessors or lease facilitators occupy the same business locations and conduct their respective leasing operations under different names, one office structure for all lessors or lease facilitators operating from such location will be acceptable; provided, however, each lessor or lease facilitator must have:

(i) a separate desk from which that lessor or lease facilitator transacts business;

(ii) a separate working telephone instrument, number, and listing in the lessor or lease facilitator's name with a fixed, land-based telephone company;

(iii) a separate right of occupancy meeting the requirements of this section.

(E) A lease facilitator's established and permanent place of business, as prescribed in this rule, must be physically located within the state of Texas.

(2) Sign requirements. A lessor or lease facilitator shall display a conspicuous and permanent sign at the licensed location showing the name under which the lessor or lease facilitator conducts business. Outdoor signs must contain letters no smaller than six inches in height.

(3) Lease requirements. If the premises from which a lessor or lease facilitator conducts business are not owned by the licensee, such licensee shall maintain a lease continuous for the same period of time as the lessor's or lease facilitator's license, and such lease agreement shall be on a properly executed form containing, but not limited to the following information:

(A) the names of the lessor and lessee;

(B) the legal description of the property or street address; and

(C) the period of time for which the lease is valid.

(b) A lessor whose licensed location is in another state and who does not deal directly with the public to execute leases must meet the following requirements at each location.

(1) Physical location requirements.

(A) The structure must be of sufficient size to accommodate and must be equipped with a desk and chairs from which the lessor transacts his business. The office also must be equipped with a working land-based telephone instrument listed in the name under which the lessor does business.

(B) A lessor that files an application for a new license or a supplemental location whose licensed location is in another state must conform to the following requirements:

(i) The office must be located in a building, with connecting exterior walls on all sides, 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.

(ii) The office must comply with all applicable local zoning ordinances and deed restrictions.

(iii) The office may not be located within a residence, apartment, hotel, motel, rooming house, or eating establishment.

(iv) The office may not be located within a storeroom, closet, stock room, or any other space that is not open to the public.

(v) The physical address of the office must be recognized by the U.S. Postal Service or capable of receiving U.S. mail.

(C) A portable-type office structure may qualify, provided it meets the minimum requirements of this section and is not a readily moveable trailer or other such vehicle.

(D) In those instances when two or more lessors occupy the same business locations and conduct their respective leasing operations under different names, one office structure for all lessors operating from such location will be acceptable; provided, however, each lessor must have:

(i) a separate desk from which that lessor transacts business;

(ii) a separate working telephone instrument, number, and listing in the lessor's name with a fixed, land-based telephone company;

(iii) a separate right of occupancy meeting the requirements of this section.

(2) Sign requirements. An out of state lessor shall display a conspicuous and permanent sign at the licensed location showing the name under which the lessor conducts business. Outdoor signs must contain letters no smaller than six inches in height.

(3) Lease requirements. If the premises from which a lessor conducts business are not owned by that person or entity, that person or entity shall maintain a lease on the property of the licensed location continuous for the same period of time as the license, and such agreement shall be on a properly executed form containing, but not limited to the following information:

(A) the names of the lessor and lessee;

(B) the legal description of the property or street address; and

(C) the period of time for which the lease is valid.

(c) Independence. A lessor or lease facilitator shall be independent of financial institutions and dealerships in location and in business activities unless that lessor or lease facilitator is an employee of, a legal subsidiary of, or an entity wholly owned by the financial institution or dealership.

(d) For the purposes of this subsection, an employee is a person who meets the requirements of §215.173(b) of this chapter (relating to License).

§215.178. Records of Leasing.

(a) Purchase and leasing records. A lessor or lease facilitator must keep a complete record of all vehicle purchases and sales for a minimum period of at least one year after the expiration of the lease. Records reflecting lease transactions that have occurred within the preceding 24 months must be maintained at the licensed location. Records for prior time periods may be kept off-site at a location within the same county or within 25 miles of the licensed location. Upon receipt of a request sent by mail or electronic document transfer from a representative of the department, a lessor or lease facilitator must produce copies of specified records to the address listed in the request within 15 days.

(b) Content of records. As used in this subsection, a complete lease file shall contain the following information or documents:

(1) names, addresses, and telephone numbers of the lessor of the vehicle in the transaction;

(2) names, addresses, and telephone numbers of the lessee of the vehicle in the transaction;

(3) names, addresses, telephone numbers, and license numbers of the lease facilitator of the vehicle in the transaction;

(4) name, home address, and telephone number of employee of lease facilitator who handled the transaction;

(5) complete description of the vehicle involved in the transaction, including its vehicle identification number (VIN);

(6) name, address, telephone number, and general distinguishing number of the dealer selling the vehicle, as well as the franchise license number of the dealer if the vehicle in the transaction is a new motor vehicle;

(7) amount of fee received by or paid to the lease facilitator;

(8) copies of the buyers order and sales contract for the vehicle;

(9) copy of the lease contract;

(10) copies of all other contracts, agreements or disclosures between the lease facilitator and the consumer lessee;

(11) copies of the front and back of Manufacturer's Statement/Certificate of Origin or the title of the vehicle involved in the transaction.

(c) Records of advertising. A lessor or lease facilitator must maintain copies of all advertisements, brochures, scripts or electronically reproduced copies, in whatever medium appropriate, of promotional materials for a period of at least 18 months, subject to inspection upon request by a representative of the Board at the business of the licensee during regular business hours.

(1) All advertisements by lessors or lease facilitators must be in accordance with Subchapter H of this chapter (relating to Advertising).

(2) Lessors and lease facilitators may not state or infer, either directly or indirectly, in any manner such as advertisements, stationery or business cards that their business involves the sale of new motor vehicles.

(d) Title assignments. All certificates of title, manufacturer's certificates of origin, or other evidence of ownership for vehicles which have been acquired by a lessor for lease must be assigned properly from the seller into the lessor's name.

(e) Letters of appointment. All letters of appointment between each lessor or lease facilitator with whom the licensee does business must be executed by both parties.

(f) Electronic records. Any records required to be kept by a lessor or lease facilitator may be kept in an electronic format, if the electronic records can be printed at the licensed location upon request by a representative of the department.

§215.179. Change of Lessor or Lease Facilitator Status.

(a) Change of ownership. A lessor or lease facilitator who proposes to sell and/or assign to another any interest in the licensed entity, whether a corporation or otherwise, so long as the physical location of the licensed entity remains the same, shall notify the division in writing within ten days by filing an application to amend the license. If the sale or assignment of any portion of the business results in a change of entity, then the purchasing/assignee entity must apply for and obtain a new license. Publicly held corporations licensed as lessors or lease facilitators need only inform the division of a change in ownership if one person or entity acquires 10% or greater interest in the licensee.

(b) Change of operating status of business location. A licensee shall obtain division approval prior to the opening of a supplemental location, or the relocation of an existing location, in accordance with §215.176 of this subchapter (relating to More than One Location). Also, a licensee must notify the division when closing an existing location.

§215.180. Required Notices to Lessees.

Lessors and lease facilitators shall provide notice of the complaint procedures provided by Occupations Code, §§2301.204 and 2301.601 - 2301.613 to each lessee of a new motor vehicle with whom they transact a lease.

§215.181. General Distinguishing Number Exception.

It is not necessary for a licensed lessor to hold a general distinguishing number (GDN) in order to sell a vehicle that the lessor owns, to either the lessee or a duly licensed dealer, either directly or through a licensed wholesale auction. A licensed lessor is not allowed to purchase vehicles at a wholesale auction. Any existing GDN held by a lessor who does not otherwise qualify for a GDN shall be cancelled. A lessor whose GDN has been cancelled under this section may reapply for a GDN once all the qualifications for a GDN are met.

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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Jennifer Soldano
Legal Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 463-8683

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SUBCHAPTER G. WARRANTY PERFORMANCE OBLIGATIONS

43 TAC §§215.201 - 215.210

STATUTORY AUTHORITY

The new sections are proposed under Transportation Code, §1002.001, which provides the Texas Motor Vehicles Board with the authority to establish rules for the conduct of activities regulated by the department.

CROSS REFERENCE TO STATUTE

Occupations Code, Chapter 2301, and Transportation Code, Chapters 503 and 1000 - 1005.

§215.201. Objective.

It is the objective of this subchapter to implement the intent of the legislature as declared in Occupations Code, Chapter 2301, Subchapter M (§§2301.601 - 2301.613) and Occupations Code, §2301.204, by prescribing rules to provide a simplified and fair procedure for the enforcement and implementation of the Texas Lemon Law (Occupations Code, Chapter 2301, Subchapter M) and consumer complaints covered by general warranty agreements (Occupations Code, §2301.204), including the processing of complaints, the conduct of hearings, and the disposition of complaints filed by owners of motor vehicles seeking relief under these provisions of the Code. Practice and procedure in a

contested case filed on or after September 1, 2007 and heard by State Office of Administrative Hearings (SOAH) are provided in Subchapter I of this chapter (relating to Practice and Procedure for Hearings Conducted by the State Office of Administrative Hearings) and the provisions of this subchapter to the extent that the provisions do not conflict with SOAH rules.

§215.202. Filing of Complaints.

(a) Complaints for relief under the lemon law must be in writing and filed with the division in person at its office in Austin, by mail to the address of the division, or by electronic document transfer at a destination designated for receipt of those documents. Complaints may be in letter form or any other written format or may be submitted on complaint forms provided by the division.

(b) Complaints should state sufficient facts to enable the Board and the party complained against to know the nature of the complaint and the specific problems or circumstances which form the basis of the claim for relief under the lemon law.

(c) Complaints should provide the following information:

(1) name, address, and phone number of vehicle owner;

(2) identification of vehicle by make, model, and year, and manufacturer's vehicle identification number;

(3) type of warranty coverage;

(4) name and address of dealer, or other person, from whom vehicle was purchased or leased, including the name and address of the current lessor, if applicable;

(5) date of delivery of vehicle to original owner; and in the case of a demonstrator, the date the vehicle was placed into demonstrator service;

(6) vehicle mileage at time vehicle was purchased or leased, mileage when problems with vehicle were first reported, name of dealer or manufacturer's, converter's, or distributor's agent to whom problems were first reported, and current mileage;

(7) identification of existing problems and brief description of history of problems and repairs on vehicle, including date and mileage of each repair, with copies of repair orders where possible;

(8) date on which written notification of complaint was given to the vehicle manufacturer, converter, or distributor, and if the vehicle has been inspected by manufacturer, converter, or distributor, the date and results of such inspection;

(9) any other information which the complainant believes to be pertinent to the complaint.

(d) The division's staff will provide information concerning the complaint procedure and complaint forms to any person requesting information or assistance.

(e) The filing fee required under Occupations Code, §2301.712, should be remitted with the complaint by check or money order. No filing fee is required for a complaint filed under Occupations Code, §2301.204. The filing fee is nonrefundable, but a complainant who prevails in a case is entitled to reimbursement of the amount of the filing fee. Failure to remit the filing fee with the complaint will result in delaying the commencement of the 150-day requirement provided in §215.206(12) of this subchapter (relating to Hearings) and may result in dismissal of the complaint.

§215.203. Review of Complaints.

All complaints will be reviewed promptly by the division's staff to determine whether they satisfy the requirements of Occupations Code, Chapter 2301, Subchapter M, or §2301.204.

(1) If it cannot be determined whether a complaint satisfies the requirements of Occupations Code, Chapter 2301, Subchapter M, or §2301.204, the complainant will be contacted for additional information.

(2) If it is determined that the complaint does meet the requirements of Occupations Code, Chapter 2301, Subchapter M, or §2301.204, the complaint will be processed in accordance with the procedures set forth in this subchapter.

(3) For purposes of Occupations Code, §2301.606, the commencement of a proceeding means the filing of a complaint with the division, and the date of filing is determined by the date of receipt by the division.

§215.204. Notification to Manufacturer, Converter, or Distributor.

Upon receipt of a complaint for relief under the Occupations Code, Chapter 2301, Subchapter M, or §2301.204, notification thereof, with a copy of the complaint, will be given to the appropriate manufacturer, converter, or distributor, and a response to the complaint will be requested. A copy of the complaint and notification thereof will also be provided to the selling dealer and any other dealers that have been involved with the complaint and a response may be requested.

§215.205. Mediation; Settlement.

If, from a review of the complaint and the responses received from the manufacturer, converter, distributor, or dealer, it appears to the division staff that a settlement or resolution of the complaint may be possible without the necessity for a hearing, the division staff will attempt to effect a settlement or resolution of the complaint.

§215.206. Hearings.

Complaints which satisfy the jurisdictional requirements of the Occupations Code, §2301.204 and §§2301.601 - 2301.613, will be set for hearing and notification of the date, time, and place of the hearing will be given to all parties by certified mail.

(1) Where possible, and subject to the availability of division personnel and funds, hearings will be held in the city where the complainant resides or at a location reasonably convenient to the complainant.

(2) Hearings will be scheduled at the earliest date possible, provided that ten days prior notice, or as otherwise provided by law, must be given to all parties.

(3) Hearings will be conducted by division staff hearing officers or by independent hearing officers designated by the Board.

(4) Hearings will be informal, it being the intent of this section to provide a procedure and forum which does not necessitate the services of attorneys and which does not involve strict legal formalities applicable to trials in county or district court.

(5) The parties have the right to be represented by attorneys at a hearing, although attorneys are not necessary. Any party who intends to be represented by an attorney at a hearing must notify the hearing officer, the division, and the other party at least five business days prior to the hearing and failure to do so will constitute grounds for postponement of the hearing if requested by the other party.

(6) The parties have the right to present their cases in full, including testimony from witnesses; documentary evidence such as repair orders, warranty documents, vehicle sales contract, etc., subject to the hearing officer's rulings.

(7) By agreement of the parties and with the approval of the hearing officer, the hearing may be conducted by written submissions only or by telephone.

(8) Except for hearings conducted by written submission only, each party will be subject to being questioned by the other party, within limits to be governed by the hearing officer.

(9) Except for hearings conducted by written submission only or by telephone, the complainant will be required to bring the vehicle in question to the hearing for the purpose of having the vehicle inspected and test driven, unless otherwise ordered by the hearing officer upon a showing of good cause as to why the complainant should not be required to bring the vehicle to the hearing.

(10) The division may have the vehicle in question inspected prior to the hearing by an expert, where the opinion of such expert will be of assistance to the hearing officer and the Board in arriving at a decision. Any such inspection shall be made upon prior notice to all parties who shall have the right to be present at such inspection, and copies of any findings or report resulting from such inspection will be provided to all parties prior to, or at, the hearing.

(11) Except for hearings conducted by written submission only, all hearings will be recorded on tape by the hearing officer. Copies of the tape recordings of a hearing will be provided to any party upon request and upon payment as provided by law.

(12) All hearings will be conducted expeditiously. However, if a hearing officer has not issued a decision within 150 days after the Occupations Code, §§2301.601 - 2301.613 complaint and filing-fee were received, division staff shall notify the parties by certified mail that complainant has a right to file a civil action in state district court to pursue rights under Occupations Code, §§2301.601 - 2301.613. The 150-day period shall be extended upon request of the complainant or if a delay in the proceeding is caused by the complainant. The notice will inform the complainant of the right to elect to continue the lemon law complaint through the division.

§215.207. Contested Cases: Decisions and Final Orders.

To expedite the resolution of cases filed under Occupations Code, Chapter 2301, Subchapter M, or §2301.204, the Board may conduct hearings and issue final orders for the enforcement of these sections, including the delegation of this duty to hearing officers or as otherwise provided by the Code. Review of the hearings officers' decisions and final orders shall be according to the procedures as follows, along with the provisions of Subchapter I of this chapter (relating to Practice and Procedure for Hearings Conducted by the State Office of Administrative Hearings) and rules promulgated by the State Office of Administrative Hearings contained in 1 TAC Chapter 155 (relating to Rules of Procedure):

(1) A hearing officer will prepare a written decision and final order as soon as possible but not later than 60 days after the hearing is closed, or as otherwise provided by law. The decision and order will include the hearing officer's findings of fact and conclusions of law.

(2) The decision and final order shall be sent to all parties of record by certified mail.

(3) The decision and order is final and binding on the parties, in the absence of a timely motion for rehearing, on the expiration of the period for filing a motion for rehearing.

(4) A party who disagrees with the decision and final order may file a motion for rehearing within 20 days from the date of the notification of the final order. A motion for rehearing must include all the specific reasons, exceptions, or grounds that are asserted by a party as the basis of the request for a rehearing. It shall recite, if applicable, the specific findings of fact, conclusions of law, or any other portions of the decision to which the party objects. Replies to a motion for rehearing must be filed with the Board within 30 days after the date of the notification of the final order. A party or attorney of record notified by mail is presumed to have been notified on the third day after the date on which the order was mailed.

(5) The Board must act on the motion within 45 days after the date of notification of the final order, or as otherwise provided by law, or it is overruled by operation of law. The Board may, by written order, extend the period for filing, replying to, and taking action on a motion for rehearing, not to exceed 90 days after the date of notification of the final order. In the event of an extension of time, the motion for rehearing is overruled by operation of law on the date fixed by the written order of extension, or in the absence of a fixed date, 90 days after the date of notification of the final order.

(6) If the Board grants a motion for rehearing, the parties will be notified by first class mail. A rehearing will be scheduled as promptly as possible. After rehearing, a final order shall be issued and any additional findings of fact or conclusions of law necessary to support the decision or order. The Board may also issue an order granting the relief requested in a motion for rehearing or replies thereto without the need for a rehearing. If a motion for rehearing and the relief requested is denied, an order so stating will be issued.

(7) A party who has exhausted all administrative remedies, and who is aggrieved by a final decision in a contested case from which appeal may be taken is entitled to judicial review pursuant to Occupations Code, §§2301.751 - 2301.756, under the substantial evidence rule. The petition shall be filed in a district court of Travis County or in the Court of Appeals for the Third Court of Appeals District within 30 days after the decision or order is final and appealable. A copy of the petition must be served on the Board and any other parties of record. After service of the petition and within the time permitted for filing an answer, the Board shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding. If the court orders new evidence to be presented to the Board, may modify the findings and decision or order by reason of the new evidence, and shall transmit the additional record to the court.

§215.208. Decisions.

Unless otherwise indicated, this section applies to decisions made pursuant to Occupations Code, Chapter 2301, Subchapter M. Decisions shall give effect to the presumptions provided in Occupations Code, §2301.605, where applicable.

(1) If it is found that the manufacturer, distributor, or converter is not able to conform the vehicle to an applicable express warranty by repairing or correcting a defect in the complainant's vehicle which creates a serious safety hazard or substantially impairs the use or market value of the vehicle after a reasonable number of attempts, and that the affirmative defenses provided under Occupations Code, §2301.606, are not applicable, the Board shall order the manufacturer, distributor, or converter to replace the vehicle with a comparable vehicle, or accept the return of the vehicle from the owner and refund to the owner the full purchase price of the vehicle, less a reasonable allowance for the owner's use of the vehicle.

(2) In any decision in favor of the complainant, the Board will accommodate the complainant's request with respect to replacement or repurchase of the vehicle, to the extent possible.

(3) Where a refund of the purchase price of a vehicle is ordered, the purchase price shall be the amount of the total purchase price of the vehicle, but shall not include the amount of any interest or finance charge or insurance premiums. The award to the vehicle owner shall include reimbursement for the amount of the lemon law complaint filing fee paid by or on behalf of the vehicle owner. The refund shall be made payable to the vehicle owner and the lienholder, if any, as their interests require.

(4) There is a rebuttable presumption that a motor vehicle has a useful life of 120,000 miles. Except in cases where the preponderance of the evidence shows that the vehicle has a longer or shorter expected useful life than 120,000 miles, the reasonable allowance for the owner's use of the vehicle shall be that amount obtained by adding subparagraphs (A) and (B) of this paragraph.

(A) the product obtained by multiplying the purchase price of the vehicle, as defined in paragraph (3) of this section, by a fraction having as its denominator 120,000 and having as its numerator the number of miles that the vehicle traveled from the time of delivery to the owner to the first report of the defect or condition forming the basis of the repurchase order; and

(B) 50 percent of the product obtained by multiplying the purchase price by a fraction having as its denominator 120,000 and having as its numerator the number of miles that the vehicle traveled after the first report of the defect or condition forming the basis of the repurchase order. The number of miles during the period covered in this paragraph shall be determined from the date of the first report of the defect or condition forming the basis of the repurchase order through the date of the hearing.

(5) There is a rebuttable presumption that the useful life of a towable recreational vehicle is 3,650 days (10 years). Except in cases where preponderance of the evidence shows that the vehicle has a longer or shorter expected useful life than 3,650 days (10 years), the reasonable allowance for the owner's use of the towable recreational vehicle shall be that amount obtained by adding subparagraphs (A) and (B) of this paragraph.

(A) The product obtained by multiplying the purchase price of the towable recreational vehicle, as defined in paragraph (3) of this section, by a fraction having as its denominator 3,650 days (10 years), except the denominator shall be 1,825 days (5 years), if the towable recreational vehicle is occupied on a full time basis, and having as its numerator the number of days from the time of delivery to the owner to the first report of the defect or condition forming the basis of the repurchase order.

(B) 50 percent of the product obtained by multiplying the purchase price by a fraction having as its denominator 3,650 days (10 years), except the denominator shall be 1,825 days (5 years), if the towable recreational vehicle is occupied on a full time basis, and having as its numerator the number of days of ownership after the first report of the defect or condition forming the basis of the repurchase order. The number of days during the period covered in this paragraph shall be determined from the date of the first report of the defect or condition forming the basis of the repurchase order through the date of the hearing.

(C) Any day or part of a day that the vehicle is out of service for repair will be deducted from the numerator in determining the reasonable allowance for use of a towable recreational vehicle in this paragraph.

(6) Except in cases involving unusual and extenuating circumstances, supported by a preponderance of the evidence, where refund of the purchase price of a leased vehicle is ordered, the purchase price shall be allocated and paid to the lessee and the lessor, respectively as follows.

(A) The lessee shall receive the total of:

(i) all lease payments previously paid by him to the lessor under the terms of the lease; and

(ii) all sums previously paid by him to the lessor in connection with the entering into the lease agreement, including, but not limited to, any capitalized cost reduction, down payment, trade-in, or similar cost, plus sales tax, license and registration fees, and other documentary fees, if applicable.

(B) The lessor shall receive the total of:

(i) the actual price paid by the lessor for the vehicle, including tax, title, license, and documentary fees, if paid by lessor, and as evidenced in a bill of sale, bank draft demand, tax collector's receipt, or similar instrument; plus

(ii) an additional 5 percent of such purchase price plus any amount or fee, if any, paid by lessor to secure the lease or interest in the lease;

(iii) provided, however, that a credit, reflecting all of the payments made by the lessee, shall be deducted from the actual purchase price which the manufacturer, converter, or distributor is required to pay the lessor, as specified in clauses (i) and (ii) of this subparagraph.

(C) When the Board orders a manufacturer, converter, or distributor to refund the purchase price in a lease vehicle transaction, the vehicle shall be returned to the manufacturer, converter, or distributor with clear title upon payment of the sums indicated in subparagraphs (A) and (B) of this paragraph. The lessor shall transfer title of the vehicle to the manufacturer, converter, or distributor, as necessary in order to effectuate the lessee's rights under this rule. In addition, the lease shall be terminated without any penalty to the lessee.

(D) Refunds shall be made to the lessee, lessor, and any lienholders as their interest may appear. The refund to the lessee under subparagraph (A) of this paragraph shall be reduced by a reasonable allowance for the lessee's use of the vehicle. A reasonable allowance for use shall be computed according to the formula in paragraph (4) or (5) of this section, using the amount in subparagraph (B)(i) of this paragraph as the applicable purchase price.

(7) In any award in favor of a complainant, the Board may require the dealer involved to reimburse the complainant, manufacturer, converter, or distributor, for the cost of any items or options added to the vehicle but only to the extent that one or more of such items or options contributed to the defect that served as the basis for the order or repurchase or replacement. In no event shall this paragraph be interpreted to mean that a manufacturer, converter, or distributor, will be required to repurchase a vehicle due to a defect or condition that was solely caused by a dealer add-on item or option.

(8) If it is found by the Board that a complainant's vehicle does not qualify for replacement or repurchase, then an order shall be entered dismissing the complaint insofar as relief under Occupations Code, §2301.604. However, an order may be entered in any proceeding, where appropriate, requiring repair work to be performed or other action taken to obtain compliance with the manufacturer's, converter's, or distributor's, warranty obligations.

(9) If the vehicle is substantially damaged or there is an adverse change in its condition, beyond ordinary wear and tear, from the date of the hearing to the date of repurchase, and the parties are unable to agree on an amount of an allowance for such damage or condition, either party shall have the right to request reconsideration by the Board of the repurchase price contained in the final order.

(10) The Board will issue a written order in each Occupations Code, Chapter 2301, Subchapter M or Occupations Code, §2301.204 case in which a hearing is held and a copy of the order will be sent to all parties.

§215.209. Incidental Expenses.

(a) When a refund of the purchase price of a vehicle is ordered, the complainant shall be reimbursed for certain incidental expenses in-

curred by the complainant from loss of use of the motor vehicle because of the defect or nonconformity which is the basis of the complaint. The expenses must be reasonable and verified through receipts or similar written documents. Reimbursable incidental expenses include but are not limited to the following costs:

(1) alternate transportation;

(2) towing;

(3) telephone calls or mail charges directly attributable to contacting the manufacturer, distributor, converter, or dealer regarding the vehicle;

(4) meals and lodging necessitated by the vehicle's failure during out-of-town trips;

(5) loss or damage to personal property;

(6) attorney fees if the complainant retains counsel after notification that the respondent is represented by counsel; and

(7) items or accessories added to the vehicle at or after purchase, less a reasonable allowance for use.

(b) Incidental expenses shall be included in the final repurchase price required to be paid by a manufacturer, converter, or distributor to a prevailing complainant or in the case of a vehicle replacement, shall be tendered to the complainant at the time of replacement.

(c) In regards to the cost of items or accessories presented under subsection (a)(7) of this section, the hearing officer shall consider the permanent nature, functionality, and value added by the items or accessories and whether the items or accessories are original equipment manufacturer parts (OEM) or non-OEM parts.

§215.210. Compliance with Order Granting Relief.

Compliance with the Board's order will be monitored by the Board.

(1) A complainant is not bound by a final decision and order and may either accept or reject the decision.

(2) If a complainant does not accept the final decision, the proceeding before the Board will be deemed concluded and the complaint file closed.

(3) If the complainant accepts the final decision, then the manufacturer, converter, or distributor and the dealer to the extent of the dealer's responsibility, if any, shall immediately take such action as is necessary to implement the final decision and order.

(4) If a manufacturer, converter, or distributor replaces or repurchases a vehicle pursuant to a Board order, reacquires a vehicle to settle a complaint filed under Occupations Code, Chapter 2301, Subchapter M or Occupations Code, §2301.204, or brings a vehicle into the state of Texas which has been reacquired to resolve a warranty claim in another jurisdiction, the manufacturer, converter, or distributor shall, prior to resale of such vehicle, re-title the vehicle in Texas and issue a disclosure statement on a form provided by or approved by the director. In addition, the manufacturer, converter, or distributor reacquiring the vehicle shall affix a disclosure label provided by or approved by the director on an approved location in or on the vehicle. Both the disclosure statement and the disclosure label shall accompany the vehicle through the first retail purchase. No person or entity holding a license or general distinguishing number issued by the division under the Codes shall remove or cause the removal of the disclosure label until delivery of the vehicle to the first retail purchaser. A manufacturer, converter, or distributor shall provide the Board in writing, the name, address, and telephone number of any transferee, regardless of residence, to whom the manufacturer, distributor, or converter, as the case may be, transfers the vehicle within 60 days of each transfer. The selling dealer shall return the completed disclosure statement to the division within 60 days of the retail sale of a reacquired vehicle. Any manufacturer, converter, or distributor or holder of a general distinguishing number who violates this section is liable for a civil penalty or other sanctions prescribed by the Code. In addition, the manufacturer, converter, or distributor must repair the defect or condition in the vehicle that resulted in the vehicle being reacquired and issue, at a minimum, a basic warranty (12 months/12,000 mile, whichever comes first), except for non-original equipment manufacturer items or accessories, on a form provided by or approved by the director, which warranty shall be provided to the first retail purchaser of the vehicle.

(5) In the event of any conflict between this rule and the terms contained in a cease and desist order, the terms of the cease and desist order shall prevail.

(6) The failure of any manufacturer, converter, distributor or dealer to comply with a decision and order of the Board within the time period prescribed in the order may subject the manufacturer, converter, or distributor, or dealer to formal action by the division and the assessment of civil penalties or other sanctions prescribed by Occupations Code, Chapter 2301, for the failure to comply with an order of 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.

Filed with the Office of the Secretary of State on November 5, 2009.

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Jennifer Soldano
Legal Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: December 20, 2009
For further information, please call: (512) 463-8683

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SUBCHAPTER H. ADVERTISING

43 TAC §§215.241 - 215.270

STATUTORY AUTHORITY

The new sections are proposed under Transportation Code, §1002.001, which provides the Texas Motor Vehicles Board with the authority to establish rules for the conduct of activities regulated by the department.

CROSS REFERENCE TO STATUTE

Occupations Code, Chapter 2301, and Transportation Code, Chapters 503 and 1000 - 1005.

§215.241. Objective.

The objective of this subchapter is to implement the intent of the legislature as declared in Occupations Code, Chapter 2301, by regulating the advertising of persons under the jurisdiction of Board by requiring truthful and accurate advertising practices for the benefit of the citizens of this state.

§215.242. General Prohibition.

A person advertising motor vehicles shall not use false, deceptive, unfair, or misleading advertising. In addition to a violation of a specific advertising rule, any other advertising or advertising practices found by the Board to be false, deceptive, or misleading, whether or not enu-

merated herein, shall be deemed violations of the Code, and shall also be considered violations of the general prohibition.

§215.243. Specific Rules.

The violation of an advertising rule shall be considered by the Board as a prima facie violation of Occupations Code, Chapter 2301.

§215.244. Definitions.

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

(1) Advertisement--An oral, written, graphic, or pictorial statement made in the course of soliciting business, including, without limitation, a statement or representation made in a newspaper, magazine, or other publication, or contained in a notice, sign, poster, display, circular, pamphlet, or letter, or on radio, the Internet, or via an on-line computer service, or on television. The term does not include an in-person oral communication by a dealer's employee with a prospective purchaser.

(2) Advertising provision--

(A) A provision of the Code relating to the regulation of advertising; or

(B) a rule relating to the regulation of advertising adopted pursuant to the authority of the Code.

(3) Bait advertisement--An alluring but insincere offer to sell or lease a product of which the primary purpose is to obtain leads to persons interested in buying or leasing merchandise of the type advertised and to switch consumers from buying or leasing the advertised product in order to sell or lease some other product at a higher price or on a basis more advantageous to the advertiser.

(4) Balloon payment--Any scheduled payment made as required by a consumer credit transaction that is more than twice as large as the average of all prior scheduled payments except the down payment.

(5) Buyers guide--A form as required by the Federal Trade Commission under 16 Code of Federal Regulations, Part 455. This form is to be completed and displayed on the side window of a vehicle that has been driven more than the limited use necessary in moving or road testing a new vehicle prior to delivery to a consumer.

(6) Clear and conspicuous--The statement, representation, or term being disclosed is of such size, color, contrast, and audibility and is presented so as to be readily noticed and understood. All language and terms, including abbreviations, shall be used in accordance with their common or ordinary usage and meaning.

(7) Code--Occupations Code, Chapter 2301.

(8) Dealership addendum--A form which is to be displayed on a window of a motor vehicle when the dealership installs special features, equipment, parts or accessories, or charges for services not already compensated by the manufacturer or distributor for work required to prepare a vehicle for delivery to a buyer. The addendum is to disclose:

(A) that it is supplemental;

(B) any added feature, service, equipment, part, or accessory charged and added by the dealership and the retail price therefore;

(C) any additional charge to the selling price such as additional dealership markup; and

(D) the total dealer selling price. The dealership addendum form shall not be deceptively similar in appearance to the manufacturer's label, which is required to be affixed by every manufacturer to the windshield or side window of each new motor vehicle under the Automobile Information Disclosure Act.

(9) Demonstrator--A new motor vehicle that is currently in the inventory of the automobile dealership and used or has been used primarily for test drives by customers and other dealership purposes and so designated by the dealership.

(10) Disclosure--Required information that is clear, conspicuous, and accurate.

(11) Factory executive/official vehicle--A new motor vehicle that has been used exclusively by an executive or official of the dealer's franchising manufacturer, distributor, or their subsidiaries.

(12) Internet--A system that connects computers or computer networks.

(13) Licensee--Any person required to obtain a license from the Motor Vehicle Division.

(14) Manufacturer's label--The label required by the Automobile Information Disclosure Act, 15 U.S.C. §§1231 - 1233, to be affixed by the manufacturer to the windshield or side window of each new automobile delivered to the dealer.

(15) On-line service--A network that connects computer users.

(16) Rebate or cash back--A sum of money refunded to a purchaser or for the benefit of the purchaser after full payment has been rendered. The purchaser may choose to reduce the amount of the purchase price by the sum of money or the purchaser may opt for the money to be returned to himself or for his benefit subsequent to payment in full.

(17) Subsequent violation--Conduct that is the same or substantially the same as conduct the Board has previously alleged to be a violation of an advertising provision.

§215.245. Availability of Vehicles.

(a) A licensee may advertise a specific vehicle or line make of vehicles for sale if:

(1) the specific vehicle or line is in the possession of the licensee at the time the advertisement is placed, or the vehicle may be obtained from the manufacturer or distributor or some other source, and this information is clearly and conspicuously disclosed in the advertisement; and

(2) the price advertisement sets forth the number of vehicles available at the time the advertisement is placed or a dealer can show he has available a reasonable expectable public demand based on prior experience. In addition, if an advertisement pertains to only one specific vehicle, then the advertisement must also disclose the vehicle's stock number or vehicle identification number.

(b) This section does not prohibit general advertising of vehicles by a manufacturer, dealer advertising association, or distributor and the inclusion of the names and addresses of the dealers selling such vehicles in the particular area.

(c) Motor vehicle dealers may advertise a specific used vehicle or vehicles for sale if:

(1) The specific used vehicle or vehicles is in the possession of the dealer at the time the advertisement is placed; and

(2) The title certificate to the used vehicle has been assigned to the dealer.

§215.246. Accuracy.

All advertised statements shall be accurate, clear, and conspicuous.

§215.247. Untrue Claims.

The following statements are prohibited.

(1) Statements such as "write your own deal," "name your own price," "name your own monthly payments," or statements with similar meaning.

(2) Statements such as "everybody financed," "no credit rejected," "we finance anyone," and other similar statements representing or implying that no prospective credit purchaser will be rejected because of his inability to qualify for credit.

(3) Statements representing that no other dealer grants greater allowances for trade-ins, however stated, unless the dealer can show such is the case.

(4) Statements representing that because of its large sales volume a dealer is able to purchase vehicles for less than another dealer selling the same make of vehicles, unless the dealer can show such is the case.

§215.248. Layout.

The layout, headlines, illustrations, or type size of a printed advertisement and the broadcast words or pictures of radio/TV advertisements shall not convey or permit an erroneous or misleading impression as to which vehicle or vehicles are offered for sale or lease at featured prices. No advertised offer, expression, or display of price, terms, down payment, trade-in allowance, cash difference, savings, or other such material terms shall be misleading and any necessary qualifications shall be clearly, conspicuously, and accurately set forth to prevent misunderstanding.

§215.249. Manufacturer's Suggested Retail Price.

The suggested retail price of a new motor vehicle when advertised by a manufacturer or distributor shall include all costs and charges for the vehicle advertised, except that destination and dealer preparation charges, and any registration, certificate of title, license fees, or an additional registration fee, if any, charged by a full service deputy as provided by Transportation Code, §502.114; any taxes; and any other fees or charges that are allowed or prescribed by law may be excluded from such price, provided that the advertisement clearly and conspicuously states that such costs and charges are excluded. However, with respect to advertisements placed with local media in Texas by a manufacturer or distributor which include the names of the local dealers for the vehicles advertised, if the price of a vehicle is stated in the advertisement, such price must include all costs and charges for the vehicle advertised, including destination and dealer preparation charges and may exclude only any registration, certificate of title, license fees, or an additional registration fee, if any, charged by a full service deputy as provided by Transportation Code, §502.114; any taxes; and any other fees or charges that are allowed or prescribed by law.

§215.250. Dealer Price Advertising.

(a) When featuring an advertised sale price of a new or used motor vehicle, the dealer must be willing to sell the vehicle for such advertised price to any retail buyer. The advertised sale price shall be the price before the addition or subtraction of any other negotiated items. The only charges that may be excluded from the advertised price are:

(1) any registration, certificate of title, license fees, or an additional registration fee, if any, charged by a full service deputy as provided by Transportation Code, §502.114;

(2) any taxes; and

(3) any other fees or charges that are allowed or prescribed by law.

(b) A qualification may not be used when advertising the price of a vehicle such as "with trade," "with acceptable trade," "with dealer-arranged financing," "rebate assigned to dealer," or "with down payment."

(c) If a price advertisement discloses a rebate cash back or discount savings claim, the price of the vehicle must be disclosed as well as the price of the vehicle after deducting the incentive.

(1) If an advertisement discloses a discount savings claim, this incentive must be disclosed as a deduction from the manufacturer's suggested retail price (MSRP). The following is an acceptable format for advertising a price with a discount savings claim.
Figure: 43 TAC §215.250(c)(1)

(2) If an advertisement discloses a rebate, this incentive must be disclosed as a deduction from the advertised price. The following is an acceptable format for advertising a price with a rebate.
Figure: 43 TAC §215.250(c)(2)

(3) If an advertisement discloses both a rebate and a discount savings claim, the incentives must be disclosed as a deduction from the MSRP. The following is an acceptable format for advertising a price with a rebate and a discount savings claim.
Figure: 43 TAC §215.250(c)(3)

(d) In the event that the manufacturer offers a discount on a package of options, then that discount should be disclosed above or prior to the MSRP with a total price of the vehicle before option discounts. The following is an acceptable format.
Figure: 43 TAC §215.250(d)

(e) If a rebate is only available to a selected portion of the public and not the public as a whole, the price should be disclosed as in subsection (c) of this section first and then the nature of the limitation and the amount of the limited rebate may be disclosed. The following is an acceptable format.
Figure: 43 TAC §215.250(e)

§215.251. Identification.

(a) When the price of a vehicle is advertised, the following must be disclosed:

(1) model year;

(2) make;

(3) model line and style or model designation; and

(4) whether the vehicle is a used, demonstrator, or a factory executive/official vehicle.

(b) Expressions such as "fully equipped," "factory equipped," "loaded," and other such terms shall not be used in any advertisement that contains the price of a vehicle unless the optional equipment of the vehicle is listed in the advertisement.

(c) An illustration of a motor vehicle used in an advertisement must be substantially the same as that of the motor vehicle advertised.

§215.252. Advertising at Cost or Invoice.

(a) The term "dealer's cost" or other reference to the cost of the vehicle shall not be used.

(b) The use of the term "invoice" or "invoice price" in advertising shall not be used.

§215.253. Trade-in Allowances.

No guaranteed trade-in amount or range of amounts shall be used in advertising.

§215.254. Used Vehicles.

A used vehicle shall not be advertised in any manner that creates the impression that it is new. A used vehicle shall be identified as either "used" or "pre-owned." Terms such as "program car," "special purchase," "factory repurchase," or other similar terms are not sufficient to designate a vehicle as used, and these vehicles must be identified as "used" or "pre-owned."

§215.255. Demonstrators, Factory, Executives/Official Vehicles.

If a demonstrator or factory executive/official vehicle is advertised, the advertisement must clearly and conspicuously identify the vehicle as a demonstrator or factory executive/official vehicle. A demonstrator or factory official vehicle may not be advertised or sold except by a dealer franchised and licensed to sell that line make of new motor vehicle.

§215.256. Free Offers.

No merchandise or enticement may be described as "free" if the vehicle can be purchased or leased for a lesser price without the merchandise or enticement or if the price of the vehicle has been increased to cover the cost or any part of the cost of the merchandise or enticement. The advertisement shall clearly and conspicuously disclose the conditions under which the "free" offer may be obtained.

§215.257. Authorized Dealer.

The term "authorized dealer" or a similar term shall not be used unless the advertising dealer holds both a franchise and a dealer license to sell those vehicles the dealer is holding itself out as "authorized" to sell.

§215.258. Manufacturer and Distributor Rebates.

It is unlawful for a manufacturer or distributor to advertise any offer of a rebate, interest or finance charge reduction, or other financial inducement or incentive, for the benefit of the purchaser of a vehicle if the selling dealer contributes in any manner to that program, unless the advertisement discloses that the dealer's contribution may affect the final negotiated price of the vehicle.

§215.259. Rebate and Financing Rate Advertising by Dealers.

(a) It is unlawful for a dealer to advertise an offer of a manufacturer's or distributor's rebate, interest or finance charge reduction, or other financial inducement or incentive if the dealer contributes to the program, unless such advertising discloses that the dealer's contribution may affect the final negotiated price of the vehicle.

(b) An advertisement containing an offer of an interest or finance charge incentive that is paid for or financed by the dealer rather than the manufacturer or distributor, shall disclose that the dealer pays for or finances the interest or finance charge rate reduction, the amount of the dealer's contribution in either a dollar or percentage amount, and that such arrangement may affect the final negotiated price of the vehicle.

(c) An offer to pay, promise to pay, or tender cash to a buyer of a motor vehicle as in a rebate or cash back program may not be advertised, unless it is offered and paid in part by the motor vehicle manufacturer or distributor directly to the retail purchaser or assignee of the retail purchaser and unless the advertisement sets forth the disclosures required by this rule.

§215.260. Lease Advertisements.

Vehicle lease advertisements shall clearly and conspicuously disclose that the advertisement is for the lease of a vehicle. Statements such as "alternative financing plan," "drive away for $ per month," or other terms or phrases that do not use the term "lease," do not constitute adequate disclosure of a lease. Lease advertisements shall not contain the phrase "no down payment" or words of similar import if any outlay of money is required to be paid by the customer to lease the vehicle. Lease terms that are not available to the general public shall not be included in advertisements directed at the general public, or all limitations and qualifications applicable to the lease terms advertised shall be clearly and conspicuously disclosed.

§215.261. Manufacturer Sales; Wholesale Prices.

A motor vehicle shall not be advertised for sale in any manner that creates the impression that it is being offered for sale by the manufacturer or distributor of the vehicle. An advertisement shall not contain terms such as "factory sale," "fleet prices," "wholesale prices," "factory approved," "factory sponsored," "manufacturer sale," use a manufacturer's name or abbreviation in any manner calculated or likely to create an impression that the vehicle is being offered for sale by the manufacturer or distributor, or use any other similar terms which indicate sales other than retail sales from the dealer.

§215.262. Savings Claims; Discounts.

(a) A savings claim or discount offer is prohibited except to advertise a new motor vehicle, and the advertisement must show the difference between the dealer's sale price and the manufacturer's, distributor's or converter's total suggested list or retail price.

(1) If a savings claim or discount offer includes only a dealer discount, the advertisement shall disclose that the discount is from the MSRP. The following is an acceptable format for advertising a dealer discount: "$2,000 discount off MSRP".

(2) A savings claim or discount offer that includes a manufacturer's customer rebate must disclose the amount of the rebate as well as the amount of the dealer's discount. The following is an acceptable format for advertising a savings claim with a rebate and a dealer discount: "$2,000 savings off MSRP ($1,500 dealer discount and $500 rebate.)"

(3) If a savings claim discloses a manufacturer's option package discount, then that discount must be disclosed prior to the discount off MSRP. The savings claim shall be advertised as a total savings. The following is an acceptable format for advertising a total savings claim: "Total Savings $3,000 ($1,000 option package discount, $1,500 dealer discount off MSRP, and $500 rebate.)"

(b) The featured savings claim or discount offer for a new motor vehicle, when advertised, must be the savings claim or discount which is available to any and all members of the buying public.

(c) If an option that is added by a dealer is not a factory-available option, a savings claim may not be advertised on that vehicle. If a dealer has added an option obtained from the manufacturer or distributor of the motor vehicle and disclosed the option and its factory suggested retail price on a dealership addendum, the dealer may advertise a savings claim on that vehicle as long as the option is listed, and the difference is shown between the dealer's sale price and the factory suggested retail price of the vehicle including the factory available option.

(d) Statements such as "up to," "as much as," "from," shall not be used in connection with savings or discount claims.

(e) No person may advertise a savings claim or discount offer on used motor vehicles.

§215.263. Sales Payment Disclosures.

An advertisement that contains the amount of a down payment, in either a percentage or dollar amount; the amount of any payment, in either a percentage or dollar amount; the number of payments; the period of repayment; or the amount of any finance charge, must include the following:

(1) the amount or percentage of the down payment;

(2) the terms of repayment (from which the number of months to make repayment and the amount per month can be determined) including any balloon payment;

(3) the annual percentage rate or APR; and

(4) the amount of annual percentage rate, if increased, after consummation of the credit transaction.

§215.264. Payment Disclosure - Lease.

(a) An advertisement that promotes a consumer lease and contains the amount of any payment; or a statement of any capitalized cost reduction or other payment or that no payment is required prior to or at consummation or by delivery, if delivery occurs after consummation, must clearly and conspicuously include the following:

(1) that the transaction advertised is a lease;

(2) the total amount due prior to or at consummation or by delivery, if delivery occurs after consummation;

(3) the number, amounts, and due dates or periods of scheduled payments under the lease;

(4) a statement of whether or not a security deposit is required; and

(5) a statement that an extra charge may be imposed at the end of the lease term where the lessee's liability, if any, is based on the difference between the residual value of the leased property and its realized value at the end of the lease term.

(b) Except for a periodic payment, a reference to a charge as described in subsection (a)(2) of this section, i.e., to components of the total due at lease signing or delivery, cannot be more prominently advertised than the disclosure of the total amount due at lease signing or delivery.

(c) If a percentage rate is advertised, that rate shall not be more prominent than any of the following disclosures stated in the advertisement, with the exception of paragraph (19) of this subsection, the notice required to accompany the rate.

(1) Description of payments.

(2) Amount due at lease signing or delivery.

(3) Payment schedule and total amount of periodic payments.

(4) Other itemized charges that are not included in the periodic payment. These charges include the amount of any liability that lease imposes upon the lessee at the end of the lease term.

(5) Total of payments.

(6) Payment calculation:

(A) Gross capitalized cost.

(B) Capitalized cost reduction.

(C) Adjusted capitalized cost.

(D) Residual value.

(E) Depreciation and any amortized amounts.

(F) Rent charge.

(G) Total of base periodic payments.

(H) Lease term.

(I) Base periodic payment.

(J) Itemization of other charges that are a part of the periodic payment.

(K) Total periodic payment.

(7) Early termination conditions and disclosure of charges.

(8) Maintenance responsibilities.

(9) Purchase option.

(10) Statement referencing nonsegregated disclosures.

(11) Liability between residual and realized values.

(12) Right of appraisal.

(13) Liability at the end of the lease term based on residual value.

(14) Fees and taxes.

(15) Insurance.

(16) Warranties or guarantees.

(17) Penalties and other charges for delinquency.

(18) Security interest.

(19) Limitations on rate information.

(d) If a lessor provides a percentage rate in an advertisement, a notice stating that "this percentage may not measure the overall cost of financing this lease" shall accompany the rate disclosure. The lessor shall not use the term "annual percentage rate," "annual lease rate," or any equivalent term.

(e) A multi-page advertisement that provides a table or schedule of the required disclosures is considered a single advertisement if, for lease terms that appear without all of the required disclosures, the advertisement refers to the page or pages on which the table or schedule appears.

(f) A merchandise tag stating any item listed in subsection (a) of this section, must comply with the disclosures in subsection (a) of this section by referring to a sign or display prominently posted in the lessor's place of business that contains a table or schedule of the required disclosures.

(g) An advertisement made through television or radio stating any item listed in subsection (a) of this section, must state in the advertisement:

(1) that the transaction advertised is a lease;

(2) the total amount due prior to or at consummation or by delivery, if delivery occurs after consummation;

(3) the number, amounts, and due dates or periods of scheduled payments under the lease; and

(4) Either:

(A) a toll-free telephone number along with a reference that such number may be used by consumers to obtain the information in subsection (a) of this section. The toll-free telephone number shall be available for no fewer than ten days, beginning on the date of the broadcast and the lessor shall provide the information in subsection (a) of this section orally or in writing upon request; or

(B) direct the consumer to a written advertisement in a publication of general circulation in the community served by the media station, including the name and the date of the publication, with a statement that the required disclosures in subsection (a) of this section are included in the advertisement. The written advertisement shall be

published beginning at least three days before and ending at least 10 days after the broadcast.

§215.265. Bait Advertisement.

"Bait" advertisement shall not be used by any person.

§215.266. Lowest Price Claims.

(a) Representing a lowest price claim, best price claim, best deal claim, or other similar superlative claims shall not be used in advertising.

(b) If a dealer advertises a "meet or beat" guarantee, then the advertisement must clearly and conspicuously disclose the conditions and requirements necessary in order for a person to receive any advertised cash amount.

§215.267. Fleet Prices.

Terms such as "fleet prices" or "fleet sales" or other terms implying that retail individual customers will be afforded the same price and/or discount as multi purchase commercial businesses shall not be used in advertising.

§215.268. Bankruptcy/Liquidation Sale.

No licensee may willingly misrepresent the ownership of a business for the purpose of holding a liquidation sale, auction sale, or other sale which represents that the business is going out of business. A person who advertises a liquidation sale, auction sale, or going out of business sale shall state the correct name and permanent address of the owner of the business in the advertisement. A person may not conduct a sale advertised with the phrase "going out of business," "closing out," "shutting doors forever," or "bankruptcy sale," "foreclosure," or "bankruptcy," or similar phrases or words indicating that an enterprise is ceasing business unless the business is closing its operations and follows the procedures required by the Business and Commerce Code, Chapter 17, Subchapter F.

§215.269. Finding of Violation.

No person shall be held to be in violation of the rules, including the general prohibition, except upon a finding thereof made by the Board after notice and hearing as provided in Occupations Code, Chapter 2301.

§215.270. Enforcement.

(a) The division may file a complaint against a licensee alleging a violation of an advertising provision pursuant to Occupations Code, §2301.203, only if the division can show:

(1) that the licensee who allegedly violated an advertising provision has received from the division a notice of an opportunity to cure the violation by certified mail, return receipt requested, in compliance with subsection (b) of this section relating to effectiveness of notice; and

(2) that the licensee committed a subsequent violation of the same advertising provision within the period beginning 15 days and ending 12 months after the licensee has received the notice required by paragraph (1) of this subsection.

(b) An effective notice issued under subsection (a)(1) of this section must:

(1) state that the division has reason to believe that the licensee violated an advertising provision and identify the provision;

(2) set forth the facts upon which the division bases its allegation of a violation; and

(3) state that if the licensee commits a subsequent violation of the same advertising provision within the time set forth in subsection (a)(2) of this section, the division will formally file a complaint.

(c) As a part of the cure procedure, the Board may require a licensee, who allegedly violated an advertising provision, to publish a retraction notice to effect an adequate cure of the alleged violation. An adequate retraction notice must:

(1) appear in a newspaper of general circulation in the area in which the alleged violation occurred;

(2) appear in that portion of the newspaper, if any, devoted to motor vehicle advertising;

(3) identify the date and the medium of publication, print, electronic or other, in which the advertising alleged to be a violation appeared; and

(4) identify the alleged violation of the advertising provision and contain a statement of correction.

(d) Performance of a cure is made solely for the purpose of settling an allegation and is not an admission of a violation of these rules, the Code, or other law.

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 November 5, 2009.

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Jennifer Soldano
Legal Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 463-8683

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SUBCHAPTER I. PRACTICE AND PROCEDURE FOR HEARINGS CONDUCTED BY THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

43 TAC §§215.301 - 215.317

STATUTORY AUTHORITY

The new sections are proposed under Transportation Code, §1002.001, which provides the Texas Motor Vehicles Board with the authority to establish rules for the conduct of activities regulated by the department.

CROSS REFERENCE TO STATUTE

Occupations Code, Chapter 2301, and Transportation Code, Chapters 503 and 1000 - 1005.

§215.301. Scope and Purpose.

(a) Occupations Code, §2301.704 requires contested cases under Occupations Code, Chapter 2301 or under Board rules to be conducted by an administrative law judge (ALJ) of the State Office of Administrative Hearings (SOAH). In accordance with Government Code, §2001.058, this subchapter provides the rules for hearings conducted by an ALJ on matters referred to SOAH by the Board.

(b) Unless otherwise provided by statute or by this chapter, this subchapter governs practice and procedure relating to contested matters filed with the Board on or after September 1, 2007. Except as otherwise provided in this chapter or by other law, uncontested matters

and contested matters filed with the Board prior to September 1, 2007 are governed by Subchapters A - H of this chapter.

§215.302. Conformity with Statutory Requirements.

In the event of a conflict between Occupations Code, Chapter 2301 and Transportation Code, Chapter 503, the definition or procedure referenced in Occupations Code, Chapter 2301 shall control.

§215.303. Application of Board and SOAH Rules.

(a) Upon referral by the Board of a matter to SOAH, the rules contained in 1 TAC Chapter 155 (relating to Rules of Procedure) and the provisions of this subchapter, to the extent they are not in conflict with 1 TAC Chapter 155, govern the processing of the matter until the ALJ disposes of the matter.

(b) The ALJ shall consider the rules and policies applicable to the Board in the hearing and preparation of the proposal for decision.

§215.304. Notice of Alleged Violation.

(a) If, after investigation of a complaint filed under §215.27 of this chapter (relating to Complaints), it is determined that a violation has occurred, the department may issue to the subject of the investigation a written notice of alleged violation.

(b) The notice of alleged violation must:

(1) identify each alleged violation;

(2) cite the applicable law;

(3) inform the subject of the investigation of:

(A) the possible sanctions that may result from the alleged violations;

(B) the possibility of a default if the subject does not respond to the notice of alleged violation; and

(C) the right to a hearing; and

(4) inform the subject of the investigation that the subject may:

(A) respond to the notice of alleged violation; and

(B) informally settle the matter without a notice of hearing and hearing.

(c) The subject of the investigation may respond in writing to the notice of alleged violation before the 30th day after the date of receipt of the notice. For purposes of this subsection, a notice is considered received on the fifth day after the date the notice is sent.

(d) The department may not impose sanctions based on the notice of alleged violation unless the subject of the investigation elects to informally settle the matter without a notice of hearing and a hearing.

(e) The department must file a notice of hearing under 1 TAC §155.401 (relating to Notice of Hearing) to pursue sanctions against the subject of the investigation who does not elect to informally settle the matter.

§215.305. Filing of Complaints, Protests, and Petitions.

All complaints, protests, and petitions required or allowed to be filed under the codes or this chapter, must be filed with the division at its offices in person, by mail, or by electronic document transfer at a destination designated for receipt of those documents.

§215.306. Referral to SOAH.

Matters shall be referred to SOAH upon determination that a hearing is appropriate under Occupations Code, Chapter 2301, Subchapter O; Transportation Code, Chapter 503; or this chapter, including matters relating to:

(1) an enforcement complaint on the division's own initiative;

(2) a notice of protest, that has been timely filed in accordance with §215.106 of this chapter (relating to Time for Filing Protest);

(3) a complaint under Occupations Code, §2301.204 or Chapter 2301, Subchapter M, that satisfies the jurisdictional requirements of the applicable provisions;

(4) a protest under Occupations Code, §2301.360 or a complaint or protest under Occupations Code, Chapter 2301, Subchapter I or Subchapter J;

(5) issuance of a cease and desist order, whether the order is issued with or without prior notice at the time the order takes effect; or

(6) any other matter meeting the requirements for a hearing under Occupations Code, §2301.703.

§215.307. Notice of Hearing.

(a) The requirements for a notice of hearing are set out in Occupations Code, §2301.705, Government Code, §2001.052, and 1 TAC §155.401 (relating to Notice of Hearing), as applicable.

(b) For service of parties outside of the United States, in addition to service under Occupations Code, §2301.265, the Board may serve notice of hearing by any method allowed by Texas Rules of Civil Procedure Rule 108a(1), or that provides for confirmation of delivery to the party.

§215.308. Reply to Notice of Hearing and Default Proceedings.

(a) On or before the 20th day after a notice of hearing has been served on a party, the party may file a written reply or pleading responding to all allegations. The written reply or responsive pleading must be filed with SOAH in accordance with 1 TAC §155.101 (relating to Filing Documents), and must identify the SOAH docket number as reflected on the notice of hearing.

(b) Any party filing a reply or responsive pleading shall provide service of copies of the reply or pleadings to other parties in compliance with 1 TAC §155.103 (relating to Service of Documents on Parties). The presumed time of receipt of served documents is subject to 1 TAC §155.103.

(c) A party may amend or supplement its reply or responsive pleadings in accordance with 1 TAC §155.301 (relating to Required Form of Pleadings).

(d) If a party properly noticed under this chapter does not appear at the hearing, another party may request that the ALJ dismiss the matter and if dismissed the case can be presented to the Board for disposition based on the default pursuant to 1 TAC §155.501 (relating to Default Proceedings). The Board may enter a final order with findings that the allegations in the petition are deemed admitted and granting relief in accordance with applicable law. No later than 10 days after the hearing date, if a final order has not been issued, a party may file a motion with the Board to set aside a default and reopen the record. The Board, for good cause shown, may grant the motion, set aside the default, and refer the case back to SOAH for further proceedings.

§215.309. Recording and Transcriptions of Hearing Cost.

(a) Hearings in a contested case proceeding will be transcribed by a court reporter or recorded electronically at the discretion of the ALJ under 1 TAC §155.423 (relating to Making a Record of the Proceeding).

(b) In a contested case in which the proceeding is transcribed by a court reporter, the costs for transcribing the proceeding and for

preparation of an original transcript of the record for the Board will be assessed equally among all parties to the proceeding, unless ordered otherwise by the Board.

(c) On the written request by a party to a case, written transcripts from the recording of all or part of the proceedings shall be prepared for the requester and for the Board. The cost of the transcripts shall be paid by the requesting party. This section does not preclude the parties from agreeing to share the costs of preparing a transcript.

(d) Copies of recordings of a hearing will be provided to any party upon written request and payment of the cost of the tapes.

(e) If a final decision by the Board is appealed to the court and if the Board is required to transmit to the court all or a part of the original record or a certified copy of the record, the appealing party shall pay the costs of preparation of the record unless those costs are waived by the Board.

§215.310. Issuance of Proposals for Decision, Recommendations, and Orders.

(a) All recommendations or proposals for decision prepared by the ALJ will be submitted to the Board and copies furnished to the parties.

(b) All decisions and orders issued by the Board will be furnished to the parties and the ALJ.

§215.311. Amicus Briefs.

(a) Any interested person wishing to file an amicus brief for consideration by the Board regarding a contested case must file the brief not later than the deadline for exceptions under 1 TAC §155.301 (relating to Required Form of Pleadings). A party may file one written response to an amicus brief no later than the deadline for replies to exceptions under 1 TAC §155.301.

(b) Amicus briefs and responses must be filed with the Board, the ALJ, and all parties to the proceeding.

(c) Any amicus brief, or response to that brief, not filed with the Board and with SOAH within the period prescribed by this section will not be considered by the Board, unless good cause is shown why this deadline should be waived or extended.

(d) The ALJ may amend the proposal for decision in response to any amicus brief or response.

§215.312. Discovery.

(a) At the written request of a party, the Board will issue a written commission directed to officers authorized by statute to take a deposition of a witness.

(b) At the written request of a party, the Board will issue a subpoena for the production of documents. The written request must identify the documents with as much detail as possible and must include a statement of the documents' relevance to the issues in the case.

(c) At the written request of a party, the Board will issue a subpoena for the attendance of a witness at a hearing in a contested case. The subpoena may be directed to any person within the department's jurisdiction, without regard to the distance between the location of the witness and the location of the hearing.

(d) If a dispute arises concerning the validity or necessity of a subpoena or commission to take deposition, the dispute will be presented to the ALJ for hearing and ruling.

§215.313. Official Notice of Board Records.

Documents or information in the licensing files of the Board may be officially noticed and may be admitted and considered by the ALJ, as described in Government Code, Chapter 2001.

§215.314. Cease and Desist Orders.

(a) Whenever it appears to the Board that a person is violating any provision of Occupations Code, Chapter 2301, Transportation Code, Chapter 503, or this chapter, the Board may enter an order requiring the person to cease and desist from the violation.

(b) If it appears from specific facts shown by affidavit or by verified complaint that one or more of the conditions enumerated in Occupations Code, §2301.803(b) will occur before notice can be served and a hearing held, the order may be issued without notice, otherwise it must be issued subject to a notice of hearing to determine the validity of the order.

(c) A cease and desist order issued without notice must include:

(1) the date and hour of issuance;

(2) a statement of which of the conditions enumerated in Occupations Code, §2301.802(b) will occur before notice can be served and a hearing held; and

(3) a notice of hearing for the earliest date possible to determine the validity of the order and to allow the person against whom the order is issued to show good cause why the order should not remain in effect during the pendency of the proceedings.

(d) A cease and desist order issued with or without notice must:

(1) set out the reasons for its issuance; and

(2) describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained.

(e) A cease and desist order shall not be issued unless the person requesting the order presents a petition or complaint to the Board verified by affidavit containing a plain and intelligible statement of the grounds for relief.

(f) A cease and desist order issued without notice expires as provided in the order, but shall not exceed 20 days.

(g) A cease and desist order may be extended for a period equal to the period granted in the original order, if prior to the expiration of the previous order, good cause is shown for the extension or the party against whom the order is directed consents to the extension. No more than one extension may be granted unless subsequent extensions are unopposed.

(h) The person against whom a cease and desist order was issued without notice may request that the scheduled hearing be held earlier than the date set in the order.

(i) Not later than three working days after the hearing the ALJ shall prepare and submit to the Board a written recommendation, including a reasoned justification and proposed order, as to whether the cease and desist order should remain in place during the pendency of the proceeding.

(j) An appeal of the interlocutory decision must be made to the Board before a person may seek judicial review. An interlocutory decision is sufficient for a complaining party to seek judicial review of the matter.

(k) Upon appeal of an order issued under this section to the district court, as provided in the code, the order may be stayed by the Board upon a showing of good cause by a party of interest.

§215.315. Statutory Stay.

(a) In accordance with Occupations Code, §2301.803(c), a person affected by a statutory stay imposed by Occupations Code,

Chapter 2301 may request a hearing to modify, vacate, or clarify the extent and application of the statutory stay.

(b) After a hearing on a motion to modify, vacate, or clarify a statutory stay, the ALJ shall expeditiously prepare and submit to the Board a written recommendation, including a reasoned justification and proposed order, as to whether the statutory stay should be modified, vacated, or clarified.

§215.316. Informal Disposition.

(a) Notwithstanding any other provision in this subchapter, at any time during the adjudication process, the Board may informally dispose of a contested matter by stipulation, agreed settlement, or consent order.

(b) If the parties have settled or otherwise determined that a contested case proceeding is not required, the party who brought the protest, complaint, or petition shall file a motion to dismiss the proceeding from SOAH's docket and present a proposed agreed order or dismissal order to the Board for consideration.

(c) Agreed orders must contain proposed findings of fact and conclusions of law that are signed by all the parties or their designated representatives.

(d) Upon receipt of the agreed order, the Board may:

(1) adopt the settlement agreement and issue a final order;

(2) reject the settlement agreement and remand the contested case for a hearing before SOAH; or

(3) take other action that the Board finds just.

§215.317. Motion for Rehearing.

Motions for rehearing and replies must be filed with the Board. For complaints filed under Occupations Code, §2301.204 or Occupations Code, Chapter 2301, Subchapter M, motions for rehearing will be processed in accordance with §215.207 of this chapter (relating to Contested Cases: Decisions and Final Orders) and Government Code, Chapter 2001.

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 November 5, 2009.

TRD-200905079
Jennifer Soldano
Legal Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: December 20, 2009
For further information, please call: (512) 463-8683

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CHAPTER 218. MOTOR CARRIERS

The Texas Department of Motor Vehicles (department) proposes new Chapter 218, Motor Carriers, to include the following subchapters: Subchapter A, concerning General Provisions, §218.1 and §218.2; Subchapter B, Motor Carrier Registration, §§218.10 - 218.18; Subchapter C, Records and Inspections, §§218.30 - 218.33; Subchapter D, Motor Transportation, §§218.40 - 218.42; Subchapter E, Consumer Protections, §§218.50 - 218.65; and Subchapter F, Enforcement, §§218.70 - 218.77.

EXPLANATION OF PROPOSED NEW SECTIONS

New Chapter 218 is necessary to implement the provisions of House Bill 3097, 81st Legislature, Regular Session, 2009 which created the Department of Motor Vehicles (DMV) from the motor carrier, motor vehicle, vehicle titles and registration, and automobile burglary and theft prevention authority divisions of the Texas Department of Transportation. This chapter establishes the procedures regarding the regulation of motor carriers, leasing business, and motor transportation brokers.

The new sections are also necessary to implement provisions of House Bill 2985, 81st Legislature, Regular Session, 2009 which requires motor carriers to provide a valid identification number issued to the motor carrier by or under the authority of the Federal Motor Carrier Safety Administration (FMCSA) when applying for registration, and the department to promulgate rules to provide for the issuance to a motor carrier of that identification number. House Bill 2985 also authorizes the department to revoke or deny the registration of a for-hire motor carrier of passengers if the motor carrier is required to register with the FMCSA and the federal registration is denied, revoked, suspended, or otherwise terminated; and to issue a cease and desist order if the department determines that the action is necessary to prevent a violation of this chapter and protect the health and safety.

New Subchapter A, General Provisions, incorporates the same content as Title 43, Chapter 18, Subchapter A, except for §18.2, Definitions. New §218.2 removes definitions and portions of definitions that reference to the Single State Registration System which has been superseded by the Unified Carrier Registration Act of 2005 established under 49 U.S.C. §14504a.

New Subchapter B, Motor Carrier Registration, incorporates the contents of Title 43, Chapter 18, Subchapter B, except for the following sections: §218.11, Motor Carrier Registration; §218.13, Application for Motor Carrier Registration; §218.14, Expiration and Renewal of Commercial Motor Vehicle Registration; §218.15, Payment of Fees. The substance of 43 TAC §18.17, Single State Registration, is not moved to new Chapter 218.

New §218.11 adds the requirement that a motor carrier or household goods carrier may not operate without a valid United States Department of Transportation (USDOT) number issued by or under the authority of the Federal Motor Carrier Safety Administration.

New §218.12, Issuance of United States Department of Transportation Numbers, adds a section to establish a procedure for motor carriers to obtain USDOT numbers.

New §218.13, Application for Motor Carrier Registration, changes the information required on the application submitted by motor carriers to include the USDOT number and deletes application of fees as they relate to the Single State Registration System. The section adds that registration may be denied if the federal registration has been denied, revoked, suspended, or terminated.

New §218.14 deletes a reference to receipts required under the Single State Registration System.

New §218.15 deletes a reference to prohibiting payment by check for Single State Registration System fees.

New Subchapter C, Records and Inspections, incorporates the contents of 43 TAC, Chapter 18, Subchapter C, except for 43 TAC §18.32, Motor Carrier Records.

New §218.32 clarifies the location where records may be maintained and provides for the availability of the records.

New Subchapter D, Motor Transportation, and Subchapter E, Consumer Protection, incorporates the contents of 43 TAC, Chapter 18, Subchapters D and E.

New Subchapter F, Enforcement, incorporates the contents of 43, TAC, Chapter 18, Subchapter F, except for the following sections: §218.70, Purpose; and §218.72, Administrative Sanctions.

New §218.70 includes cease and desist orders as a purpose for the subchapter.

New §218.72, Administrative Sanctions, allows the department to suspend, revoke, or deny a registration of a for-hire motor carrier if federal registration is denied, revoked, suspended, or terminated.

New §218.77, Cease and Desist Order, adds the procedure that the department may use to issue a cease and desist order to a motor carrier operating in violation of the chapter, to prevent a violation of the chapter, or to protect the public health and safety of the public. The section describes how the order is delivered and that it is final unless a written request for a hearing is submitted to the department within ten days. The department will forward the request for a hearing to the state Office of Administrative Hearings. If the cease and desist order is violated, the department may impose a penalty, seek an injunction against violation of the order, seek collection of the administrative penalty, and any other remedy provided by law. The order will remain in effect until the respondent comes into compliance or is otherwise decided after department review.

FISCAL NOTE

Brian Ragland, Interim Chief Financial Officer, has determined that for the first five years the new chapter as proposed is in effect, there will be no fiscal implications for state and local governments as a result of enforcing or administering the new chapter as the chapter largely incorporates the subject matter of existing Title 43, Chapter 18, Motor Carriers, promulgated by the Texas Department of Transportation.

Jennifer Soldano, Legal Counsel, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the new chapter.

PUBLIC BENEFIT AND COST

Ms. Soldano has also determined that for each year of the first five years the new chapter is in effect, the public benefit anticipated as a result of enforcing or administering the new sections incorporated from Title 43, Chapter 18 is an efficient transition of the responsibilities of the Texas Department of Transportation to the new Texas Department of Motor Vehicles, and an increase in the protection of the health and safety of the traveling public.

Ms. Soldano has determined that there will be a fiscal impact for motor carriers related to 1) obtaining cease and desist orders in new §218.77; 2) the ability to suspend, revoke, or deny registration if federal registration is denied revoked, suspended, or terminated in new §218.13; and 3) new §218.72 for carriers that are not complying with existing rules and regulations.

House Bill 2985 authorizes the adoption of cease and desist orders to prevent violations and to protect the public health and safety. The legislation mandates that the department deny, revoke, suspend, or terminate registration to correspond with such federal actions.

The department estimates that no more than 20 cease and desist orders will be issued in the first year, based on historical data from previous cases that would have been considered for such orders. The department estimates that, during the second year and subsequent years, no more than 15 orders will be issued, because the older cases that qualify for the order will have been issued an order and the industry will have an understanding of the situations that would give rise to such an order.

During fiscal year 2009 the department averaged 42,000 registered motor carriers and 300,000 vehicles as listed on those certificates of registration. These numbers include motor carriers whose headquarters may be located outside Texas, but that register in Texas.

The fiscal impact to a motor carrier cannot be calculated because of the varied types of motor carrier transportation operations. Some motor carriers perform service, manufacturing and construction, or field functions. Others are exclusively devoted to trucking, either for hire or private in nature.

A motor carrier registered with the department, operating as a subsidiary of a parent company, may utilize its power units to provide service only, such as installation, maintenance, and repair of material goods unrelated to transportation. As a result, revenue generated from the operations of the power unit is incidental to the actual service performed. In this business structure, a cease and desist order of the motor carrier's operations could substantially affect its customers and general public, because the trucks are not available to provide necessary services.

The other motor carriers that operate for hire, utilizing basic flatbed trailers to haul construction material such as sheetrock and lumber, or boxed trailers hauling palletized cargo are not comparable to motor carriers operating with specialized equipment which may include multiple axles hauling oversize and/or overweight loads such as wind turbines to wind farms, and generators to power plants. Gravel, sand, and aggregate haulers may transport material to construction projects related to roads, highways, oilfield, and structural sites. Another type of motor carrier may use its power units to transport automobiles from manufacturers or auctions to automobile dealership locations. The revenue generated by the service a household goods carrier provides is primarily based on the transportation of a consumer's personal house items.

It is also common for motor carriers to have a primary business other than trucking which would reduce the fiscal impact.

SUBMITTAL OF COMMENTS

Written comments on the new chapter may be submitted to Brett Bray, Interim Director, Motor Carrier Division, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Building 1, Austin, Texas 78731. The deadline for receipt of comments is 5:00 p.m. on December 21, 2009.

SUBCHAPTER A. GENERAL PROVISIONS

43 TAC §218.1, §218.2

STATUTORY AUTHORITY

The new sections are proposed under Transportation Code, §1002.001, which provides the Texas Motor Vehicles Board with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 643, Subchapter B, and Subchapter F.

§218.1. Purpose.

Transportation Code, Chapters 643, 645, and 646 require the department to regulate motor carriers, leasing businesses, as defined in §218.2 of this subchapter (relating to Definitions), and motor transportation brokers in order to protect the welfare of the public and ensure fair treatment of consumers by household goods carriers. The sections under this chapter prescribe the policies and procedures for the regulation of motor carriers, leasing businesses, and transportation brokers by providing for insurance limits, the issuance of motor carrier credentials, the filing of performance bonds for transportation brokers, audit and record keeping functions, and enforcement.

§218.2. Definitions.

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

(1) Approved association--A group of household goods carriers, its agents, or both, that has an approved collective ratemaking agreement on file with the department under §218.64 of this chapter (relating to Rates).

(2) Binding proposal--A formal written offer stating the exact price for the transportation of specified household goods and any related services.

(3) Board--The Texas Motor Vehicle Board.

(4) Certificate of insurance--A certificate prescribed by and filed with the department in which an insurance carrier or surety company warrants that a motor carrier for whom the certificate is filed has the minimum coverage as required by §218.16 of this chapter (relating to Insurance Requirements).

(5) Certificate of registration--A certificate issued by the department to a motor carrier and containing a unique number.

(6) Certified scale--Any scale designed for weighing motor vehicles, including trailers or semitrailers not attached to a tractor, and certified by an authorized scale inspection and licensing authority. A certified scale may also be a platform-type or warehouse-type scale properly inspected and certified.

(7) Commercial motor vehicle--

(A) Includes:

(i) any motor vehicle or combination of vehicles with a gross weight, registered weight, or gross weight rating in excess of 26,000 pounds, that is designed or used for the transportation of cargo in furtherance of any commercial enterprise;

(ii) any vehicle, including buses, designed or used to transport more than 15 passengers, including the driver;

(iii) any vehicle used in the transportation of hazardous materials in a quantity requiring placarding under the regulations issued under the federal Hazardous Materials Transportation Act (49 U.S.C. §§5101 - 5128);

(iv) a commercial motor vehicle, as defined by 49 C.F.R. §390.5, owned or controlled by a person or entity that is domiciled in or a citizen of a country other than the United States; and

(v) any vehicle transporting household goods for compensation, regardless of the gross weight rating, registered weight or gross weight.

(B) Does not include:

(i) a farm vehicle with a gross weight, registered weight, and gross weight rating of less than 48,000 pounds;

(ii) cotton vehicles registered under Transportation Code, §504.505;

(iii) a vehicle registered with the Railroad Commission under Natural Resources Code, §113.131 and §116.072;

(vi) a vehicle operated by a governmental entity;

(vii) a motor vehicle exempt from registration by the Unified Carrier Registration Act of 2005; and

(viii) a tow truck, as defined by Occupations Code, §2308.002 and permitted under Occupations Code, Chapter 2308, Subchapter C.

(8) Commercial school bus--A motor vehicle owned by a motor carrier that is:

(A) registered under Transportation Code, Chapter 643, Subchapter B;

(B) operated exclusively within the boundaries of a municipality and used to transport preprimary, primary, or secondary school students on a route between the students' residences and a public, private, or parochial school or daycare facility;

(C) operated by a person who holds a driver's license or commercial driver's license of the appropriate class for the operation of a school bus;

(D) complies with Transportation Code, Chapter 548; and

(E) complies with Transportation Code, §521.022.

(9) Conspicuous--Written in a size, color, and contrast so as to be readily noticed and understood.

(10) Conversion--A change in an entity's organization that is implemented with a Certificate of Conversion issued by the Texas Secretary of State under Texas Business Corporation Act, Article 5.218.

(11) Department--Texas Department of Motor Vehicles (DMV).

(12) Director--The director of the Motor Carrier Division, Texas Department of Motor Vehicles.

(13) Division--The Motor Carrier Division.

(14) DOI--Texas Department of Insurance.

(15) Estimate--An informal oral calculation of the approximate price of transporting household goods.

(16) Farmer--A person who operates a farm or is directly involved in cultivating land or in raising crops or livestock that are owned by or are under the direct control of that person.

(17) Farm vehicle--Any vehicle or combination of vehicles controlled or operated by a farmer or rancher being used to transport agriculture products, farm machinery, and farm supplies to or from a farm or ranch.

(18) Gross weight rating--The maximum loaded weight of any combination of truck, tractor, and trailer equipment as specified by the manufacturer of the equipment. If the manufacturer's rating is unknown, the gross weight rating is the greater of:

(A) the actual weight of the equipment and its lading; or

(B) the maximum lawful weight of the equipment and its lading.

(19) Household goods--Personal property intended ultimately to be used in a dwelling when the transportation of that property is arranged and paid for by the householder or the householder's representative. The term does not include personal property to be used in a dwelling when the property is transported from a manufacturing, retail, or similar company to a dwelling if the transportation is arranged by a manufacturing, retail, or similar company.

(20) Household goods agent--A motor carrier who transports household goods on behalf of another motor carrier.

(21) Household goods carrier--A motor carrier who transports household goods for compensation or hire in furtherance of a commercial enterprise.

(22) Insurer--A person, including a surety, authorized in this state to write lines of insurance coverage required by Subchapter B of this chapter.

(23) Inventory--A list of the items in a household goods shipment and the condition of the items.

(24) Leasing business--A person that leases vehicles requiring registration under Subchapter B of this chapter to a motor carrier that must be registered.

(25) Manager--The manager of the department's Motor Carrier Division, Motor Carrier Operations Section.

(26) Mediation--A non-adversarial form of alternative dispute resolution in which an impartial person, the mediator, facilitates communication between two parties to promote reconciliation, settlement, or understanding.

(27) Motor Carrier or carrier--A person who controls, operates, or directs the operation of one or more vehicles that transport persons or cargo over a public highway in this state.

(28) Motor transportation broker--A person who sells, offers for sale, or negotiates for the transportation of cargo by a motor carrier operated by another person or a person who aids and abets another person in selling, offering for sale, or negotiating for the transportation of cargo by a motor carrier operated by another person.

(29) Moving services contract--A contract between a household goods carrier and shipper, such as a bill of lading, receipt, order for service, or work order, that sets out the terms of the services to be provided.

(30) Multiple user--An individual or business who has a contract with a household goods carrier and who used the carrier's services more than 50 times within the preceding 12 months.

(31) Not-to-exceed proposal--A formal written offer stating the maximum price a shipper can be required to pay for the transportation of specified household goods and any related services. The offer may also state the non-binding approximate price. Any offer based on hourly rates must state the maximum number of hours required for the transportation and related services unless there is an acknowledgment from the shipper that the number of hours is not necessary.

(32) Principal place of business--A single location that serves as a motor carrier's headquarters and where it maintains its operational records or can make them available.

(33) Public highway--Any publicly owned and maintained street, road, or highway in this state.

(34) Reasonable dispatch--The performance of transportation, other than transportation provided under guaranteed service dates, during the period of time agreed on by the carrier and the shipper and shown on the shipment documentation. This definition does not affect the availability to the carrier of the defense of force majeure.

(35) Replacement vehicle--A vehicle that takes the place of another vehicle that has been removed from service.

(36) Revocation--The withdrawal of registration and privileges by the department or a registration state.

(37) Shipper--The owner of household goods or the owner's representative.

(38) Short-term lease--A lease of 30 days or less.

(39) SOAH--The State Office of Administrative Hearings.

(40) Substitute vehicle--A vehicle that is leased from a leasing business and that is used as a temporary replacement for a vehicle that has been taken out of service for maintenance, repair, or any other reason causing the temporary unavailability of the permanent vehicle.

(41) Suspension--Temporary removal of privileges granted to a registrant by the department or a registration state.

(42) Unified carrier registration system--A motor vehicle registration system established under 49 U.S.C. §14504a or a successor federal registration program.

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

Filed with the Office of the Secretary of State on November 5, 2009.

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Jennifer Soldano
Legal Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 463-8683

SUBCHAPTER B. MOTOR CARRIER REGISTRATION

43 TAC §§218.10 - 218.18

STATUTORY AUTHORITY

The new sections are proposed under Transportation Code, §1002.001, which provides the Texas Motor Vehicles Board with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 643, Subchapter B, and Subchapter F.

§218.10. Purpose.

Transportation Code, Chapter 643, provides that a motor carrier may not operate a commercial motor vehicle or transport household goods on a for-hire basis on a road or highway of this state unless the carrier registers with the department or is exempt from registration under Transportation Code, §643.002. This subchapter prescribes the pro-

cedures by which a motor carrier, leasing business, or for-hire transporter of household goods may register, and sets out minimum insurance requirements and minimum workers' compensation or accident insurance requirements.

§218.11. Motor Carrier Registration.

(a) A motor carrier may not operate a commercial motor vehicle upon the public streets and highways of this state without first obtaining a certificate of registration issued by the department as prescribed in this subchapter and a valid United States Department of Transportation (USDOT) number issued by or under the authority of the Federal Motor Carrier Safety Administration (FMCSA).

(b) A household goods carrier may not operate upon the public streets and highways of this state without first obtaining a certificate of registration issued by the department as prescribed in this subchapter and a valid USDOT number issued by or under the authority of the FMCSA.

§218.12. Issuance of United States Department of Transportation Numbers.

(a) Every person or entity operating or intending to operate as a motor carrier in intrastate or interstate commerce shall obtain a valid USDOT number.

(b) USDOT numbers for intrastate and interstate operations can be obtained by filing a FMCSA MCS-150 form available from the FMCSA or by registering online at www.fmcsa.dot.gov.

(c) USDOT numbers for intrastate only operations can be obtained utilizing an application form prescribed by the department.

§218.13. Application for Motor Carrier Registration.

(a) Form of application. An application for motor carrier registration must be filed with the department's Motor Carrier Division and must be in the form prescribed by the director and must contain, at a minimum, the following information.

(1) USDOT number. A valid USDOT numbers issued by or under the authority of the FMCSA.

(2) Business or trade name. The applicant must designate the business or trade name of the motor carrier.

(3) Owner name. If the motor carrier is a sole proprietorship, the owner must indicate the name and social security number of the owner. A partnership must indicate the partners' names, and a corporation must indicate principal officers and titles.

(4) Principal place of business. A motor carrier must disclose the motor carrier's principal business address. If the mailing address is different from the principal business address, the mailing address must also be disclosed.

(5) Legal Agent.

(A) A Texas-domiciled motor carrier must provide the name and address of a legal agent for service of process if the agent is different from the motor carrier.

(B) A motor carrier domiciled outside Texas must provide the name and Texas address of the legal agent for service of process.

(C) A legal agent for service of process shall be a Texas resident, a domestic corporation, or a foreign corporation authorized to transact business in Texas with a Texas address for service of process.

(6) Description of vehicles. An application must include a motor carrier equipment report identifying each commercial motor vehicle that requires registration and that the carrier proposes to operate. Each commercial motor vehicle must be identified by its motor vehicle identification number, make, model year, and type of cargo and by the unit number assigned to the commercial motor vehicle by the motor carrier. Any subsequent registration of vehicles must be made under subsection (e) of this section.

(7) Type of motor carrier operations. An applicant must state if the applicant:

(A) proposes to transport passengers, household goods, or hazardous materials; or

(B) is domiciled in a foreign country.

(8) Insurance coverage. An applicant must indicate insurance coverage as required by §218.16 of this subchapter (relating to Insurance Requirements).

(9) Safety affidavit. Each motor carrier must complete, as part of the application, an affidavit stating that the motor carrier knows and will conduct operations in accordance with all federal and state safety regulations.

(10) Drug-testing certification. Each motor carrier must certify, as part of the application, that the motor carrier is in compliance with the drug-testing requirements of 49 C.F.R. Part 382.

(A) Drug-testing consortium participants. If the motor carrier belongs to a consortium, as defined by 49 C.F.R. Part 382, the applicant must provide the names of the persons operating the consortium.

(B) Report of positive result. A motor carrier required to register under this section shall report to the Department of Public Safety, in the manner required by the Department of Public Safety, a valid positive result on a controlled substances test performed as part of the carrier's drug testing program on an employee of the carrier who holds a commercial driver's license under Transportation Code, Chapter 522. The term "employee" as used in this subparagraph includes all employees as defined in 49 C.F.R. §40.3.

(11) Duration of registration. An applicant must indicate the duration of the desired registration. Registration may be for seven calendar days or for 90 days, one year, or two years. The duration of registration chosen by the applicant will be applied to all vehicles. Household goods carriers may not obtain seven day or 90 day certificates of registration.

(12) Additional requirements. The following fees and information must be submitted with all applications.

(A) An application must be accompanied by an application fee of:

(i) $100 for annual and biennial registrations;

(ii) $25 for 90 day registrations; or

(iii) $5 for seven day registrations.

(B) An application must be accompanied by a vehicle registration fee of:

(i) $10 for each vehicle that the motor carrier proposes to operate under a seven day, 90 day, or annual registration; or

(ii) $20 for each vehicle that the motor carrier proposes to operate under a biennial registration.

(C) An application must be accompanied by proof of insurance or financial responsibility and insurance filing fee as required by §218.16 of this subchapter.

(D) An application must be accompanied by any other information required by law.

(b) Incomplete applications. The director will return an application to the applicant if it is not accompanied by all fees and by proof of insurance or financial responsibility.

(c) Conditional acceptance of application. The director may conditionally accept an application if it is accompanied by all fees and by proof of insurance or financial responsibility, but is not accompanied by all required information. Conditional acceptance in no way constitutes approval of the application. The director will notify the applicant of any information necessary to complete the application. If the applicant does not supply all necessary information within 45 days from notification by the director, the application will be considered withdrawn and all fees will be retained.

(d) Disposition of application.

(1) Approval. An applicant meeting the requirements of this section and whose registration is approved will be issued the following documents.

(A) Certificate of registration. The department will issue a certificate of registration. The certificate of registration will contain the name and address of the motor carrier and a single registration number, regardless of the number of vehicles requiring registration that the carrier operates.

(B) Insurance cab card. The department will issue an original insurance cab card listing all vehicles to be operated under the carrier's certificate of registration. The insurance cab card shall be continuously maintained at the registrant's principal place of business. The insurance cab card will be valid for the same period as the motor carrier's certificate of registration and will contain information regarding each vehicle registered by the motor carrier.

(i) A copy of the page of the insurance cab card on which the vehicle is shown shall be maintained in each vehicle listed. The appropriate information concerning that vehicle shall be highlighted. The insurance cab card will serve as proof of insurance as long as the motor carrier has continuous insurance or financial responsibility on file with the department.

(ii) On demand by a department-certified inspector or any other authorized government personnel, the driver shall present the highlighted page of the insurance cab card that is maintained in the vehicle.

(iii) The carrier shall notify the department in writing if it discontinues use of a registered commercial motor vehicle before the expiration of its insurance cab card.

(iv) Any erasure, alteration, or unauthorized use of an insurance cab card renders it void.

(v) If an original insurance cab card is lost, stolen, destroyed, or mutilated, if it becomes illegible, or if it otherwise requires replacement, a new insurance cab card will be issued by the department at the request of the motor carrier.

(vi) Registration listings previously issued by the department will remain valid until expiration or renewal or until revoked or suspended by the department.

(2) Denial. The department may deny a registration if the applicant:

(A) had a registration revoked under §218.72 of this chapter (relating to Administrative Sanctions); or

(B) is a for-hire motor carrier of passengers required to register with the FMSCA and the federal registration is denied, revoked, suspended, or terminated.

(e) Additional and Replacement Vehicles. A motor carrier required to obtain a certificate of registration under this section shall not operate additional vehicles unless the carrier identifies the vehicles on a form prescribed by the director and pays applicable fees as described in this subsection.

(1) Additional vehicles. To add a vehicle, a motor carrier must pay a fee of $10 for each additional vehicle that the motor carrier proposes to operate under a seven day, 90 day, or annual registration. To add a vehicle during the first year of a biennial registration, a motor carrier must pay a fee of $20 for each vehicle. To add a vehicle during the second year of a biennial registration, a motor carrier must pay a fee of $10 for each vehicle.

(2) Replacement vehicles. No fee is required for a vehicle that is replacing a vehicle for which the fee was previously paid. Before the replacement vehicle is put into operation, the motor carrier shall notify the department, identify the vehicle being taken out of service, and identify the replacement vehicle on a form prescribed by the department. A motor carrier registered under seven day registration may not replace vehicles.

(f) Supplement to original application. A motor carrier required to register under this section shall submit a supplemental application under the following circumstances.

(1) Change of cargo. A registered motor carrier may not begin transporting household goods or hazardous materials unless the carrier submits a supplemental application to the department and shows the department evidence of insurance or financial responsibility in the amounts specified by §218.16 of this subchapter.

(2) Change of name. A motor carrier that changes its name shall file a supplemental application for registration no later than the effective date of the change. The motor carrier shall include evidence of insurance or financial responsibility in the new name and in the amounts specified by §218.16 of this subchapter. A motor carrier that is a corporation must have its name change approved by the Texas Secretary of State before filing a supplemental application. A motor carrier incorporated outside the state of Texas must complete the name change under the law of its state of incorporation before filing a supplemental application.

(3) Change of address or legal agent for service of process. A motor carrier shall file a supplemental application for any change of address or any change of its legal agent for service of process no later than the effective date of the change. The address most recently filed will be presumed conclusively to be the current address.

(4) Change in principal officers and titles. A motor carrier that is a corporation shall file a supplemental application for any change in the principal officers and titles no later than the effective date of the change.

(5) Conversion of corporate structure. A motor carrier that has successfully completed a corporate conversion involving a change in the name of the corporation shall file a supplemental application for registration and evidence of insurance or financial responsibility reflecting the new company name. The conversion must be approved by the Office of the Secretary of State before the supplemental application is filed.

(6) Change in drug-testing consortium status. A motor carrier that changes consortium status shall file a supplemental application that includes the names of the persons operating the consortium.

(7) Retaining a revoked or suspended certificate of registration number. A motor carrier may retain a prior certificate of registration number by:

(A) filing a supplemental application to re-register instead of filing an original application; and

(B) providing adequate evidence that the carrier has satisfactorily resolved the facts that gave rise to the suspension or revocation.

(g) Change of ownership. A motor carrier must file an original application for registration when there is a corporate merger or a change in the ownership of a sole proprietorship or of a partnership.

(h) Alternative vehicle registration for household goods agents. To avoid multiple registrations of a commercial motor vehicle, a household goods agent's vehicles may be registered under the motor carrier's certificate of registration under this subsection.

(1) The carrier must notify the department on a form approved by the director of its intent to register its agent's vehicles under this subsection.

(2) When a carrier registers vehicles under this subsection, the carrier's certificate will include all vehicles registered under its agent's certificates of registration. The carrier must register under its certificate of registration all vehicles operated on its behalf that do not appear on its agent's certificate of registration.

(3) The department may send the carrier a copy of any notification sent to the agent concerning circumstances that could lead to denial, suspension, or revocation of the agent's certificate.

(i) Substitute vehicles leased from leasing businesses. A registered motor carrier is not required to comply with the provisions of subsection (e) of this section for a substitute vehicle leased from a business registered under §218.18 of this subchapter (relating to Short-term Lease and Substitute Vehicles). A motor carrier is not required to carry proof of registration as described in subsection (d) of this section if a copy of the lease agreement for the originally leased vehicle is carried in the cab of the temporary replacement vehicle.

§218.14. Expiration and Renewal of Commercial Motor Vehicle Registration.

(a) Expiration and renewal dates.

(1) A motor carrier with annual or biennial registration will be assigned a date for the expiration and renewal of its motor carrier registration according to the last digit of the carrier's certificate of registration number, as outlined in the following chart:
Figure: 43 TAC §218.14(a)(1)

(2) 90 day certificates of registration are valid for 90 calendar days from the effective date.

(3) Seven day certificates of registration are valid for seven calendar days from the effective date.

(b) Registration renewal.

(1) Approximately 60 days before the expiration of registration, the department will mail or send electronically a renewal notice to each registered motor carrier with annual or biennial registration. The notice will be mailed to the carrier's last known address according to the division's records. Failure to receive the notice does not relieve the registrant of the responsibility to renew. A motor carrier must ensure that the department receives the renewal at least 15 days prior to the renewal date specified in subsection (a) of this section. A supplement to an application for motor carrier registration renewal must:

(A) supply any new information required under §218.13(f) of this subchapter (relating to Application for Motor Carrier Registration) if the information has not previously been supplied to the department; and

(B) include a $10 fee for each vehicle that the carrier operates under an annual certificate of registration and a $20 fee for each vehicle that the carrier operates under a biennial certificate of registration.

(2) Seven day and 90 day registrations may not be renewed.

(3) A motor carrier shall maintain continuous insurance or evidence of financial responsibility in an amount at least equal to the amount prescribed under §218.16 of this subchapter (relating to Insurance Requirements).

(4) The insurance cab card issued to a motor carrier is valid for the same period as the motor carrier's certificate of registration.

(5) To renew registration after it has expired, a motor carrier must identify its vehicles on a form prescribed by the director, pay all vehicle fees, and if current proof of insurance is not on file with the division, meet all insurance requirements.

(c) Interstate motor carrier operating in intrastate commerce.

(1) An interstate motor carrier registered under §218.17 of this subchapter (relating to Unified Carrier Registration System) is not required to renew a certificate of registration issued under §218.11 of this subchapter (relating to Motor Carrier Registration) except when the motor carrier is operating commercial motor vehicles as a

(A) charter bus carrier;

(B) for-hire household goods carrier; or

(C) recyclable materials or waste carrier.

(2) If a motor carrier that registered under §218.17 of this subchapter does not maintain continuous motor carrier registration under §218.11 of this subchapter, the motor carrier must file an application under §218.13 of this subchapter to operate on public streets and highways in this state.

§218.15. Payment of Fees.

(a) Except as provided in subsection (b) of this section, all fees provided for in this subchapter shall be paid to the department:

(1) with a valid credit card approved by the department and issued by a financial institution chartered by a state or the federal government, or a nationally recognized credit organization approved by the department (persons paying by credit card will pay a service charge of $1.00 per transaction);

(2) by electronic funds transfer;

(3) with a personal check, business check, cashier's check, or money order, payable to the Texas Department of Motor Vehicles;

(4) by cash in person at the department's Motor Carrier Division (cash payments are not the preferred form of payment); or

(5) with funds deposited in an escrow account established in compliance with subsection (b) of this section.

(b) An applicant may establish an escrow account with the department for the specific purpose of paying any fee that is related to the issuance of a motor carrier registration.

(1) An applicant that desires to establish an escrow account shall complete and sign an escrow account agreement, and shall return the completed and signed agreement to the department with a check in the amount of $305, which shall be deposited to the appropriate fund by the department in the State Treasury. In lieu of submitting a check for the initial deposit to an applicant's escrow account, the applicant may transfer funds to the department electronically. Five dollars per

deposit will be charged as an escrow account administrative fee which shall be deposited in the state highway fund.

(2) When the applicant's escrow account balance has been reduced to $150, the department will notify the holder of the escrow account with instructions to submit a cashier's check or money order, payable to the department in the minimum amount of $305, which shall be used to replenish the escrow account. In lieu of a cashier's check, the escrow account holder may replenish an escrow account by transferring funds to the department electronically.

(3) Upon receipt of a replenishment check or electronic funds transfer, the department will charge five dollars as an escrow account administrative fee, and will credit the remainder of the transmitted funds to the balance of the escrow account holder.

(4) An escrow account holder must submit a written request to the department to terminate the escrow account agreement. Any remaining balance will be returned to the escrow account holder.

§218.16. Insurance Requirements.

(a) Automobile liability insurance requirements. A motor carrier must file proof of commercial automobile liability insurance with the department on a form acceptable to the director for each vehicle required to be registered under this subchapter. The motor carrier must carry and maintain automobile liability insurance that is combined single limit liability for bodily injury to or death of an individual per occurrence, loss or damage to property (excluding cargo) per occurrence, or both. Extraneous information will not be considered acceptable, and the department may reject proof of commercial automobile liability insurance if it is provided in a format that includes information beyond what is required. Minimum insurance levels are indicated in the following table.

Figure: 43 TAC §218.16(a)

(b) Cargo insurance. Household goods carriers shall file and maintain with the department proof of financial responsibility.

(1) The minimum limits of financial responsibility for a household goods carrier for hire is $5,000 for loss or damage to a single shipper's cargo carried on any one motor vehicle.

(2) The minimum limits of financial responsibility for a household goods carrier for hire is $10,000 for aggregate loss or damage to multiple shipper cargo carried on any one motor vehicle. In cases in which multiple shippers sustain damage and the aggregate amount of cargo damage is greater than the cargo insurance in force, the insurance company shall prorate the benefits among the shippers in relationship to the damage incurred by each shipper.

(c) Workers' compensation or accidental insurance coverage.

(1) A motor carrier that is required to register under this subchapter and whose primary business is transportation for compensation or hire between two or more incorporated cities, towns, or villages shall provide workers' compensation for all its employees or accidental insurance coverage in the amounts prescribed in paragraph (2) of this subsection.

(2) Accidental insurance coverage required by paragraph (1) of this subsection shall be at least in the following amounts:

(A) $300,000 for medical expenses and coverage for at least 104 weeks;

(B) $100,000 for accidental death and dismemberment, including 70 percent of employee's pre-injury income for not less than 104 weeks when compensating for loss of income; and

(C) $500 for the maximum weekly benefit.

(d) Qualification of motor carrier as self-insured.

(1) General qualifications. A motor carrier may meet the insurance requirements of subsections (a) and (b) of this section by filing an application, in a form prescribed by the department, to qualify as a self-insured. The application must include a true and accurate statement of the motor carrier's financial condition and other evidence that establishes its ability to satisfy obligations for bodily injury and property damage liability without affecting the stability or permanency of its business. The department may accept United States Department of Transportation evidence of the motor carrier's qualifications as a self-insured.

(2) Adopted final orders. The department adopts all final orders of the Railroad Commission of Texas to the extent that they concern self-insurance and were in effect on August 31, 1995. Those final orders are continued in effect until changed by order of the department.

(3) Applicant guidelines. In addition to filing an application as prescribed by the department, an applicant for self-insured status must submit materials that will allow the department to determine the following information.

(A) Applicant's net worth. An applicant's net worth must be adequate in relation to the size of its operations and the extent of its request for self-insurance authority. The applicant must demonstrate that it can and will maintain an adequate net worth.

(B) Self-insurance program. An applicant must demonstrate that it has established and will maintain a sound insurance program that will protect the public against all claims involving motor vehicles to the same extent as the minimum security limits applicable under this section. In determining whether an applicant is maintaining a sound insurance program, the department will consider:

(i) reserves;

(ii) sinking funds;

(iii) third-party financial guarantees;

(iv) parent company or affiliate sureties;

(v) excess insurance coverage; and

(vi) other appropriate aspects of the applicant's program.

(C) Safety program. An applicant must submit evidence of substantial compliance with the Federal Motor Carrier Safety Regulations as adopted by the Texas Department of Public Safety and with Transportation Code, Chapter 644.

(4) Other securities or agreements. The department may accept an application for approval of a security or agreement if satisfied that the security or agreement offered will adequately protect the public.

(5) Periodic reports. An applicant shall file annual statements, semi-annual and quarterly reports, and any other reports required by the department reflecting the applicant's financial condition and the status of its self-insurance program while the motor carrier is self-insured.

(6) Duration of self-insured status. The department may approve an applicant as a self-insured for any specific time or for an indefinite time.

(7) Revocation of self-insured status. On receiving evidence that a self-insured motor carrier's financial condition has changed, that its safety program or record is inadequate, or that it is otherwise not in compliance with this subchapter, the department may

at any time require the self-insured to provide additional information. On 10 days notice from the department, the self-insured shall appear and demonstrate that it continues to have adequate financial resources to pay all claims involving motor vehicles for bodily injury and property damage liability. The self-insured shall also demonstrate that it remains in compliance with the requirements of this section and of any active self-insurance orders issued or adopted by the department. If an applicant fails to comply with this paragraph, its self-insured status may be revoked.

(8) Appeal. An applicant may appeal a denial or revocation of self-insurance status by filing a petition for an administrative hearing in accordance with §§206.61 et seq. of this title (relating to Scope and Purpose).

(e) Filing proof of insurance with the department.

(1) Forms.

(A) A motor carrier shall file and maintain proof of automobile liability insurance for all vehicles required to be registered under this subchapter at all times. This proof shall be filed on a form acceptable to the director.

(B) A household goods carrier shall file and maintain proof of cargo insurance for its cargo at all times. This proof shall be on a form acceptable to the director.

(2) Filing proof of insurance and financial responsibility. A motor carrier's insurance or surety company, bank, or other financial institution shall file and maintain proof of insurance or financial responsibility on a form acceptable to the director:

(A) at the time of the original application for motor carrier certificate of registration;

(B) on or before the cancellation date of the insurance coverage as described in subsection (f) of this section;

(C) when the motor carrier changes insurers;

(D) when the motor carrier asks to retain the certificate number of a revoked certificate of registration;

(E) when the motor carrier changes its name under §218.13(f)(2) of this subchapter (relating to Application for Motor Carrier Registration);

(F) when the motor carrier, under subsection (a) of this section, changes the classification of the cargo being transported; and

(G) when replacing another active insurance filing.

(3) Filing fee. Each certificate of insurance or proof of financial responsibility filed with the department for the coverage required under this section shall be accompanied by a nonrefundable filing fee of $100. This fee applies both when the carrier submits an original application and when the carrier submits a supplemental application when retaining a revoked certificate of registration number.

(4) Acceptable filings. The department will not accept an insurance policy or certificate of insurance unless it is issued by an insurance company licensed and authorized to do business in the state of Texas. It must be in a form prescribed or approved by the DOI and signed or countersigned by an authorized agent of the insurance company. The department will accept a certificate of insurance issued by a surplus lines insurer that meets the requirements of Insurance Code, §981.101, and rules adopted by the DOI under that chapter.

(f) Cancellation of insurance coverage. Except when replaced by another acceptable form of insurance coverage or proof of financial responsibility approved by the department, no insurance coverage shall be canceled or withdrawn until 30 days after notice has been given to the department by the insurance company in a form approved by the department. Nonetheless, proof of insurance coverage for a seven day or 90 day certificate of registration may be canceled by the insurance company without 30 days notice if the certificate of registration is expired, suspended, or revoked, and the insurance company provides a cancellation date on the proof of insurance coverage. The department will revoke a certificate of registration under §218.72 of this chapter (relating to Administrative Sanctions) for failure to maintain proof of current insurance.

(g) Replacement insurance filing. The department will consider a new insurance filing as the current record of financial responsibility required by this section if:

(1) the new insurance filing is received by the department; and

(2) a cancellation notice has not been received for previous insurance filings.

(h) Insolvency of insurance carrier. If the insurer of a motor carrier becomes insolvent or becomes involved in a receivership or other insolvency proceeding, the motor carrier must file an affidavit with the department. The affidavit must be executed by an owner, partner, or officer of the motor carrier and show that:

(1) no accidents have occurred and no claims have arisen during the insolvency of the insurance carrier; or

(2) all claims have been satisfied.

(i) Notifications. The department shall notify the Texas Department of Public Safety and other law enforcement agencies of each motor carrier whose certificate of registration has been revoked for failing to maintain liability insurance coverage.

§218.17. Unified Carrier Registration System.

(a) The State of Texas, through the department, shall participate in the federal motor carrier registration program under the Unified Carrier Registration system as defined in §218.2(42) of this chapter (relating to Definitions).

(b) An interstate carrier operating in Texas must register and comply with provisions of the Unified Carrier Registration System as required by 49 U.S.C. 14504(a).

§218.18. Short-term Lease and Substitute Vehicles.

(a) Registration. A short-term lease vehicle registered under this section is exempt from the registration requirements described in §218.13 of this subchapter (relating to Application for Motor Carrier Registration) while leased to a registered motor carrier.

(1) Application. A leasing business registering vehicles under this section shall file an application on a form prescribed by the director.

(2) Annual Report. The operation of a short-term lease vehicle shall be reported to the department on a form prescribed by the director not later than April 1 of each calendar year for the previous calendar year's operations. The report must identify the number of short-term lease vehicles that would otherwise be subject to the registration requirements of this subchapter.

(3) Fees. An annual registration fee of $10 per vehicle operated must be paid at the time the report is filed under paragraph (2) of this subsection.

(4) Cancellation, Expiration, and Revocation.

(A) A leasing business must make a written request for cancellation of registration.

(B) A leasing business registration expires on April 30 of each year unless the leasing business reports by April 1 the actual number of vehicles requiring registration operated in the previous calendar year.

(C) The department may suspend or revoke a leasing business registration under §218.72 of this chapter (relating to Administrative Sanctions).

(b) Proof of contingency liability insurance. A leasing business registering a vehicle under this section must file and maintain proof of liability insurance on a form prescribed by the director as required by §218.16 of this subchapter (relating to Insurance Requirements).

(1) Filings. A leasing business shall file proof of insurance at the time of its initial registration and whenever it changes insurance carriers in accordance with §218.16 of this subchapter.

(2) Filing fee. Each proof of insurance filing under this section shall be accompanied by a nonrefundable $100 filing fee.

(3) Cancellation of insurance coverage. Any cancellation of insurance filed under this section must comply with the requirements set out in §218.16 of this subchapter.

(c) Substitute vehicles. A registered motor carrier is not required to comply with the provisions of §218.13(e) of this subchapter for a vehicle that is leased from a leasing business and that is used as a temporary replacement for a vehicle that has been taken out of service for maintenance, repair, or any other reason causing the temporary unavailability of the permanent vehicle.

(d) Identification. A registered motor carrier is not required to carry proof of registration, as required by §218.13(d)(1)(B) of this subchapter, in a vehicle leased from a registered leasing business. A copy of the lease agreement or of the lease for the originally leased vehicle, in the case of a temporary replacement vehicle, must be carried in the cab of the vehicle.

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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Jennifer Soldano
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For further information, please call: (512) 463-8683

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SUBCHAPTER C. RECORDS AND INSPECTIONS

43 TAC §§218.30 - 218.33

STATUTORY AUTHORITY

The new sections are proposed under Transportation Code, §1002.001, which provides the Texas Motor Vehicles Board with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 643, Subchapter B, and Subchapter F.

§218.30. Purpose.

The purpose of this subchapter is to advise motor carriers registered under Subchapter B of this chapter (relating to Motor Carrier Registration) of the information and records they are required to maintain, where the records must be maintained, how long the records must be maintained, and department procedures for examining records and inspecting a motor carrier's premises.

§218.31. Investigations and Inspections of Motor Carrier Records.

(a) Certification of inspectors. In accordance with Transportation Code, Chapter 643, the executive director or designee will designate department employees as certified inspectors for the purpose of entering the premises of a motor carrier to copy or verify documents required by this section to be maintained by the motor carrier. The executive director or designee shall provide credentials to certified inspectors identifying them as department certified inspectors.

(b) Inspections.

(1) A motor carrier shall admit a certified inspector access to the carrier's premises to conduct inspections or investigations of alleged violations of this chapter, Transportation Code, Chapters 643 and 645. The motor carrier shall provide adequate work space with reasonable working conditions, and allow the certified inspector to copy and verify records and documents required to be maintained by the carrier under §218.32 of this subchapter (relating to Motor Carrier Records).

(2) The certified inspector may conduct inspections and investigations during normal business hours unless mutual arrangements have been made otherwise.

(3) The certified inspector will present his or her credentials and a written statement from the department to the motor carrier indicating the inspector's authority to inspect and investigate the motor carrier.

(c) Access. A motor carrier shall provide access to requested records and documents at:

(1) the motor carrier's principal place of business; or

(2) a location agreed to by the department and the motor carrier.

(d) Designation of meeting time. If the motor carrier's normal business hours do not provide the access necessary for the investigator to conduct the investigation and the parties cannot reach an agreement as to a time to meet to access the records, the department shall designate the time of the meeting by certified mail or facsimile.

§218.32. Motor Carrier Records.

(a) General records to be maintained. Every motor carrier shall prepare and maintain:

(1) operational logs, insurance certificates, documents to verify the carrier's operations, and proof of registration fee payments;

(2) complete and accurate records of services performed;

(3) all certificate of title documents, weight tickets, permits for oversize or overweight vehicles and loads, dispatch records, or any other document that would verify the operations of the vehicle to determine the actual weight, insurance coverage, size, and/or capacity of the vehicle; and

(4) the original certificate of registration and registration listing, if applicable.

(b) Additional records for household goods carriers. In order to verify compliance with Subchapters B and E of this chapter (relating to Motor Carrier Registration and Consumer Protection), every household goods carrier shall retain complete and accurate records maintained in accordance with reasonable accounting procedures of all services performed in intrastate commerce. Household goods carriers shall retain all of the following information and documents:

(1) moving services contracts, such as, bills of lading or receipts;

(2) proposals for moving services;

(3) inventories, if applicable;

(4) freight bills;

(5) time cards, trip sheets, or driver's logs;

(6) claim records;

(7) ledgers and journals;

(8) canceled checks;

(9) bank statements and deposit slips;

(10) invoices, vouchers or statements supporting disbursements; and

(11) dispatch records.

(c) Proof of motor carrier registration.

(1) Except as provided in paragraph (2) of this subsection, every motor carrier shall maintain a copy of its current registration listing in the cab of each registered vehicle at all times. A motor carrier shall make available to a certified inspector or any law enforcement officer a copy of the current registration listing upon request.

(2) A registered motor carrier is not required to carry proof of registration in a vehicle leased from a leasing business that is registered under §218.18 of this chapter (relating to Short-term Lease and Substitute Vehicles), when leased as a temporary replacement due to maintenance, repair, or other unavailability of the originally leased vehicle. A copy of the lease agreement, or the lease for the originally leased vehicle, in the case of a substitute vehicle, must be carried in the cab of the vehicle.

(d) Location of files. Except as provided in this subsection, every motor carrier shall maintain at a principal office in Texas all records and information required by the department.

(1) Texas firms. If a motor carrier wishes to maintain records at a location other than its principal office in Texas, the motor carrier shall make a written request to the manager. A motor carrier may not begin maintaining records at an alternate location until the request is approved by the manager.

(2) Out-of-state firms. A motor carrier whose principal business address is located outside the state of Texas shall maintain records required under this section at its principal office in Texas. Alternatively, a motor carrier may maintain such records at an out-of-state facility if the carrier reimburses the department for necessary travel expenses and per diem for any inspections or investigations conducted in accordance with §218.31 of this subchapter (relating to Investigations and Inspections of Motor Carrier Records).

(3) Regional office or driver work-reporting location. All records and documents required by this subchapter which are maintained at a regional office or driver work-reporting location shall be made available for inspection upon request at the motor carrier's principal place of business or other location specified by the Department within 48 hours after a request is made. Saturdays, Sundays, and Federal and State holidays are excluded from the computation of the 48-hour period of time in accordance with 49 C.F.R. §390.29.

(e) Preservation and destruction of records. All books and records generated by a motor carrier, except driver's time cards and logs, must be maintained for not less than two years at the motor carrier's principal business address. A motor carrier must maintain driver's time cards and logs for not less than six months at the carrier's principal business address.

§218.33. Enforcement.

A motor carrier who fails or refuses to permit an inspection, does not maintain and make available the requisite records, or otherwise fails to comply with the requirements of this subchapter commits a violation subject to enforcement under Subchapter F of this chapter (relating to Enforcement).

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 November 5, 2009.

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Jennifer Soldano
Legal Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 463-8683

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SUBCHAPTER D. MOTOR TRANSPORTATION BROKERS

43 TAC §§218.40 - 218.42

STATUTORY AUTHORITY

The new sections are proposed under Transportation Code, §1002.001, which provides the Texas Motor Vehicles Board with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 643, Subchapter B, and Subchapter F.

§218.40. Applicability.

This subchapter does not apply to a motor transportation broker that is registered as a motor carrier under Transportation Code, Chapter 646, or that holds a permit issued under 49 United States Code Subtitle IV.

§218.41. Bond.

(a) Filing. A motor transportation broker shall file a bond with the department before it may act as a motor transportation broker.

(b) Conditions of bond.

(1) The bond shall be:

(A) in the amount of at least $10,000;

(B) be executed by a bonding company authorized to do business in the state of Texas; and

(C) be payable to the state of Texas or a person to whom the motor transportation broker provides services.

(2) The bond shall be conditioned upon:

(A) the faithful performance of the contracts or agreements of transportation by the motor carrier or motor carriers for whom the motor transportation broker is acting, and which were negotiated by the broker; and

(B) the honest and faithful performance by the motor transportation broker in that capacity.

(3) The bond shall provide that all defenses available to the motor carrier shall be available to the principal and surety, but no condition or provision of the bond shall otherwise affect the right of the shipper to collect all damages to which it may be entitled at law.

(c) Expiration or cancellation of bond. The bond shall not expire or be subject to cancellation until the 30th day after written notice of expiration or cancellation has been served on the principal and the department, either personally or by certified mail. Unless the principal files a new bond in compliance with the requirements of this section on or before the expiration of the 30-day period, the person may not act as a motor transportation broker.

(d) Amount of Recovery. In no event shall the total of all recoveries under a bond exceed the penal amount.

§218.42. Fees.

(a) Bond review fee. Upon submission of a bond to the department, the motor transportation broker shall include a bond review fee of $5.00, payable as described in subsection (b) of this section.

(b) Payment of Fees.

(1) Non-refundable. All fees paid to the department as provided for in this section are non-refundable.

(2) Payment methods. A fee may be paid:

(A) with a valid credit card issued by a financial institution chartered by a state or the federal government, or a nationally recognized credit organization approved by the department (persons paying by credit card will pay a service charge of $1.00);

(B) by cashier's check or money order;

(C) by electronic funds transfer;

(D) by check; or

(E) by cash in person at the Motor Carrier Division (cash payments are not the preferred form of payment).

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

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SUBCHAPTER E. CONSUMER PROTECTION

43 TAC §§218.50 - 218.65

STATUTORY AUTHORITY

The new sections are proposed under Transportation Code, §1002.001, which provides the Texas Motor Vehicles Board with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 643, Subchapter B and Subchapter F.

§218.50. Purpose and Scope.

This subchapter sets forth the department's policies and procedures to protect shippers of household goods against deceptive or unfair practices and unreasonably hazardous activities on the part of a household goods carrier. This subchapter also provides a mediation process administered by the department for claims on household goods shipments. Shipments of household goods transported subject to a United States Government Bill of Lading or to a written agreement with the United States Department of Defense are exempt from §§218.53 - 218.63 of this subchapter.

§218.51. Household Goods Agents.

(a) Appointment of household goods agent. A household goods carrier may appoint a household goods agent to represent the household goods carrier's business interests in Texas.

(b) Liability. A household goods carrier is responsible for the acts, delinquencies, omissions, and conduct of each of its household goods agents while acting on behalf of the household goods carrier.

(c) Agent filing. A household goods carrier shall file with the department, on a form approved by the director, a current, accurate list of its household goods agents and their addresses.

(1) A household goods carrier using alternative vehicle registration under §218.13(e) of this chapter (relating to Application for Motor Carrier Registration) shall notify the department 30 days prior to the creation or termination of an agency agreement.

(2) A household goods carrier not using the alternative vehicle registration shall notify the department on or before January 1, April 1, July 1, and October 1, of each year of the creation or termination of an agency agreement.

(d) Use of household goods carrier's name. When representing a household goods carrier, the agent:

(1) shall operate under the name of the represented household goods carrier, as shown on the certificate of registration issued by the department;

(2) shall use only the moving services contract of the represented household goods carrier; and

(3) may include its name, as listed on the household goods carrier's agent filing, on the carrier's advertisements.

(e) Availability of tariff records. A household goods carrier shall require each of its household goods agents to keep copies of the applicable tariff in the household goods agent's office and open to public inspection.

(f) Shipping records maintained. A household goods agent shall keep a record of every shipment that it sells or handles for at least two years after the date of shipment.

(g) Agency agreements. An agreement between a household goods carrier and its household goods agent shall be in writing and signed by the household goods carrier and the household goods agent, and copies of any agreement must be kept in the files of the household goods carrier for a period of not less than two years following the date of termination of each agreement.

§218.52. Advertising.

(a) Print advertising. A household goods carrier shall include the following information on print advertisements primarily addressing a local market within this state:

(1) the name of the household goods carrier as shown on the certificate of registration;

(2) the street address of the household goods carrier's or its agent's place of business in this state; and

(3) the household goods carrier's certificate of registration number in the following form, "DMV No. _____".

(b) Use of household goods agent's name. A household goods carrier may include the name of its household goods agent as filed with the department in its print advertisements.

(c) Items not considered to be print advertisements. For the purposes of this section, print advertisement shall not include:

(1) promotional items of nominal value such as ball caps, tee shirts, and pens;

(2) business cards;

(3) internet websites;

(4) listings not paid for by the household goods carrier or its household goods carrier's agent;

(5) nationally placed billboards; and

(6) single-line listings of a carrier name, address, and telephone number in a directory or similar publication.

(d) Internet websites. A household goods carrier shall provide the department's toll-free telephone number (1-888-368-4689) and the household goods carrier's certificate of registration number on any website operated by or for the household goods carrier.

(e) Identifying markings on household goods carrier's vehicles.

(1) A household goods carrier or its agent shall display the following information on both sides of either the power unit or trailer:

(A) the name of the carrier as it appears on the motor carrier certificate of registration; and

(B) the carrier's registration number as it appears on the motor carrier certificate of registration.

(2) The markings required by paragraph (1) of this subsection shall have clearly legible letters and numbers at least 2 inches in height.

(3) This subsection does not apply to vehicles:

(A) required to comply with Transportation Code, Chapter 642; or

(B) operated under a short-term lease.

(f) Prohibited advertisements. For the purposes of this subsection, an advertisement is any communication to the public in connection with an offer or sale of an intrastate transportation service. A household goods carrier and its household goods agents may not use any false, misleading, or deceptive advertisements.

§218.53. Household Goods Carrier Cargo Liability.

A household goods carrier shall be liable for $ .60 per pound per article, unless the carrier and shipper agree, in writing, to a higher limit of carrier liability. The household goods carrier shall not be liable for damages in an amount in excess of the agreed to higher limit of liability for the loss, destruction, or damage of the household goods.

§218.54. Selling Insurance to Shippers.

(a) Type of insurance. A household goods carrier and its representatives may sell, or offer to sell, or procure insurance for a shipper for transported or stored property. The insurance policy must cover loss or damage in excess of the household goods carrier liability as specified in §218.53 of this subchapter (relating to Household Goods Carrier Cargo Liability).

(b) Policy issuance. A copy of the policy or other appropriate evidence of purchased insurance must be issued to the shipper before the shipment is loaded.

(c) Policy language. Policies or other appropriate evidence of purchased insurance must be written in a clear and concise manner, specifying the nature and extent of coverage including any deductibles. The policies or other appropriate evidence of purchased insurance must also clearly indicate:

(1) the name, address and telephone number of the insurance company;

(2) the policy number; and

(3) a statement of whether claims are to be filed with the insurance company or with the household goods carrier.

(d) Penalty. If the shipper purchased insurance from the household goods carrier and the household goods carrier does not obtain the insurance policy or other appropriate evidence of purchased insurance for the shipper, the household goods carrier shall be subject to full liability for all of the loss or damage caused by the household goods carrier.

§218.55. Information for Shippers.

(a) When the household goods carrier provides the shipper with an original written proposal, as required in §218.56 of this subchapter (relating to Proposals and Estimates for Moving Services), the household goods carrier shall also provide a copy of the information sheet entitled, Your Rights and Responsibilities When You Move in Texas as prescribed by the director.

(b) The household goods carrier may duplicate the department's form provided the exact text is reproduced in a legible manner in at least 10 point type font. No additional information that interferes with or alters the text may be added to the form.

§218.56. Proposals and Estimates for Moving Services.

(a) Written proposals. Prior to loading, a household goods carrier shall provide a written proposal, such as a bid or quote, to the shipper. A proposal shall state the maximum amount the shipper could be required to pay for the listed transportation and listed related services. This section does not apply if a pre-existing transportation contract sets out the maximum amount the shipper could be required to pay for the transportation services. Pre-existing transportation contracts include, but are not limited to, corporate contracts for the relocation of multiple employees.

(1) A proposal must contain the name and registration number of the household goods carrier as they appear on the motor carrier certificate of registration. If a proposal is prepared by the household goods carrier's agent, it shall include the name of the agent as listed on the carrier's agent filing with the department. A proposal shall also include the street address of the household goods carrier or its agent. A proposal may not include the name, logo, or motor carrier registration number of any other motor carrier.

(2) A proposal must clearly and conspicuously state whether it is a binding or not-to-exceed proposal.

(3) A proposal must completely describe the shipment and all services to be provided. A proposal must state, "This proposal is for listed items and services only. Additional items and services may result in additional costs."

(4) A proposal must specifically state when the shipper will be required to pay the transportation charges, such as, if payment must be made before unloading at the final destination. A proposal must also state what form of payment is acceptable, such as, a cashier's check.

(5) A proposal must conspicuously state that a household goods carrier's liability for loss or damage to cargo is limited to $ .60 per pound per article unless the household goods carrier and shipper agree, in writing, to a higher limit of carrier liability.

(b) Hourly rates. If a proposal is based on an hourly rate, then it is not required to provide the number of hours necessary to perform the transportation and related services. However, if the number of hours is not included in a proposal, then the carrier must secure a written acknowledgment from the shipper indicating the proposal is complete without the number of hours.

(c) Proposal as addendum. If a proposal is accepted by the shipper and the carrier transports the shipment, then the proposal is considered an addendum to the moving services contract.

(d) Additional items and services. If the household goods carrier determines additional items are to be transported and/or additional services are required to load, transport, or deliver the shipment, then before the carrier transports the additional items or performs the additional services the carrier and shipper must agree, in writing, to:

(1) allow the original proposal to remain in effect;

(2) amend the original proposal or moving services contract; or

(3) substitute a new proposal for the original.

(e) Amendments and storage.

(1) An amendment to an original proposal or moving services contract, as allowed in subsection (d) of this section, must:

(A) be signed and dated by the household goods carrier and shipper; and

(B) clearly and specifically state the amended maximum price for the transportation of the household goods.

(2) If the household goods carrier fails to amend or substitute an original proposal as required by this subsection and subsection (d) of this section, only the charges stated on the original proposal for moving services may be assessed on the moving services contract. The carrier shall not attempt to amend or substitute the proposal to add items or services after the items or services have been provided or performed.

(3) If through no fault of the carrier, the shipment cannot be delivered during the agreed delivery period, then the household goods carrier may place the shipment in storage and assess fees relating to storage according to the terms in §218.58 of this subchapter (relating to Moving Services Contract - Options for Carrier Limitation of Liability), without a written agreement with the shipper to amend or substitute the original proposal.

(f) Combination document. A proposal required by subsection (a) of this section may be combined with other shipping documents, such as the moving services contract, into a single document. If a proposal is combined with other shipping documents, the purpose of each signature line on the combination document must be clearly indicated. Each signature is independent and shall not be construed as an agreement to all portions and terms of the combination document.

(g) Telephone estimates. A household goods carrier may provide an estimate for the transportation services by telephone. If the household goods carrier provides the estimate by telephone, then the carrier must also furnish a written proposal for the transportation services to the shipper prior to loading the shipment.

§218.57. Moving Services Contract.

(a) Requirements. A household goods carrier must give a copy of the moving services contract to the shipper prior to the loading of the shipment. This copy must include:

(1) the name and motor carrier registration number of the household goods carrier as they appear on the motor carrier certificate of registration, and the address and telephone number of the household goods carrier or the household goods agent that prepared the moving services contract;

(2) the date the shipment is loaded and a description of the shipment as household goods;

(3) the name and address of the shipper;

(4) the addresses of the:

(A) origin;

(B) destination, if known; and

(C) any stops in transit, if known;

(5) the moving services to be performed;

(6) the conspicuous statement, "A household goods carrier's liability for loss or damage to any shipment is $ .60 per pound per article, unless the carrier and shipper agree, in writing, to a greater level of liability.";

(7) a conspicuous explanation of any agreement for increased carrier liability limit, the amount of increased carrier liability, the cost of the increased limit, any deductible above the carrier's $ .60 per pound per article liability, and the statement, "This is not insurance.";

(8) a clear notice of the amount of any insurance for property that is transported or stored, the amount of insurance premiums, and the insurance policy number, if insurance for the shipment was purchased from or through the household goods carrier;

(9) the conspicuous statement, "This is a contract for moving services and is subject to the terms and conditions on the front and back of this document and any addendum.";

(10) a description of whether the proposal is a binding or not-to-exceed proposal, and the maximum price the shipper could be required to pay for the services listed;

(11) a statement authorizing performance of the listed services, signed and dated by the household goods carrier and the shipper; and

(12) a statement signed and dated by the shipper authorizing delivery of household goods at a destination where the shipper is not present if the shipper intends for the household goods carrier to deliver to a site where the shipper will not be present.

(b) Delivery. A household goods carrier must give a completed copy of the moving services contract to the shipper upon delivery of the shipment. The household goods carrier must release the household goods to the shipper at destination if the shipper pays the

maximum price listed on the moving services contract. Except as provided by subsection (c) of this section, the moving services contract shall be signed and dated by the household goods carrier and the shipper confirming the shipment has been delivered. This signature only confirms delivery of the shipment. Except as provided in subsection (e) of this section, this copy must include the information listed in subsection (a) of this section and:

(1) the total charges for the shipment and the specific nature of each charge, including the method used to calculate the minimum and total charges if the shipment was not transported based on a binding proposal;

(2) an explanation of all additional moving services provided in accordance with §218.56(d) of this subchapter (relating to Proposals and Estimates for Moving Services); and

(3) the addresses of the origin, destination, and any stops in transit if not previously provided on the moving services contract at the origin.

(c) Delivery to a destination where the shipper is not present. If a shipper authorizes the household goods carrier to deliver household goods to a destination where the shipper is not present, as allowed in subsection (a)(12) of this section, the moving services contract need not be signed and dated by the shipper at the time of delivery.

(d) Pre-existing transportation contracts. A household goods carrier is not required to comply with subsection (b)(1) and (2) of this section if a pre-existing transportation contract sets out the maximum amount the shipper could be required to pay for the transportation services. Pre-existing transportation contracts include, but are not limited to, corporate contracts for the relocation of multiple employees.

(e) Signatures. The signatures of the shipper, as required by subsections (a)(11) and (b) of this section, may be transmitted by facsimile or other electronic means. These signatures must be separate from any signatures required by the household goods carrier such as the acknowledgment of the statement of value of the shipment.

§218.58. Moving Services Contract - Options for Carrier Limitation of Liability.

(a) General.

(1) Household goods shipments transported between points in Texas shall be subject to all terms and conditions of the moving services contract, as set forth in §218.57 of this subchapter (relating to Moving Services Contract), except in cases where such terms and conditions are in conflict with the laws of the State of Texas.

(2) If a household goods carrier chooses to use additional limitations of liability on a shipment, the limitations shall be either of the options specified in subsection (b) or (c) of this section. A household goods carrier may not alter or expand on the limitation to its liability or the exact wording set out in subsection (b) or (c) of this section. The option selected by the household goods carrier shall be included with and is part of the moving services contract.

(b) Option 1. If this option is chosen, the following language must be used verbatim.

(1) Section 1 - General Provisions.

(A) For the purposes of this subsection, the following terms will mean:

(i) Household goods carrier--The motor carrier/mover contracted to transport a shipment of household goods.

(ii) Shipper--The owner of the household goods shipment or his representative.

(B) Changes to the moving service contract are not valid unless agreed to in writing by the household goods carrier and the shipper.

(C) Household goods carriers will transport shipments with reasonable dispatch. Reasonable dispatch requires the transportation of a shipment within the agreed period of time shown on the moving services contract, except when circumstances beyond the carrier's control, force majeure, prevent or delay transportation.

(D) Moving services contracts must comply with all other applicable laws of the State of Texas.

(2) Section 2 - Cargo Liability Provisions.

(A) The household goods carrier is liable for any loss or damage to the shipment, except as listed in subparagraphs (B) and (C) of this paragraph.

(B) The household goods carrier is not responsible for loss, damage, or delay due to acts of God, acts of civil authorities, defects in the shipment, a riot, a strike, or an act or default of the shipper.

(C) The household goods carrier is not liable for loss or damage caused by dangerous or explosive goods unless the shipper notifies the carrier, in writing, of the nature of the goods and the carrier agrees, in writing, to the transportation of these goods.

(3) Section 3 - Claims Provisions.

(A) A written claim must be filed by the shipper within 90 days of delivery of the shipment to the final destination. In case of failure to make delivery, then a written claim must be filed by the shipper within 90 days after a reasonable time for delivery has elapsed.

(B) A household goods carrier is not liable for any claim that is not filed within 90 days of the delivery of the shipment to the final destination. A household goods carrier is not liable for any claim that is not filed within 90 days after a reasonable time for delivery has elapsed for shipments that were not delivered.

(4) Section 4 - Payment Provisions. The shipper must pay the freight charges upon delivery unless the shipper and household goods carrier agree otherwise.

(5) Section 5 - Provisions for Shipments Not Delivered.

(A) A household goods carrier may place a shipment of household goods into storage if the shipper is not available for delivery of the goods as scheduled.

(B) The cost of such storage is the responsibility of the shipper of the household goods.

(C) A shipment of household goods placed in storage is subject to liens for storage, freight, and other lawful charges.

(D) A household goods carrier must issue written notice of the storage of the household goods to the shipper at each address shown on the moving services contract within three days of placing the goods in storage.

(E) If the shipper refuses to accept or does not claim the household goods within 15 days of the written notice of storage, the household goods carrier may begin the process of selling the goods at public sale, as prescribed in Transportation Code, Chapter 6.

(F) A household goods carrier must give written notice of the public sale to the shipper at each address shown on the moving services contract.

(G) The moving services contract does not prohibit the sale of the goods under any other lawful manner if the method set out in the contract cannot be reasonably accomplished.

(c) Option 2. If this option is chosen, the following language must be used verbatim.

(1) Section 1 of contract terms and conditions.

(A) The household goods carrier or party in possession of any of the property herein described shall be liable at common law for any loss thereof or damage thereto, except as hereinafter provided.

(B) No household goods carrier or party in possession of all or any of the property herein described shall be liable for any loss thereof or damage thereto or delay caused by an act of God, the public enemy, the authority of law, or an act or default of the shipper or owner. The household goods carrier's liability shall be that of warehouseman only, for loss, damage, or delay caused by fire occurring after the expiration of the free time (if any) allowed by tariffs lawfully on file after notice of the arrival of the property at destination has been duly sent or given, and after placement of the property for delivery at destination, or tender of delivery of the property to the party entitled to receive it, has been made. Except in case of negligence of the household goods carrier or party in possession (and the burden to prove freedom from such negligence shall be on the household goods carrier or party in possession), the household goods carrier or party in possession shall not be liable for loss, damage, or delay occurring while the property is stopped and held in transit upon the request of the shipper, owner, or party entitled to make such request, or resulting from a defect or inherent vice of the article, including susceptibility to damage because of atmospheric conditions such as temperature and humidity or changes therein, or from riots or strikes. Except in the case of household goods carrier's negligence, no household goods carrier, or party in possession of all or any of the property herein described, shall be liable for delay caused by highway obstruction, faulty or impassable highway, or lack of capacity of any highway, bridge, or ferry, and the burden to prove freedom from such negligence shall be on the household goods carrier or party in possession.

(C) In case of quarantine the property may be discharged at the risk and expense of the owner into quarantine depot or elsewhere, as required by quarantine regulations or authorities, or for the household goods carrier's dispatch at the nearest available point in the household goods carrier's judgment, and in any such case the household goods carrier's responsibility shall cease when property is so discharged, or property may be returned by the household goods carrier at the owner's expense to the shipping point, earning freight both ways. Quarantine expenses of whatever nature or kind upon or in respect to property shall be borne by the owner of the property or the household goods carrier may file a lien. The household goods carrier shall not be liable for loss or damage occasioned by fumigation or disinfection or other acts required or done by quarantine regulations or authorities even though the same may have been done by the household goods carrier's officers, local agents, or employees, nor for detention, loss, or damage of any kind occasioned by the quarantine or its enforcement. A household goods carrier shall not be liable, except in the case of negligence, for any mistake or inaccuracy in any information furnished by the household goods carrier, its local agents, or officers, as to quarantine laws or regulations. The shipper shall hold the household goods carrier harmless from any expense it may incur, or damages it may be required to pay, by reason of the introduction of the property covered by this contract into any place against the quarantine laws or regulations in effect at such place.

(2) Section 2 of contract terms and conditions.

(A) A household goods carrier is not bound to transport property by any particular scheduled vehicle or in time for any particular market other than with reasonable dispatch. A household goods carrier shall have the right, in case of physical necessity, to forward the property by any household goods carrier or route between the point of shipment and the point of destination. In all cases not prohibited by law, where a lower value than actual value has been represented in writing by the shipper or has been agreed upon in writing as the released value of the property as determined by the classification or tariffs upon which the rate is based, such lower value plus freight charges, if paid, shall be the maximum amount recovered, whether or not such loss or damage occurs from negligence.

(B) As a condition precedent to recovery, a claim must be filed in writing with the receiving or delivering household goods carrier, or the household goods carrier issuing the bill of lading or receipt, or the household goods carrier on whose line the loss, damage, injury, or delay occurred, or the household goods carrier in possession of the property when the loss, damage, injury, or delay occurred, within 90 days after delivery of the property or, in case of failure to make delivery, then within 90 days after a reasonable time for delivery has elapsed; and suits shall be instituted against any household goods carrier only within two years and one day from the day when notice in writing is given by the household goods carrier to the claimant that the household goods carrier has disallowed the claim or any of its part or parts specified in the notice. Where a claim is not filed or a suit is not instituted in accordance with the foregoing provisions, a household goods carrier hereunder shall not be held liable, and the claim will not be paid.

(C) Any household goods carrier or party liable on account of loss of or damage to any of the property shall have the full benefit of any insurance that may have been effected, upon, or on account of, said property, so far as this shall not avoid the policies or contracts of insurance; provided, that the household goods carrier reimburses the claimant for the premium paid.

(3) Section 3 of contract terms and conditions. Except where such service is required as the result of household goods carrier's negligence, all property shall be subject to necessary cooperage and baling at the owner's cost.

(4) Section 4 of contract terms and conditions.

(A) Property not removed by the party entitled to receive it within the free time (if any) allowed by tariff lawfully on file (such free time to be computed as therein provided), after notice of the arrival of the property at destination has been duly sent or given, and after tender of the property for delivery at destination has been made, or property not received, at time tender of delivery of the property to the party entitled to receive it has been made, may be kept in vehicle, warehouse, or place of business of the household goods carrier, subject to the tariff charge for storage and to household goods carrier's responsibility as warehouseman, only, or at the option of the household goods carrier, may be removed to and stored in a public or licensed warehouse at the point of delivery or other available point, or if no such warehouse is available at point of delivery or at other available storage facility, at the cost of the owner and there held without liability on the part of the household goods carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage. In the event consignee cannot be found at address given for delivery, notice of the placing of such goods in warehouse shall be mailed to the address given for delivery and mailed to any other address given on the bill of lading or receipt for notification, showing the warehouse in which the property has been placed.

(B) If nonperishable property which has been transported to destination hereunder is refused by consignee or the party

entitled to receive it upon tender of delivery, or said consignee or party entitled to receive it fails to receive or claim it within 15 days after notice of arrival shall have been duly sent or given, the household goods carrier may sell the same at public auction to the highest bidder, at such place as may be designated by the household goods carrier; provided, that the household goods carrier shall have first mailed, sent, or given to the consignor notice that the property has been refused or remains unclaimed, as the case may be, and that it will be subject to sale under the terms of the bill of lading or receipt if disposition be not arranged for, and shall have published notice containing a description of the property, the name of the party to whom consigned, or, if shipped order notify, the name of party to be notified, and the time and place of sale, once a week for two successive weeks, in a newspaper of general circulation at the place of sale or nearest place where such newspaper is published. Thirty days must elapse after notice that the property was refused or remains unclaimed was mailed, sent, or given before notice of sale may be published.

(C) If perishable property which has been transported is refused by the consignee or party entitled to receive it, or the consignee or party entitled to receive it shall fail to receive it promptly, the household goods carrier may, in its discretion, to prevent deterioration or further deteriorations, sell the same to the best advantage at private or public sale; provided, that if time serves for notification to the consignor or owner of the refusal of the property or the failure to receive it and request for disposition of the property, notification shall be given, in such manner as the exercise of due diligence requires before the property is sold.

(D) If the procedure provided for in this section is not possible, it is agreed that nothing contained in the section shall be construed to abridge the right of the household goods carrier at its option to sell the property under such circumstances and in such manner as may be authorized by law.

(E) The proceeds of the sale shall be applied by the household goods carrier to the payment of freight, demurrage, storage, and any other lawful charges and the expense of notice, advertisement, sale, and other necessary expense and of caring for and maintaining the property, if proper care requires special expense. If there is a balance it shall be paid to the owner of the property.

(F) If the household goods carrier is directed by the consignor or its agent to load property from (or render any services at) a place or places at which the consignor or its agent is not present, the property shall be at the risk of the owner before loading.

(G) If the household goods carrier is directed by the consignee or its agent to unload or deliver property (or render any services) at the place or places at which the consignee or its agent is not present, the property shall be at the risk of the owner after unloading or delivery.

(5) Section 5 of contract terms and conditions. A household goods carrier shall not carry or be liable in any way for documents, specie, or for articles of extraordinary value not specifically rated in the published classification or tariffs unless a special agreement to do so and a stipulated value of the articles are endorsed.

(6) Section 6 of contract terms and conditions. Every party, whether the principal or local agent, shipping explosives or dangerous goods, without previous full written disclosure to the household goods carrier of their nature, shall be liable for and indemnify the household goods carrier against all loss or damage caused by the goods, and the goods may be warehoused at the owner's risk and expense or destroyed without compensation.

(7) Section 7 of contract terms and conditions.

(A) The owner or consignee shall pay the freight and all other lawful charges accruing on said property; but, except in those instances where it may lawfully be authorized to do so, no household goods carrier shall deliver or relinquish possession at destination of the property covered by this bill of lading or receipt until all rates and charges have been paid. The consignor shall be liable for the freight and all other lawful charges, except that if the consignor stipulates, by signature, in the space provided for that purpose on the face of this bill of lading or receipt that the household goods carrier shall not make delivery without requiring payment of the charges and the household goods carrier, contrary to such stipulation shall make delivery without requiring such payment, the consignor (except as hereinafter provided) shall not be liable for the charges. Where the household goods carrier has been instructed by the shipper or consignor to deliver the property to a consignee other than the shipper or consignor, the consignee shall not be legally liable for transportation charges in respect of the transportation of the property (beyond those billed against him at the time of delivery for which he is otherwise liable) which may be found to be due after the property has been delivered to him, if the consignee is an agent only and has no beneficial title in said property, and prior to delivery of said property has notified the delivering household goods carrier in writing of the fact of such agency and absence of beneficial title, and, in the case of a shipment reconsigned or diverted to a point other than that specified in the original bill of lading or receipt, has also notified the delivering household goods carrier in writing of the name and address of the beneficial owner of said property; and, in such cases the shipper or consignor, or, in the case of a shipment so reconsigned or diverted, the beneficial owner shall be liable for such additional charges.

(B) If the consignee has given to the household goods carrier erroneous information as to whom the beneficial owner is, such consignee shall be liable for the additional charges. Nothing herein shall limit the right of the household goods carrier to require at time of shipment the payment or guarantee of the charges. If upon inspection it is ascertained that the articles shipped are not those described in this bill of lading or receipt, the freight charges must be paid on the articles actually shipped.

(8) Section 8 of contract terms and conditions. If this bill of lading or receipt is issued on the order of the shipper or his agent, in exchange or in substitution for another bill of lading or receipt, the shipper's signature to the prior bill of lading or receipt as to the statement of value or otherwise, or election of common law or bill of lading or receipt, in or in connection with such prior bill of lading or receipt, shall be considered a part of this bill of lading or receipt as fully as if the same were written or made in or in connection with this bill of lading or receipt.

(9) Section 9 of contract terms and conditions. Any alteration, addition, or erasure in this bill of lading or receipt which shall be made without the special notation herein of the agent of the household goods carrier issuing this bill of lading or receipt, shall be without effect, and this bill of lading or receipt shall be enforceable according to its original tenor.

§218.59. Inventories.

(a) Applicability. A household goods carrier has the option of preparing an inventory of the shipment.

(b) Inventories prepared by the carrier. A household goods carrier may prepare a complete or partial inventory for its own use without an agreement between the carrier and shipper. The household goods carrier may not charge a fee for preparing an inventory for its own use.

(c) Inventories prepared by the carrier and shipper. If the household goods carrier and shipper agree to the preparation of an inventory, the carrier may assess a fee for this service.

(1) Information contained in the inventory.

(A) The inventory must contain the shipper's name and the household goods carrier's name as it appears on its motor carrier certificate of registration. The inventory may not include the name, logo, or motor carrier registration number of any other motor carrier. The inventory may include the name of the household goods carrier's agent as it is listed on the carrier's agent filing with the department.

(B) The inventory must describe each item in the shipment. If any charges are based on the size of the containers, the inventory must list the quantity and size of each container. Additionally, if the household goods carrier assesses handling charges for specific items, such as, pianos, the inventory must show these items separately, if not already shown on the moving services contract.

(C) The inventory must describe and use the symbol "CP" for all containers packed or crated by the carrier. Additionally, the inventory must describe and use the symbol "PBO" for all containers packed or crated by the shipper.

(D) The inventory must include a key for any abbreviation used to describe the condition of the items.

(2) Inventory at origin. The inventory shall be signed by the household goods carrier and the shipper at origin. The inventory must include a conspicuous statement that the shipper's signature is affirming the contents and condition of the items in the shipment.

(3) Inventory at destination. The carrier shall sign the inventory at destination. A legible copy of the inventory shall be given to the shipper. The inventory must include the following statement adjacent to the shipper's signature line, "Signing the inventory means:

(A) all items loaded have been received, except as noted;

(B) obvious loss or damage has been noted; and

(C) signing the inventory does not waive a claimant's right to file a claim."

(4) Combination document. The inventory may be combined with other shipping documents, such as the moving services contract, into a single document. If the inventory is combined with other shipping documents, the purpose of each signature line on the combination document must be clearly indicated. Each signature is independent and shall not be construed as an agreement to all portions and terms of the combination document.

§218.60. Determination of Weights.

(a) Shipment weights. A carrier transporting household goods on a not-to-exceed proposal using shipment weight as a factor in determining transportation charges shall determine the weight of each shipment transported prior to the assessment of any charges. Except as provided in this section, the weight shall be obtained on a certified scale.

(b) Weighing procedures.

(1) The weight of each shipment shall be obtained by determining the difference between the:

(A) tare weight of the vehicle on which the shipment is to be loaded prior to the loading and the gross weight of the same vehicle after the shipment is loaded; or

(B) gross weight of the vehicle with the shipment loaded and the tare weight of the same vehicle after the shipment is unloaded.

(2) At the time of both weighings, all pads, dollies, handtrucks, ramps, and other equipment required in the transportation of a shipment shall be on the vehicle. Neither the driver nor any other person shall be on the vehicle at the time of the weighings.

(3) The fuel tanks on the vehicle shall be full at the time of each weighing or, in the alternative, no fuel may be added between the two weighings when the tare weighing is the first weighing performed.

(4) The trailer of a tractor-trailer vehicle combination may be detached from the tractor and weighed separately at each weighing providing the length of the scale platform is adequate to only accommodate and support the entire trailer at one time.

(5) Shipments weighing 1,000 pounds or less may be weighed on a certified platform or warehouse scale prior to loading for transportation or subsequent to unloading.

(6) The net weight of shipments transported in containers shall be the difference between the tare weight of the container, including all pads, blocking and bracing used or to be used in the transportation of the shipment, and the gross weight of the container with the shipment loaded.

(7) The shipper or any other person responsible for the payment of the freight charges shall have the right to observe all weighings of the shipment. The household goods carrier must advise the shipper or any other person entitled to observe the weighings of the time and specific location where each weighing will be performed and must give that person a reasonable opportunity to be present to observe the weighings. Waiver by a shipper of the right to observe any weighing or reweighing is permitted and does not affect any rights of the shipper under this subchapter.

(c) Weight tickets.

(1) The carrier shall obtain a separate weight ticket for each weighing required under this subsection and the ticket shall be carried on the vehicle. However, if both weighings are performed on the same scale, one weight ticket may be used to record both weighings. Every weight ticket shall be signed by the person performing the weighing. Weight tickets shall be attached to the carrier's copy of moving services contract covering the shipment. Weight tickets shall contain:

(A) the complete name and location of the scale;

(B) the date of each weighing;

(C) identification of the weight entries as being tare, gross, or net weights;

(D) the company or carrier identification of the vehicle; and

(E) the last name of the shipper as it appears on the moving services contract.

(2) This ticket must be retained by the carrier as part of the file on the shipment. A bill presented to collect any shipment charges dependent on the weight transported must be accompanied by true copies of all weight tickets obtained in the determination of the shipment weight.

(d) Reweighing of shipments. Before unloading a shipment weighed at origin and after the shipper is informed of the billing weight and total charges, the shipper may request a reweigh. The charges shall be based on the reweigh weight.

(e) Stored shipments. If a shipment is weighed and placed in storage in transit or delivered out of storage to destination by another vehicle, then no additional weighing shall be required unless the shipment has been decreased or increased in weight subsequent to the original weighing of the shipment.

(f) Constructive weight. Where no certified scale is available at origin, at a point en route, or at destination, a constructive weight, based on seven pounds per cubic foot of properly loaded space may be used to determine the weight of the household goods shipment.

§218.61. Claims.

(a) Filing of claims. A household goods carrier must act on all claims filed by a shipper on shipments of household goods according to this section.

(1) A claim must be filed in writing or by electronic document transfer with the household goods carrier or the household goods carrier's agent whose name appears on the moving services contract. A claim is considered filed on the date the claim is received by the household goods carrier. A shipper must file a written claim within 90 days:

(A) of delivery of the shipment to the final destination; or

(B) after a reasonable time for delivery has elapsed in the case of failure to make delivery.

(2) The claim must include enough facts to identify the shipment. The claim must also describe the type of claim and request a specific type of remedy.

(3) Shipping documents may be used as evidence to support a claim, but cannot be substituted for a written claim.

(4) A claim submitted by someone other than the owner of the household goods must be accompanied by a written explanation of the claimant's interest in the claim.

(b) Acknowledgment and disposition of filed claims.

(1) A household goods carrier shall send a written acknowledgment of the claim to the claimant within 20 days (excluding Sundays and nationally recognized holidays) after receipt of the claim by the carrier or his agent.

(A) The claim acknowledgment shall include the statement, "Household goods carriers have 90 days from receipt of a claim to pay, decline to pay, or make a firm settlement offer, in writing, to a claimant. Questions or complaints concerning the household goods carrier's claims handling should be directed to the DMV's Motor Carrier Division at 1-888-368-4689. Additionally, a claimant has the right to request mediation from DMV within 30 days (excluding Sundays and nationally recognized holidays) after any portion of the claim is denied by the carrier, the carrier makes a firm settlement offer that is not acceptable to the claimant, or 90 days has elapsed since the carrier received the claim and the claim has not been resolved."

(B) The household goods carrier is not required to issue the acknowledgment letter prescribed in this subsection if the claim has been resolved or the household goods carrier has initiated communication with the claimant within 20 days (excluding Sundays and nationally recognized holidays) after receipt of the claim. However, the burden of proof of the claim resolution or communication with the claimant is the responsibility of the household goods carrier.

(2) After a thorough investigation of the facts, the household goods carrier shall pay, decline to pay, or make a firm settlement offer in writing to the claimant within 90 days after receipt of the claim by the household goods carrier or its household goods agent. The settlement offer or denial shall state, "A claimant has the right to seek mediation through DMV within 30 days (excluding Sundays and nationally recognized holidays) after any portion of the claim is denied by the carrier, the carrier makes a firm settlement offer that is not acceptable to the claimant, or 90 days has elapsed since the carrier received the claim and the claim has not been resolved."

(3) A household goods carrier must provide a copy of the shipping documents to the shipper's insurance company upon request. The carrier may assess a reasonable fee for this service.

(c) Documenting loss or damage to household goods.

(1) Inspection. If a loss or damage claim is filed and the household goods carrier wishes to inspect the items, the carrier must complete any inspection as soon as possible, but no later than 30 calendar days, after receipt of the claim.

(2) Payment of shipping charges. Payment of shipping charges and payment of claims shall be handled separately, and one shall not be used to offset the other unless otherwise agreed upon by both the household goods carrier and claimant.

(d) Claim records. A household goods carrier shall maintain a record of every claim filed. Claim records shall be retained for two years as required by §218.32 of this chapter (relating to Motor Carrier Records). At a minimum, the following information on each claim shall be maintained in a systematic, orderly and easily retrievable manner:

(1) claim number (if assigned), date received, and amount of money or the requested remedy;

(2) number (if assigned) and date of the moving services contract;

(3) name of the claimant;

(4) date the carrier issued its claim acknowledgment letter;

(5) date and total amount paid on the claim or date and reasons for disallowing the claim; and

(6) dates, time, and results of any mediation coordinated by the department.

§218.62. Mediation by the Department.

(a) The claimant may make a written request to the department for mediation.

(b) The claimant must attempt to resolve the claim with the household goods carrier by making a reasonable effort to follow the household goods carrier's claim process before requesting mediation by the department.

(c) Requests for mediation must be made within 30 days (excluding Sundays and nationally recognized holidays) after the earliest of the following events:

(1) any portion of the claim is denied by the carrier;

(2) the carrier makes a firm settlement offer that is not acceptable to the claimant; or

(3) 90 days has elapsed since the carrier received the claim and the carrier has not responded to the claimant as prescribed in §218.61(b)(2) of this subchapter (relating to Claims).

(d) Except as provided in subsection (e) of this section, the department will deny a request for mediation made more than 120 days (excluding Sundays and nationally recognized holidays) after the carrier received the claim. Additionally, the department will deny a request for mediation if the carrier did not receive the claim within 90 days after the delivery of the shipment to the final destination or within

90 days after a reasonable time for delivery has elapsed in the case of failure to make delivery.

(e) The department may grant a mediation request if the claimant and the carrier agree to participate in the mediation process and:

(1) the claimant was not advised in writing at least one time of the right to mediation as required by §218.61(b)(1)(A) or (2) of this subchapter; or

(2) the claimant does not receive the written denial or settlement offer letter required by §218.61(b)(2) of this subchapter.

(f) For purposes of subsection (c)(1) and (2) of this section, the 30 day deadline for requesting mediation is calculated from the latter of:

(1) the date of the claim denial or settlement offer letter; or

(2) the date the claim denial or settlement offer letter is mailed or faxed to the claimant.

(g) The department will not grant more than one mediation request to a claimant for one shipment of household goods.

(h) The department will coordinate the selection of a mediator. The mediation will be conducted by written submissions, telephone conferences, or mediation sessions held at the department's facilities in Austin. The department will establish the time, date, and form of the mediation session.

(i) Household goods carriers must participate in this mediation process. The department may impose administrative sanctions, under §218.71 of this chapter (relating to Administrative Penalties), on a household goods carrier who refuses to participate in the mediation process or otherwise fails to comply with the requirements of this section.

(j) If the claimant fails to appear at the mediation after due notice or, if the mediator determines the claimant has not cooperated in the mediation process, the department's mediation process shall be considered concluded. The claimant may consider pursuing the claim through an appropriate court of law.

(k) The mediator shall preside and have discretion over the mediation procedures, including the ability to require the claimant and the household goods carrier to provide information and documents in a timely fashion.

(l) If the household goods carrier makes a written report of the results of the inspection documenting the lost or damaged household goods and uses the report during the department's mediation, then the carrier shall provide the original or a legible copy of the report to the claimant.

§218.63. Annual Report.

(a) Submission date. On or before the 15th day of May of each year, every household goods carrier shall file a copy of its annual operating report (on a form approved by the director) with the department.

(b) Contents. Annual reports shall include, at a minimum, the following information on intrastate household goods shipments:

(1) the total number of shipments;

(2) the total number of claims that resulted in mediations coordinated by the department; and

(3) the total number of claims resolved after a lawsuit was filed.

§218.64. Rates.

(a) Ratemaking. A household goods carrier and/or its household goods agent shall set maximum rates and charges for services in its applicable tariff. The household goods carrier and/or its household goods agent shall disclose the maximum rates and charges to prospective shippers before transporting a shipment between two incorporated cities.

(b) Prohibited charges and allowances. A household goods carrier and/or its household goods agent shall not charge more than the maximum charges published in its tariff on file with the department for services associated with transportation between two incorporated cities.

(c) Collective ratemaking agreements.

(1) Eligibility. In accordance with Transportation Code, §643.154, a household goods carrier and/or its household goods agent may enter into collective ratemaking agreements between one or more other household goods carriers or household goods agents concerning the establishment and filing of maximum rates and charges, classifications, rules, or procedures.

(2) Designation of collective ratemaking associations. An approved association may be designated by a member household goods carrier as its collective ratemaking association for the purpose of filing a tariff containing maximum rates and charges required by §218.65 of this subchapter (relating to Tariff Registration).

(3) Submission. In accordance with Transportation Code, §643.154, a collective ratemaking agreement shall be filed with the department for approval. The agreement shall include the following information:

(A) full and correct name, business address (street and number, city, state and zip code), and phone number of the association;

(B) whether the association is a corporation or partnership; and

(i) if a corporation, the government, state, or territory under the laws of which the applicant was organized and received its present charter; and

(ii) if an association or a partnership, the names of the officers or partners and date of formation;

(C) full and correct name and business address (city and state) of each household goods carrier on whose behalf the agreement is filed and whether it is an association, a corporation, an individual, or a partnership;

(D) the name, title, and mailing address of counsel, officer, or other person to whom correspondence in regard to the agreement should be addressed; and

(E) a copy of the constitution, bylaws, or other documents or writings, specifying the organization's powers, duties, and procedures.

(4) Signature. The collective ratemaking agreement shall be signed by all parties subject to the agreement or the association's executive officer.

(5) Incomplete agreement. If the department receives an agreement which does not comply with this subsection, the department will send a letter to the individual submitting the agreement. The letter shall identify the information that is missing and advise the association that the agreement will not be processed until the information is received.

(6) Approval. In accordance with Transportation Code, §643.154, the director or designee will approve a collective ratemaking agreement if the agreement provides that:

(A) all meetings are open to the public; and

(B) notice of meetings shall be sent to shippers who are multiple users of household good carriers.

(7) Noncompliance.

(A) If the director or designee determines that an agreement does not comply with paragraph (6) of this subsection, the department will notify the association representative by certified mail of:

(i) the specific reason that an agreement is not being approved; and

(ii) the hearing date.

(B) If the association representative resubmits an acceptable agreement which meets the requirements of paragraph (6) of this subsection within 10 business days prior to the hearing date, the hearing will be canceled and the agreement will be approved. The State Office of Administrative Hearings (SOAH) shall conduct the hearing in accordance with §1.21 et seq. of this title (relating to Contested Case Procedure).

(C) If the hearing is held, the presiding officer shall explain the reason(s) that the agreement was rejected. The association representative will be allowed to respond to the objections and present evidence or exhibits which relate to his or her response. The hearing examiner, based on the evidence provided, will make a recommendation to the board commission whether the agreement should be approved or resubmitted. The association representative shall be advised of the examiner's recommendation. The final order will be submitted to the board commission for approval.

(8) New parties to an agreement. An updated agreement shall be filed with the department as new parties are added.

(9) Amendments to approved agreements. Amendments to approved agreements (other than as to new parties) may become effective only after approval of the department.

§218.65. Tariff Registration.

(a) Submission. In accordance with Transportation Code, §643.153, a household goods carrier and/or its household goods agent shall file a tariff with the department. The tariff shall establish maximum rates and charges for transportation services when a highway between two or more incorporated cities, towns or villages is traversed. A household goods carrier who is not a member of an approved association under §218.64 of this subchapter (relating to Rates) shall file a tariff individually. In lieu of filing individually, a household goods carrier or its household goods agent, that is a member of an approved association in accordance with §218.64 of this subchapter, may designate a collective association as its ratemaking association. The association may file a tariff, as required by this subsection, for member carriers.

(1) Contents. The tariff:

(A) shall set out all rates, charges, rules, regulations, or other provisions, in clear and concise terms, used to determine total transportation charges;

(B) may provide for the offering, selling, or procuring of insurance as provided in §218.54 of this subchapter (relating to Selling Insurance to Shippers);

(C) may provide for the base transportation charge to include assumption by the household goods carrier for the full value of the shipment in the event a policy or other appropriate evidence of the insurance purchased by the shipper from the household goods carrier is not issued to the shipper at the time of purchase;

(D) shall describe the procedure for determining charges that are below the maximum rate for each service performed; and

(E) shall reference a specific mileage guide or source, if information on rates and charges based on mileage is included in the tariff (The referenced mileage guide shall be filed with the department as an addendum to the tariff. If the household goods carrier utilizes a computer database as a mileage guide, the household goods carrier shall allow department personnel free access to the system when conducting an inquiry regarding a specific movement performed by the household goods carrier).

(2) Interstate tariff. In accordance with Transportation Code, §643.153, a household goods carrier may satisfy the requirements of this subsection by filing a copy of its tariff governing interstate household goods transportation services.

(3) Transmittal letter. A transmittal letter shall accompany a tariff being filed. The transmittal letter shall provide:

(A) the name of the household goods carrier;

(B) the Texas mailing address and street address of the household goods carrier's principal office;

(C) the household goods carrier's registration number;

(D) the name and title of the household goods carrier's representative authorizing the tariff filing; and

(E) whether the tariff is being filed on behalf of a member carrier.

(4) Format. Tariffs shall be filed:

(A) on 8 1/2" x 11" paper;

(B) with a cover sheet showing:

(i) the name of the issuing household goods carrier or collective ratemaking association;

(ii) the Texas mailing and street address;

(iii) the issuance date of the tariff;

(iv) the effective date of the tariff; and

(v) the tariff number; and

(C) separated into the following sections:

(i) general rules;

(ii) accessorial services; and

(iii) rates.

(5) Item numbers. Individual items shall be titled and designated by item number.

(6) Amendments. Any amendment to a tariff shall be filed with the department not less than 10 days prior to the effective date of the amendment. The household goods carrier or collective ratemaking association filing on behalf of its member may either file an amended tariff in total or an amendment referencing the specific sections and items which are being amended. The amendment format shall be the same as required by paragraph (4) of this subsection. A transmittal letter providing the same information as required by paragraph (3) of this subsection shall accompany the amendment filing.

(7) Rejection. The department will reject a tariff or amendment filing if it is determined the tariff:

(A) fails to meet the requirements of this section; or

(B) fails to fully disclose, in clear and concise terms, all rates, charges, and rules.

(8) Electronic filings. A household goods carrier may file an electronic copy of its tariff provided that the document is consistent with the provision of this subsection and is formatted in Microsoft Word or other format approved by the director.

(b) Operations. The department will accept a tariff which is in substantial compliance with this section if the tariff was submitted prior to November 1, 1995.

(c) Access. In accordance with Transportation Code, §643.153, tariffs filed in accordance with this section will be made available for public inspection at the Motor Carrier Division, 4000 Jackson Avenue, Building 1, Austin, Texas, 78731, and by calling 1-888-368-4689.

(d) Conflicts. All provisions of household goods carriers' tariffs are superseded to the extent they may conflict with the provisions of this chapter.

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

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Texas Department of Motor Vehicles
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For further information, please call: (512) 463-8683

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SUBCHAPTER F. ENFORCEMENT

43 TAC §§218.70 - 218.77

STATUTORY AUTHORITY

The new sections are proposed under Transportation Code, §1002.001, which provides the Texas Motor Vehicles Board with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 643, Subchapter B, and Subchapter F.

§218.70. Purpose.

The purpose of this subchapter is to provide for an efficient and effective system of enforcement of Transportation Code, Chapters 643, 645, and 648, by setting out procedures for administrative penalties, the suspension revocation and denial of motor carrier registration and leasing business registration, cease and desist orders, and probation of the suspension of a motor carrier's certificate of registration.

§218.71. Administrative Penalties.

(a) Authority. The department may impose an administrative penalty against a motor carrier required to register under this section if the motor carrier violates a provision of Transportation Code, Chapter 643 or Chapter 645 or violates a rule or order adopted under Transportation Code, Chapter 643 or Chapter 645.

(b) Amount of penalty.

(1) The penalty for each violation may be in an amount not to exceed $5,000.

(2) If it is found that the motor carrier knowingly committed a violation, the penalty for that violation may be in an amount not to exceed $15,000. A person acts knowingly if that person has acted with knowledge that acts are in violation of Transportation Code, Chapter 643 or Chapter 645, or a rule or order adopted under Transportation Code, Chapter 643 or Chapter 645.

(3) If it is found that the motor carrier knowingly committed multiple violations, the aggregate penalty for the multiple violations may be in an amount not to exceed $30,000. Multiple violations are all violations arising during a single episode pursuant to one scheme or course of conduct.

(4) Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(5) Any recommendation that a penalty should be imposed must be based on the following factors:

(A) the seriousness of the violation; including the nature, circumstances, extent and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety or economic welfare of the public;

(B) the economic harm to property or the environment caused by the violation;

(C) the history of previous violations;

(D) the amount necessary to deter future violations;

(E) efforts made to correct the violation; and

(F) any other matters that justice may require.

§218.72. Administrative Sanctions.

(a) Grounds for action. The department may suspend, revoke, or deny a certificate of registration of a motor carrier or leasing business if the motor carrier or leasing business:

(1) fails to maintain insurance or proof of financial responsibility as required by §218.16 of this chapter (relating to Insurance Requirements);

(2) fails to keep proof of insurance in the cab of each vehicle as required by §218.16 of this chapter;

(3) fails to register a vehicle requiring registration under Subchapter B of this chapter (relating to Motor Carrier Registration);

(4) is a for-hire motor carrier of passengers required to register with the Federal Motor Carrier Safety Administration and the federal registration is denied, revoked, suspended, or terminated;

(5) violates any provision of Transportation Code, Chapter 643;

(6) knowingly provides false information on any form filed with the department under this chapter or Transportation Code, Chapter 643; or

(7) violates an order adopted under this chapter or Transportation Code, Chapter 643.

(b) Department of Public Safety enforcement recommendations.

(1) The department may suspend or revoke a certificate of registration of a motor carrier upon a written request by the Department of Public Safety, if a motor carrier:

(A) has an unsatisfactory safety rating under 49 C.F.R., Part 385; or

(B) has multiple violations of Transportation Code, Chapter 644, a rule adopted under that chapter, or Transportation Code, Title 7, Subtitle C.

(2) A request under paragraph (1) of this subsection must include documentation showing the violation.

(c) Probation.

(1) The department may probate any suspension ordered under this section.

(2) In determining whether to probate a suspension, the department will review:

(A) the seriousness of the violation;

(B) prior violations by the motor carrier;

(C) whether the department has previously probated a suspension for the motor carrier;

(D) cooperation by the motor carrier in the investigation and enforcement proceeding; and

(E) the ability of the motor carrier to correct the violations.

(3) The department shall set the length of the probation based on the seriousness of the violation and previous violations by the motor carrier.

(4) The department will require that the motor carrier report monthly to the department any information necessary to determine compliance with the terms of the probation.

(5) The department may revoke the probation and order the initial suspension and administrative penalty if the motor carrier fails to abide by any terms of the probation.

§218.73. Administrative Proceedings.

(a) If the department decides to take an enforcement action under §218.71 of this subchapter (relating to Administrative Penalties) or §218.72 of this subchapter (relating to Administrative Sanctions), the department shall give written notice to the motor carrier by first class mail to the carrier's address as shown in the records of the department.

(b) The notice required by subsection (a) of this section must include:

(1) a brief summary of the alleged violation;

(2) a statement of each sanction;

(3) the effective date of each sanction;

(4) a statement informing the carrier of the carrier's right to request a hearing;

(5) a statement as to the procedure for requesting a hearing, including the period during which a request must be made; and

(6) a statement that the proposed penalties and sanctions will take effect on the date specified in the letter if the motor carrier fails to request a hearing.

(c) The motor carrier must submit a written request for a hearing to the address provided in the notice not later than the 26th day after the date the notice is mailed.

(d) On receipt of the written request for a hearing the department will refer the matter to the State Office of Administrative Hearings. When the hearing is set, the department will give notice of the time and place of the hearing to the carrier.

(e) If the motor carrier does not make a written request for a hearing or enter into a settlement agreement under §218.74 of this subchapter (relating to Settlement Agreements) before the 27th day after the date the notice is mailed, the department's decision becomes final and unappealable.

§218.74. Settlement Agreements.

(a) The department and the alleged violator may enter into a compromise settlement agreement at any time before the issuance of a final decision. The compromise settlement agreement must provide that the alleged violator consents to the assessment of a specified administrative penalty or to other specified action by the department against the violator and must be signed by the alleged violator and the director. A compromise agreement is not an admission of the alleged violation.

(b) If the settlement agreement requires the payment of a penalty to the department, the alleged violator must submit a cashier's check or money order to the department in the agreed amount before the agreement may be executed.

(c) Upon the execution by the director of a settlement agreement, the administrative proceeding ends. The settlement is a department order that is final and unappealable.

(d) The settlement agreement must include a clause that allows the department the authority to revoke the settlement agreement and initiate a hearing on the original alleged violations if the alleged violator fails to abide by the terms of the settlement agreement.

§218.75. Implications for Nonpayment of Penalties.

(a) If a motor carrier fails to pay any penalty imposed or cost assessed before the 61st day after the day the order imposing the penalty or assessing the cost becomes final, the department may initiate a new administrative action to revoke, suspend, or deny the motor carrier's certificate of registration.

(b) If a motor carrier's registration is revoked or suspended by an administrative action under this chapter, the motor carrier is not eligible for a reinstatement or renewal of a registration under Subchapter B of this chapter (relating to Motor Carrier Registration) until all required penalties, costs, fees, or expenses have been paid to the department.

(c) If a motor carrier is denied registration under this chapter, the motor carrier is not eligible to register or renew the motor carrier registration under Subchapter B of this chapter until all required penalties, costs, fees, or expenses have been paid to the department.

§218.76. Registration Suspension Ordered under Family Code.

(a) On receipt of a final order issued under Family Code, §232.003, §232.008, or §232.009, regarding child support enforcement, the department will suspend:

(1) a certificate of registration issued under Subchapter B of this chapter (relating to Motor Carrier Registration); or

(2) the registration of an interstate motor carrier issued under §218.18 of this chapter (relating to Unified Carrier Registration System).

(b) The department will charge an administrative fee of $10 to a person whose registration is suspended under this section.

(c) A suspension under this section does not require the department to give notice or otherwise follow the administrative process

provided under §218.73 of this subchapter (relating to Administrative Proceedings).

(d) A registration suspended under this section may only be reinstated on receipt of an order issued under Family Code, §232.013.

§218.77. Cease and Desist Order.

(a) The department may issue a cease and desist order to a respondent:

(1) who engages or represents itself to be engaged in a motor carrier operation that is in violation of this chapter;

(2) to prevent a violation of this chapter; and

(3) to protect the public health and safety.

(b) The order shall:

(1) be delivered by personal delivery or registered or certified mail, return receipt requested, to the person's or entities last known address; and

(2) state the effective date of the order.

(c) The department's cease and desist order is final, unless within ten days of the service of the order, the respondent files a written request for hearing to the department.

(d) If a request for hearing is filed, the department shall initiate a contested case with the State Office of Administrative Hearing in accordance with Chapter 206, Subchapter D of this title (relating to Procedures in Contested Cases).

(e) The cease and desist order shall remain in effect until the respondent comes into complete compliance with department directives and decisions, or unless otherwise provided by an order issued after final review by the department.

(f) If respondent violates a cease and desist order, the department may:

(1) impose an administrative penalty against the respondent; and

(2) refer the matter to the appropriate authority to institute actions for:

(A) an injunction against violation of the cease and desist order;

(B) collection of any administrative penalty assessed by the department; and

(C) any other remedy provided by law.

(g) Nothing in this section precludes the department from imposing other administrative sanctions against the respondent while a cease and desist order is in effect.

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 November 5, 2009

TRD-200905086
Jennifer Soldano
Legal Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: December 20, 2009
For further information, please call: (512) 463-8683

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 19. EDUCATION

PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 241. PRINCIPAL CERTIFICATE

19 TAC §241.35

Proposed amended §241.35, published in the May 1, 2009, issue of the *Texas Register* (34 TexReg 2654), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on November 3, 2009.

TRD-200905008

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 1. OFFICE OF THE GOVERNOR

CHAPTER 4. TEXAS MILITARY PREPAREDNESS COMMISSION

SUBCHAPTER B. DEFENSE ECONOMIC ADJUSTMENT ASSISTANCE GRANT PROGRAM

1 TAC §§4.30 - 4.40

The Texas Military Preparedness Commission (TMPC) adopts the repeal of Chapter 4, §§4.30 - 4.40, concerning the Defense Economic Adjustment Assistance Grant Program, without changes to the proposal as published in the October 2, 2009, issue of the *Texas Register* (34 TexReg 6717) and will not be republished.

The 2009 Legislature enacted House Bill 2546, which amended §436.002 of the Local Government Code by establishing the TMPC within, and provided rulemaking authority to, the Texas Economic Development and Tourism Office. The rules currently in Chapter 4 are not adequate to address the rules and best practices of the Texas Economic Development and Tourism Office. The matters addressed by the repealed provisions will be incorporated into a new Chapter 4.

No comments were received regarding the repeal of these rules.

The repeal is adopted under House Bill 2546, Section 24, enacted by the 2009 Legislature, which provided rulemaking authority to the Texas Economic Development and Tourism Office.

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 November 5, 2009.

TRD-200905069
Aaron Demerson
Executive Director, Economic Development and Tourism
Office of the Governor
Effective date: November 25, 2009
Proposal publication date: October 2, 2009
For further information, please call: (512) 936-0100

♦ ♦ ♦

1 TAC §§4.30 - 4.40

The Texas Military Preparedness Commission (TMPC) adopts new Chapter 4, §§4.30 - 4.40, concerning the Defense Economic Adjustment Assistance Grant (DEAAG) Program, without changes to the proposed text as published in the October 2, 2009, issue of the *Texas Register* (34 TexReg 6717) and will not be republished.

The new sections in Chapter 4 will reflect the changes in Sections 1, 18(a), 19(6), 20(b) and 21(4) of House Bill 2546, enacted by the 2009 Legislature, and also implement best practices of the Texas Economic Development and Tourism Office.

The new chapter outlines the requirements of the DEAAG program.

No comments were received regarding the new sections.

The new sections are adopted under House Bill 2546, Section 24, enacted by the 2009 Legislature, which provided rulemaking authority to the Texas Economic Development and Tourism Office.

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 November 5, 2009.

TRD-200905070
Aaron Demerson
Executive Director, Economic Development and Tourism
Office of the Governor
Effective date: November 25, 2009
Proposal publication date: October 2, 2009
For further information, please call: (512) 936-0100

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PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 76. USE OF A DECEASED INDIVIDUAL'S NAME, VOICE, SIGNATURE, PHOTOGRAPH, OR LIKENESS

The Office of the Secretary of State adopts an amendment to §76.1 and the repeal of §76.11, concerning property rights. The amendment to §76.1 is adopted with a change to the web address that was published in the October 2, 2009, issue of the *Texas Register* (34 TexReg 6723). Section 76.1 will be republished. The repeal of §76.11 is adopted without changes and will not be republished.

The non-substantive changes clarify the rules, update the mailing address for the Office of the Secretary of State, provide the secretary of state's website, and remove references to specific required forms by name.

No comments were received regarding adoption of the amendment or the repeal.

1 TAC §76.1

The amendment to §76.1 is adopted under the authority of §26.006(b), Texas Property Code, which provides for the secretary of state to prescribe forms for registration of property rights.

§76.1. Registration of Claim.

(a) A registration of claim will be accepted for filing only upon submission of a completed registration form and payment of the applicable fee.

(b) The effective date of a registration of claim is the date on which the secretary of state receives the completed registration form and payment of the applicable fee.

(c) A registration of claim must be verified and include:

(1) the name and date of death of the deceased individual;

(2) the name and address of the claimant;

(3) a statement of the basis of the claim; and

(4) a statement of the right claimed.

(d) A registration form designed for the purpose of complying with Chapter 26, Texas Property Code is available on the secretary of state web site at www.sos.state.tx.us/statdoc/statforms.shtml or may be obtained by writing the Statutory Documents Section, Office of the Secretary of State, P.O. Box 13550, Austin, Texas 78711-3550. See Form 3701.

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 November 6, 2009.

TRD-200905127
Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Effective date: November 26, 2009
Proposal publication date: October 2, 2009
For further information, please call: (512) 463-5562

♦ ♦ ♦

1 TAC §76.11

The repeal of §76.11 is adopted under the authority of §26.006(b), Texas Property Code, which provides for the secretary of state to prescribe forms for registration of property rights.

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 November 6, 2009.

TRD-200905128
Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Effective date: November 26, 2009
Proposal publication date: October 2, 2009
For further information, please call: (512) 463-5562

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 80. MANUFACTURED HOUSING

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs (Department) adopts without changes the amendments to 10 TAC Chapter 80, §§80.3, 80.25, 80.32, 80.33, 80.40, 80.41, 80.90, and 80.92; and new §80.94. The text to the adopted rules without changes will not be republished in the *Texas Register.* The amendment to §80.100 is adopted with non-substantive changes and will be republished in the *Texas Register.* The proposal was published in the August 21, 2009, issue of the *Texas Register* (34 TexReg 5630).

The rules are revised to comply with House Bill (HB) 2238 (81st Legislative Session, 2009), Federal Regulations, and for clarification purposes.

The rules relating to installation standards are effective sixty (60) days following the date of publication and all other rules are effective thirty (30) days following the date of publication with the *Texas Register* of notice that the rules are adopted.

Except as noted below, the rules as proposed on August 21, 2009, are adopted as final rules with the following non-substantive changes.

Section 80.100(a)(32): Changed the name of the form from Notification of Filing Status as a Central Tax Collector to CTC Account Request Form.

Figure: 10 TAC §80.100(b)(1): Removed "Proposed Form" and the revision marks indicating new text in the proposed form. The content of the form was not changed from the proposed version.

Figure: 10 TAC §80.100(b)(2): Removed "Proposed Form" and the revision marks indicating new text in the proposed form. The content of the form was not changed from the proposed version.

Figure: 10 TAC §80.100(b)(3): Removed "Proposed Form" and the revision marks indicating new text in the proposed form. The content of the form was not changed from the proposed version.

Figure: 10 TAC §80.100(b)(4): Removed "Proposed Form" and the revision marks indicating new text in the proposed form. The content of the form was not changed from the proposed version.

Figure: 10 TAC §80.100(b)(7): Removed "Proposed Form" and the revision marks indicating new text in the proposed form. The content of the form was not changed from the proposed version.

Figure: 10 TAC §80.100(b)(11): Removed "Proposed Form" and the revision marks indicating new text in the proposed form. The content of the form was not changed from the proposed version.

Figure: 10 TAC §80.100(b)(14): Removed "Proposed Form" and the revision marks indicating new text in the proposed form. The content of the form was not changed from the proposed version.

Figure: 10 TAC §80.100(b)(16): Removed "Proposed Form" and the revision marks indicating new text in the proposed form. The first paragraph on page 2 was reworded to clarify the form submission requirements.

Figure: 10 TAC §80.100(b)(17): Removed "Proposed Form" and the revision marks indicating new text in the proposed form. The content of the form was not changed from the proposed version.

Figure: 10 TAC §80.100(b)(19): Removed "Proposed Form" and the revision marks indicating new text in the proposed form. The content of the form was not changed from the proposed version.

Figure: 10 TAC §80.100(b)(24): Removed "Proposed Form" and the revision marks indicating new text in the proposed form. The content of the form was not changed from the proposed version.

Figure: 10 TAC §80.100(b)(27): Removed "Proposed Form" and the revision marks indicating new text in the proposed form. The content of the form was not changed from the proposed version.

Figure: 10 TAC §80.100(b)(29): Removed "Proposed Form" and the revision marks indicating new text in the proposed form. The content of the form was not changed from the proposed version.

Figure: 10 TAC §80.100(b)(30): Removed "Proposed Form" and the revision marks indicating new text in the proposed form. The content of the form was not changed from the proposed version.

New Figure: 10 TAC §80.100(b)(31): Removed "Proposed Form" and the revision marks in the new form. The content of the form was not changed from the proposed version.

Figure: 10 TAC §80.100(b)(32): Changed the name of the form from Notification of Filing Status as a Central Tax Collector to CTC Account Request Form, changed wording in the notation at the bottom of Block 3 to state additional taxing entities may be listed on the provided addendum instead of on the reverse side, and reworded the statement in Block 4 for clarification. This form was not in the proposed rules, but the revisions are non-substantive.

Figure: 10 TAC §80.100(b)(35): Added the Manufactured Housing Division's new physical address to the renewal form for applicants that wish to deliver the application in person. Removed "Proposed Form" and the revision marks indicating new text in the proposed form.

Figure: 10 TAC §80.100(b)(38): Removed "Proposed Form" and the revision marks indicating new text in the proposed form. The first paragraph on page 2 was reworded to clarify the form submission requirements.

Figure: 10 TAC §80.100(b)(39): Removed "Proposed Form" and the revision marks indicating new text in the proposed form. The content of the form was not changed from the proposed version.

Figure: 10 TAC §80.100(b)(40): Removed "Proposed Form" and the revision marks indicating new text in the proposed form. The content of the form was not changed from the proposed version.

Figure: 10 TAC §80.100(b)(42): Added the Manufactured Housing Division's new physical address to the renewal form for applicants that wish to deliver the application in person. Removed "Proposed Form" and the revision marks indicating new text in the proposed form.

Figure: 10 TAC §80.100(b)(43): Removed "Proposed Form" and the revision marks indicating new text in the proposed form. The content of the form was not changed from the proposed version.

The following is a restatement of the rules' factual basis:

Section 80.3(b)(2) is adopted (without changes) to comply with §1201.104(f) revised by HB 2238.

Section 80.3(k)(2) is adopted (without changes) to comply with §1201.009 revised by HB 2238 and to enable the user enhancements available with the new system.

Section 80.25(i)(3) and (4) is adopted (without changes) to comply with Federal Regulations.

Section 80.25(k)(3) is adopted (without changes) to comply with Federal Regulations.

Section 80.32(b) is adopted (without changes) to comply with 24 CFR §3288.5 of the Federal Regulations.

Section 80.33(g) is adopted (without changes) to comply with §1201.104(f) revised by HB 2238.

Section 80.33(k)(3) is adopted (without changes) to comply with federal mandates charging installers with the responsibility of site preparation for all new homes. This provision can only apply to used homes.

Section 80.40(e) is adopted (without changes) to comply with the repeal of the insurance requirement by HB 2238.

Section 80.41(a) is adopted (without changes) to comply with the repeal of the insurance requirement by HB 2238.

Section 80.41(a)(2)(A) is adopted (without changes) to comply with §1201.104(f) revised by HB 2238.

Section 80.41(a)(2)(B) is adopted (without changes) to comply with §1201.104(f) revised by HB 2238.

Section 80.41(a)(2)(C) is adopted (without changes) to comply with §1201.104(f) revised by HB 2238.

Section 80.41(d)(2) is adopted (without changes) to comply with §1201.104(e) revised by HB 2238. Live courses are no longer required.

Section 80.41(d)(3) is adopted (without changes) to comply with §1201.104(e) revised by HB 2238. Live courses are no longer required.

Section 80.41(d)(4)(E) is adopted (without changes) to comply with §1201.104(e) revised by HB 2238. Live courses are no longer required.

Section 80.90(c)(2)(C) is adopted (without changes) to comply with §1201.058(e), revised by HB 2238, that only permits the waiving of a fee if the Governor by executive order or proclamation declares a state of disaster under Chapter 418.

Section 80.92(b) is adopted (without changes) to comply with §1201.204(c) revised by HB 2238.

New §80.94 is adopted (without changes) to explain that the report that is provided by hardcopy each month to the county tax assessor-collectors and county appraisal districts can be provided electronically, if requested.

Section 80.100(a)(30) is adopted (without changes) to revise the title of the form from Notice of Lien for Tax Lien/Release to Notice of Tax Lien/Release.

Section 80.100(a)(31) is adopted (without changes) to delete the Notice of Lien (Other than a Tax Lien) form and replace it with the new Dispute Resolution form.

Section 80.100(a)(38) is adopted (without changes) to revise the name of the form for statutory compliance with §1201.104(f) revised by HB 2238.

Section 80.100(a)(43) is adopted (without changes) to revise the name of the form from Application for License Instruction Provider to Application for Continuing Education Provider.

Figure: 10 TAC §80.100(b)(1) is adopted (without changes) to correct errors in the block for the Department's use.

Figure: 10 TAC §80.100(b)(2) is adopted (without changes) to comply with the repeal of the insurance requirement by HB 2238 and to add a field for date of birth in Block 9 to make it easier to run criminal history checks on related persons.

Figure: 10 TAC §80.100(b)(3) is adopted (without changes) to comply with the repeal of the insurance requirement by HB 2238.

Figure: 10 TAC §80.100(b)(4) is adopted (without changes) to comply with §1201.103(d)(1) and §1201.104(c) revised by HB 2238.

Figure: 10 TAC §80.100(b)(7) is adopted (without changes) to comply with §1201.204(c) revised by HB 2238. By emphasizing this requirement as a footer on the form, it may reduce the likelihood of being forgotten or not submitted, as is the case now.

Figure: 10 TAC §80.100(b)(11) is adopted (without changes) to revise the form to correct grammatical and formatting errors.

Figure: 10 TAC §80.100(b)(14) is adopted (without changes) to comply with §1201.009 and §1201.204(c) revised by HB 2238.

For changes to comply with §1201.204(c) additional language is needed to direct the creditor to specify each home secured so they can be notified if we are made aware that the home is sold out of trust (current filing process does not specify each home covered under the TIF). Include summary as second page so homes can be specified by label and serial number(s).

For changes to comply with §1201.009 the addition of a file number will enable the user to update the homes secured under the filing, electronically (with the new system).

Figure: 10 TAC §80.100(b)(16) is adopted (without changes) to revise the form to correct grammatical and formatting errors.

Figure: 10 TAC §80.100(b)(17) is adopted (without changes) to comply with the Federal Regulations relating to smoke alarms (§3285.703), water testing (§3285.603(e) and §3280.612) and drainage testing (§3285.605(c)).

Figure: 10 TAC §80.100(b)(19) is adopted (without changes) to comply with §§1201.2055(b), 1201.2055(i), and 1201.219(b) revised by HB 2238. The revisions improve efficiency by incorporating the filing of a mortgage lien on the SOL application and eliminating the Notice of Lien (Other than a Tax Lien) form. The notary requirement was repealed in HB 2238.

Figure: 10 TAC §80.100(b)(24) is adopted (without changes) to add the election back into the form since HB 2238 repealed the notary requirement in §1201.2055(b). This will improve efficiency since it eliminates the Analyst from having to make a copy of the application for the applicant to make election and lets us utilize the addendum.

Figure: 10 TAC §80.100(b)(27) is adopted (without changes) to remove the payment information because there is no fee for taxing entities to obtain a Texas Seal.

Figure: 10 TAC §80.100(b)(29) is adopted (without changes) to comply with §1201.206(a) revised by HB 2238.

Figure: 10 TAC §80.100(b)(30) is adopted (without changes) to revise the title of the form, contact phone numbers, signature lines, and information in the section for Department use.

New Figure: 10 TAC §80.100(b)(31) is adopted (without changes) to add the Dispute Resolution form to comply with Federal Regulations, 24 CFR §3288.5.

Figure: 10 TAC §80.100(b)(31) is adopted (without changes) to delete the Notice of Lien (Other than a Tax Lien) form because no separate form is needed since §1201.219(b), revised by HB 2238, enables the notice to be incorporated in the Statement of Ownership and Location form.

Figure: 10 TAC §80.100(b)(35) is adopted (with changes) to comply with §1201.114(a) and §1201.113.

Figure: 10 TAC §80.100(b)(38) is adopted (without changes) to comply with §1201.104(f) revised by HB 2238 and formatting corrections.

Figure: 10 TAC §80.100(b)(39) is adopted (without changes) to comply with §1201.217(b) revised by HB 2238, which requires that notice be also given to any known intervening owners of liens or equitable interest.

Figure: 10 TAC §80.100(b)(40) is adopted (without changes) to comply with §1201.217(b) and (f) revised by HB 2238.

Figure: 10 TAC §80.100(b)(42) is adopted (with changes) to comply with §1201.103(d)(1) and §1201.113 revised by HB 2238.

Figure: 10 TAC §80.100(b)(43) is adopted (without changes) to revise the title from Application for License Instruction Providers to Application for Continuing Education Providers.

There were no comments received during the comment period and no requests were received for a public hearing to take comments on the rules.

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

10 TAC §80.3

The amended rule is adopted 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 Government Code, Chapter 2306, §2306.6014 and §2306.6020, which authorizes the board to adopt rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statute, code, or article is affected by the adoption of the amended rule.

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 November 6, 2009.

TRD-200905121

Joe A. Garcia
Executive Director, Manufactured Housing Division
Texas Department of Housing and Community Affairs
Effective date: December 20, 2009
Proposal publication date: August 21, 2009
For further information, please call: (512) 475-2206

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SUBCHAPTER B. INSTALLATION STANDARDS AND DEVICE APPROVALS

10 TAC §80.25

The amended rule is adopted 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 Government Code, Chapter 2306, §2306.6014 and §2306.6020, which authorizes the board to adopt rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statute, code, or article is affected by the adoption of the amended rule.

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 November 6, 2009.

TRD-200905122
Joe A. Garcia
Executive Director, Manufactured Housing Division
Texas Department of Housing and Community Affairs
Effective date: January 19, 2010
Proposal publication date: August 21, 2009
For further information, please call: (512) 475-2206

♦ ♦ ♦

SUBCHAPTER C. LICENSEES' RESPONSIBILITIES AND REQUIREMENTS

10 TAC §80.32, §80.33

The amended rules are adopted 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 Government Code, Chapter 2306, §2306.6014 and §2306.6020, which authorizes the board to adopt rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statute, code, or article is affected by the adoption of the amended rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 6, 2009.

TRD-200905123
Joe A. Garcia
Executive Director, Manufactured Housing Division
Texas Department of Housing and Community Affairs
Effective date: December 20, 2009
Proposal publication date: August 21, 2009
For further information, please call: (512) 475-2206

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SUBCHAPTER E. LICENSING

10 TAC §80.40, §80.41

The amended rules are adopted 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 Government Code, Chapter 2306, §2306.6014 and §2306.6020, which authorizes the board to adopt rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statute, code, or article is affected by the adoption of the amended rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 6, 2009.

TRD-200905124
Joe A. Garcia
Executive Director, Manufactured Housing Division
Texas Department of Housing and Community Affairs
Effective date: December 20, 2009
Proposal publication date: August 21, 2009
For further information, please call: (512) 475-2206

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SUBCHAPTER H. STATEMENTS OF OWNERSHIP AND LOCATION

10 TAC §§80.90, 80.92, 80.94

The new and amended rules are adopted 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 Government Code, Chapter 2306, §2306.6014 and §2306.6020, which authorizes the board to adopt rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

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SUBCHAPTER I. FORMS

10 TAC §80.100

The amended rule is adopted 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 Government Code, Chapter 2306, §2306.6014 and §2306.6020, which authorizes the board to adopt rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statute, code, or article is affected by the adoption of the amended rule.

§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 Rebuilder'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 the Installation of a Used Manufactured Home 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.

(21) Affidavit of Fact.

(22) Affidavit of Error.

(23) Affidavit of Fact for Right of Survivorship.

(24) Addendum to Application for SOL.

(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 Tax Lien/Release Form.

(31) HUD Disclosure to Consumer Regarding Dispute Resolution.

(32) CTC Account Request Form.

(33) Site Preparation Notice for Used Homes 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) Notice of Installation (Form T) for Provisional Installer's License.

(39) Notice of Intent to Acquire Ownership of an Abandoned Home.

(40) Affidavit of Fact for Abandonment.

(41) Disclosure to Consumer (Possible Need to Vacate Home if Financing does not Close).

(42) Application for Salesperson's License Renewal.

(43) Application for Continuing Education Provider.

(44) Statement from Tax Assessor-Collector.

(45) Consumer Disclosure Statement (Spanish Version).

(46) HUD Required Installation Program Disclosure to Consumer.

(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) Application for Retailer with Branch Locations License.
Figure: 10 TAC §80.100(b)(3)

(4) Application for Salesperson's License.
Figure: 10 TAC §80.100(b)(4)

(5) Licensing Surety Bond.

Figure: 10 TAC §80.100(b)(5) (No change.)

(6) Licensing Security Agreement.
Figure: 10 TAC §80.100(b)(6) (No change.)

(7) Manufacturer's Certificate of Origin (MCO).
Figure: 10 TAC §80.100(b)(7)

(8) Consumer Disclosure Statement.
Figure: 10 TAC §80.100(b)(8) (No change.)

(9) Warranty and Disclosure for a Used Manufactured Home
Figure: 10 TAC §80.100(b)(9) (No change.)

(10) Retail Monitoring Checklist.
Figure: 10 TAC §80.100(b)(10) (No change.)

(11) Consumer Notice of Licensed and Bonded Location.
Figure: 10 TAC §80.100(b)(11)

(12) Notice and Informed Consent to the Installation of a Used Manufactured Home on an Improperly Prepared Site.
Figure: 10 TAC §80.100(b)(12) (No change.)

(13) Formaldehyde Notice.
Figure: 10 TAC §80.100(b)(13) (No change.)

(14) Texas Inventory Finance Security Form.
Figure: 10 TAC §80.100(b)(14)

(15) Broker Disclosure Form.
Figure: 10 TAC §80.100(b)(15) (No change.)

(16) Notice of Installation (Form T).
Figure: 10 TAC §80.100(b)(16)

(17) Installation Checklist.
Figure: 10 TAC §80.100(b)(17)

(18) Estimate for Reassigned Warranty Work.
Figure: 10 TAC §80.100(b)(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.
Figure: 10 TAC §80.100(b)(20) (No change.)

(21) Affidavit of Fact.
Figure: 10 TAC §80.100(b)(21) (No change.)

(22) Affidavit of Error.
Figure: 10 TAC §80.100(b)(22) (No change.)

(23) Affidavit of Fact for Right of Survivorship.
Figure: 10 TAC §80.100(b)(23) (No change.)

(24) Addendum to Application for SOL.
Figure: 10 TAC §80.100(b)(24)

(25) Release or Foreclosure of Lien (Form B).
Figure: 10 TAC §80.100(b)(25) (No change.)

(26) Statement of Inheritance (Form C).
Figure: 10 TAC §80.100(b)(26) (No change.)

(27) Taxing Entity Application for Texas Seal (Form S).
Figure: 10 TAC §80.100(b)(27)

(28) Multiple Application Log (Form M).
Figure: 10 TAC §80.100(b)(28) (No change.)

(29) Instructions to Third Party Closer.
Figure: 10 TAC §80.100(b)(29)

(30) Notice of Tax Lien/Release Form.
Figure: 10 TAC §80.100(b)(30)

(31) HUD Disclosure to Consumer Regarding Dispute Resolution.
Figure: 10 TAC §80.100(b)(31)

(32) CTC Account Request Form.
Figure: 10 TAC §80.100(b)(32)

(33) Site Preparation Notice for Used Homes Form.
Figure: 10 TAC §80.100(b)(33) (No change.)

(34) Sample of Statement of Ownership and Location.
Figure: 10 TAC §80.100(b)(34) (No change.)

(35) Application for License Renewal (other than a salesperson).
Figure: 10 TAC §80.100(b)(35)

(36) Right of Rescission Waiver Form.
Figure: 10 TAC §80.100(b)(36) (No change.)

(37) List of Unlicensed Installers Form.
Figure: 10 TAC §80.100(b)(37) (No change.)

(38) Notice of Installation (Form T) for Provisional Installer's License.
Figure: 10 TAC §80.100(b)(38)

(39) Notice of Intent to Acquire Ownership of an Abandoned Manufactured Home.
Figure: 10 TAC §80.100(b)(39)

(40) Affidavit of Fact for Abandonment.
Figure: 10 TAC §80.100(b)(40)

(41) Disclosure to Consumer (Possible Need to Vacate Home if Financing does not Close).
Figure: 10 TAC §80.100(b)(41) (No change.)

(42) Application for Salesperson's License Renewal.
Figure: 10 TAC §80.100(b)(42)

(43) Application for Continuing Education Provider.
Figure: 10 TAC §80.100(b)(43)

(44) Statement from Tax Assessor-Collector.
Figure: 10 TAC §80.100(b)(44) (No change.)

(45) Consumer Disclosure Statement (Spanish Version).
Figure: 10 TAC §80.100(b)(45) (No change.)

(46) HUD Required Installation Program Disclosure to Consumer.
Figure: 10 TAC §80.100(b)(46) (No change.)

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 November 6, 2009.

TRD-200905126
Joe A. Garcia
Executive Director, Manufactured Housing Division
Texas Department of Housing and Community Affairs
Effective date: December 20, 2009
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For further information, please call: (512) 475-2206

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TITLE 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 26. PRACTICE AND PROCEDURE

13 TAC §26.24

The Texas Historical Commission (hereinafter referred to as the Commission) adopts amendments to §26.24 of Title 13, Part 2, Chapter 26 of the Texas Administrative Code, concerning Reports Relating to Archeological Permits, with changes to the text as published in the August 28, 2009, issue of the *Texas Register* (34 TexReg 5851).

The adoption of these rule amendments are needed as part of the Commission's overall effort to improve the distribution of data to the public and professional archeologists.

Several email comments were received from professional archeologists regarding the adoption of the amendment. Commenter's concerns primarily involved questions about whether professional archeologists would be held responsible as a permit condition for the distribution of copies of their reports to university libraries, and how the Commission would verify whether they had mailed those reports to libraries. In all cases, the Commission responded that the distribution of reports to university libraries would not be a permit condition and because of that the Commission did not plan on developing a verification system. A commenter also reminded us that West Texas State University is now called West Texas A&M University and that correction has been made to §26.24(a)(5). Additionally, the Council of Texas Archeologists asked us to add the Dolph Briscoe Center for American History to the list of libraries and that was done.

The amendments are adopted under the Natural Resources Code, Title 9, Chapter 191, §191.058, which provides the Commission with authority to promulgate rules and require contract or permit conditions to reasonably effect the purposes of Chapter 191.

§26.24. Reports Relating to Archeological Permits.

(a) A report should meet the Council of Texas Archeologists (CTA) Guidelines for Cultural Resources Management Full Reports, and must be submitted to the commission meeting the following requirements.

(1) The report must contain:

(A) a title page that includes: the name of the investigation project, the name of the principal investigator and investigative firm, the county or counties the investigations were performed in, and the Antiquities Permit number, and date of publication of report;

(B) an abstract containing descriptions of the findings, a list of the sites recorded and a clarification concerning which artifacts were curated and where they are or will be curated;

(C) specific recommendations of which sites merit official designation to State Archeological Landmark status; which sites appear to be eligible for inclusion in the National Register of Historic Places; and which sites will be adversely affected by a proposed project.

(2) One printed copy of the draft permit report must be submitted to the commission for review prior to the production of the final report. The draft report does not have to be bound, but should contain all of the basic content elements required for the final report. The final report must also contain any revisions in the draft that are required in writing by the commission.

(3) Upon completion of a permitted project, and at no charge to the commission, the permittee, sponsor, or principal investigator shall furnish the commission with one printed copy of the final report, which shall be an unbound copy that contains at least one map with the plotted location of any and all sites recorded, and two copies of a tagged PDF format of the report on a archival quality CD or DVD. One of the tagged PDF CD or DVD must include the plotted location of any and all sites recorded, and the other should not include the site location data.

(4) A completed Abstracts in Texas Contract Archeology Summary Form must also be submitted with the final report and an electronic copy of the abstract and the completed abstract form must also be forwarded to the commission and when appropriate, a Curation Form (printed copies available from the commission or also online at www.thc.state.tx.us) must also be submitted with the final report.

(5) Ten or more printed copies of all reports without the site location information shall also be distributed by the permittee, sponsor, or principal investigator, at no cost to the commission, to university-based libraries and archeological research facilities around the state. Recommended libraries include: the Texas Archeological Research Laboratory at the University of Texas, the Center for Archeological Studies at Texas State University, the Center for Archeological Research at UTSA, the Stephen F. Austin State University library, the Texas Tech University library, the Texas A&M University library, the UT El Paso library, the Southern Methodist University library, Dolph Briscoe Center for American History, and the West Texas A&M University library.

(b) When Antiquities Permit investigations result in negative findings, the report standards shall meet the CTA Guidelines for Cultural Resources Management Short Reports, and production must follow the same standards as set forth in subsection (a)(3) and (5) of this section.

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 November 4, 2009.

TRD-200905027
Mark Wolfe
Executive Director
Texas Historical Commission
Effective date: November 24, 2009
Proposal publication date: August 28, 2009
For further information, please call: (512) 463-1858

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

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

SUBCHAPTER O. UNIFORM RECRUITMENT AND RETENTION STRATEGY

19 TAC §§4.240 - 4.245

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new §§4.240 - 4.245 concerning Uniform Recruitment and Retention Strategy. Sections 4.240 - 4.244 are adopted without changes and §4.245 is adopted with changes to the proposed text as published in the August 7, 2009, issue of the *Texas Register* (34 TexReg 5275).

Specifically, these new sections will implement the Uniform Recruitment and Retention Strategy (URRS) for Texas public institutions of higher education. The URRS will improve programs to ensure the success of students in higher education and meet the goals of Closing the Gaps by 2015.

The following comments were received regarding the new sections:

Comment: The University of Texas System commented that institutions reporting under the current URRS program must provide a tremendous amount of data and information that taxes the existing administrative infrastructure. The proposed rule changes will increase data collection, require program re-design and analysis, and therefore increase costs for institutions. It is recommended that the Coordinating Board, to the greatest extent possible, utilize the existing reporting and analysis system (such as the Accountability System, the Applied, Admitted, Enrolled report and the Closing the Gaps progress report) to measure progress and adopt an abbreviated reporting structure that identifies the institutional strategies designed to meet these goals.

Response: Coordinating Board staff disagrees and no changes were made as a result of this comment. Coordinating Board staff created a new abbreviated reporting structure that requires institutions to identify URRS strategies designed to address Closing the Gaps targets. The new reporting format allows institutions to decide whether to utilize existing or new strategies to meet their Closing the Gaps targets. In addition, Coordinating Board staff will utilize existing data from other Coordinating Board reports for the evaluation of institutions efforts in meeting the goals of Closing the Gaps. Institutions may utilize their own internal evaluation processes to determine the effectiveness of their chosen strategies and make any necessary adjustments. Institutions received the new reporting structure and forms on August 11, 2009.

Comment: The University of Texas System commented that §4.243 provides for the evaluation of the effectiveness of an institution's URRS in accomplishing the goals of Closing the Gaps. The proposed rule will give the Coordinating Board staff the authority to "incorporate the URRS strategy" into the types and kinds of degree or other programs an institution may or must offer, and to substitute its judgment over strategies to achieve goals that are within the purview of an institution and its governing board. This shift threatens an institution's independence.

Response: Coordinating Board staff disagrees and no changes were made as a result of this comment. Coordinating Board staff currently provides the Board with recommendations on degree and program approval. At the Board's request, the new standards for degree and program approval include the URRS. The Coordinating Board, Commissioner, and staff are dedicated to meeting the state's goals for Closing the Gaps. The Legislature has also expressed the importance of meeting the state's goals for Closing the Gaps to Coordinating Board members and the Commissioner. The Legislature is very interested in institutional efforts to close the gaps and in how those efforts are reflected in institutional targets. The legislatively mandated URRS provides another tool to strengthen the Coordinating Board's and institutional commitment to meeting the goals of Closing the Gaps. The Coordinating Board's implementation of Closing the Gaps still allows institutions and governing boards to have independence in the way they meet their targets for Closing the Gaps.

Comment: The University of Texas System commented that §4.244 provides that the Coordinating Board shall establish reporting requirements to be completed by all institutions. It also provides that an institution's URRS is to be considered in compliance only if the URRS is approved by the Coordinating Board staff. The proposed rule provides no standards for evaluation by which an institution can be guided in its efforts or by which an institution can be assured of compliance. This section also permits the Coordinating Board, at its discretion, to utilize external reviewers to review an institution's URRS but provides no standards to guide external reviews. Standards for evaluation and review should be proposed to ensure uniformity of review and to avoid arbitrary decision-making. At a minimum, standards must provide for blind reviews and establish qualifications for all reviewers.

Response: Coordinating Board staff disagrees and no changes were made as a result of this comment. As part of the URRS review process, external reviewers will be selected to review institutional reports using an evaluation matrix. The evaluation matrix will be posted on the Coordinating Board secure site. The reviewers will be asked to provide recommendations and suggestions during their review of the institutional reports. Coordinating Board staff also review the reports internally and provide feedback on the reports. Reviewers will be selected from organizations such as the ones as follows: Texas Association of Collegiate Registrars and Admissions Officers (TACRAO); Texas Association of Institutional Researchers (TAIR); Society of College and University Planners (SCUP); American Association of Collegiate Registrars and Admissions Officers (AACRAO). Coordinating Board staff has developed standards for evaluation, blind reviews, and qualifications for all reviewers. As with all Coordinating Board reporting and funding requirements, staff is required to evaluate whether institutions are in compliance, including compliance with URRS reporting requirements.

Comment: The University of Texas System commented that §4.245 provides for noncompliance and for significant sanctions. The lack of standards and uniformity (discussed above) will permit an institution to suffer significant penalty without recourse. The proposed rules should provide for a procedure to appeal decisions or determinations of the Coordinating Board staff.

Response: Coordinating Board staff disagrees and no changes were made as a result of this comment. The Coordinating Board has procedures in place to appeal all decisions or determinations of the Coordinating Board staff. See 19 TAC §1.20 et seq.

Comment: The University of Texas System commented that the reporting and administrative burdens to be imposed by the proposed rule changes will create a significant workload for institutions as well as the Coordinating Board. Expansion of the URRS program should not be undertaken until sufficient resources are identified to ensure that the costs imposed on institutions and the Coordinating Board staff are fully understood and provided for.

The Coordinating Board should convene a cross-section group of enrollment management and institutional research directors to redesign the URRS reporting requirements so the administrative burden on institutions can be reduced and existing data residing at the Coordinating Board can be used to understand the progress that institutions are making toward Closing the Gaps.

Response: Coordinating Board staff disagrees and no changes were made as a result of this comment. The Commissioner is committed to utilizing all staff resources to meet the goals of Closing the Gaps. Given the tie to program approval, tuition revenue bonds, and grant approval processes, the new reporting requirements include staff from all sections of the Coordinating Board. Due to the importance of Closing the Gaps, the Commissioner will appoint a standing advisory committee to address all issues related to Closing the Gaps. The committee will include presidents and provosts with the decision-making authority needed to make decisions on behalf of the institution.

The new sections are adopted under Texas Education Code, §61.086, which gives the Coordinating Board the authority to establish guidelines and reporting requirements, as well as adopt rules to enforce the requirements, conditions, and limitations of §61.086 for the Uniform Recruitment and Retention Strategy.

§4.245. Noncompliance; Sanctions.

(a) The following constitutes noncompliance:

(1) A Coordinating Board Evaluation Fidelity Score of 1;

(2) A report that has not been submitted by the December 1 deadline; or

(3) A resubmitted report that has not been submitted within ten business days.

(b) For noncompliance with any Closing the Gaps by 2015 reporting requirements, including the Uniform Recruitment and Retention Strategy, the Coordinating Board shall withhold program approvals as outlined in Chapter 5, Subchapter C of this title (relating to Approval of New Academic Programs and Administrative Changes at Public Universities, Health-Related Institutions, and Assesment of Existing Degree Programs), all Coordinating Board grant funding, and up to 22 points in the Tuition Revenue Bond approval process.

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 November 5, 2009.

TRD-200905037
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 25, 2009
Proposal publication date: August 7, 2009
For further information, please call: (512) 427-6114

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CHAPTER 5. RULES APPLYING TO PUBLIC UNIVERSITIES AND HEALTH-RELATED INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §5.5

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §5.5, concerning the Uniform Admission Policy, with changes to the proposed text as published in the September 25, 2009, issue of the *Texas Register* (34 TexReg 6588).

Specifically, these amendments will implement requirements under House Bill 3826 (80th Texas Legislature) that amend specific provisions for students admitted to public universities under the top 10 percent rule requiring the completion of the Recommended or Advanced High School Program, or an equivalent curriculum, or achievement of ACT's College Readiness Benchmarks on the ACT assessment or a score of at least 1500 out of 2400 for the SAT assessment. In addition, these amendments will provide for the admission to any public institution of higher education children of certain public servants killed in the line of duty.

The following comments were received regarding the amendments:

Comment: In addition to the statutory reference provided in §5.5(b)(2)(A), TEA staff recommend adding a reference to 19 TAC §74.63 and §74.64, concerning the recommended and advanced high school program. TEA staff indicates that within §74.63 and §74.64 are more specific requirements set out by the State Board of Education than what appears in the statute.

Response: Staff concurs and has added that reference to §5.5(b)(2)(A).

Comment: In subsection (c)(1), TEA staff recommend deletion of the reference to "diploma" since public school districts are not required to designate the graduation program a student completes on the high school diploma but instead on the high school transcript, known as the Academic Achievement Record.

Response: Staff concurs and has made the appropriate change.

The amendments are adopted under the Texas Education Code, §§51.803, 51.804, 51.805, and 51.807, which provides the Coordinating Board with the authority to adopt rules relating to the operation of admissions programs under these sections including, but not limited, to the top 10 percent rule.

§5.5. Uniform Admission Policy.

(a) Each public university shall admit first-time undergraduate students for each semester in accordance with Texas Education Code, §§51.801 - 51.809. Only The University of Texas at Austin shall admit students under Texas Education Code, §51.803(a-1) - (a-5) and subsection (e) of this section.

(b) All applicants from Texas schools accredited by a generally recognized accrediting agency and who graduate in the top 10 percent of their high school class shall be admitted to a general academic teaching institution if the student meets the following conditions:

(1) The student graduated from high school within the two years prior to the academic year for which the student is applying for admission;

(2) The student has met one of the following:

(A) Successfully completed the Recommended or Advanced High School Program from a Texas public high school as outlined under Texas Education Code, §28.025, and §74.63 of this title (relating to Recommended High School Program) and §74.64 of this ti-

tle (relating to Distinguished Achievement High School Program--Advanced High School Program);

(B) Successfully completed a curriculum from a high school in Texas other than a public high school that is equivalent in content and rigor to the Recommended or Advanced High School Program as outlined under subsection (c) of this section;

(C) Satisfied ACT's College Readiness Benchmarks on the ACT assessment; or

(D) Earned on the SAT assessment a score of at least a 1500 out of 2400, or the equivalent;

(3) The student submitted a complete application as defined by the institution before the expiration of the institution's established deadline; and

(4) The student submitted an official high school transcript or diploma not later than the end of the student's junior year of high school. The transcript or diploma must indicate that the student satisfied the requirements outlined under paragraph (2)(A) or (B) of this section.

(c) A student is considered to have satisfied the requirements of subsection (b)(2)(A) or (B) of this section if the student completed all or the portion of the Recommended or Advanced High School Program or of a curriculum equivalent in content and rigor, as applicable, that was available to the student. Student's may be considered to have completed the Recommended or Advanced High School curriculum if a student was unable to complete the remainder of the curriculum solely because courses necessary to complete the remainder were unavailable to the student at the appropriate times in the student's high school career as a result of course scheduling, lack of enrollment capacity, or another cause not within the student's control. The standards for determining whether a student has satisfied the requirements of this subsection include the following:

(1) For a student in a Texas public high school, the public high school providing to a Texas public institution of higher education the Academic Achievement Record or transcript outlined under subsection (b)(4) of this section must indicate, in a form and manner prescribed by the Commissioner of Higher Education, whether the student has completed all or a portion of the Recommended or Advanced High School Program or of the curriculum equivalent in content and rigor, as applicable, that was available.

(2) For a student in a Texas private high school, the private high school providing to a Texas public institution of higher education the transcript or diploma outlined under subsection (b)(4) of this section must:

(A) Be accredited by the Texas Private School Accreditation Commission or other accrediting organizations recognized by the Texas Education Agency; and

(B) Indicate, in a form and manner prescribed by the Commissioner of Higher Education, whether the student has completed all or a portion of the Recommended or Advanced High School Program or of the curriculum equivalent in content and rigor, as applicable, that was available.

(d) All applicants from high schools operated by the United States Department of Defense and who graduate in the top 10 percent of their high school class shall be admitted to a general academic teaching institution if the student meets the following conditions:

(1) The student graduated from high school within the two years prior to the academic year for which the student is applying;

(2) The student is a Texas resident as defined in Texas Education Code, §54.052 or is entitled to pay tuition and fees at the rate provided for Texas residents for the term or semester to which the student is admitted; and

(3) The student submitted a complete application as defined by the institution before the expiration of the institution's established deadline.

(e) For the period from the 2011-2012 academic year through the 2015-2016 academic year, The University of Texas at Austin is not required to admit applicants in excess of the number needed to fill 75 percent of first-time resident undergraduate students.

(f) High school rank for students seeking automatic admission to a general academic teaching institution on the basis of their class rank is determined and reported as follows:

(1) Class rank shall be based on the end of the 11th grade, middle of the 12th grade, or at high school graduation, whichever is most recent at the application deadline.

(2) The top 10 percent of a high school class shall not contain more than 10 percent of the total class size.

(3) The student's rank shall be reported by the applicant's high school or school district as a specific number out of a specific number total class size.

(4) Class rank shall be determined by the school or school district from which the student graduated or is expected to graduate.

(g) A general academic teaching institution may limit the number of students admitted under this section if the number of applicants eligible and applying for admission to the institution under this section exceeds by more than 10 percent the average number of first-time freshmen admitted the previous two academic years. If an institution chooses to limit the number of students admitted under this section, it must ensure that:

(1) At least 97 percent of first-time freshmen admitted are in the top 10 percent of their high school class and;

(2) Clear guidelines are established for the selection of students based on one or a specified combination of the following methods:

(A) A lottery in which all students qualified for automatic admission have an equal chance for selection;

(B) Students are selected on a first-come, first-admitted basis following receipt of a complete application; or

(C) At least four or more criteria identified in Texas Education Code, §51.805 are used to select students admitted.

(h) Each general academic teaching institution shall annually report to the Board the composition of the entering class of first-time freshmen students admitted under this section. The report shall include a demographic breakdown of the class including race, ethnicity, and economic status. Each general academic teaching institution shall provide this report to the Board annually on or before a date set by the Board.

(i) Each public institution of higher education shall admit a student as an undergraduate if the student meets the following conditions:

(1) Is the child of a public servant listed in Texas Government Code, §615.003 who was killed or sustained a fatal injuring in the line of duty; and

(2) Meets the minimum admissions requirements established for purposes of this subsection by the governing board of the institution for high school or prior college-level grade point average and performance on standardized tests.

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 November 6, 2009.

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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Proposal publication date: September 25, 2009
For further information, please call: (512) 427-6114

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CHAPTER 9. PROGRAM DEVELOPMENT IN PUBLIC TWO-YEAR COLLEGES

SUBCHAPTER A. DEFINITIONS

19 TAC §9.1

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §9.1, concerning Definitions, without changes to the proposed text as published in the August 7, 2009, issue of the *Texas Register* (34 TexReg 5303).

Specifically, these amendments provide definitions for the terms "academic degree"; "applied associate degree"; "Career Technical/Workforce program"; "Statewide Articulated Transfer Curriculum", and include the federally amended name of the Carl D. Perkins Career and Technical Improvement Act of 2006.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code Chapter 61, §61.051, which gives the Coordinating Board the authority to coordinate higher education in Texas.

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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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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SUBCHAPTER B. GENERAL PROVISIONS

19 TAC §9.27, §9.28

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §9.27 and §9.28, concerning General Provisions, without changes to the proposed text as published in the August 7, 2009, issue of the *Texas Register* (34 TexReg 5305).

Specifically, these amendments provide inclusion of the federally amended name of the U.S. Department of Labor Employment and Training Administration and align language contained in Subchapter B with the federally amended Carl D. Perkins Career and Technical Education Improvement Act of 2006 by including the words "career technical" in reference to workforce education courses.

No comments were received regarding these amendments.

The amendments are adopted under Texas Education Code, Chapter 61, §61.051, which gives the Coordinating Board the authority to coordinate higher education in Texas.

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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Texas Higher Education Coordinating Board
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SUBCHAPTER C. PURPOSE, ROLE, AND MISSION

19 TAC §9.53

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §9.53, concerning Role, Mission, and Purpose of Public Two Year Colleges, without changes to the proposed text as published in the August 7, 2009, issue of the *Texas Register* (34 TexReg 5306).

Specifically, these amendments delete the words "Two Year" and replace those words with "Public Community/Junior and Technical" in the section's title.

No comments were received regarding these amendments.

The amendments are adopted under Texas Education Code Chapter 61, §61.051 which gives the Coordinating Board the authority to coordinate higher education in Texas.

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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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114

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19 TAC §9.55

The Texas Higher Education Coordinating Board (Coordinating Board) adopts the repeal of §9.55, concerning Board Review of Purpose, Role, and Mission Statements, without changes to the proposal as published in the August 7, 2009, issue of the *Texas Register* (34 TexReg 5306).

Specifically, this repeal deletes the section in order to eliminate reference to the institutional effectiveness evaluation process for public two-year community and technical colleges so that a new evaluation process may be developed and implemented.

No comments were received regarding this repeal.

The repeal is adopted under Texas Education Code Chapter 61, §61.051, which gives the Coordinating Board the authority to coordinate higher education in Texas.

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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SUBCHAPTER E. CERTIFICATE AND ASSOCIATE DEGREE PROGRAMS

19 TAC §§9.92, 9.93, 9.95

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §§9.92, 9.93, and 9.95, concerning Certificate and Associate Degree Programs, without changes to the proposed text as published in the August 7, 2009, issue of the *Texas Register* (34 TexReg 5307).

Specifically, these amendments provide a streamlined process for the approval of new certificate and associate degree programs and align language in Subchapter E with language contained in Subchapter B by including the words "career technical" in reference to workforce education programs so as to be consistent with language in the federally amended Carl D. Perkins Career and Technical Education Improvement Act of 2006.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code Chapter 61, §61.051 which gives the Coordinating Board the authority to coordinate higher education in Texas.

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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SUBCHAPTER F. CAREER TECHNICAL/WORKFORCE CONTINUING EDUCATION COURSES

19 TAC §§9.112 - 9.117

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §§9.112 - 9.117, concerning Workforce Continuing Education Courses, without changes to the proposed text as published in the August 7, 2009, issue of the *Texas Register* (34 TexReg 5309). Specifically, these amendments align language contained in Subchapter F with the federally amended Carl D. Perkins Career and Technical Education Improvement Act of 2006 by including the words "career technical" in reference to workforce education courses.

No comments were received regarding these amendments.

The amendments are adopted under Texas Education Code, Chapter 61, §61.051 which gives the Coordinating Board the authority to coordinate higher education in Texas.

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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Texas Higher Education Coordinating Board
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SUBCHAPTER H. PARTNERSHIPS BETWEEN SECONDARY SCHOOLS AND PUBLIC TWO-YEAR COLLEGES

19 TAC §9.142

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §9.142, concerning Partnerships Between Secondary Schools and Public Two-Year Colleges,

without changes to the proposed text as published in the August 7, 2009, issue of the *Texas Register* (34 TexReg 5310). Specifically, these amendments change the reference to the Carl D. Perkins Vocational and Applied Technology Education Act (of 1998) by substituting the current name of the statute: The Carl D. Perkins Career and Technical Education Improvement Act of 2006.

No comments were received regarding these amendments.

The amendments are adopted under Texas Education Code, Chapter 61, §61.051 which gives the Coordinating Board the authority to coordinate higher education in Texas.

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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SUBCHAPTER J. ACADEMIC ASSOCIATE DEGREE AND CERTIFICATE PROGRAMS

19 TAC §9.181, §9.183

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §9.181 and §9.183, concerning Academic Associate Degree Programs. Section 9.181 is adopted without changes to the proposed text as published in the August 7, 2009, issue of the *Texas Register* (34 TexReg 5310). Section 9.183 is adopted with changes and will be republished. Specifically, these amendments provide new language in §9.181 and §9.183 to include Texas State Technical College-Harlingen; clarify language pertaining to the Lamar State Colleges; add language to stipulate that each academic associate degree must provide a clearly-articulated curriculum that can be associated with a discipline or field of study leading to a baccalaureate degree, and must be identified as such in the institution's program inventory, and that a college may offer a specialized academic associate degree that incorporates a Board-approved statewide articulated transfer curriculum and a portion of the college's approved core curriculum if the coursework for both would total more than 66 SCH.

No comments were received. However, after posting the proposed amendments, staff noted the need for clarification of §9.183(c). Existing language suggested that the provisions of subsection (c) applied only to paragraph (1) of the subsection when it was intended that the provisions of subsection (c) should also apply to paragraphs (2) and (3). The proposed amendments were edited for purposes of clarification.

The amendments are adopted under Texas Education Code, Chapter 61, §61.051, which gives the Coordinating Board the authority to coordinate higher education in Texas.

§9.183. Degree Titles, Program Length, and Program Content.

(a) An academic associate degree may be called an associate of arts (AA), an associate of science (AS), or an associate of arts in teaching (AAT) degree.

(1) The associate of arts (AA) is the default title for an academic associate degree program if the college offers only one type of academic degree program.

(2) If a college offers both associate of arts (AA) and associate of science (AS) degrees, the degree programs may be differentiated in one of two ways, including:

(A) The AA program may have additional requirements in the liberal arts and/or the AS program may have additional requirements in disciplines such as science, mathematics, or computer science; or

(B) The AA program may serve as a foundation for the BA degree and the AS program for the BS degree.

(C) Each academic associate degree must provide a clearly-articulated curriculum that can be associated with a discipline or field of study leading to a baccalaureate degree, and must be identified as such in the institution's program inventory.

(3) The associate of arts in teaching (AAT) is a specialized academic associate degree program designed to transfer in its entirety to a baccalaureate program that leads to initial Texas teacher certification. This title should only be used for an associate degree program that consists of a Board-approved AAT curriculum.

(b) Academic associate degree programs must consist of a minimum of 60 SCH and a maximum of 66 SCH.

(c) Except as provided in paragraphs (1), (2), and (3) of this subsection, academic associate degree programs must incorporate the institution's approved core curriculum as prescribed by §4.28 of this title (relating to Core Curriculum) and §4.29 of this title (relating to Core Curricula Larger than 42 Semester Credit Hours).

(1) A college may offer a specialized academic associate degree that incorporates a Board-approved field of study curriculum as prescribed by §4.32 of this title (relating to Field of Study Curricula) and a portion of the college's approved core curriculum if the coursework for both would total more than 66 SCH; or

(2) A college may offer a specialized academic associate degree that incorporates a Board-approved statewide articulated transfer curriculum and a portion of the college's approved core curriculum if the coursework for both would total more than 66 SCH.

(3) A college that has a signed articulation agreement with a General Academic Teaching Institution to transfer a specified curriculum may offer a specialized AA or AS (but not AAT) degree program that incorporates that curriculum.

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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General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114

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SUBCHAPTER J. ACADEMIC ASSOCIATE DEGREE PROGRAMS

19 TAC §§9.184 - 9.186

The Texas Higher Education Coordinating Board (Coordinating Board) adopts the repeal of §§9.184 - 9.186, concerning Academic Associate Degree Programs, without changes to the proposed text as published in the August 7, 2009, issue of the *Texas Register* (34 TexReg 5311).

No comments were received regarding the repeal.

The repeal is adopted under the Texas Education Code, Chapter 61, §61.051 which gives the Coordinating Board the authority to coordinate higher education in Texas.

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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Bill Franz
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SUBCHAPTER J. ACADEMIC ASSOCIATE DEGREE AND CERTIFICATE PROGRAMS

19 TAC §§9.184 - 9.186

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new §§9.184 - 9.186 concerning Academic Associate Degree Programs, without changes to the proposed text as published in the August 7, 2009, issue of the *Texas Register* (34 TexReg 5312).

Specifically, these amendments provide criteria for the approval and implementation of new academic associate degree programs; the conditions under which an academic certificate may be awarded, and authorization for Texas State Technical College-Harlingen to offer the associate of science degree in a field of study in accordance with Texas Education Code §135.51(b)(1-2).

No comments were received.

The new sections are adopted under Texas Education Code, Chapter 61, §61.051, which gives the Coordinating Board the authority to coordinate higher education in Texas.

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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Bill Franz
General Counsel
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For further information, please call: (512) 427-6114

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SUBCHAPTER K. TECH-PREP PROGRAMS AND CONSORTIA

19 TAC §9.203, §9.206

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §9.203 and §9.206, concerning Tech-Prep Programs and Consortia, without changes to the proposed text as published in the August 7, 2009, issue of the *Texas Register* (34 TexReg 5313).

Specifically, these amendments amend §9.203 and §9.206 to stipulate Tech-Prep program performance measures as required by the federally amended Carl D. Perkins Career and Technical Education Improvement Act of 2006.

No comments were received regarding these amendments.

The amendments are adopted under Texas Education Code, Chapter 61, §61.051, which gives the Coordinating Board the authority to coordinate higher education in Texas.

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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Bill Franz
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Texas Higher Education Coordinating Board
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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 210. USE OF RECLAIMED WATER
SUBCHAPTER C. QUALITY CRITERIA AND SPECIFIC USES FOR RECLAIMED WATER

30 TAC §210.33

The Texas Commission on Environmental Quality (commission or agency) adopts the amendment of §210.33, *with changes* to the proposed text as published in the June 5, 2009, issue of the *Texas Register* (34 TexReg 3495).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

The executive director and the United States Environmental Protection Agency (EPA) reached an agreement in July 2008 regarding bacterial effluent limitations and monitoring requirements in Texas Pollutant Discharge Elimination System (TPDES) domestic wastewater permits. The agreement included the commission proposing rulemaking to establish requirements for bacteria limitations in all TPDES domestic wastewater permits.

Chapter 210, which authorizes the use of reclaimed wastewater, is being amended to allow the reclaimed water provider to select either the currently required fecal coliform or the new requirement for TPDES domestic permits, *Escherichia coli (E. coli)* or *Enterococci* as the indicator organism for disinfection. All three bacteria adequately demonstrate disinfection and are therefore protective of human health and the environment. This flexibility allows the provider to choose the most convenient, most cost-effective bacteria test for its facility. This rulemaking also amends 30 TAC Chapters 309 and 319 to include bacteria testing and set its frequency for TPDES domestic wastewater permits. A reclaimed water use authorization can only be issued to an entity that has a permitted method to dispose of the effluent if at any time there is not a beneficial use for it. The most typical scenario is for a domestic wastewater treatment facility to supply reclaimed water to a user for purposes of irrigation, dust suppression, cooling tower make-up water, or oil and gas drilling.

SECTION DISCUSSION

Adopted §210.33 requires a reclaimed water provider to demonstrate disinfection by measuring fecal coliform, *E. coli* or *Enterococci* bacteria. Limits for *Enterococci* were added since proposal to allow either new indicator organism to be substituted for fecal coliform. Reclaimed water providers that hold TPDES domestic wastewater permits with *E. coli* or *Enterococci* limits will not have to sample both fecal coliform and the bacteria required by their wastewater permit. Providers with land application permits that do not require *E. coli* or *Enterococci* testing may continue to use fecal coliform testing. All three bacteria tests are adequate to demonstrate disinfection.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed this rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225, because it does not meet the criteria for a "major environmental rule" as identified in that statute. A major environmental rule is defined as a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This rule adoption does not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific intent of this portion of the adopted rulemaking is to allow flexibility in the indicator bacteria used to demonstrate disinfection for reclaimed water usage. The rulemaking modifies the state rules to allow a choice of indicator bacteria measured for demonstration of disinfection in reclaimed water authorizations.

Furthermore, the rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet any of the four applicable requirements specified in §2001.0225(a). Texas Government Code, §2001.0225(a) applies only to a state agency's adoption of a major environmental rule that: 1) exceeds a standard set by federal law, unless state law specifically requires the rule; 2) exceeds an express requirement of state law, unless federal law specifically requires the rule; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) is adopted solely under the general powers of the agency instead of under a specific state law.

The commission invited public comment regarding this draft regulatory impact analysis determination during the comment period. No comments were received on this draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the rulemaking and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the rulemaking is to modify the Texas Administrative Code to reflect bacteria effluent limitations and monitoring in all TPDES domestic wastewater permits, as mandated by the EPA. This rulemaking substantially advances that stated purpose by modifying 30 TAC §§210.33, 309.3, and 319.9, and repealing §319.10.

Promulgation and enforcement of the adopted rule will not be a statutory or constitutional taking of private real property. Specifically, the rulemaking does not apply to or affect any landowner's rights in private real property because it does not burden (constitutionally), restrict, or limit any landowner's right to real property or reduce any property value by 25% or more beyond that which would otherwise exist in the absence of the regulations. These actions will not affect private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that the adoption is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.,* and therefore is required to be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the adopted rule in accordance with the Coastal Coordination Act Implementation Rules, 31 TAC §505.22 and found the rulemaking is consistent with the applicable CMP goals and policies.

CMP goals applicable to the adopted rule includes the protection, preservation, restoration, and enhancement of the diversity, quality, quantity, functions, and values of coastal natural resource areas and ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone.

CMP policies applicable to the adopted rule includes 31 TAC §501.21(b)(1) and (2), which state that discharges shall comply with water quality-based effluent limits and that discharges that increase pollutant loadings to coastal waters shall not impair designated uses of coastal waters and shall not significantly degrade coastal water quality unless necessary for important economic or social development.

This rulemaking would adopt bacteria limits for all domestic wastewater facilities that discharge into waters in the state. By adopting bacteria limits, there will be a more direct and possibly more accurate measure of the level of disinfection achieved in

domestic effluent discharged to both fresh and salt water in the areas of concern to the CMP.

Promulgation and enforcement of this rulemaking will not violate or exceed any standards identified in the applicable CMP goals and policies because the adopted rule is consistent with those CMP goals and policies and because the rule does not create or have a direct or significant adverse effect on any coastal natural resource areas.

The commission invited public comment regarding consistency with the coastal management program during the comment period. No comments were received on the consistency with the coastal management program.

PUBLIC COMMENT

The commission held a public hearing for this rulemaking in Austin, Texas at TCEQ Building E, at 10:00 a.m. on June 30, 2009. No oral comments were received at the public hearing. The comment period closed on July 6, 2009. The commission received written comments from AECOM USA Group, Inc. (AECOM); EPA; Harris County Attorney's Office on behalf of Harris County Public Infrastructure Department, Harris County Flood Control District, and Harris County Public Health and Environmental Services Department Environmental Public Health Division (Harris County); and Water Environmental Association of Texas (WEAT). All entities supported the rulemaking, either partially or with changes. No comments were received concerning Chapter 210.

STATUTORY AUTHORITY

The amendment is adopted under the Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission. TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority provided by the TWC. TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the code and other laws of the state. TWC, §5.104, which states that the commission, by rule, will develop memoranda of understanding necessary to clarify and provide for its respective duties, responsibilities, or functions on any matter under the jurisdiction of the commission that is not expressly assigned to the commission. TWC, §5.105, which authorizes the commission to adopt rules and policies necessary to carry out its responsibilities as provided by the TWC. TWC, §5.120, which requires the commission to "administer the law so as to promote the judicious use and maximum conservation and protection" of the environment and natural resources of the state. TWC, §26.011, which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state. TWC, §26.013, which authorizes the executive director to conduct or have conducted any research and investigations it considers advisable and necessary for the discharge of the duties under Chapter 26 of the TWC. TWC, §26.027, which authorizes the TCEQ to issue permits for the discharge of waste or pollutants into or adjacent to water in the state.

This adopted amendment implements TWC, §§5.013, 5.102, 5.103, 5.104, 5.105, 5.120, 26.011, 26.013, 26.027, 26.034, and 26.041.

§210.33. Quality Standards for Using Reclaimed Water.

The following conditions apply to the types of uses of reclaimed water. At a minimum, the reclaimed water producer shall only transfer reclaimed water of the following quality as described for each type of specific use:

(1) for Type I reclaimed water uses, reclaimed water on a 30-day average shall have a quality of:
Figure: 30 TAC §210.33(1)

(2) for Type II reclaimed water use, reclaimed water on a 30-day average shall have a quality of:

(A) for a system other than pond system:
Figure: 30 TAC §210.33(2)(A)

(B) for a pond system:
Figure: 30 TAC §210.33(2)(B)

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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TRD-200905088
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-2548

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CHAPTER 309. DOMESTIC WASTEWATER EFFLUENT LIMITATION AND PLANT SITING
SUBCHAPTER A. EFFLUENT LIMITATIONS

30 TAC §309.3

The Texas Commission on Environmental Quality (commission or TCEQ) adopts the amendment of §309.3 *without changes* to the proposed text as published in the June 5, 2009, issue of the *Texas Register* (34 TexReg 3495) and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

The TCEQ typically includes chlorine exposure time and residual concentration requirements as the bacteria control mechanism for disinfection by chlorination in Texas Pollutant Discharge Elimination System (TPDES) domestic discharge permits. Starting in February 2007, the United States Environmental Protection Agency (EPA) took a new position that bacteria limits are required. This resulted in the EPA objecting to a subset of the commission's draft permits. As a result, the commission could not issue approximately 100 permits during this time. The executive director and EPA reached an agreement in July 2008 regarding bacteria effluent limitations and monitoring requirements in TPDES domestic wastewater permits. The agreement included an interim approach to require bacteria limitations and/or monitoring for selected facilities that met certain criteria for discharges to bacteria impaired water bodies. The agreement also included a long term approach in which the commission would propose rulemaking to establish requirements for bacteria limitations in all TPDES domestic wastewater permits. Conditions in the agreement stated that an adopted rule must be effective by December 31, 2009, and all TPDES domestic wastewater draft permits for which Notice of Application and Preliminary Decision is pub-

lished on or after January 1, 2010 will have the new requirements as part of the permit language or EPA objections would begin again. The purpose of this rulemaking is to satisfy the agreement with the EPA.

The commission is adopting the contact recreation criterion in the Texas Surface Water Quality Standards as the bacteria limit for domestic TPDES permits. The Texas Surface Water Quality Standards program has determined that the contact recreation criterion is protective of both human health and the environment. It is also readily achievable with current technology.

SECTION DISCUSSION

The commission adopts administrative changes throughout this rulemaking to conform to Texas Register and agency guidelines. These changes include updating cross-references.

Adopted §309.3(g)(2) removes the last sentence in the paragraph that applies to renewal permits for wastewater systems constructed prior to October 8, 1990. There are no longer any active permits issued prior to this date that have not been renewed. The statement is being removed to simplify the rule.

Adopted §309.3(g)(3) replaces the fecal coliform limit with the *Escherichia coli (E. coli)* or *Enterococci* bacteria limitation set by §309.3(h) or (i) if applying for an alternative method of disinfection. The requirement was changed to be consistent with other bacteria requirements in this section.

Adopted §309.3(g)(4) allows a permittee to choose to test for *E. coli* or fecal coliform testing for effluent that is land applied through a subsurface area drip dispersal system in an area that has the potential for human contact. This change was made to allow flexibility in testing procedures. Both bacteria tests indicate the safety level of water for human contact. The permittee may choose the test that is more convenient or more cost effective. Subsurface area drip dispersal systems are authorized by a state-only permit and are not subject to the TPDES program, and therefore, not subject to the agreement with EPA.

Adopted §309.3(h) describes bacteria effluent limitations for domestic TPDES permits.

Adopted §309.3(h)(1) lists the indicator bacteria required for fresh water discharges and salt water discharges. The Texas Surface Water Quality Standards and the agreement with EPA require *E. coli* testing for fresh water and *Enterococci* testing for salt water.

Adopted §309.3(h)(2) sets the monthly average bacteria limitation at the geometric mean of the contact recreation standard. The current geometric mean for contact recreation is 126 colony forming units (cfu) per 100 milliliters (ml) for *E. coli* bacteria in fresh water and 35 cfu/100 ml for *Enterococci* in salt water. The Chief Engineer's Office is currently evaluating a change to the fresh water standard. If a change is adopted, staff will use the new *E. coli* criterion for the most stringent contact recreation category for the bacteria limits in TPDES domestic permits issued, amended, or renewed after the date the new standards are adopted.

Adopted §309.3(h)(3) sets the maximum single grab sample bacteria limitation as the single grab sample for the contact recreation standard. Currently, the single grab sample criterion is 394 cfu/100 ml for *E. coli* in fresh water and 89 cfu/100 ml for *Enterococci* in salt water. The levels contemplated for the amended Water Quality Standards would change the grab sample criteria to 399 cfu/100 ml for *E. coli* and 104 cfu/100 ml for *Enterococci* for primary contact recreation, the most stringent contact recreation criteria. If changes are adopted, staff will use the new criterion for the most stringent contact recreation category for the bacteria limits in TPDES domestic permits issued, amended, or renewed after the date the new standards are adopted.

Adopted §309.3(i) is the former §309.3(h) with amendments. The subsection was relettered to allow for the insertion of the bacteria limits subsection. It allows the executive director to assign a more stringent parameter limit if necessary to protect human health or water quality. The bacteria limit was included in the parameters that can be adjusted by the executive director. Protection of human health was also added, consistent with the commission's mission and other regulations. The list of subsections to which it applies was changed from subsections (a) - (g) to subsections (a) - (h) to include the new bacteria limitations subsection.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed this rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225, because it does not meet the criteria for a "major environmental rule" as identified in that statute. A major environmental rule is defined as a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This rule adoption does not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific intent of the adopted rulemaking is to establish requirements for bacteria limitations in all TPDES domestic wastewater permits.

The adopted rulemaking modifies the state rules and/or procedural documents to include bacteria effluent limitations and monitoring in all TPDES domestic wastewater permits.

Furthermore, the rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet any of the four applicable requirements specified in §2001.0225(a). Texas Government Code, §2001.0225(a) applies only to a state agency's adoption of a major environmental rule that: (1) exceeds a standard set by federal law, unless state law specifically requires the rule; (2) exceeds an express requirement of state law, unless federal law specifically requires the rule; (3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) is adopted solely under the general powers of the agency instead of under a specific state law.

The commission invited public comment regarding this draft regulatory impact analysis determination during the comment period. No comments were received on this draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the rulemaking and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the rulemaking is to modify the Texas Administrative Code to reflect bac-

teria effluent limitations and monitoring in all TPDES domestic wastewater permits, as mandated by the EPA. This rulemaking substantially advances that stated purpose by modifying 30 TAC §§210.33, 309.3, and 319.9, and repealing §319.10.

Promulgation and enforcement of the adopted rule will not be a statutory or constitutional taking of private real property. Specifically, the rulemaking does not apply to or affect any landowner's rights in private real property because it does not burden (constitutionally), restrict, or limit any landowner's right to real property or reduce any property value by 25% or more beyond that which would otherwise exist in the absence of the regulations. These actions will not affect private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that the adoption is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.,* and therefore is required to be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the adopted rule in accordance with the Coastal Coordination Act Implementation Rules, 31 TAC §505.22 and found the rulemaking is consistent with the applicable CMP goals and policies.

CMP goals applicable to the adopted rule include the protection, preservation, restoration, and enhancement of the diversity, quality, quantity, functions, and values of coastal natural resource areas and ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone.

CMP policies applicable to the adopted rule includes 31 TAC §501.21(b)(1) and (2), which state that discharges shall comply with water quality-based effluent limits and that discharges that increase pollutant loadings to coastal waters shall not impair designated uses of coastal waters and shall not significantly degrade coastal water quality unless necessary for important economic or social development.

This rulemaking adopts bacteria limits for all domestic wastewater facilities that discharge into waters in the state. By adopting bacteria limits, there will be a more direct and possibly more accurate measure of the level of disinfection achieved in domestic effluent discharged to both fresh and salt water in the areas of concern to the CMP.

Promulgation and enforcement of this rulemaking will not violate or exceed any standards identified in the applicable CMP goals and policies because the adopted rule is consistent with these CMP goals and policies and because this rulemaking does not create or have a direct or significant adverse effect on any coastal natural resource areas.

The commission invited public comment regarding consistency with the coastal management program during the comment period. No comments were received on the consistency with the coastal management program.

PUBLIC COMMENT

The commission held a public hearing for this rulemaking in Austin, Texas at TCEQ Building E, at 10:00 a.m. on June 30, 2009. No oral comments were received at the public hearing. The comment period closed on July 6, 2009. The commission received written comments from AECOM USA Group, Inc. (AECOM); EPA; Harris County Attorney's Office on behalf of Harris County Public Infrastructure Department, Harris County Flood Control District, and Harris County Public Health and Environmental Services Department Environmental Public Health Division (Harris County); and the Water Environmental Association of Texas (WEAT). All entities supported the rulemaking, either partially or with changes.

RESPONSE TO COMMENTS

AECOM:

The time line for monitoring and compliance as proposed in the rules is out of proportion with what is normally granted to wastewater facilities. Typically, a facility owner is assigned a monitoring only period prior to limitations going into effect. The draft rules appear to establish bacteria limits without an interim monitoring only period. If facilities are not able to meet bacteria effluent limitations and structural modifications to the plant will have to be made, a one-year monitoring period in the first permit issued under the proposed bacteria requirements is requested.

The rule is silent on compliance periods. All currently permitted wastewater treatment facilities are required to and should be designed and operated to disinfect effluent. A facility's disinfection method, whether 20-minute chlorine contact time with a minimum of one milligram per liter (mg/l) residual, properly operated ultraviolet light (UV) system, or a lagoon system with a minimum 21-day retention time should disinfect effluent and thereby comply with bacteria limitations. Measuring bacteria levels is a more direct way of measuring disinfection than chlorine contact time and residual or detention time in a lagoon system.

The executive director's agreement with the EPA requires that bacteria limitation be effective upon permit issuance. Section 307.3, Definitions and Abbreviations, allows a compliance period of up to a maximum of three years for newly imposed water quality based effluent limitations. The executive director will evaluate requests for a compliance period on a case-by-case basis. However, EPA has preliminarily indicated that it may consider approving a compliance period for certain facilities only if new construction is required for the facility to meet bacteria limitations.

Bacteria limits will not go into effect until a facility's next permit action. The vast majority of permittees in the state will have time to evaluate existing facilities and make needed renovations.

The commission has made no changes in response to this comment.

EPA:

EPA requested that the commission consider requiring minor wastewater treatment facilities (those discharging less than one million gallons per day (mgd) to dechlorinate their effluent.

Requiring dechlorination of effluent from minor facilities is beyond the scope of this rulemaking, and Chapter 309 does not set dechlorination standards for any facilities. Dechlorination requirements are located in *Procedures to Implement the Texas Surface Water Quality Standards,* RG-194. EPA will have an opportunity to comment on this document in the near future.

The commission has made no changes in response to this comment.

HARRIS COUNTY:

Harris County appreciates TCEQ efforts and diligence in developing bacteria effluent limits and monitoring requirements for all domestic wastewater treatment plants.

The commission acknowledges Harris County's appreciation.

There are 666 wastewater treatment plants in the Harris County region where there are bacteria impaired segments subject to total maximum daily loads (TMDLs). Sewage from wastewater treatment plants is the single most treatable source of bacteria entering waterways. Studies by Harris County and others indicate rampant re-growth of bacteria following discharge from wastewater treatment plants. A well designed and operated wastewater treatment plant is capable of and should be required to meet monthly average effluent limitations for *E. coli* of 10 cfu per 100 ml of water and a single sample maximum limit of 50 cfu/100 ml. A similar approach should be developed for *Enterococci* limitations.

Regrowth of indicator bacteria and possibly pathogenic organisms is a potential concern in some situations. At this stage of research efforts on regrowth characteristics, the appropriate step in response to federal requirements is to establish across-the-board effluent limits that are equal to the instream recreational criteria in the *Texas Surface Water Quality Standards.* This is a relatively stringent regulatory approach, since the proposed effluent limits will impose water quality standards at the end of pipe, without allowing for instream dilution. More stringent effluent limits can still be required for specific permits or watersheds, as demonstrated by the TMDL evaluation for the Buffalo and White Oak Bayou watersheds, where an average concentration of *E. coli* 63 cfu/100 ml is required as the effluent limit for domestic wastewater discharges. Also, by equating the effluent limit to the instream water quality criteria, rather than to specified numerical concentrations, the proposed rule maintains the flexibility to accommodate any future changes in the water quality standards for contact recreation. Section 309.2(b) gives the executive director the authority on a case-by-case basis to set more stringent limits when needed to protect water quality.

The commission has made no changes in response to this comment.

WEAT:

Laboratory availability will be a challenge, particularly for small systems. Many commercial laboratories do not accept samples on weekends without charging higher rates. Sampling frequencies need to be addressed to acknowledge laboratory working hours, similar to what is being done with drinking water samples. Holding times for drinking water microbiological testing were extended to 30 hours and frequencies were adjusted to Monday through Thursday to handle sample shipping issues and laboratory testing schedules. The draft rules should include these considerations.

Sampling frequencies in the rule range from once per calendar quarter to daily. The executive director recognized this issue during the development of the rule and fiscal note. Only facilities that treat more than one mgd using lagoons or five mgd using chlorine have monitoring frequencies (three or more times per week) that would require testing on days other than Monday through Thursday. Facilities that use chlorine to disinfect and treat less than five mgd have a sampling frequency of once per week or less. The monitoring schedule for facilities that use UV disinfection has not been changed from historical practices. UV facilities that treat less than 0.1 mgd are required to test five days per week. Larger UV facilities must test daily.

Currently, the only EPA approved method for the enumeration of *E coli* in wastewater is located in 40 Code of Federal Regulations §136.3, which has a maximum six-hour hold time and a two-hour lab setup time. The 30-hour hold time for bacteria in the drinking water program is primarily used for a presence-absence evaluation rather than enumeration against a numerical limitation. The 30-hour hold time methods in the drinking water program have been EPA approved and can be found in 40 CFR §141.21 and §141.704.

There is a procedure available to request from the EPA a variance from methods approved in *Standard Methods for the Examination of Water and Wastewater* and 40 CFR. The request procedure requires that the requesting party apply to the EPA through the state authority.

The commission has made no changes in response to this comment.

WEAT commented that the rule's fiscal note does not correctly characterize laboratory costs. WEAT members have been quoted costs between $30 and $50 per sample, depending upon location of the utility with respect to contract laboratory. The initial cost to set up in-house sampling for the Colilert procedure has been quoted at $6,300. None of these costs include training or hourly wages paid to utility staff to comply with the new regulations.

Research into the cost of bacteria testing by contract laboratories was done in February 2009. The source of contract lab costs is given in the following table.

Figure: 30 TAC Chapter 309--Preamble

Different sources or the difference in the dates the research was done may account for the lower costs quoted by WEAT.

The source of set-up and per test costs for in-house labs was Hach Company for the m-ColiBlue24 testing method. Information was collected in March 2009. The m-ColiBlue24 method was the most economical and simplest method found in regards to equipment costs, training, and operational costs. More expensive options, such as the Colilert method, were not included, although they are available and are approved methods.

The commission has made no changes in response to this comment.

Many facilities have not been designed to accommodate *E. coli* sampling after the final treatment unit. In order to collect uncontaminated samples, variances or other amendments to TPDES permits may need to be considered to ensure more functional sampling points.

Sampling for bacteria is required to be conducted following the final treatment unit; similar to sampling for other parameters in a TPDES permit (for example, biochemical oxygen demand and total suspended solids). If there are case-specific issues, an applicant may apply for a change in sample location when a permit application is filed.

The commission has made no changes in response to this comment.

WEAT has a number of smaller utility members that may struggle with the proposed rule. In particular, small systems with ponds may not have adequate contact time to meet the proposed *E. coli* limits. TCEQ needs to consider way of implementing the proposed effluent limits in a manner that will allow permittees time to secure funds and construct any needed improvements

before imposing mandatory effluent limits. It would serve no justice to begin an enforcement campaign against systems when they fail to meet a new permit condition imposed through a renewal process. Any associated fines would be better utilized constructing improvements to maintain permit compliance.

All currently permitted wastewater treatment facilities are required to and should be designed and operated to disinfect effluent. A facility's disinfection method, whether 20-minute chlorine contact time with a minimum of one mg/l residual, properly operated ultraviolet light system, or a lagoon system with a minimum 21-day retention time should disinfect effluent, and thereby comply with bacteria limitations. Measuring bacteria levels is a more direct way of measuring disinfection than chlorine contact time and residual or detention time in a lagoon system.

The executive director's agreement with the EPA requires that bacteria limitation be effective upon permit issuance. Section 307.3, allows a compliance period of up to a maximum of three years. The executive director will evaluate requests for a compliance period on a case-by-case basis. However, EPA has preliminarily indicated that it may consider approving a compliance period for certain facilities only if new construction is required for the facility to meet bacteria limitations.

Bacteria limits will not go into effect until a facility's next permit action. The vast majority of facilities in the state will have time to evaluate existing facilities and make needed renovations.

The executive director may consider allowing municipally owned utilities, water supply or sewer service corporations or districts to defer the payment of all or part of an administrative penalty for a violation on the condition that the entity complies with all provisions for corrective action in a commission order to address the violations, as stated in Texas Water Code (TWC), §7.034.

The commission has made no changes in response to this comment.

WEAT's members are concerned about wet weather events and potential non-compliance during the same. Bacteria from runoff may impact permit compliance given the stringency of the proposed limits. WEAT requests consideration for alternative wet weather effluent limits, or in the alternative, enforcement discretion regarding same.

The TCEQ recognizes that domestic wastewater treatment systems can be stressed during wet-weather periods. However, disinfection systems are required to be designed to treat the two-hour peak flow. Wet weather, including inflow and infiltration, should be part of the calculation of the two-hour peak flow. The average effluent limit is based on the instream criterion for primary contact recreation and is applied as a geometric mean over a monthly period, and a geometric mean calculation helps to reduce the impact of a few elevated samples during a month.

In developing enforcement actions, case specific factors will be considered. In addition, the executive director may consider allowing municipally owned utilities, water supply or sewer service corporations or districts to defer the payment of all or part of an administrative penalty for a violation on the condition that the entity complies with all provisions for corrective action in a commission order to address the violations, as stated in TWC, §7.034.

The commission has made no changes in response to this comment.

WEAT reiterates its concerns regarding the correlation of fecal coliform performance with *E. coli* performance at certain wastewater treatment plants. WEAT submitted a comment letter during the informal rule development stage that included a copy of a study that was performed to assess plant performance with respect to effluent concentrations of both fecal coliform and *E. coli.* The study demonstrates that there is not always a good correlation in plant performance. Given that very few of the wastewater treatment facilities in the Texas were designed to explicitly comply with an *E. coli* limit of 126 cfu/100 ml, WEAT is concerned that individual plant performance will vary across the state and suggests that there should be a means to improve plant compliance if/when a problem is identified. WEAT requests the commission utilize enforcement discretion with utilities as the industry only now will begin to produce performance data indicative of compliance with this new limit.

The executive director reviewed the 2004 study, *Escherichia coli and Fecal Coliform Populations in Disinfected Municipal Wastewater Treatment Plant Effluent and Recommendations to DNR for a Monthly Geometric Mean Escherichia coli Limitation,* during the development of the draft rules. The argument in the study is that the IDEXX® test inflates the number of viable *E. coli* in relation to the number of viable fecal coliform, and this causes a poor correlation between the two results *(E. coli* versus fecal coliform).

Enhanced recovery techniques for stressed organisms are discussed at length in *Standard Methods for the Examination of Water and Wastewater.* These techniques can be applied to analysis of fecal coliform and may, with further study, confirm that the recovery of *E. coli* using IDEXX® may not be poorly correlated to the actual concentrations of fecal coliform in a given sample. Additionally, IDEXX® manufactures an enzyme substrate test specifically for fecal coliforms, similar to the test for *E. coli.* Both the *E. coli* and the fecal coliform IDEXX® tests are specifically intended to aid in the recovery of stressed organisms. Neither of these methods to recover stressed organisms were used to confirm the results of the 2004 study.

Concern over whether the IDEXX® method enhances the survivability of a stressed organism is not applicable to the monitoring TCEQ proposes, because one cannot assume that a stressed organism will not survive when released into environmental waters. Moreover, the assertion that the IDEXX® method yields inflated *E. coli* concentrations relative to the other methods cited in the study can be countered with the assertion that the other methods cited are likely to under-report the concentrations of fecal coliform present.

There are seven approved methods for the analysis of *E. coli* in wastewater listed in 40 CFR Part 136, Table 1A. A permittee could use any of these seven methods. If the method selected is one for which TCEQ offers a National Environmental Laboratory Accreditation Conference (NELAC) accreditation, a contract laboratory would need to be NELAC-accredited for that method.

The bacteria limit is set at the primary contact recreation standard in Chapter 307. Chapter 307 has required *E. coli* to be used as the indicator organism in fresh water for water quality standards since August 17, 2000. In 2000, TCEQ revised the water quality standards for recreation and changed the indicator bacteria from fecal coliform to *E. coli* for freshwater and *Enterococci* for saltwater. The new indicators and their associated numerical criteria (such as the 126 cfu/100 ml for *E. coli)* are in accordance with EPA's 1986 national guidance criteria for recreation. EPA's 1986 criteria are based on epidemiological studies

that showed these new indicators correlated better with risk of disease (gastroenteritis) than other indicators such as fecal coliform. The National Beach Act of 2000 required coastal states to adopt *Enterococci* and the associated EPA numerical criteria for saltwater.

In developing enforcement actions, case specific factors will be considered. In addition, the executive director may consider allowing municipally owned utilities, and water supply or sewer service corporations or districts to defer the payment of all or part of an administrative penalty for a violation on the condition that the entity complies with all provisions for corrective action in a commission order to address the violations, as stated in TWC, §7.034.

The commission has made no changes in response to this comment.

STATUTORY AUTHORITY

The amendment is adopted under the Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission. TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority provided by the TWC. TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the code and other laws of the state. TWC, §5.104, which states that the commission, by rule, will develop memoranda of understanding necessary to clarify and provide for its respective duties, responsibilities, or functions on any matter under the jurisdiction of the commission that is not expressly assigned to the commission. TWC, §5.105, which authorizes the commission to adopt rules and policies necessary to carry out its responsibilities as provided by the TWC, TWC, §5.120, which requires the commission to "administer the law so as to promote the judicious use and maximum conservation and protection" of the environment and natural resources of the state. TWC, §26.011, which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state. TWC, §26.013, which authorizes the executive director to conduct or have conducted any research and investigations it considers advisable and necessary for the discharge of the duties under Chapter 26 of the TWC. TWC, §26.027, which authorizes the TCEQ to issue permits for the discharge of waste or pollutants into or adjacent to water in the state.

The amendment is also adopted under the Texas Water Quality Control Act, which gives the TCEQ the authority to adopt rules for the approval of disposal system plans under TWC, §26.034 as well as the authority to set standards to prevent the discharge of waste that is injurious to the public health under TWC, §26.041.

This adopted amendment implements TWC, §§5.013, 5.102 - 5.105, 5.120, 26.011, 26.013, 26.027, 26.034, and 26.041.

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 November 6, 2009.

TRD-200905089

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Effective date: November 26, 2009

Proposal publication date: June 5, 2009

For further information, please call: (512) 239-2548

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CHAPTER 319. GENERAL REGULATIONS INCORPORATED INTO PERMITS
SUBCHAPTER A. MONITORING AND REPORTING SYSTEM

The Texas Commission on Environmental Quality (commission or TCEQ) adopts the amendment of §319.9 and the repeal of §319.10.

Section 319.9 is adopted *with changes* to the proposed text and will be republished. Section 319.10 is adopted *without changes* to the proposed text as published in the June 5, 2009, issue of the *Texas Register* (34 TexReg 3495) and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The TCEQ typically includes chlorine exposure time and residual concentration requirements as the bacteria control mechanism for disinfection by chlorination in Texas Pollutant Discharge Elimination System (TPDES) domestic discharge permits. Starting in February 2007, the United States Environmental Protection Agency (EPA) took a new position that bacteria limits are required. This resulted in the EPA objecting to a subset of the commission's draft permits. As a result, the commission could not issue approximately 100 permits during this time. The executive director and EPA reached an agreement in July 2008 regarding bacteria effluent limitations and monitoring requirements in TPDES domestic wastewater permits. The agreement included an interim approach to require bacteria limitations and/or monitoring for selected facilities that met certain criteria for discharges to bacteria impaired water bodies. The agreement also included a long term approach in which the commission would propose rulemaking to establish requirements for bacteria limitations in all TPDES domestic wastewater permits. Conditions in the agreement stated that an adopted rule must be effective by December 31, 2009, and all TPDES domestic wastewater draft permits for which Notice of Application and Preliminary Decision is published on or after January 1, 2010 will have the new requirements as part of the permit language or EPA objections would begin again. The purpose of this rulemaking is to satisfy the agreement with the EPA.

The frequency of effluent parameter measurements is addressed in Chapter 319. Different frequencies of measuring bacteria are required based on both the amount of wastewater permitted for discharge and the disinfection method. Larger flows are given more frequent measurement requirements than small flows because of the amount of potential harm to human health and the environment are proportionate to the pollutant loadings from the amount of wastewater discharged from a treatment facility.

Frequencies also vary with the disinfection method. Because facilities with chlorine disinfection systems have chlorine contact time and concentrations as another method to evaluate disinfection, those facilities are assigned a proportionately less frequent

measurement schedule than facilities that use ultraviolet light, natural attenuation, or a chemical system other than chlorine. The natural attenuation, or pond, systems were given a more frequent measurement schedule than chlorine systems, but less frequent than other chemical systems or ultraviolet light systems. Although there is no other method to measure disinfection with these systems, their treatment levels change slowly. Ultraviolet light and other chemical systems are given the highest frequency of measurement because they are subject to equipment failure, and therefore, a lack of disinfection in a short time span.

SECTION BY SECTION DISCUSSION

Adopted §319.9 includes Table 2, located in §319.9(b), and renumbers the current Table 2, located in existing §319.9(b) and Table 3, located in existing §319.9(c), as Table 3, located in §319.9(c) and Table 4, located in §319.9(d). Table 1, located in §319.9(a), is the *Frequency of Measurement* for domestic discharges. It includes measurement frequencies for flow, biochemical oxygen demand, total suspended solids, chlorine residual, and pH. The second row in the first column of Table 1, Design Capacity MGD, was changed to read 0.10 to less than 0.50 rather than 0.50 to less than 0.10 to which was a typographical error. Table 2, located in §319.9(b), is the *Frequency of Measurement of Bacteria* for domestic discharges, the amended Table 3, located in §319.9(c), is the *Frequency of Measurement* for nondomestic discharges, and the amended Table 4, located in §319.9(d), is the *Required Quality Control Analyses.* For better organization and easier reading, Table 2 was inserted after Table 1 rather than added after Table 4 to keep the domestic discharge tables together. Table 2, was revised to include greater than symbols in the second, third, and fourth rows in the first column, to clarify the sampling frequencies. The last column, first row of Table 3, was revised to read 10.00 or greater rather than 10.00 to greater to correct a typographical error.

The adopted rulemaking repeals §319.10. Bacteria limits will replace and supersede this requirement. It is being removed to simplify the rule.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed this rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225, because it does not meet the criteria for a "major environmental rule" as identified in that statute. A major environmental rule is defined as a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This rule adoption does not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific intent of this portion of the rulemaking is to establish frequency requirements for bacteria monitoring in all TPDES domestic wastewater permits. The rulemaking modifies the state rules and/or procedural documents to include bacteria effluent limitations and monitoring frequencies in all TPDES domestic wastewater permits.

Furthermore, the rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet any of the four applicable requirements specified in §2001.0225(a). Texas Government Code, §2001.0225(a) applies only to a state agency's adoption of a major environmental rule that: 1) exceeds a standard set by federal law, unless state law specifically requires the rule; 2) exceeds an express requirement of state law, unless federal law specifically requires the rule; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) is adopted solely under the general powers of the agency instead of under a specific state law.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on this draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the rulemaking and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the rulemaking is to modify the Texas Administrative Code to reflect bacteria effluent limitations and monitoring in all TPDES domestic wastewater permits, as mandated by the EPA. This rulemaking substantially advances that stated purpose by modifying 30 TAC §§210.33, 309.3, and 319.9, and repealing §319.10.

Promulgation and enforcement of the adopted rules will not be a statutory or constitutional taking of private real property. Specifically, the rulemaking does not apply to or affect any landowner's rights in private real property because it does not burden (constitutionally), restrict, or limit any landowner's right to real property or reduce any property value by 25% or more beyond that which would otherwise exist in the absence of the regulations. These actions will not affect private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that the adoption is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.,* and therefore is required to be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the adopted rules in accordance with the Coastal Coordination Act Implementation Rules, 31 TAC §505.22 and found the rulemaking is consistent with the applicable CMP goals and policies.

CMP goals applicable to the adopted rules include the protection, preservation, restoration, and enhancement of the diversity, quality, quantity, functions, and values of coastal natural resource areas and ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone.

CMP policies applicable to the adopted rules include 31 TAC §501.21(b)(1) and (2), which state that discharges shall comply with water quality-based effluent limits and that discharges that increase pollutant loadings to coastal waters shall not impair designated uses of coastal waters and shall not significantly degrade coastal water quality unless necessary for important economic or social development.

These rules would adopt bacteria limits for all domestic wastewater facilities that discharge into waters in the state. By adopting bacteria limits, there will be a more direct and possibly more accurate measure of the level of disinfection achieved in domestic

effluent discharged to both fresh and salt water in the areas of concern to the CMP.

Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the adopted rules are consistent with those CMP goals and policies and because these rules do not create or have a direct or significant adverse effect on any coastal natural resource areas.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. No comments were received on the consistency with the coastal management program.

PUBLIC COMMENT

The commission held a public hearing for this rulemaking in Austin, Texas at TCEQ Building E, at 10:00 a.m. on June 30, 2009. No oral comments were received at the public hearing. The comment period closed on July 6, 2009. The commission received written comments from AECOM USA Group, Inc. (AECOM); EPA; Harris County Attorney's Office on behalf of Harris County Public Infrastructure Department, Harris County Flood Control District, and Harris County Public Health & Environmental Services Department Environmental Public Health Division (Harris County); and Water Environment Association of Texas (WEAT). All entities supported the rulemaking, either partially or with changes.

RESPONSE TO COMMENTS

AECOM:

The time line for monitoring and compliance as proposed in the rules is out of proportion with what is normally granted to wastewater facilities. Typically, a facility owner is assigned a monitoring only period prior to limitations going into effect. The draft rules appear to establish bacteria limits without an interim monitoring only period. If facilities are not able to meet bacteria effluent limitations and structural modifications to the plant will have to be made, a one-year monitoring period in the first permit issued under the proposed bacteria requirements is requested.

The rule is silent on compliance periods. All currently permitted wastewater treatment facilities are required to and should be designed and operated to disinfect effluent. A facility's disinfection method, whether 20-minute chlorine contact time with a minimum of one milligram per liter (mg/l) residual, properly operated ultraviolet light (UV) system, or a lagoon system with a minimum 21-day retention time should disinfect effluent and thereby comply with bacteria limitations. Measuring bacteria levels is a more direct way of measuring disinfection than chlorine contact time and residual or detention time in a lagoon system.

The executive director's agreement with the EPA requires that bacteria limitation be effective upon permit issuance. Section 307.3, Definitions and Abbreviations, allows a compliance period of up to a maximum of three years for newly imposed water quality based effluent limitations. The executive director will evaluate requests for a compliance period on a case-by-case basis. However, EPA has preliminarily indicated that it may consider approving a compliance period for certain facilities only if new construction is required for the facility to meet bacteria limitations.

Bacteria limits will not go into effect until a facility's next permit action. The vast majority of facilities in the state will have time to evaluate existing facilities and make needed renovations.

The commission has made no changes in response to this comment.

EPA:

EPA requested that the commission consider requiring minor wastewater treatment facilities (those discharging less than one million gallons per day (mgd) to dechlorinate their effluent.

Requiring dechlorination of effluent from minor facilities is beyond the scope of this rulemaking, and Chapter 309 does not set dechlorination standards for any facilities. Dechlorination requirements are located in *Procedures to Implement the Texas Surface Water Quality Standards,* RG-194. EPA will have an opportunity to comment on this document in the near future.

The commission has made no changes in response to this comment.

HARRIS COUNTY:

Harris County appreciates TCEQ efforts and diligence in developing bacteria effluent limits and monitoring requirements for all domestic wastewater treatment plants.

The commission acknowledges Harris County's appreciation.

There are 666 wastewater treatment plants in the Harris County region where there are bacteria impaired segments subject to total maximum daily loads (TMDLs). Sewage from wastewater treatment plants is the single most treatable source of bacteria entering waterways. Studies by Harris County and others indicate rampant re-growth of bacteria following discharge from wastewater treatment plants. A well designed and operated wastewater treatment plant is capable of and should be required to meet monthly average effluent limitations for *E. coli* of 10 colony forming units (cfu) per 100 milliliters (ml) of water and a single sample maximum limit of 50 cfu/100 ml. A similar approach should be developed for *Enterococci* limitations.

Regrowth of indicator bacteria and possibly pathogenic organisms is a potential concern in some situations. At this stage of research efforts on regrowth characteristics the appropriate step in response to federal requirements is to establish across-the-board effluent limits that are equal to the instream recreational criteria in the *Texas Surface Water Quality Standards.* This is a relatively stringent regulatory approach, since the proposed effluent limits will impose water quality standards at the end of pipe, without allowing for instream dilution. More stringent effluent limits can still be required for specific permits or watersheds, as demonstrated by the TMDL evaluation for the Buffalo and White Oak Bayou watersheds, where an average concentration of *E. coli* 63 cfu/100 ml is required as the effluent limit for domestic wastewater discharges. Also, by equating the effluent limit to the instream water quality criteria, rather than to specified numerical concentrations, the proposed rule maintains the flexibility to accommodate any future changes in the water quality standards for contact recreation. Section 309.2(b) gives the executive director the authority on a case-by-case basis to set more stringent limits when needed to protect water quality.

The commission has made no changes in response to this comment.

WEAT:

Laboratory availability will be a challenge, particularly for small systems. Many commercial laboratories do not accept samples on weekends without charging higher rates. Sampling frequencies need to be addressed to acknowledge laboratory working

hours, similar to what is being done with drinking water samples. Holding times for drinking water microbiological testing were extended to 30 hours and frequencies were adjusted to Monday through Thursday to handle sample shipping issues and laboratory testing schedules. The draft rules should include these considerations.

Sampling frequencies in the rule range from once per calendar quarter to daily. The executive director recognized this issue during the development of the rule and fiscal note. Only facilities that treat more than one mgd using lagoons or five mgd using chlorine have monitoring frequencies (three or more times per week) that would require testing on days other than Monday through Thursday. Facilities that use chlorine to disinfect and treat less than five mgd have a sampling frequency of once per week or less. The monitoring schedule for facilities that use UV disinfection has not been changed from historical practices. UV facilities that treat less than 0.1 mgd are required to test five days per week. Larger UV facilities must test daily.

Currently, the only EPA approved method for the enumeration of *E coli* in wastewater is located in 40 Code of Federal Regulations (CFR) §136.3, which has a maximum six-hour hold time and a two-hour lab setup time. The 30-hour hold time for bacteria in the drinking water program is primarily used for a presence-absence evaluation rather than enumeration against a numerical limitation. The 30-hour hold time methods in the drinking water program have been EPA approved and can be found in 40 CFR §141.21 and §141.704.

There is a procedure available to request from the EPA a variance from methods approved in *Standard Methods for the Examination of Water and Wastewater* and 40 CFR. The request procedure requires that the requesting party apply to the EPA through the state authority.

The commission has made no changes in response to this comment.

WEAT commented that the rule's fiscal note does not correctly characterize laboratory costs. WEAT members have been quoted costs between $30 and $50 per sample, depending upon location of the utility with respect to contract laboratory. The initial cost to set up in-house sampling for the Colilert procedure has been quoted at $6,300. None of these costs include training or hourly wages paid to utility staff to comply with the new regulations.

Research into the cost of bacteria testing by contract laboratories was done in February 2009. The source of contract lab costs is given in the following table.

Figure: 30 TAC Chapter 319--Preamble

Different sources or the difference in the dates the research was done may account for the lower costs quoted by WEAT.

The source of set-up and per test costs for in-house labs was Hach Company for the m-ColiBlue24 testing method. Information was collected in March 2009. The m-ColiBlue24 method was the most economical and simplest method found in regards to equipment costs, training, and operational costs. More expensive options, such as the Colilert method, were not included, although they are available and are approved methods.

The commission has made no changes in response to this comment.

Many facilities have not been designed to accommodate *E. coli* sampling after the final treatment unit. In order to collect uncontaminated samples, variances or other amendments to TPDES permits may need to be considered to ensure more functional sampling points.

Sampling for bacteria is required to be conducted following the final treatment unit; similar to sampling for other parameters in a TPDES permit (for example, biochemical oxygen demand and total suspended solids). If there are case-specific issues, an applicant may apply for a change in sample location when a permit application is filed.

The commission has made no changes in response to this comment.

WEAT has a number of smaller utility members that may struggle with the proposed rule. In particular, small systems with ponds may not have adequate contact time to meet the proposed *E. coli* limits. TCEQ needs to consider way of implementing the proposed effluent limits in a manner that will allow permittees time to secure funds and construct any needed improvements before imposing mandatory effluent limits. It would serve no justice to begin an enforcement campaign against systems when they fail to meet a new permit condition imposed through a renewal process. Any associated fines would be better utilized constructing improvements to maintain permit compliance.

All currently permitted wastewater treatment facilities are required to and should be designed and operated to disinfect effluent. A facility's disinfection method, whether 20-minute chlorine contact time with a minimum of one mg/l residual, properly operated ultraviolet light system, or a lagoon system with a minimum 21-day retention time should disinfect effluent and thereby comply with bacteria limitations. Measuring bacteria levels is a more direct way of measuring disinfection than chlorine contact time and residual or detention time in a lagoon system.

The executive director's agreement with the EPA requires that bacteria limitation be effective upon permit issuance. Section 307.3, allows a compliance period of up to a maximum of three years. The executive director will evaluate requests for a compliance period on a case-by-case basis. However, EPA has preliminarily indicated that it may consider approving a compliance period for certain facilities only if new construction is required for the facility to meet bacteria limitations.

Bacteria limits will not go into effect until a facility's next permit action. The vast majority of facilities in the state will have time to evaluate existing facilities and make needed renovations.

The executive director may consider allowing municipally owned utilities, water supply or sewer service corporations or districts to defer the payment of all or part of an administrative penalty for a violation on the condition that the entity complies with all provisions for corrective action in a commission order to address the violations, as stated in Texas Water Code (TWC), §7.034.

The commission has made no changes in response to this comment.

WEAT's members are concerned about wet weather events and potential non-compliance during the same. Bacteria from runoff may impact permit compliance given the stringency of the proposed limits. WEAT requests consideration for alternative wet weather effluent limits, or in the alternative, enforcement discretion regarding same.

The TCEQ recognizes that domestic wastewater treatment systems can be stressed during wet-weather periods. However,

disinfection systems are required to be designed to treat the two-hour peak flow. Wet weather, including inflow and infiltration, should be part of the calculation of the two-hour peak flow. The average effluent limit is based on the instream criterion for primary contact recreation and is applied as a geometric mean over a monthly period, and a geometric mean calculation helps to reduce the impact of a few elevated samples during a month.

In developing enforcement actions, case specific factors will be considered. In addition, the executive director may consider allowing municipally owned utilities, water supply or sewer service corporations or districts to defer the payment of all or part of an administrative penalty for a violation on the condition that the entity complies with all provisions for corrective action in a commission order to address the violations, as stated in TWC, §7.034.

The commission has made no changes in response to this comment.

WEAT reiterates its concerns regarding the correlation of fecal coliform performance with *E. coli* performance at certain wastewater treatment plants. WEAT submitted a comment letter during the informal rule development stage that included a copy of a study that was performed to assess plant performance with respect to effluent concentrations of both fecal coliform and *E. coli.* The study demonstrates that there is not always a good correlation in plant performance. Given that very few of the wastewater treatment facilities in the Texas were designed to explicitly comply with an *E. coli* limit of 126 cfu/100 ml, WEAT is concerned that individual plant performance will vary across the state and suggests that there should be a means to improve plant compliance if/when a problem is identified. WEAT requests the commission utilize enforcement discretion with utilities as the industry only now will begin to produce performance data indicative of compliance with this new limit.

The executive director reviewed the 2004 study, *Escherichia coli and Fecal Coliform Populations in Disinfected Municipal Wastewater Treatment Plant Effluent and Recommendations to DNR for a Monthly Geometric Mean Escherichia coli Limitation,* during the development of the draft rules. The argument in the study is that the IDEXX® test inflates the number of viable *E. coli* in relation to the number of viable fecal coliform, and this causes a poor correlation between the two results *(E. coli* versus fecal coliform).

Enhanced recovery techniques for stressed organisms are discussed at length in *Standard Methods for the Examination of Water and Wastewater.* These techniques can be applied to analysis of fecal coliform and may, with further study, confirm that the recovery of *E. coli* using IDEXX® may not be poorly correlated to the actual concentrations of fecal coliform in a given sample. Additionally, IDEXX® manufactures an enzyme substrate test specifically for fecal coliforms, similar to the test for *E. coli.* Both the *E. coli* and the fecal coliform IDEXX® tests are specifically intended to aid in the recovery of stressed organisms. Neither of these methods to recover stressed organisms were used to confirm the results of the 2004 study.

Concern over whether the IDEXX® method enhances the survivability of a stressed organism is not applicable to the monitoring TCEQ proposes, because one cannot assume that a stressed organism will not survive when released into environmental waters. Moreover, the assertion that the IDEXX® method yields inflated *E. coli* concentrations relative to the other methods cited in the study can be countered with the assertion that the other methods cited are likely to under-report the concentrations of fecal coliform present.

There are seven approved methods for the analysis of *E. coli* in wastewater listed in 40 CFR Part 136, Table 1A. A permittee could use any of these seven methods. If the method selected is one for which TCEQ offers a National Environmental Laboratory Accreditation Conference (NELAC) accreditation, a contract laboratory would need to be NELAC-accredited for that method.

The bacteria limit is set at the primary contact recreation standard in Chapter 307. Chapter 307 has required *E. coli* to be used as the indicator organism in fresh water for water quality standards since August 17, 2000. In 2000, TCEQ revised the water quality standards for recreation and changed the indicator bacteria from fecal coliform to *E. coli* for freshwater and *Enterococci* for saltwater. The new indicators and their associated numerical criteria (such as the 126 cfu/100 ml for *E. coli)* are in accordance with EPA's 1986 national guidance criteria for recreation. EPA's 1986 criteria are based on epidemiological studies that showed these new indicators correlated better with risk of disease (gastroenteritis) than other indicators such as fecal coliform. The National Beach Act of 2000 required coastal states to adopt *Enterococci* and the associated EPA numerical criteria for saltwater.

In developing enforcement actions, case specific factors will be considered. In addition, the executive director may consider allowing municipally owned utilities, and water supply or sewer service corporations or districts to defer the payment of all or part of an administrative penalty for a violation on the condition that the entity complies with all provisions for corrective action in a commission order to address the violations, as stated in TWC, §7.034.

The commission has made no changes in response to this comment.

30 TAC §319.9

STATUTORY AUTHORITY

The amendment is adopted under the Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission. TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority provided by the TWC. TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the code and other laws of the state. TWC, §5.104, which states that the commission, by rule, will develop memoranda of understanding necessary to clarify and provide for its respective duties, responsibilities, or functions on any matter under the jurisdiction of the commission that is not expressly assigned to the commission. TWC, §5.105, which authorizes the commission to adopt rules and policies necessary to carry out its responsibilities as provided by the TWC. TWC, §5.120, which requires the commission to "administer the law so as to promote the judicious use and maximum conservation and protection" of the environment and natural resources of the state. TWC, §26.011, which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state. TWC, §26.013, which authorizes the executive director to conduct or have conducted any research and investigations it considers advisable and necessary for the discharge of the duties under Chapter 26 of the TWC. TWC, §26.027, which authorizes the TCEQ to issue permits for the discharge of waste or pollutants into or adjacent to water in the state.

The amendment is also adopted under the Texas Water Quality Control Act which gives the TCEQ the authority to adopt rules for the approval of disposal system plans under TWC, §26.034, as well as the authority to set standards to prevent the discharge of waste that is injurious to the public health under TWC, §26.041.

This adopted amendment implements TWC, §§5.013, 5.102, 5.103, 5.104, 5.105, 5.120, 26.011, 26.013, 26.027, 26.034, and 26.041.

§319.9. Self-Monitoring and Quality Assurance Schedules.

(a) The following table sets forth the self-monitoring schedules applicable to treated domestic sewage effluent.
Figure: 30 TAC §319.9(a)

(b) The following table sets forth the bacteria self-monitoring schedules applicable to treated domestic sewage effluent that is discharged to water in the state.
Figure: 30 TAC §319.9(b)

(c) The following table sets forth the self-monitoring schedules applicable to nondomestic wastewater effluent.
Figure: 30 TAC §319.9(c)

(d) The following table sets forth the quality assurance requirements for wastewater analyses.
Figure: 30 TAC §319.9(d)

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 November 6, 2009.

TRD-200905090
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: November 26, 2009
Proposal publication date: June 5, 2009
For further information, please call: (512) 239-2548

♦ ♦ ♦

30 TAC §319.10

STATUTORY AUTHORITY

The repeal is adopted under the Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission. TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority provided by the TWC. TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the code and other laws of the state. TWC, §5.104, which states that the commission, by rule, will develop memoranda of understanding necessary to clarify and provide for its respective duties, responsibilities, or functions on any matter under the jurisdiction of the commission that is not expressly assigned to the commission. TWC, §5.105, which authorizes the commission to adopt rules and policies necessary to carry out its responsibilities as provided by the TWC. TWC, §5.120, which requires the commission to "administer the law so as to promote the judicious use and maximum conservation and protection" of the environment and natural resources of the state. TWC, §26.011, which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state. TWC, §26.013, which authorizes the executive director to conduct or have conducted any research and investigations it considers advisable and necessary for the discharge of the duties under Chapter 26 of the TWC. TWC, §26.027, which authorizes the TCEQ to issue permits for the discharge of waste or pollutants into or adjacent to water in the state.

The repeal is also adopted under the Texas Water Quality Control Act which gives the TCEQ the authority to adopt rules for the approval of disposal system plans under TWC, §26.034, as well as the authority to set standards to prevent the discharge of waste that is injurious to the public health under TWC, §26.041.

The adopted repeal implements TWC, §§5.013, 5.102, 5.103, 5.104, 5.105, 5.120, 26.011, 26.013, 26.027, 26.034, and 26.041.

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 November 6, 2009.

TRD-200905091
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: November 26, 2009
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For further information, please call: (512) 239-2548

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER K. HOTEL OCCUPANCY TAX

34 TAC §3.161

The Comptroller of Public Accounts adopts an amendment to §3.161, concerning definitions, exemptions and exemption certificate, without changes to the proposed text as published in the September 18, 2009, issue of the *Texas Register* (34 TexReg 6438).

Subsection (a)(1) is being amended to clarify that a nonprofit charitable or eleemosynary organization that devotes all or substantially all of its activities to the alleviation of poverty, disease, pain and suffering by providing medicine and medical treatment may qualify for exempt status. Subsection (a)(5) is being amended to clarify that a private club is an organization that provides members entertainment, recreation, sport, dining, social facilities, or other significant club amenities, in addition to lodging, and assesses dues, initiation fees, and other charges for special privileges or status not available to the general public. Subsection (c)(5) is amended to provide that the comptroller prescribe the form and content of an exemption certificate and delete reference to the telephone numbers for Telecommunication Device for the Deaf (TDD). Subsection (d)(2) is amended to clarify that an organization that does not provide members

entertainment, recreation, sport, dining, social facilities, or other significant club amenities, in addition to lodging, and does not assess dues, initiation fees, and other charges for special privileges or status not available to the general public is not a private club for hotel occupancy tax purposes and must collect hotel occupancy tax on rentals of rooms to members. Non-substantive changes are also made to improve grammar and general readability.

No comments were received regarding adoption of the amendment.

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

The amendment implements Tax Code, §§156.001, 156.102 and 156.104.

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 November 3, 2009.

TRD-200905009
Ashley Harden
General Counsel
Comptroller of Public Accounts
Effective date: November 23, 2009
Proposal publication date: September 18, 2009
For further information, please call: (512) 475-0387

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SUBCHAPTER O. STATE SALES AND USE TAX

34 TAC §3.365

The Comptroller of Public Accounts adopts an amendment to §3.365, concerning sales tax holiday--clothing, shoes and school supplies, without changes to the proposed text as published in the September 18, 2009, issue of the *Texas Register* (34 TexReg 6440).

The name of the rule is amended to differentiate between the sales tax holiday for clothes, shoes, and school supplies and the sales tax holiday for energy star items. This rule is being amended pursuant to House Bill 1801, 81st Legislature, 2009, which expanded the exemption to include school supplies, defined "school supplies," and added exclusions to the definition of backpack. Subsection (a) has been amended to provide the definition of "school supplies" and to exclude luggage, briefcase, athletic bag, duffle bag, gym bag, computer bag, purse and framed backpack from the definition of "school backpack." Subsection (c) is amended to exclude from the exemption school supplies not listed in the definition. Subsection (e) is revised to reflect long-standing policy regarding sales of items sold in prepackaged combinations containing both exempt and non-exempt items. The taxability of the prepackaged combination is determined by the primary components. If items that qualify for the sales tax holiday exemption are the primary component of the package, the entire sales price of the package is exempt during the holiday period. Subsection (o) has been amended to provide provisions for purchases of school supplies under a business account. Conforming changes are made throughout the rule.

No comments were received regarding adoption of the amendment.

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

The amendment implements Tax Code, §151.327.

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 November 3, 2009.

TRD-200905010
Ashley Harden
General Counsel
Comptroller of Public Accounts
Effective date: November 23, 2009
Proposal publication date: September 18, 2009
For further information, please call: (512) 475-0387

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Agency Rule Review Plan

Texas Board of Veterinary Medical Examiners

Title 22, Part 24

TRD-200905134
Filed: November 9, 2009

♦ ♦ ♦

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 §366.731(b)

	TANF Recognizable Needs Amount		
Persons in the Certified Group	**Child Only**	**One Parent**	**Two Parents**
1	$64	$78	$---
2	92	163	125
3	130	188	206
4	154	226	231
5	198	251	268
6	214	288	294
7	267	313	330
8	293	356	356
9	337	382	399
10	363	425	425
11	406	451	468
12	432	494	494
13	475	520	537
14	501	563	563
15	544	589	606
Per each additional member	43	43	43

Figure: 1 TAC §366.829(a)

Family Size	Medically Needy Income Limit
1	$104
2	216
3	275
4	308
5	357
6	392
7	440
8	475
9	532
10	567
11	624
12	659
13	716
14	751
15	808
Per each additional member	57

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

APPLICATION FOR MANUFACTURER'S LICENSE

(Please type or print clearly.)

Check one:	**[ ] Corporation**	**[ ] Partnership**	**[ ] Sole Proprietorship**	**[ ] Other**

1. Legal Business Name:	
2. Have you ever been licensed by TDHCA?	**[ ]YES [ ] 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).
NOTE: Providing your social security number is optional, HOWEVER, the processing of your application may be delayed without it.

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?	[ ]YES [ ] 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. **A DPS criminal check will be performed.**
11. Plant Certification Date:	
12. Production Inspection Primary Inspection Agency Label Prefix:	
13. Design Approval Primary Inspection Agency:	
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):	

15. Will you have a manufacturing plant or service facility in Texas? [ ] YES [ ] NO

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 §80.40(d) of the Administrative Rules and §1201.106 of the Standards Act.

Name of Facility:
Address:
City/State/ZIP:
Phone:

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.

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)*

Department Use Only

Education:	***Fees:***	***Additional Requirements:***
[ ] 20 hours of Department Education in Austin, Texas	[ ] $850.00 Manufacturer Licensing Fee	[ ] $1000,000 BOND/CD [ ] $100,000 ADDITIONAL BOND/CD

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

APPLICATION FOR LICENSE
(FOR A RETAILER, BROKER, INSTALLER AND/OR REBUILDER)

(Please type or print clearly.)

Check one: [ ] Corporation [ ] Partnership [ ] Sole Proprietorship [ ] Other

1. Legal Business Name:	
2. Have you ever been licensed by TDHCA?	[ ]YES [ ] 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).

NOTE: Providing your social security number is optional, HOWEVER, the processing of your application may be delayed without it.

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 & ZIP	Phone	Date of Birth

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?	**[ ] YES [ ] 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. **A DPS criminal check will be performed.**

11. Indicate which type of license you are applying for:

[ ] **R**= Retailer [ ] **RB**= Retailer/Broker [ ] **RI**=Retailer/Installer [ ] **RBI**=Retailer/Broker/Installer
[ ] **B**= Broker [ ] **I**= Installer [ ] **RB=Rebuilder**

12. As applicable, indicate what function(s) you will be performing:	**[ ] Transporting [ ] Installation**
13. Are you in arrears on any taxes owed to the State of Texas? **Are you in arrears on a guaranteed student loan?**	**[ ] YES [ ] NO** **[ ] YES [ ] 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):	

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.

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)*

Department Use Only

Education:	***Fees:***	***Additional Requirements:***
[ ] 20 hours of Department Education in Austin, Texas	[ ] $250.00 Education Fee [ ] $550.00 Retailer Licensing Fee [ ] $350.00 Broker Licensing Fee [ ] $350.00 Installer Licensing Fee [ ] $900.00 Retailer/Broker Licensing Fee [ ] $900.00 Ret./Installer Licensing Fee [ ] $1250.00 Ret./Brok./Inst. Licensing Fee	[ ] $50,000 BOND/CD

Figure: 10 TAC §80.100(b)(3)

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

APPLICATION FOR RETAILER WITH BRANCH LOCATIONS LICENSE

(Please type or print clearly.)

Check one: [ ] Corporation [ ] Partnership [ ] Sole Proprietorship [ ] Other

1. Business Name: _____

DBA Name: _____

2. Business Owner's Name:

3. Have you ever been licensed by TDHCA? YES / NO If so, please provide license number:

	City	State	Zip	County	Phone/Fax
4. Location Address:					
5. Mailing Address:					

6. Date applicant became owner, operator (or date incorporated):

7. Provide complete information on ALL corporate officers or partners.

NOTE: Providing your social security number is optional, HOWEVER, the processing of your application may be delayed without it.

Name and Title	Home Mailing Address	Home Phone	Date of Birth	SSN

8. 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?

[ ]YES [ ] NO *If YES, complete the enclosed Criminal Conviction Questionnaire.*

9. Indicate which type of license you are applying for:

[ ] Register a primary location with branch locations specified on an attached sheet (attach bond for each location)
[ ] Register an additional branch location to an existing Retailers Branch

10. What function(s) will you be performing: [ ] Transporting [ ] Installation

11. Name of related person who attended licensing education class:

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

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.

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)*

Department Use Only

Education:	*Fees:*	*Additional Requirements:*
[ ] 20 hours of Department Education in Austin, Texas	[ ] $250.00 Education Fee [ ] $550.00 Retailer Licensing Fee [ ] $900.00 Retailer/Broker Licensing Fee [ ] $900.00 Ret./Installer Licensing Fee [ ] $1250.00 Ret./Brok/Inst. Licensing Fee	[ ] $50,000 BOND/CD

MHD FORM 1057 / BRANCH_LOC.DOC

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

APPLICATION FOR SALESPERSON'S LICENSE

(Please type or print clearly.)

1. Name of Salesperson:	**2. Date of Birth:**	/ /
3. Home Address:	**4. Social Security #:**	- -
City: **State:** **Zip:**		
5. Telephone: Home ( )	**Telephone: Work ( )**	**Fax: ( )**
6. Sponsoring Retailer or Broker:		
Sponsoring Retailer's or Broker's Lic. #:		
7. Business Address:		
City: **State:** **Zip:**		

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.

(Dates)	*(Employer)*	*(Address)*
(Dates)	*(Employer)*	*(Address)*
(Dates)	*(Employer)*	*(Address)*

9. Have you ever been licensed by TDHCA? YES / NO If so, please provide license number:

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?
[ ]YES [ ] NO *If YES, complete the enclosed Criminal Conviction Questionnaire.*

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**

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. License will be suspended if the education requirements of §1201.104(c) are not successfully completed within 90 days 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 or Broker)* *(Date)*

Payment

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: ***Texas Department of Housing and Community Affairs***. Mail to the address listed at the top of this form.

Department Use Only

Fees	[ ] $200.00 License Fee	Date Received:	/ /

MHD FORM 1032 / SALESLIC.DOC

Page 1 of 1

Figure: 10 TAC §80.100(b)(7)

MANUFACTURER'S CERTIFICATE OF ORIGIN
TO A MANUFACTURED HOME

THE UNDERSIGNED MANUFACTURER HEREBY CERTIFIES THAT THE NEW MANUFACTURED HOME DESCRIBED HEREIN, THE PROPERTY OF SAID MANUFACTURER, HAS BEEN TRANSFERRED ON THE DATE SET FORTH HEREIN, SUBJECT TO THE TERMS AND CONDITIONS OF THE INVOICE OR OTHER APPLICABLE AGREEMENT TO:

NAME OF RETAILER	REG. NO.	ADDRESS OF RETAILER	CITY	STATE	ZIP

TRANSFER DATE	MODEL DESIGNATION	DATE OF MANUFACTURE	NUMBER OF SECTIONS	TOTAL SQUARE FEET

LABEL/DECAL NUMBER	SERIAL NUMBER	WEIGHT	SIZE	EXCLUDING HITCH

FIRST ASSIGNMENT (FOR RETAILERS ONLY) **DATE**

TO:

NAME OF RETAILER	REGISTRATION NO.

ADDRESS

CITY	STATE	ZIP

TYPE NAME AND TITLE OF PERSON AUTHORIZED TO SIGN FOR TRANSFERENCE TO RETAILER

AUTHORIZED SIGNATURE

SECOND ASSIGNMENT (FOR RETAILERS ONLY) **DATE**

TO:

NAME OF RETAILER	REGISTRATION NO.

ADDRESS

CITY	STATE	ZIP

TYPE NAME AND TITLE OF PERSON AUTHORIZED TO SIGN FOR TRANSFERENCE TO RETAILER

AUTHORIZED SIGNATURE

NOTE: AT FIRST RETAIL SALE THIS CEASES TO EVIDENCE OWNERSHIP OF THE HOME.

CONSTRUCTED FOR:

ENERGY ZONE _____

WIND ZONE _____

ROOF LOAD ZONE _____

THE MANUFACTURER WARRANTS THAT A GOOD AND MARKETABLE TITLE IS BEING TRANSFERRED AND THAT NO OTHER VALID MANUFACTURER'S CERTIFICATE OF ORIGIN IS ISSUED AND OUTSTANDING ON THE MANUFACTURED HOME DESCRIBED HEREIN.

MANUFACTURER OF HOME	REGISTRATION NO.

ADDRESS OF MANUFACTURER

CITY	STATE	ZIP

AUTHORIZED SIGNATURE/TITLE

INVOICE # _____

THE ORIGINAL MCO MUST BE INCLUDED WITH THE NEW HOME SOL APPLICATION WITHIN 60 DAYS FROM THE DATE OF SALE.

Figure: 10 TAC §80.100(b)(11)

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

Notice of Licensed and Bonded Location

THIS LOCATION IS LICENSED AND BONDED UNDER THE TEXAS MANUFACTURED HOUSING STANDARDS ACT (TEX. OCC. CODE, CHAPTER 1201) AS A RETAIL LOCATION. THE RETAILER'S LICENSE AND THE LICENSE OF EACH SALESPERSON WORKING AT THIS SITE ARE AVAILABLE FOR REVIEW.

TO CONTACT THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS, MANUFACTURED HOUSING DIVISION, THE STATE AGENCY THAT REGULATES RETAIL MANUFACTURED HOME SALES, CALL **1-800-500-7074** OR GO TO

WWW.TDHCA.STATE.TX.US/MH

Figure: 10 TAC §80.100(b)(14)

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

TEXAS INVENTORY FINANCE SECURITY FORM

The undersigned retailer and creditor-lender have executed a separate security agreement which sets forth the rights and obligations of the two parties in the inventory finance agreement.

This inventory finance security form only applies to the single retail location set forth below, and the homes reported to the Department on the Texas Inventory Finance Security Form Homes Summary. The filing of the inventory finance security form with the Texas Department of Housing and Community Affairs perfects the security interest in all reported manufactured homes which have been financed by the creditor-lender or for which the creditor-lender has advanced any funds or has incurred any obligation which enabled the retailer to acquire the manufactured home, any manufactured homes subsequently acquired by the retailer, for which the creditor-lender has advanced any funds or the incurrence of the obligation, shall be reported to the Department on the prescribed Texas Inventory Finance Security Homes Summary.

No provision in the security agreement between the parties to an inventory financing arrangement shall in any way modify, change or supersede the requirements of the rules of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs for the perfection of security interest in the manufactured homes which are in the inventory of a retailer.

Name of Retail Business	TDHCA License #	
Location		
City	State	Zip

Signature of Retail Business Agent: _____

Name of Creditor-Lender		
Location		
City	State	Zip

Signature of Creditor-Lender Agent: _____

THE SEPARATE SECURITY AGREEMENT IS DATED: _____

THIS FORM IS DATED: _____

Department Use Only
Date Recorded:
Filing No. Assigned:

Filing No.: _____

Texas Inventory Finance Form Homes Summary

HUD Label Number	Serial Number

Figure: 10 TAC §80.100(b)(16)

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

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					

Is home installed in Frost Line Zone? (___) Yes (___) No **Does retailer or installer provide skirting? Yes (___) No (___)**

Is installation part of sales contract of used home? Yes (___) No (___) Not Applicable (___)

New Home - The home has been installed in accordance with:

(___) 1. Manufacturer's Home Installation Instructions (provide page number or option _____).

(___) 2. A Special Foundation System *(attach a copy of the drawing for this system and provide a reference, if applicable, to any drawing previously submitted).*

Used Home:

(___) 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).*

FOR USED HOMES, IF NO METHOD IS CHECKED, IT WILL BE PRESUMED THAT OPTION 2 (STATE GENERIC STANDARDS) WAS USED.

The Installation Report (Form T) shall be submitted to the Department along with the required fee no later than the 7th day after which the installation is completed and should not be submitted with the title documents.

Per §1201.206(i): 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	
☐ **Inspected Without Violations**	☐ **Not Inspected, Unable to Locate**
☐ **Inspected With Violations**	☐ **Not Inspected, No Unit At Location**
☐ **Not Inspected, Unit Skirted**	☐ **Not Inspected, Unit Not Accessible**

Inspection Date: _____ **HUD/Seal #:** _____

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.

Inspector Signature: _____ **Printed Name:** _____

DRAW MAP BELOW

Figure: 10 TAC §80.100(b)(17)

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

INSTALLATION CHECKLIST

HUD Label or Texas Seal # (s): _____ ***Serial # (s):*** _____

Date of installation: _____ Wind Zone: _____

Humid/fringe status: _____

Required Testing

Electrical testing - At the time of installation, the following tests must be performed:

___ All site installed or shipped loose fixtures must be polarity tested to determine that the connections have been properly made.

___ All grounding and bonding conductors installed or connected during the home installation must be tested for continuity.

___ An operational test must be performed on all electrical lights, equipment, ground fault circuit interrupters and appliances to demonstrate that all equipment is connected and functioning properly.

___ All Smoke detectors are functional and in working order.

Water testing – At the time of installation the water system must be inspected and tested for leaks after completion at the site. (The water heater must be disconnected when using an air-only test.)

Drainage system testing: At the time of installation the drainage system must be inspected and tested for leaks after completion at the site.

Fuel testing procedures: The gas system must be inspected and tested for leaks after completion at the site.

Method of installation – if a copy is not included because the installation was done to a method that the licensed installer uses from time to time, where is a copy of the actual methods in the installer's records?

Once the home installation is complete an Operational Test will be performed to ensure that all doors and windows are operational.

You must complete the following as part of your installation responsibility.

- SITE PREPARATION
- LIST OF EACH DEVICE USED
- LOAD BEARING CAPACITY OF SOIL
- IS A VAPOR RETARDER REQUIRED?

And as applicable:

- SPACING OF PIERS
- SPACING OF ANCHORS
- NUMBER OF DIAGONAL TIES

Was the installer contracting directly with the consumer or were they subcontracted by another retailer or installer? Attach a copy of each contract.

Attach a list of each person who worked on the installation and how to contact them.

If Air Conditioner was provided, name and license number of Air Conditioner installer: _____
_____.

Copy of any required move permits should be attached.

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) 475-3506

Internet Address: 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:

Personal Property Transaction	Real Property Transaction
☐ New	☐ New
☐ Used	☐ Used
☐ Lien Assignment	
☐ 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:		Model:	
Address:		Date of Manufacture:	
City, State, Zip:		Total Square Feet:	
License Number:		Wind Zone:	

	Label/Seal Number	*Complete Serial Number*	*Weight*	*Size**
Section 1:				X
Section 2:				X
Section 3:				X
Section 4:				X

** NOTE: Size must be reported as the outside dimensions (length and width) of the home as measured to the nearest ½ foot at the base of the home, exclusive of the tongue or other towing device.*

2(b) Is home being sold? ☐ No ☐ Yes

If yes, and **if there is/are no HUD Label(s) or Texas Seal(s)** on your home, a Texas Seal will need to be purchased and will be issued to each section of your home at an **additional cost** of $35.00 per section.

Indicate which section(s) needs a Texas Seal(s): *(Single - $35 Double - $70 Triple - $105)*

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? ☐ No ☐ Yes If yes, include a copy of moving permit.

Was Home Installed for this sale? ☐ No ☐ 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? ☐ No ☐ Yes If yes, the application transferring the ownership to the Retailer must be attached to this application. Provide the following information on the home traded in:

HUD Label _____, Serial No. _____

HUD Label #:	Serial #:	GF# (for title co.):

BLOCK 5: Right of Survivorship (if no box is checked, joint owners will NOT have right of survivorship)

If joint owners desire right of survivorship, check the applicable box below:

☐ Husband and wife will be the only owners and agree that the ownership of the above described manufactured home shall, from this day forward, be held jointly and in the event of death, shall pass to the surviving owner.

☐ Joint owners are other than husband and wife, desire right of survivorship, **and** have attached a completed Affidavit of Fact for Right of Survivorship or other affidavits as necessary to meet the requirements of §1201.213 of the Standards Act.

BLOCK 6: Personal/Real Property Election - Purchaser(s)/Transferee(s)/Owner(s) check one election type

☐ Personal Property – Applicant elects to treat this home as personal property. All documents affecting title to the home will be filed in the records of the Department.

☐ Real Property – I (we) elect to treat this home as real property and certify that I am (we are) entitled to make this election in accordance with Section 1201.2055 of the Occupations Code because (**one** box **must** be checked):

☐ I (we) own the real property that the home is attached to. ☐ I (we) have a qualifying long-term lease for the land that the home is attached to.

☐ The applicant or their authorized representative is the holder or servicer of the loan.

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.

Legal description must be provided for real property: _____

_____

If a title company, list your file or GF #: _____

☐ **Inventory** – ***(FOR RETAILER USE ONLY)*** Retailer number must be provided in Block 4b if this election is checked.

BLOCK 7: Designated Use - to be designated by purchaser(s), transferee(s), or owner(s)

☐ Residential Use (as a dwelling) OR

☐ Non-Residential - Check **one** of the following: ☐ *Business Use* ☐ *Salvage*

BLOCK 8: Liens – Will there be any liens on the home (other than a tax lien)? ☐ No ☐ Yes If yes, complete the below lien information.

Date of First Lien:		Date of Second Lien:	
Name of First Lienholder:		Name of Second Lienholder:	
Mailing Address:		Mailing Address:	
City/State/Zip:		City/State/Zip:	
Daytime Phone:		Daytime Phone:	

BLOCK 9: Special Mailing Instructions

IF 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.	Name:	
	Company:	
	Street Address:	
	City, State, Zip:	
	Area Code/Phone	

BLOCK 10: Signatures (Notarization is Optional)

10(a) Signatures of each seller/transferor	10(b) Signatures of each purchaser/transferee or owner
_____ *Signature of owner or authorized seller* *Sworn and subscribed before me this ____ day of _____, 20___* _____ *Signature of Notary* *SEAL*	_____ *Signature of purchaser/transferee or owner* *Sworn and subscribed before me this ____ day of _____, 20___* _____ *Signature of Notary* *SEAL*
_____ *Signature of owner or authorized seller* *Sworn and subscribed before me this ____ day of _____, 20___* _____ *Signature of Notary* *SEAL*	_____ *Signature of purchaser/transferee or owner* *Sworn and subscribed before me this ____ day of _____, 20___* _____ *Signature of Notary* *SEAL*

10(c) For Lien Assignments Only

_____ *Signature of authorized representative for previous lienholder*	_____ *Signature of authorized representative for new lender*

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. **Election:** _____ Real Property _____ Personal Property If real property, provide the legal description below.

8. _____**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)(27)

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

TAXING ENTITY APPLICATION FOR TEXAS SEAL

FORM S

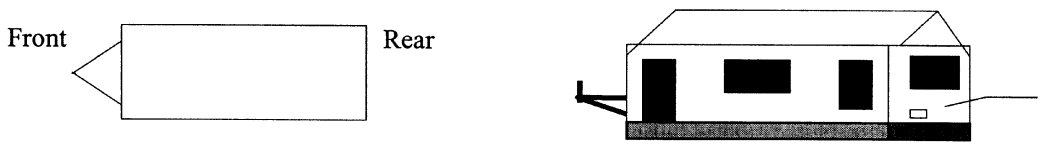
Please type or print clearly. Please fill out form completely.

BLOCK 1: Home Information (Must be completed.)			
Manufacturer Name:			Year of Manufacture:
Model:			Date of Seizure:
	Size (Width X Length)		*(Department Use Only)* Seal #
Section One:	X		TXS
Section Two:	X		TXS
Section Three:	X		TXS

BLOCK 2: Address Where Seal Is To Be Mailed	
Please make sure the address below is complete. This form will be returned to you using a window envelope.	
Retailer/Installer License Number (if applicable):	
Name:	Day Phone #: ( )
Mailing Address:	
City/State/Zip:	

BLOCK 3: Location of Seal on Manufactured Home

The seal must be placed on the manufactured home after you receive it from this office. If it is a double or triple section home, place the Texas Seal in the same location on each section. Please follow the drawing below for affixing the seal(s) to your home.



BLOCK 4: Certification

By signing, I certify to the best of my knowledge that no serial number, HUD Label or Texas Seal can be found on this manufactured home and that the home to which the Texas Seal will be affixed meets the definition of a HUD-Code manufactured home or a mobile home as defined in Chapter 1201 of the Occupations Code (on back). It is understood that the Texas Seal is issued for identification purposes only and may not be construed to imply that the home is habitable or that the purchaser of the home at a tax sale may obtain a title document from the department without an inspection for habitability.

Signature _____ Title _____ Date _____

Occupations Code

§ 1201.459. Compliance Not Required for Sale for Collection of Delinquent Taxes

(a) In selling a manufactured home to collect delinquent taxes, a tax collector is not required to comply with this subchapter or another provision of this chapter relating to the sale of a used manufactured home.

(b) If a home does not have a serial number, seal, or label, the tax appraiser or tax assessor-collector may apply to the department for a seal if the tax appraiser or assessor-collector assumes full responsibility for the affixation of a seal to the home and the seal is actually affixed on the home.

(c) A seal issued to a tax assessor-collector is for identification purposes only and does not imply that:

(1) the home is habitable; or

(2) a purchaser of the home at a tax sale may obtain a new statement of ownership and location from the department without an inspection for habitability.

Definitions

"Mobile Home" means a structure that was constructed before June 15, 1976, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems.

"HUD-code manufactured home" means a structure constructed on or after June 15, 1976, according to the rules of the United States Department of Housing and Urban Development, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems. The term does not include a recreational vehicle as that term is defined by 24 C.F.R. Section 3282.8(g).

Figure: 10 TAC §80.100(b)(29)

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

INSTRUCTIONS TO THIRD PARTY CLOSER

[On sale of a manufactured home that is personal property at the time of sale, exchange, or lease-purchase but is to be converted to real property]

[Name and address of title company, attorney, or other party closing the transaction]

Re: Sale, exchange, or lease-purchase of the manufactured home (the "Home") identified by:

Texas seal or HUD label number(s):_____

Serial Number(s):_____

To: _____ (the "New Owner")

Dear Third Party Representative:

The undersigned is licensed as a retailer under the Texas Manufactured Housing Standards Act, Tex. Occ. Code, Chapter 1201 (the "Act") and has entered into an agreement to sell, exchange, or lease-purchase the Home to the New Owner. It is contemplated that in connection with the closing of this transaction, the New Owner will elect to treat the Home as real property in accordance with Section 1201.2055 of the Act. In closing this transaction, you are hereby directed to perform each of the following:

1) Obtain the New Owner(s)' signature(s) on the enclosed Application for Statement of Ownership and Location and have it (them) notarized.

2) Insert your name and address in Block 9 of the Application for Statement of Ownership and Location as the person and place to which the Statement of Ownership and Location should be delivered.

3) Collect the $55 fee for Application for Statement of Ownership and Location and all necessary recording fees.

4) File the original completed and executed Application for Statement of Ownership and Location and original Manufacturer's Certificate of Origin (MCO) (if the home is new) with:

Texas Department of Housing and Community Affairs
Manufactured Housing Division
P. O. Box 12489
Austin, TX 78711-2489

This step must BY LAW be completed no later than the 60th day after the closing of the sale, exchange, or lease-purchase. Delay beyond that date may give rise to the incurring of penalties, for which you will be held responsible in the event they are assessed.

5) Upon receipt of a recordable copy of the Statement of Ownership and Location that is issued by the Texas Department of Housing and Community Affairs, Manufactured Housing Division, record that document in the real property records for the county where the Home is reflected as being located.

6) Notify the Tax Assessor-Collector for the county where the Home is located that the Statement of Ownership and Location has been recorded.

7) Provide the Texas Department of Housing and Community Affairs, Manufactured Housing Division with a copy of the file stamped, recorded Statement of Ownership and Location, accompanied by a statement confirming that step 6, above, was done.

Steps 5, 6, and 7 MUST be done within the 60 day period following the date of issuance of the Statement of Ownership and Location by the Texas Department of Housing and Community Affairs.

These instructions are in addition to and not in lieu of any instructions provided by any lender or other party.

In the event that the Texas Department of Housing and Community Affairs, Manufactured Housing Division requires any additional information in order to process the Application for Statement of Ownership and Location, you may contact the undersigned for assistance.

The Application for Statement of Ownership and Location, completed and executed by the undersigned but still requiring the completion and notarized execution by the New Owner(s) is enclosed herewith.

This instructions letter is being sent as an original and a copy. Please acknowledge these instructions in the space provided on the copy and return it to the undersigned at:

[ ]

Please do not hesitate to call if there is anything further you require in this regard.

Sincerely,

Enclosures

Acknowledged this ____ day of _____, ____.

_____

By:_____

Figure: 10 TAC §80.100(b)(30)

Texas Department of Housing and Community Affairs
MANUFACTURED HOUSING DIVISION
P. O. BOX 12489 Austin, Texas 78711-2489
(800) 500-7074, x5-2889, (512) 475-2889 FAX (512) 463-7951
Internet Address: www.tdhca.state.tx.us/mh/index.htm

NOTICE OF TAX LIEN/RELEASE

Please type or print clearly.

BLOCK 1: Information

Taxpayer Name and Tax Roll Account # are for information purposes only. All other information is REQUIRED.

HUD Label or Texas Seal #: _____ **OR Serial #:** _____

Tax Roll Account #: _____

Complete 8-Digit Taxing Entity ID #: _____

County Code (3 digits): _____

County Name: _____

Tax Year Recorded/Released: _____

Amount of Lien (Aggregate amount if Central Tax Collector is filing for multiple entities.): _____

Name of person in whose name the manufactured home is listed on the tax roll: _____
(Name)

Taxpayer Address: _____
(Address)

_____
(City) *(State)* *(Zip Code)*

Collector's Name & Name of Taxing Entity: _____

Collector's Address: _____
(Address)

_____
(City) *(State)* *(Zip Code)*

Collector's Phone #: ( )

BLOCK 2: Signature REQUIRED for Tax Lien Recording

I hereby certify that the lien being **RECORDED** with this form is in accordance with all applicable provisions of the Tax Code. If this lien recordation is done as a central collector, the undersigned further represents that it is on file as a central collector with the Texas Department of Housing and Community Affairs and that such records are complete and current.

_____ _____
(Signature of Tax Collector or Authorized Representative) *(Date)*

BLOCK 3: Signature REQUIRED for Tax Lien Release

I hereby certify that the lien being **RELEASED** with this form has been discharged and should be removed from the records of the Texas Department of Housing and Community Affairs. If this lien release is done as a central collector, the undersigned further represents that it is on file as a central collector with the Texas Department of Housing and Community Affairs and that such records are complete and current.

_____ _____
(Signature of Tax Collector or Authorized Representative) *(Date)*

Department Use Only

Filing NOT processed because:

- ☐ Home is elected as real property.
- ☐ No dollar amount indicated.
- ☐ No serial or label number.
- ☐ Lien listed is not on file.
- ☐ Record received after the filing deadline.
- ☐ No signature was provided.
- ☐ No tax roll account number was provided.
- ☐ No taxing unit ID number was provided.
- ☐ No tax year was provided.
- ☐ Other: _____
- ☐ Only one taxing entity and dollar amount can be listed on the form when recording a lien.

Date Rejected:

MHD FORM 1045 / TAXLIEN.DOC

Figure: 10 TAC §80.100(b)(31)

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

HUD Disclosure to Consumer Regarding Dispute Resolution

Name of Retailer or Installer: _____

License No.: _____

Effective: 02/08/08
24 CFR § 3288.5 Retailer notification at sale.

Retailer notice at the time of signing. At the time of signing a contract for sale or lease for a manufactured home, the retailer must provide the purchaser with a retailer notice. This notice may be in a separate document from the sales contract or may be incorporated clearly in a separate section on consumer dispute resolution information at the top of the sales contract. The notice must include the following language:

"The U.S. Department of Housing and Urban Development (HUD) Manufactured Home Dispute Resolution Program is available to resolve disputes among manufacturers, retailers, or installers concerning defects in manufactured homes. Many states also have a consumer assistance or dispute resolution program. For additional information about these programs, see sections titled "Dispute Resolution Process" and "Additional Information— HUD Manufactured Home Dispute Resolution Program" in the Consumer Manual required to be provided to the purchaser. These programs are not warranty programs and do not replace the manufacturer's, or any other person's, warranty program."

_____
Consumer Signature

_____
Consumer Printed Name

_____
Date

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) 463-7951
Internet Address: www.tdhca.state.tx.us/mh/index.htm

CTC ACCOUNT REQUEST FORM

CTC – 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 provided addendum to 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 to provide the Department with written notice of such change at least ten (10) days prior to its taking effect. The Department will not be bound by any change unless/until such written notice is received as required.

_____ _____
(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)

_____ *SEAL*
(Notary Public)

_____
(Commission Expires) *Notary Public State of Texas*

BLOCK 3: Taxing Jurisdiction Information (Addendum to CTC Account Request Form)	
Complete 8-Digit Taxing Entity ID #	**Name of Taxing Entity**

MHD FORM 1066 / CTC.DOC

Page 2 of 2

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/MHD, P.O. Box 12489, Austin, Texas 78711-2489
- Deliver in person this completed application with the fee to 1106 Clayton Lane, Suite 270W, Austin, Texas 78723

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 24 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.

Have you completed the requirements for continuing education? [ ] Yes [ ] No
If yes, please attach the class certificate.

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

Please check one:				
	[ ] Retailer (R)	$550	[ ] Retailer/Installer (RI)	$900
	[ ] Broker (B)	$350	[ ] Retailer/Broker/Installer (RBI)	$1250
	[ ] Installer (I)	$350	[ ] Salvage Rebuilder (S)	$550
	[ ] Retailer/Broker (RB)	$900	[ ] Manufacturer (M)	$850

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: ___/___/___

MHD FORM 1053 / RBIMS_RENEWAL.DOC

Page 1 of 1

Figure: 10 TAC §80.100(b)(38)

PROVISIONAL 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/mh/index.htm

You may fax or email 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					

Is home installed in Frost Line Zone? (___) Yes (___) No Does retailer or installer provide skirting? Yes (___) No (___)

Is installation part of sales contract of used home? Yes (___) No (___) Not Applicable (___)

New Home - The home has been installed in accordance with:

(___) 1. Manufacturer's Home Installation Instructions (provide page number or option _____).

(___) 2. A Special Foundation System *(attach a copy of the drawing for this system and provide a reference, if applicable, to any drawing previously submitted).*

Used Home:

(___) 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).*

FOR USED HOMES, IF NO METHOD IS CHECKED, IT WILL BE PRESUMED THAT OPTION 2 (STATE GENERIC STANDARDS) WAS USED.

The Installation Report (Form T) shall be submitted to the Department along with the required fee no later than the 3rd day after which the installation is completed and should not be submitted with the title documents.

Per §1201.206(i): 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) provisional installations must be inspected without violations for a provisional installer's license to become a full installer's license.

Department Use Only	
☐ **Inspected Without Violations**	☐ **Not Inspected, Unable to Locate**
☐ **Inspected With Violations**	☐ **Not Inspected, No Unit At Location**
☐ **Not Inspected, Unit Skirted**	☐ **Not Inspected, Unit Not Accessible**

Inspection Date: _____ **HUD/Seal #:** _____

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.

Inspector Signature: _____ **Printed Name:** _____

DRAW MAP BELOW

Figure: 10 TAC §80.100(b)(39)

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 any intervening owners of liens or equitable interest:

_____
_____
_____
_____
_____

Name and address of 1st lienholder of record:

_____
_____
_____

Name and address of 2nd 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 ABANDONED. It is my intent forty-five (45) days from the date of this letter, to declare the Home to be abandoned and to 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)(40)

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

AFFIDAVIT OF FACT FOR ABANDONMENT
(Sworn Statement)

BLOCK 1: Home Information

Manufacturer:_____ Model:_____

Serial Number:_____ Label # and/or Seal #:_____

BLOCK 2: Statement of Facts

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:

- Each notice and the return receipt for certified mail that was sent to the following:
  - Each owner of the home at the address(es) on the statement of ownership and location records of the Department.
  - 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.
  - Each intervening owner of lien or equitable interest.
- Evidence that any indebtedness secured by the manufactured home is delinquent.
- Neither the affiant nor any person related or affiliated with them has now, or has ever, owned an interest in the manufactured home.

  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.

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.

BLOCK 3: Signatures *(Notarization is REQUIRED)*

_____ _____
(Signature) *(Signature)*

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)

_____ *SEAL*
(Notary Public)

_____
(Commission Expires) *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) 475-3506
Internet Address: 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. Please help us improve by completing the survey afterward.
- Complete this application and mail it with the renewal fee to: TDHCA/MHD, P.O. Box 12489, Austin, Texas 78711-2489
- Deliver in person this completed application with the fee to 1106 Clayton Lane, Suite 270W, Austin, Texas 78723

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.*

Have you completed the requirements for continuing education? [ ] Yes [ ] No
If yes, please attach the class certificate.

BLOCK 2: Employer Information

Name of Sponsoring Retailer or Broker: _____

Sponsoring Retailer's or Broker's Address: _____

City/State/ZIP: _____

Sponsoring Retailer's or Broker'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 or Broker)* _____ *(Date)*

Department Use Only: [ ] License Renewal Fee Received Date Received: / /

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

APPLICATION FOR CONTINUING EDUCATION PROVIDER

(Please type or print clearly.)

Check one: [ ] 20 Hour Initial Licensing Class [ ] 8 Hour Continuing Education Class

1. Legal Business Name:	
2. Have you ever been an approved Continuing Education Provider by TDHCA?	[ ]YES [ ] NO If yes, provide dates:
3. Physical Location Address:	**City, State, ZIP and County**
4. Phone:	**Fax:**
5. Mailing Address:	**City, State, ZIP and County**
6. Email Address:	

7. Provide complete list of all instructors (additional instructors may be listed on a separate sheet). Attach biographies and credentials for each instructor.

Legal Name and Title	Mailing Address, City, State and ZIP	Phone

Certification

Continuing Education Provider 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.

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.

(Signature of Applicant or President, if incorporated) *(Date)* *(Signature of Secretary, if incorporated)* *(Date)*

Department Use Only

Education:	*Fees:*	*Additional Requirements:*
[ ] Copy of Course Material	[ ] $300.00 Fee	[ ] Biography for each instructor [ ] Credentials for each instructor [ ] Schedule of fees to be charged for the course

Figure: 30 TAC §210.33(1)

BOD_5 or $CBOD_5$	5 mg/l
Turbidity	3 NTU
Fecal coliform or *E. coli*	20 CFU/100 ml*
Fecal coliform or *E. coli*	75 CFU/100 ml**
Enterococci	4 CFU/100 ml*
Enterococci	9 CFR/100 ml**

* 30-day geometric mean

** maximum single grab sample

Figure: 30 TAC §210.33(2)(A)

BOD_5	20 mg/l
or $CBOD_5$	15 mg/l
Fecal coliform or *E. coli*	200 CFU/100 ml*
Fecal coliform or *E. coli*	800 CFU/100 ml**
Enterococci	35 CFU/100 ml*
Enterococci	89 CFU/100 ml**

* 30-day geometric mean

** maximum single grab sample

Figure: 30 TAC §210.33(2)(B)

BOD_5	30 mg/l
Fecal coliform or *E. coli*	200 CFU/100 ml*
Fecal coliform or *E. coli* (not to exceed)	800 CFU/100 ml**
Enterococci	35 CFU/100 ml*
Enterococci	89 CFU/100 ml**

* 30-day geometric mean

** maximum single grab sample

Figure: 30 TAC Chapter 309--Preamble

Facility	**Location**	**Cost for *E. coli***
TestAmerica	Corpus Christi	$60.00
Environmental Chemistry	Houston	$55.00
LCRA	Austin	$39.50
Averages		***$51.50***

Figure: 30 TAC Chapter 319--Preamble

Facility	**Location**	**Cost for *E. coli***
TestAmerica	Corpus Christi	$60.00
Environmental Chemistry	Houston	$55.00
LCRA	Austin	$39.50
Averages		***$51.50***

Figure: 30 TAC §319.9(a)

Table 1 FREQUENCY OF MEASUREMENT						
Design Capacity MGD	Flow	BOD5	Total Suspended Solids	Chlorine Residual	pH	Collecting of Samples and Taking Measurements
0 to less than 0.10	One instantaneous measurement each working day but not less than five measurements per week (b) (c)	One each week	One each week	One each working day but not less than five measurements per week (c)	One each month	The laboratory tests shall be made on a grab sample collected at peak loading periods, and flow measurements shall be taken concurrently with such grab samples. (d)
0.10 to less than 0.50	One instantaneous measurement each working day but not less than five measurements per week (b) (c)	One each week	One each week	One each working day but not less than five measurements per week (c)	One each month	The laboratory tests shall be made on a grab sample collected at peak loading periods, and flow measurements shall be taken concurrently with such grab samples. (d)
0.50 to less than 1.00	The daily flow measured by a totalizing meter	One each week	One each week	One each day of the week	Two each month	The laboratory test excepting the pH and chlorine residual test which are performed on grab samples or insitu shall be made on a composite sample proportioned according to flow, made up of three portions collected no closer together than 2 hours and with the first sample collected no earlier than 10:00 a.m.
1.00 to less than 5.00	The daily flow measured by a totalizing meter	Two each week	Two each week	One each day of the week	One each week	The laboratory test excepting the pH and chlorine residual test which are performed on grab sample or insitu shall be made on a composite sample proportioned

						according to flow, made up of six portions collected no closer together than 2 hours and with the first sample collected no earlier than 10:00 a.m.
5.00 to less than 10.00	The daily flow measured by a totalizing meter	One each weekday (a)	One each weekday (a)	One each day of the week	One each week-day	The laboratory test excepting the pH and chlorine residual test which are performed on grab samples or insitu shall be made on (a) 24-hour composite samples proportioned according to flow collected no closer together than 2 hours in 12 individual portions.
10.00 or greater	The daily flow measured by a totalizing meter	One each day of the week	One each day of the week	One each day of the week	One each day of the week	The laboratory test excepting the pH and the chlorine residual test which are performed on grab samples or insitu shall be made on 24-hour composite samples proportioned according to flow collected no closer together than 2 hours in 12 individual portions.

(a) Weekday - Monday thru Friday.
(b) Where a totalizing meter is provided, the actual volume of water which has been processed each day should be determined and reported.
(c) Working Day - A day when the plant is visited for routine work.
(d) Peak loading period - That time during the calendar day when the maximum flow rate is experienced within the facility.
(e) Flow - Determined by actual measurement of effluent flow or determined by calculation based upon influent measurement unless effluent flow is specified in the permit.
NOTE: See 30 TAC §319.5(e) concerning additional measurements and documentation.

Figure: 30 TAC §319.9(b)

Table 2
FREQUENCY OF BACTERIA MEASUREMENT

Minimum Required Frequency[1, 2, 3, 4]			
Flow (mgd)	**Chlorine Systems**	**Ultraviolet Systems**	**Natural Systems**
>10	5/week	Daily	Daily
>5-10	3/week	Daily	5/week
>1-5	1/week	Daily	3/week
>0.5-1.0	2/month	Daily	1/week
0.1-0.5	1/month	5/week	2/month
<0.1	1/quarter	5/week	1/month

(1) Sampling must be spaced across the time period at approximately equal intervals, with the exceptions of the five times per week sampling schedule. Five samples per week must be taken one on each of five days during a seven day period.

(2) A permittee that has at least twelve months of uninterrupted compliance with its bacteria limit may notify the commission of its compliance and request a less frequent measurement schedule.

(a) If the commission finds that a less frequent measurement schedule is protective of human health and the environment, the permittee will be given a less frequent measurement schedule. Daily will drop to 5/week, 5/week to 3/week, 3/week to 1/week, 1/week to 2/month, 2/month to 1/month, 1/month to 1/quarter, 1/quarter to 1/6 months.

(b) A violation of the bacteria limit by a facility that has been granted a less frequent measurement schedule will require the permittee to return to the standard frequency schedule.

(c) A permittee that has had a violation while on a less frequent measurement schedule may not apply for another reduction in measurement frequency for at least 24 months from the last violation.

(3) A chemical system other than chlorine will be required to comply with the ultraviolet frequency schedule.

(4) The executive director may establish a more frequent measurement schedule if necessary to protect human health or the environment.

Figure: 30 TAC §319.9(c)

Table 3
FREQUENCY OF MEASUREMENT
VOLUME OF MGD

Parameter	0 to less than 0.05	0.05 to less than 0.50	0.50 to less than 2.00	2.00 to less than 10.00	10.00 or greater
Flow	One instantaneous measurement per operating day except on sample days when 3 instantaneous measurements made concurrently with the collection of sample portions are required.	One instantaneous measurement per operating shift - on sample days concurrent with the collection of a sample portion.	One instantaneous measurement per operating shift - on sample days concurrent with the collection of a sample portion or the reading from a totalizing flow meter.	Six instantaneous measurements per day spaced at equal intervals during the operating period or the reading from a totalizing flow meter.	Instantaneous measurements made each operating hour or the reading from a totalizing flow meter.
pH (a)	1 per day	1 per day	1 per day	1 per day	1 per day
Temperature (b)	1 per day	3 per day	3 per day	6 per day	12 per day
BOD	1 per week	2 per week	2 per week	3 per week	1 per day
COD	1 per week	2 per week	2 per week	3 per week	1 per day
TOC	1 per week	2 per week	2 per week	3 per week	1 per day
Oil & Grease (c)	1 per week	2 per week	2 per week	3 per week	1 per day
Ammonia Nitrogen	1 per week	2 per week	2 per week	3 per week	1 per day
Arsenic	1 per week	2 per week	2 per week	3 per week	1 per day
Barium	1 per week	2 per week	2 per week	3 per week	1 per day
Boron	1 per week	2 per week	2 per week	3 per week	1 per day
Cadmium	1 per week	2 per week	2 per week	3 per week	1 per day
Chromium	1 per week	2 per week	2 per week	3 per week	1 per day
Copper	1 per week	2 per week	2 per week	3 per week	1 per day

Lead	1 per week	2 per week	2 per week	3 per week	1 per day
Manganese	1 per week	2 per week	2 per week	3 per week	1 per day
Mercury	1 per week	2 per week	2 per week	3 per week	1 per day
Nickel	1 per week	2 per week	2 per week	3 per week	1 per day
Selenium	1 per week	2 per week	2 per week	3 per week	1 per day
Silver	1 per week	2 per week	2 per week	3 per week	1 per day
Zinc	1 per week	2 per week	2 per week	3 per week	1 per day
TSS	1 per week	2 per week	2 per week	3 per week	1 per day
TDS	1 per week	2 per week	2 per week	3 per week	1 per day
Chloride	1 per week	2 per week	2 per week	3 per week	1 per day
Sulphate	1 per week	2 per week	2 per week	3 per week	1 per day
Nitrate Nitrogen	1 per week	2 per week	2 per week	3 per week	1 per day
Sulfide (c)	1 per week	2 per week	2 per week	3 per week	1 per day
Phenol (c)	1 per week	2 per week	2 per week	3 per week	1 per day
Collection of Samples	Samples shall be composite samples made up of three portions, sized proportional to flow, collected to no closer together than one hour and over a span of time not exceeding 24 hours.	Samples shall be composite samples made up of three portions, sized proportional to flow, one portion being collected during each operating shift or otherwise suitably distributed throughout the operating day.	Samples shall be composite samples made up of three portions, sized proportional to flow, one portion being collected during each operating shift or otherwise suitably distributed throughout the operating day.	Samples shall be composite samples made up of six portions, sized proportional to flow, collected concurrently with the instantaneous flow measurements made during a 24 hour time span.	Samples shall be 24 hour composite samples collected in 12 or more individual portions, sized proportional to flow, equally spaced throughout the operating day.

(a) The required laboratory tests shall be made on grab samples and analyzed immediately after collection or analyzed in situ at the permit sampling point.
(b) The temperature shall be measured in situ on the water at the permit sampling point.
(c) The required laboratory tests shall be made on grab samples.

Figure: 30 TAC §319.9(d)

Table 4
REQUIRED QUALITY CONTROL ANALYSES

Parameter	Blank	Standard	Duplicate	Spike
Bacterial	A		B	
Alkalinity		A	B	
Ammonia Nitrogen	A	A	B	B
BOD	A	A	B	
BOD-carbonaceous	A	A	B	
COD	A	A	B	B
Chloride	A	A	B	B
Chlorine-Total or Free		D		
Cyanide-Total or Amenable to Chlorination	A	A	B	B
Fluoride	A	A	B	B
pH		C		
Kjeldahl Nitrogen	A	A	B	B
Metals (all)	A	A	B	B
Nitrate Nitrogen	A	A	B	B
Nitrite Nitrogen	A	A	B	B
Oil & Grease	A	D		
Orthophosphate	A	A	B	B
Oxygen (dissolved)		A	B	
Phenols	A	A	B	
Phosphorus-Total	A	A	B	B
Specific Conductance	A	A		
Sulfate	A	A	B	B

Sulfide	A	A	B	
Sulfite	A	A	B	
TOC	A	A	B	B
TSS	A		B	
TDS	A	A	B	
Organics by GC or GC/MS or other approved methods	A	A	E	E

Where:

A - Wherever specified, at least one blank and one standard shall be performed each day that samples are analyzed.

B - Wherever specified, duplicate and spike analyses shall be performed on a 10% basis each day that samples are analyzed. If one to 10 samples are analyzed on a particular day, then one duplicate and one spike analyses shall be performed.

C - For pH analysis, the meter shall be calibrated each day that samples are analyzed using a minimum of two standards which bracket the pH value(s) of the sample(s).

D - For the oil and grease analysis and chlorine-total or free analysis, standards shall be analyzed on a 10% basis. If one to 10 samples are analyzed on a particular day, then one standard shall be analyzed. Duplicates may be analyzed in lieu of standards for the oil and grease analysis and chlorine-total or free analysis.

E - For GC and GC/MS analyses, duplicate and spike analyses shall be performed on a 5% basis. If one to 20 samples are analyzed in a month, then one duplicate and one spike analyses per month shall be performed.

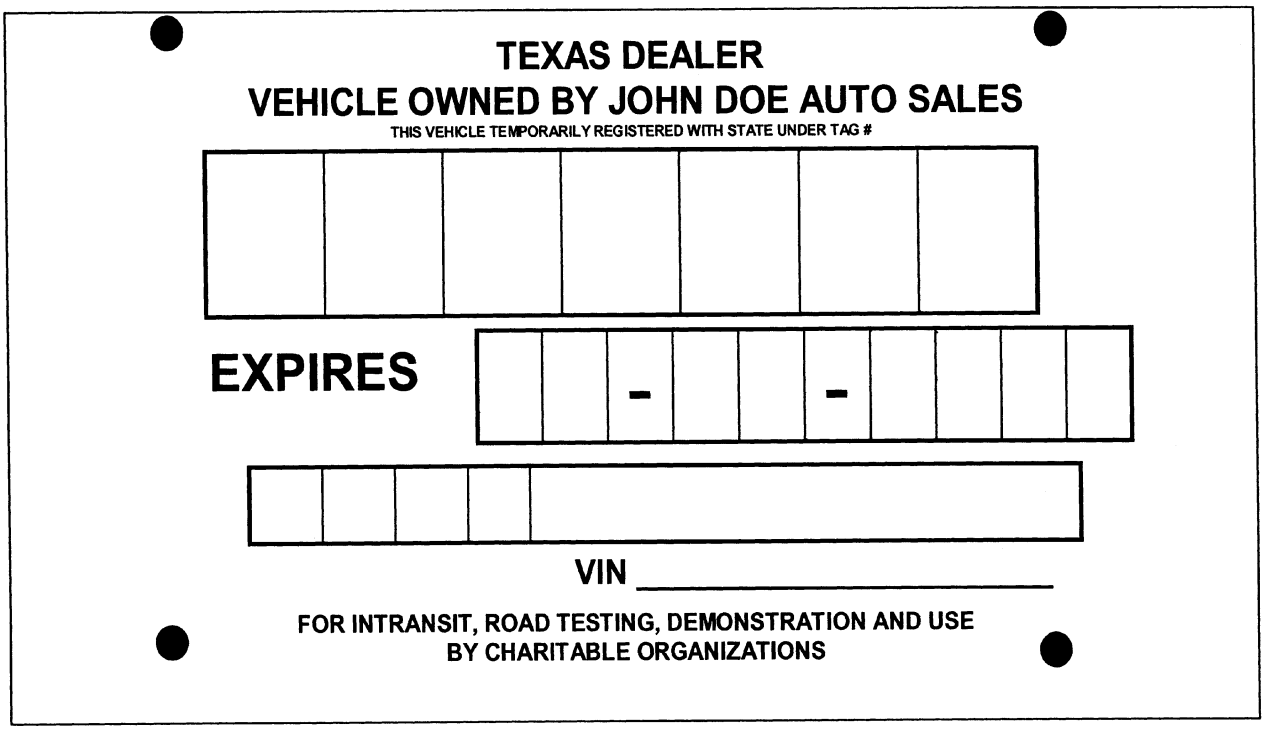
Figure: 43 TAC §207.4(a)

Service Rendered	Charge
Standard-size paper copies (up to 8 1/2 inches x 14 inches)	$ .10 per page (Each side that has recorded information is considered a single page)
Paper copies produced on high-resolution color copier	$ .65 per page (Each side that has recorded information is considered a single page)
Charges for certified copies	Charges as applicable, plus $1.00 for sealed certification page
Nonstandard-size paper copy	$ .50 per page
Paper copy from microfilm or microfiche: standard size	$ .10 per page
Specialty paper/media (e.g.: Mylar blueline, blueprint, continuous or roll plot)	Actual cost
Title and registration verification (record search)	$2.30
Title history	$5.75
Online access to motor vehicle records database	$23.00 per month plus $ .12 per record entry
Motor vehicle registration and title database	$5,000 plus $ .38 per 1,000 records copied to tape
Weekly updates to motor vehicle registration and title database--tape provided by the department	$135.00
Batch inquiry to motor vehicle records database	$23.00 per computer run plus $ .12 per record searched
Duplicate forms: --microfilm roll, 16mm --microfilm roll, 35mm --microfiche --microfilm jackets	Actual cost (current Texas State Library charge; contact the department for cost and assistance).
Photographic prints	Actual cost
Diskettes	$1.00 each
Computer magnetic tape	Actual cost
Data cartridge	Actual cost
Tape cartridge	Actual cost
Rewritable CD (CD-RW)	$1.00 each
Non-rewritable CD (CD-R)	$1.00 each
Digital video disc	$3.00 each
JAZ drive	Actual cost
Other electronic media	Actual cost
VHS video cassette	$2.50 each
Audio cassette	$1.00 each
Other, including miscellaneous supplies, postage and shipping	Actual cost
Remote document retrieval charges	Actual cost
Computer resource charge (mainframe; prorated to actual time used; charges not assessed for printout time)	$10.00 per CPU minute

Service Rendered	Charge
Computer resource charge (mid-size/mini; prorated to actual time used; charges not assessed for printout time)	$1.50 per CPU minute
Computer resource charge (client/server; prorated to actual time used; charges not assessed for printout time)	$2.20 per clock hour
Computer resource charge (PC or LAN prorated to actual time used; charges not assessed for printout time)	$1.00 per clock hour
Programming (time charge; to be prorated to actual time used)	$28.50 per clock hour
Outside/Contracted Services	Actual Cost

Figure: 43 TAC §215.153(c)(1)

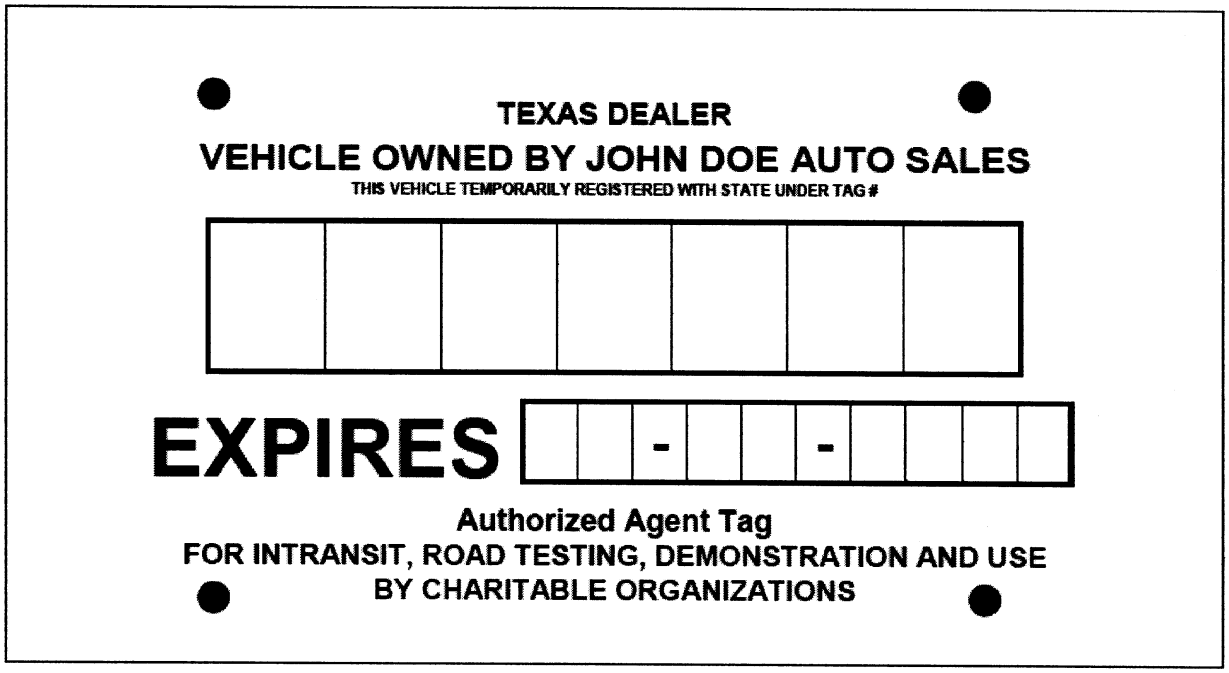
APPENDIX A-1



DEALER TAG - ASSIGNED TO SPECIFIC VEHICLE

Figure: 43 TAC §215.153(c)(2)

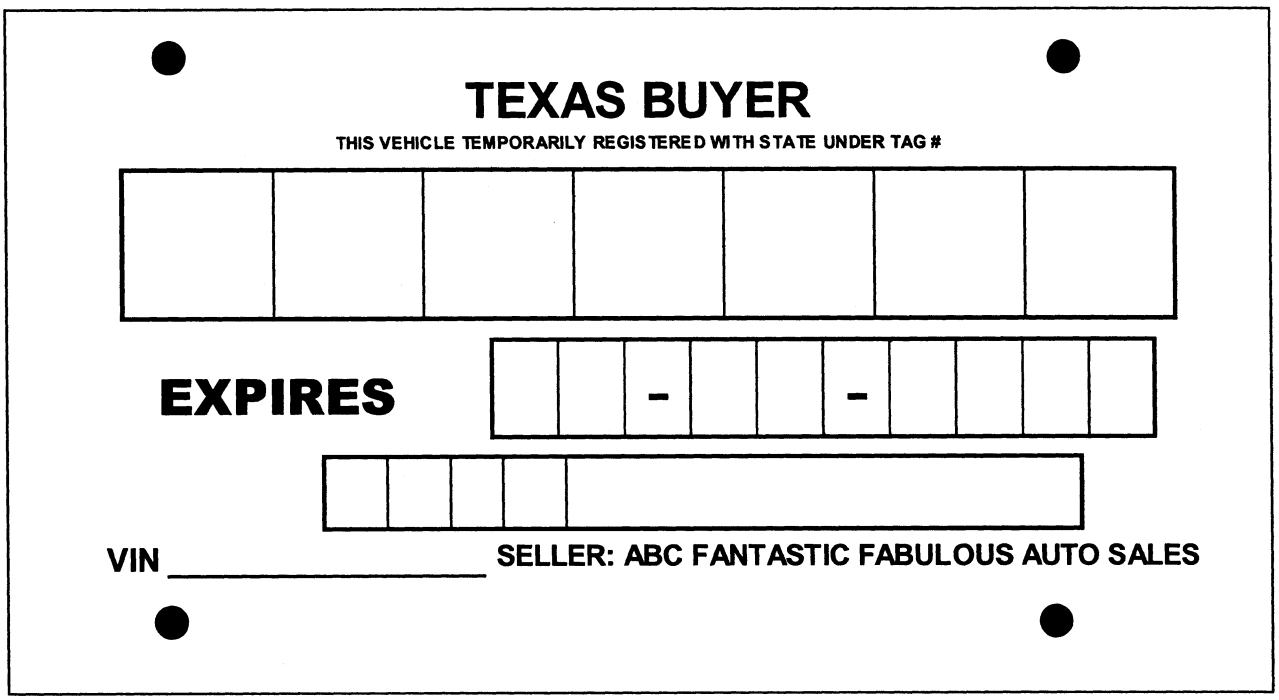
APPENDIX A-2



DEALER TAG - ASSIGNED TO AGENT

Figure: 43 TAC §215.153(c)(3)

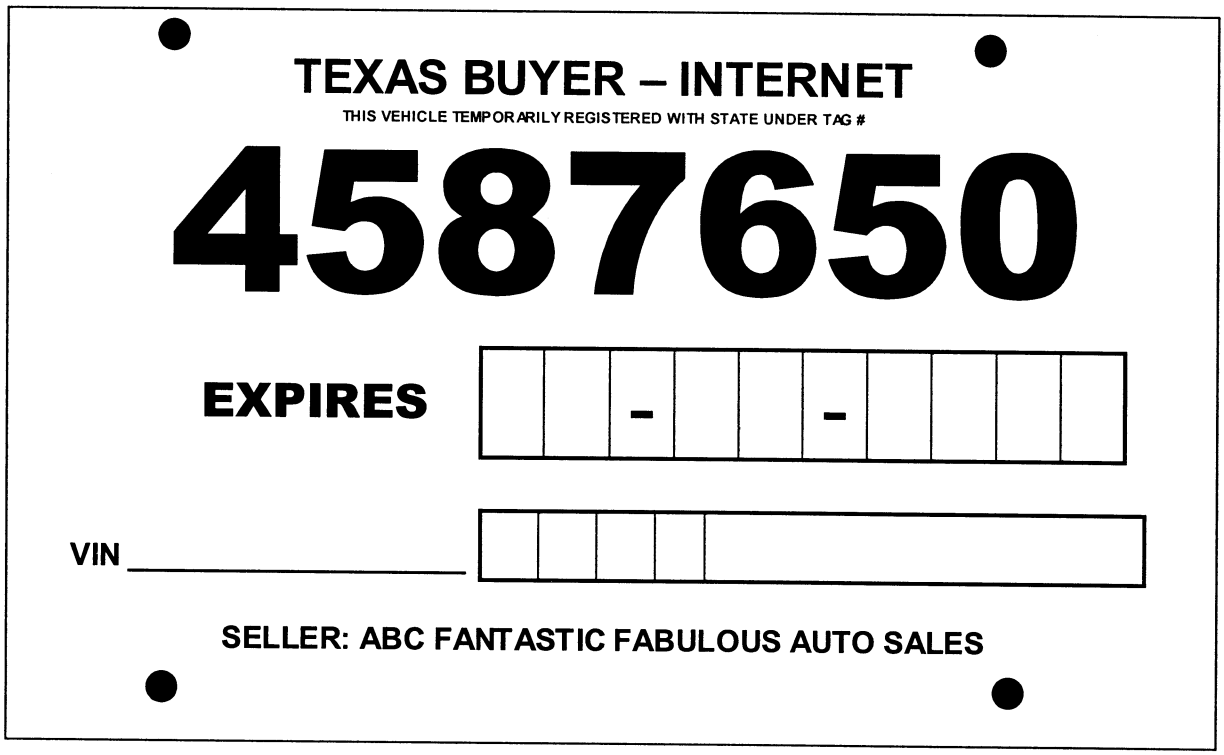
APPENDIX B-1



BUYER'S TAG

Figure: 43 TAC §215.153(c)(4)

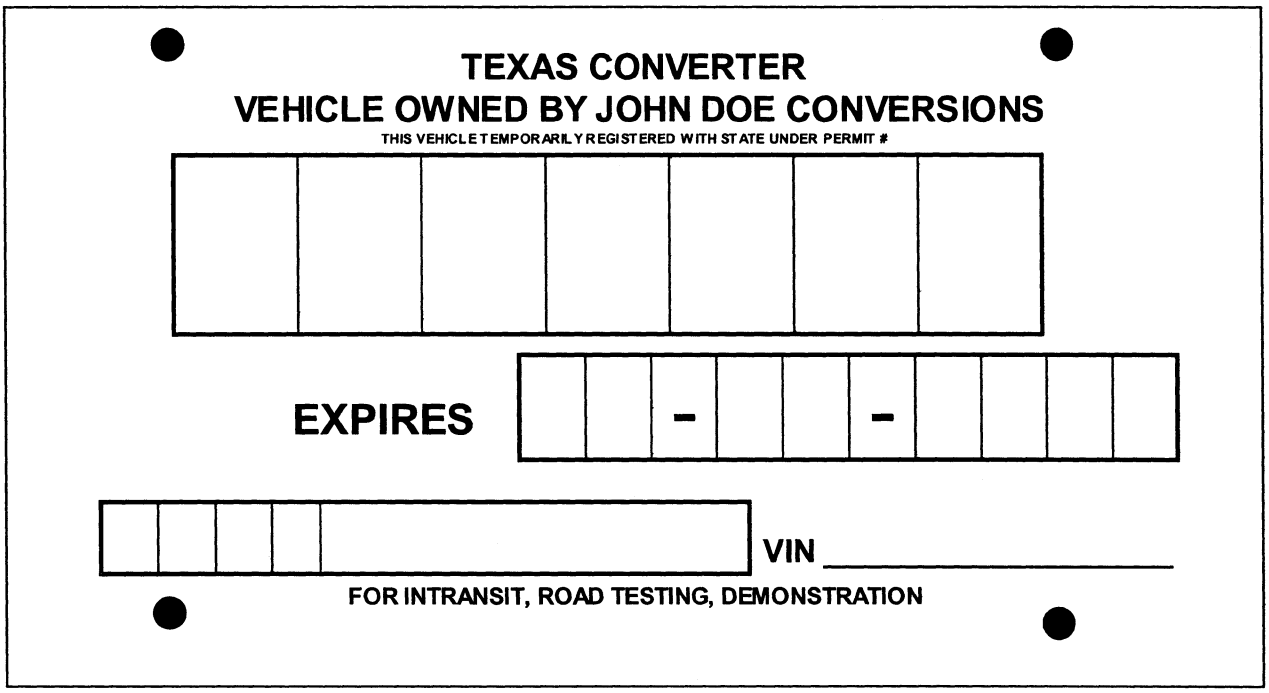
APPENDIX B-2



INTERNET DOWN BUYER'S TAG

Figure: 43 TAC §215.153(c)(5)

APPENDIX C-1



CONVERTER TAG

Figure: 43 TAC §215.250(c)(1)

MSRP	$20,000
Less Dealer Discount	1,000
Sale Price	$19,000

Figure: 43 TAC §215.250(c)(2)

Advertised Price	$18,000
Less Rebate	500
Sale Price	$17,500

Figure: 43 TAC §215.250(c)(3)

MSRP	$20,000
Less Rebate	500
Less Dealer Discount	500
Sale Price	$19,000

Figure: 43 TAC §215.250(d)

Total Vehicle Plus Options	$10,995
Option Package Discount	1,000
MSRP	9,995
Less Rebate	500
Less Dealer Discount	500
Sale Price	$8,995

Figure: 43 TAC §215.250(e)

MSRP	$9,995
Less Rebate	500
Less Dealer Discount	500
Sale Price	$8,995

FIRST TIME BUYERS RECEIVE ADDITIONAL $500 OFF

Figure: 43 TAC §218.14(a)(1)

If the last digit is:	**Registration must be renewed before the first day of:**
1	January
2	February
3	March
4	April
5	May
6	June
7	July
8	October
9	November
0	December

Figure: 43 TAC §218.16(a)

Type of Vehicle	Minimum Insurance Level
1. Household goods carriers (gross vehicle weight less than 26,000 lbs.).	$300,000
2. Buses designed or used to transport more than 15 passengers (including the driver), but fewer than 26 passengers (not including the driver).	$500,000
3. Commercial motor vehicles which are buses with a seating capacity of 15 passengers or fewer (including the driver) operated by a foreign motor carrier and foreign motor private carrier as defined in 49 U.S.C. §13102.	$1,500,000
4. Buses designed or used to transport 26 passengers or more (not including the driver).	$5,000,000
5. Commercial school buses, regardless of the passenger capacity as described in Transportation Code, §643.1015.	$500,000
6. Commercial motor vehicles that are buses with a seating capacity of 16 passengers or more (including the driver) operated by a foreign motor carrier or foreign motor private carrier as defined in 49 U.S.C. §13102.	$5,000,000
7. Farm trucks (gross vehicle weight 48,000 lbs. or more).	$500,000
8. Commercial motor vehicles (gross vehicle weight in excess of 26,000 lbs.).	$500,000
9. Commercial motor vehicles, as defined in 49 C.F.R. §390.5, operated by a foreign motor carrier or foreign motor private carrier as defined in 49 U.S.C. §13102.	$750,000
10. Commercial motor vehicles - Oil listed in 49 C.F.R. §172.101; hazardous waste, hazardous materials and hazardous substances defined in 49 C.F.R. §171.8 and listed in 49 C.F.R. §172.101, but not mentioned in item 10 of this table.	$1,000,000
11. Commercial motor vehicles - Hazardous substances, as defined in 49 C.F.R. §171.8, transported in cargo tanks, portable tanks, or hopper-type vehicles with capacities in excess of 3,500 water gallons; or any quantity of Division 1.1, 1.2, and 1.3 materials, any quantity of Division 2.3, Hazard Zone A material; in bulk Division 2.1 or 2.2; or highway route controlled quantities of a Class 7 material, as defined in 49 C.F.R. §173.403.	$5,000,000

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.

Comptroller of Public Accounts

Notice of Legal Banking Holidays

Texas Tax Code §111.053(b) requires that, before January 1 of each year, the Comptroller of Public Accounts publish a list of the legal holidays for banking purposes for that year. This is the 2010 Eleventh District Holiday Schedule. Pursuant to the Federal Reserve Bank of Dallas Notice 09-49 dated July 23, 2009, the Federal Reserve Bank of Dallas and its branches at El Paso, Houston, and San Antonio, Texas, will observe the following holidays for calendar year 2010 and will not be open on the dates indicated below.

Friday, January 1, New Year's Day

Monday, January 18, Martin Luther King, Jr. Day

Monday, February 15, Presidents Day

Monday, May 31, Memorial Day

Monday, July 5, Independence Day

Monday, September 6, Labor Day

Monday, October 11, Columbus Day

Thursday, November 11, Veterans Day

Thursday, November 25, Thanksgiving Day

The Federal Reserve standard holiday schedule mandates that if January 1, July 4, November 11, or December 25 falls on a Sunday, the following Monday will be observed as a holiday. If January 1, July 4, November 11, or December 25 occurs on a Saturday, the preceding Friday will not be observed as a holiday. For the year 2010, July 4 occurs on a Sunday; therefore, the following Monday will be observed as a holiday. Also, December 25 occurs on a Saturday; therefore, the preceding Friday will not be observed as a holiday.

TRD-200905207
Pamela Smith
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: November 10, 2009

♦ ♦ ♦

Notice of Request for Proposals

Pursuant to Chapters 403, 447, and 2254, Subchapter A; as well as 2305, §2305.032, Texas Government Code; and the American Recovery and Reinvestment Act of 2009 (ARRA) Public Law (PL) 111-5 (2009), and related laws, rules and regulations, as amended, the Comptroller of Public Accounts (Comptroller), State Energy Conservation Office (SECO) announces its Request for Proposals (RFP #195f) and invites proposals from qualified, interested engineering firms and individuals to provide professional energy engineering services, technical assistance and monitoring services for 1) the State Energy Program (SEP) with federal authority in 10CFR Part 420, 2) the Energy Efficiency and Conservation Block Grant (EECBG) Program authorized in Title V, Subtitle E of the Energy Independence and Security Act of 2007 (EISA) and signed into Public Law (PL 110-140) on December 19, 2007, 3) the State Energy Efficient Appliance Rebate Program (SEEARP) authorized through the Energy Policy Act of 2005, Title I, Subtitle B, Section 124; Federal Code: 42 USC 15821, and 4) the Energy Assurance Program (EA) authorized under 31 USC 6304 and PL 109-58 Energy Policy Act of 2005. The Comptroller reserves the right to award more than one contract under the terms of this RFP. If a contract award is made under the terms of this RFP, Contractors will be expected to begin performance of the contract on or about January 15, 2010, or as soon thereafter as practical.

Contact: Parties interested in submitting a proposal should contact William Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, in the Issuing Office at: 111 E. 17th St., Room 201, Austin, Texas 78774, (512) 305-8673, to obtain a complete copy of the RFP. The Comptroller will mail copies of the RFP only to those parties specifically requesting a copy. The RFP will be available for pick-up at the above referenced address on Friday, November 20, 2009, after 10:00 a.m. Central Zone Time (CZT) and during normal business hours thereafter. The Comptroller will also make the entire RFP available electronically on the Electronic State Business Daily (ESBD) at: http://esbd.cpa.state.tx.us after 10:00 a.m. CZT on Friday, November 20, 2009.

Questions and Non-Mandatory Letters of Intent: All written inquiries, questions, and Non-mandatory Letters of Intent to propose must be received at the above-referenced address not later than 2:00 p.m. CZT on Friday, December 4, 2009. Prospective proposers are encouraged to fax non-mandatory Letters of Intent and Questions to (512) 463-3669 to ensure timely receipt. Non-mandatory Letters of Intent must be addressed to William Clay Harris, Assistant General Counsel, Contracts, and must contain the information as stated in the corresponding Section of the RFP and be signed by an official of that entity. On or about Friday, December 11, 2009, the Comptroller expects to post responses to questions on the ESBD. Late Non-mandatory Letters of Intent and Questions will not be considered under any circumstances. Respondents shall be solely responsible for verifying timely receipt of Non-Mandatory Letters of Intent and Questions in the Issuing Office.

Closing Date: Proposals must be delivered in the Issuing Office to the attention of the Assistant General Counsel, Contracts, no later than 2:00 p.m. CZT, on Friday, December 18, 2009. Late Proposals will not be considered under any circumstances. Respondents shall be solely responsible for verifying time receipt of Proposals in the Issuing Office.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. The Comptroller will make the final decision. The Comptroller reserves the right to accept or reject any or all proposals submitted. The Comptroller is not obligated to execute a contract on the basis of this notice or the distribution of any RFP. The Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or to the RFP.

The anticipated schedule of events pertaining to this solicitation is as follows: Issuance of RFP - November 20, 2009, after 10:00 a.m. CZT; Non-Mandatory Letters of Intent and Questions Due - December 4, 2009, 2:00 p.m. CZT; Official Responses to Questions posted - December 11, 2009; Proposals Due - December 18, 2009, 2:00 p.m. CZT;

Contract Execution - January 15, 2010, or as soon thereafter as practical; Commencement of Services - January 15, 2010.

TRD-200905187
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: November 10, 2009

♦ ♦ ♦

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 11/09/09 - 11/15/09 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/09/09 - 11/15/09 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by §303.005[3] for the period of 11/01/09 - 11/30/09 is 18% for Consumer/Agricultural/Commercial/credit through $250,000.

The monthly ceiling as prescribed by §303.005 for the period of 11/01/09 - 11/30/09 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

[3]For variable rate commercial transactions only.

TRD-200905028
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: November 4, 2009

♦ ♦ ♦

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 11/16/09 - 11/22/09 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/16/09 - 11/22/09 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-200905191
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: November 10, 2009

♦ ♦ ♦

Employees Retirement System of Texas

Request for Proposal for Employee Discount Products and Services Program (Revised Notice)

This Notice takes place of the previous Notice published in the October 16, 2009, issue of the *Texas Register* (34 TexReg 7217).

The Employees Retirement System of Texas ("ERS") is issuing a Request for Proposal ("RFP") for qualified firms/organizations (hereinafter called "Vendor") to provide an Employee Discount Products and Services Program that would offer discounted benefits and/or services to the state and certain higher education employees, retirees, and their qualified dependents ("Participants") throughout Texas beginning September 1, 2010 through August 31, 2013. Qualified Vendors shall provide the level of discount products and services required in the RFP and meet other requirements that are in the best interest of the Participants and ERS and shall be required to execute a Contractual Agreement ("Contract") provided by and satisfactory to ERS.

The RFP will be available in mid-November from ERS' website and will include documents for the Vendor's review and response. To access the secured portion of the RFP website, interested Vendors shall email their request to the attention of IVendor Mailbox at: ivendorquestions@ers.state.tx.us. The email request shall include the Vendor's legal name, street address, phone and fax numbers, and email address for the organization's direct point of contact. Upon receipt of your emailed request, a user ID and password will be issued to the requesting organization that will permit access to the secured RFP. General questions concerning the RFP should be sent to the IVendor Mailbox as well. Inquires and responses, if applicable, are updated frequently.

To be eligible for consideration, the Vendor is required to submit a sealed proposal as more fully specified in the RFP. Vendor is required to submit a total of four (4) sets of the proposal. One (1) "Original" to include fully executed Signature Pages and Contractual Agreement, **signed in blue ink**, and without amendment or revision and an additional two (2) bound duplicates of the proposal, including all required exhibits shall be provided in printed format. The remaining complete copy shall be submitted on a separate CD-ROM in Excel or Word format. No PDF documents (with the exception of sample marketing materials and financial materials) may be reflected on the CD-ROM. All materials shall be executed as noted above and shall be received by ERS no later than 12:00 Noon (CT) on December 30, 2009.

ERS will base its evaluation and selection of Vendor(s) on the value of goods and services offered, product discounts, the ease at which a Participant can obtain a discount, Vendor's reporting capabilities, and customized communication material capabilities. The proposal will be evaluated individually and relative to the proposal of other qualified Vendors. Complete specifications will be included with the RFP.

ERS reserves the right to reject any and/or all proposals and/or call for new proposals if deemed by ERS to be in the best interests of the Participants and ERS. ERS also reserves the right to reject any proposal submitted that does not fully comply with the RFP's instructions and criteria including minimum requirements as reflected in the RFP. ERS is under no legal requirement to execute a Contract on the basis of this notice or upon issuance of the RFP and will not pay any costs incurred by any entity in responding to this notice or the RFP or in connection with the preparation thereof. ERS specifically reserves the right to vary all provisions set forth at any time prior to execution of a contract where ERS deems it to be in the best interest of the Participants and ERS.

TRD-200905080
Paula A. Jones
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
Filed: November 5, 2009

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (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 **December 21, 2009.** 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) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on December 21, 2009.** 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: Alexander Moulding Mill Company; DOCKET NUMBER: 2009-1553-PWS-E; IDENTIFIER: RN100828805; LOCATION: Hamilton, Hamilton County; TYPE OF FACILITY: wood products manufacturing with a public water supply (PWS); RULE VIOLATED: 30 Texas Administrative Code (TAC) §290.109(c)(3)(A)(ii) and §290.122(c)(2)(B), by failing to collect a set of four repeat distribution coliform samples and by failing to provide notice to persons served by the facility regarding the failure to collect repeat samples; 30 TAC §290.109(c)(2)(F) and §290.122(c)(2)(B), by failing to collect at least five distribution coliform samples the month following a total coliform-positive result and by failing to provide notice to persons served by the facility regarding the failure to conduct increased routine monitoring; and 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B) and Texas Health and Safety Code (THSC), §341.033(d), by failing to collect routine distribution coliform samples and by failing to provide notice to persons served by the facility regarding the failure to conduct routine coliform monitoring; PENALTY: $4,789; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(2) COMPANY: BASF Catalysts, LLC; DOCKET NUMBER: 2009-1271-AIR-E; IDENTIFIER: RN100223379; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.145(2)(A) and THSC, §382.085(b), by failing to timely report deviations; 30 TAC §117.2035(a)(1) and §122.143(4), Federal Operating Permit (FOP) Number O-01473, Special Terms and Condition (STC) Number 6A(iii), and THSC, §382.085(b), by failing to maintain and operate a totalizing fuel flow meter; 30 TAC §122.143(4), FOP Number O-01473, Special Condition (SC) Number 8, Air Permit Number 21140, SC Number 5A, and THSC, §382.085(b), by failing to comply with the minimum flow rate for the caustic vent scrubber; 30 TAC §122.143(4), FOP Permit Number O-01473, SC Number 8, Air Permit Number 19344, SC Number 2D, and THSC, §382.085(b), by failing to keep continuous records required to demonstrate that the flow monitor and British thermal unit analyzer were in operation at least 95% of the time when the Lynx 900 Catalyst Unit flare was in use; and 30 TAC §122.143(4), FOP Number O-01473, SC Number 8, Air Permit Number 19344, SC Number 6, and THSC, §382.085(b), by failing to correctly install the CPX-1 truck loading/unloading vent line to the flare; PENALTY: $4,365; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: Mardoche Abdelhak dba Big Trees Trailer City; DOCKET NUMBER: 2009-0804-PWS-E; IDENTIFIER: RN101652048; LOCATION: Bexar County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.43(e), by failing to provide a properly constructed intruder-resistant fence around all storage tanks and pressure maintenance facilities; 30 TAC §290.46(e)(4)(A) and THSC, §341.033(a), by failing to operate the facility at all times under the direct supervision of a water works operator who holds a Class "D" or higher license; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the facility and its equipment; 30 TAC §290.46(d)(2)(A), by failing to operate the disinfectant equipment to maintain a minimum disinfectant residual of 0.2 milligrams per liter (mg/L) of free chlorine throughout the distribution system; 30 TAC §290.46(m)(4), by failing to maintain all water treatment units, storage, and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition; 30 TAC §290.46(f)(2), (3)(E)(i), and (D)(i) and (ii), by failing to make the facility's operating records accessible for review during an inspection; and 30 TAC §290.51(a)(6) and the Code, §5.702, by failing to pay all annual and late public health service fees; PENALTY: $2,533; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(4) COMPANY: City of Chillicothe; DOCKET NUMBER: 2009-0202-MWD-E; IDENTIFIER: RN102985355; LOCATION: Hardeman County; TYPE OF FACILITY: domestic wastewater treatment plant; RULE VIOLATED: 30 TAC §317.4(a)(8), by failing to test the reduced backflow prevention assembly on the potable water line to the facility; 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010639001, Monitoring and Reporting Requirements Number 3.b., by failing to maintain records of the facility's sewage sludge use and disposal activities and by failing to maintain adequate monitoring records; 30 TAC §305.125(17) and TPDES Permit Number WQ0010639001, Sludge Provisions, by failing to timely submit the annual sludge report; 30 TAC §305.125(1) and (5) and TPDES Permit Number WQ0010639001, Operational Requirements Number 4, by failing to maintain adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures by means of alternate power sources, standby generators, and/or retention of inadequately treated wastewater; 30 TAC §305.125(17) and §319.7(d) and TPDES Permit Number WQ0010639001, Monitoring and Reporting Requirements Number 1, by failing to submit the monitoring results at the intervals specified in the permit; 30 TAC §305.125(1) and TPDES Permit Number WQ0010639001, Monitoring and Reporting Requirements Number 7.c., by failing to notify the TCEQ in writing

of any effluent permit excursion of 40% or greater; 30 TAC §§319.6, 319.9(c), and 319.11 and TPDES Permit Number WQ0010639001, Monitoring and Reporting Requirements Number 2, by failing to utilize the required quality assurance and effluent analysis methods; 30 TAC §305.125(1), TPDES Permit Number WQ0010639001, Effluent Limitations and Monitoring Requirements Numbers 1 and 3, TCEQ Agreed Order Docket Number 2006-0955-MWD-E, Ordering Provision 2.b., and the Code, §26.121(a), by failing to comply with permitted effluent limitations; and 30 TAC §305.125(1) and TPDES Permit Number WQ0010639001, Operational Requirements Number 1, by failing to properly maintain and operate the wastewater treatment ponds; PENALTY: $59,820; ENFORCEMENT COORDINATOR: Lauren Smitherman, (512) 239-5223; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(5) COMPANY: ConocoPhillips Company; DOCKET NUMBER: 2009-1203-AIR-E; IDENTIFIER: RN101619179; LOCATION: Old Ocean, Brazoria County; TYPE OF FACILITY: refinery; RULE VIOLATED: 30 TAC §116.115(c), Permit Number 5920A, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $16,975; Supplemental Environmental Project (SEP) offset amount of $6,790 applied to Texas Parent Teacher Association - *Clean School Bus Program*; ENFORCEMENT COORDINATOR: John Muennink, (361) 825-3100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: City of Converse; DOCKET NUMBER: 2009-1201-WQ-E; IDENTIFIER: RN104150206; LOCATION: Converse, Bexar County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations (CFR) §122.26(c), by failing to obtain authorization to discharge storm water associated with construction activities; PENALTY: $3,060; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(7) COMPANY: Clinton Cotton; DOCKET NUMBER: 2009-1769-WQ-E; IDENTIFIER: RN103743746; LOCATION: Rising Star, Eastland County; TYPE OF FACILITY: landscape irrigation; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $210; ENFORCEMENT COORDINATOR: Kirk Schoppe, (512) 239-0489; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(8) COMPANY: Daniels Building & Construction, Inc.; DOCKET NUMBER: 2009-1719-WQ-E; IDENTIFIER: RN105793731; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: storm water; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: $700; ENFORCEMENT COORDINATOR: Jordan Jones, (512) 239-2569; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(9) COMPANY: Robert Lerma, Jr. and Marta Villareal dba G S I II; DOCKET NUMBER: 2009-1013-AIR-E; IDENTIFIER: RN104707633; LOCATION: Alice, Jim Wells County; TYPE OF FACILITY: abrasive cleaning and surface coating; RULE VIOLATED: 30 TAC §116.110(a), Agreed Order Docket Number 2007-1294-AIR-E, Ordering Provision Number 3.a.ii., and THSC, §382.0518(a) and §382.085(b), by failing to comply with the ordering provision of an agreed order and exceeded allowable material usage; and 30 TAC §106.433(8)(B) - (D), Agreed Order Docket Number 2007-1294-AIR-E, Ordering Provision Number 3.a.i., and THSC, §382.085(b), by failing to comply with the ordering provision of an agreed order and by failing to provide complete records; PENALTY: $44,200; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(10) COMPANY: Ingram ReadyMix, Inc.; DOCKET NUMBER: 2009-1414-IWD-E; IDENTIFIER: RN100250372; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: concrete batch plant; RULE VIOLATED: 30 TAC §305.125(1), TPDES General Permit Number TXG110027, Part III, Section A, Permit Requirements, and the Code, §26.121(a), by failing to comply with the permitted effluent limit for total suspended solids (TSS); and 30 TAC §305.125(17) and TPDES General Permit Number TXG110027, Part IV, Standard Permit Conditions Number 7(f), by failing to submit monitoring results at the intervals specified in the permit; PENALTY: $3,420; ENFORCEMENT COORDINATOR: Jordan Jones, (512) 239-2569; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(11) COMPANY: ISP Synthetic Elastomers, LP; DOCKET NUMBER: 2009-0699-AIR-E; IDENTIFIER: RN100224799; LOCATION: Port Neches, Jefferson County; TYPE OF FACILITY: synthetic elastomer manufacturing plant; RULE VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), FOP Number O-01224, General Terms and Conditions (GTC) and SC Number 11A, Air Permit Number 9908, SC Number 1, and THSC, §382.085(b), by failing to comply with permit emission limits; and 30 TAC §§122.143(4), 122.145(2)(A), and 122.146(1) and (5)(C), FOP Number O-01224, GTC, and THSC, §382.085(b), by failing to report a deviation; PENALTY: $27,170; ENFORCEMENT COORDINATOR: Audra Benoit, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(12) COMPANY: Joe Williamson Construction Company; DOCKET NUMBER: 2009-1745-WQ-E; IDENTIFIER: RN105794705; LOCATION: Weslaco, Hidalgo County; TYPE OF FACILITY: general contractors; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: $700; ENFORCEMENT COORDINATOR: Jordan Jones, (512) 239-2569; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(13) COMPANY: Kleinwood Joint Powers Board; DOCKET NUMBER: 2009-0783-MWD-E; IDENTIFIER: RN102328580; LOCATION: Harris County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0011409001, Effluent Limitations and Monitoring Requirements Whole Effluent Toxicity (WET) limit, and the Code, §26.121(a), by failing to meet the permitted effluent limitations for *Ceriodaphnia dubia*, seven-day chronic toxicity test; and 30 TAC §305.125(1), TPDES Permit Number WQ0011409001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations for *Escherichia coli* (E. coli), total residual chlorine, and TSS; PENALTY: $18,650; SEP offset amount of $18,650 applied to Gulf Coast Waste Disposal Authority - River, Lakes, Bays, and Bayous Trash Bash; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 425-6010; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(14) COMPANY: LONGPOINT ENTERPRISES, INC. dba Amigos Food Mart; DOCKET NUMBER: 2009-1029-PST-E; IDENTIFIER: RN101896249; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.10(b), by failing to maintain the required underground storage tank (UST) records and make them immediately available for the inspection; 30 TAC §334.8(c)(4)(A)(vii) and (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; 30 TAC §334.8(c)(5)(A)(i) and the Code, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; 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; 30 TAC §334.50(b)(2) and the Code, §26.3475(a), by failing to provide release detection for the piping associated with the USTs; 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; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to ensure that all USTs are monitored in a manner which will detect a release; 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 §334.50(d)(1)(B)(iii)(I) and the Code, §26.3475(c)(1), by failing to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs; and 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; PENALTY: $20,894; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(15) COMPANY: Matrix Metals, LLC; DOCKET NUMBER: 2009-0955-AIR-E; IDENTIFIER: RN100218205; LOCATION: Richmond, Fort Bend County; TYPE OF FACILITY: steel manufacturing plant; RULE VIOLATED: 30 TAC §§122.143(4), 122.145(2)(A), and 122.146(2), FOP Number O-02121, GTC, and STC Number 9, and THSC, §382.085(b), by failing to submit an annual permit compliance certification (PCC) and two semi-annual deviation reports; 30 TAC §122.143(4), FOP Number 0-02121, STC Number 3(A)(iv)(3) and (C)(iii)(2), and THSC, §382.085(b), by failing to maintain records of opacity observations; and 30 TAC §116.115(c) and §122.143(4), New Source Review (NSR) Permit Number 1814A, SC Number 4, FOP Number O-02121, STC Number 7(A), and THSC, §382.085(b), by failing to maintain all pollution emission capture equipment and abatement equipment in good working condition; PENALTY: $17,500; ENFORCEMENT COORDINATOR: Martina Kusniadi, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(16) COMPANY: Military Highway Water Supply Corporation; DOCKET NUMBER: 2009-1373-MWD-E; IDENTIFIER: RN101611366; LOCATION: Hidalgo County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0013462001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations for TSS and biochemical oxygen demand (BOD); PENALTY: $7,200; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(17) COMPANY: City of Rio Grande City; DOCKET NUMBER: 2009-0866-MWD-E; IDENTIFIER: RN102777661; LOCATION: Rio Grande City, Starr County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1) and (5) and TPDES Permit Number WQ0010802001, Operational Requirements Number 4, by failing to maintain adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures; 30 TAC §305.125(1), TPDES Permit Number WQ0010802001, Effluent Limitations and Monitoring Requirements Numbers 1, 2, and 6, and the Code, §26.121(a), by failing to comply with permit effluent limits for minimum dissolved oxygen (DO), minimum chlorine residual, and five-day BOD; 30 TAC §305.125(1) and TPDES Permit Number WQ0010802001, Operational Requirements Number 1, by failing to maintain process control records; 30 TAC §319.7(a) and (c), by failing to maintain calibration and maintenance records for any analytical equipment used at the facility; 30 TAC §30.350(d) and TPDES Permit Number WQ0010802001, Other Requirements Number 1, by failing to have a certified operator with the proper level of license operating at the facility and the collection system; and 30 TAC §305.125(5) and TPDES Permit Number WQ0010802001, Operational Requirements Number 1, by failing to ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; PENALTY: $25,686; SEP offset amount of $20,549 applied to Texas Association of Resource Conservation and Development Areas, Inc. (RC&D) - Abandoned Tire Clean-Up; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(18) COMPANY: Glen L. Grandy, Jr. dba S & M Vacuum & Liquid Waste Processing Facility; DOCKET NUMBER: 2009-0716-MLM-E; IDENTIFIER: RN102888872; LOCATION: Killeen, Bell County; TYPE OF FACILITY: grease trap processing; RULE VIOLATED: 30 TAC §330.15(a)(1) and the Code, §26.121(a)(1), by failing to prevent an unauthorized discharge of wastewater; 30 TAC §330.205(a), by failing to conduct proper tests to specify the characteristics and constituent concentrations of waste generated; 30 TAC §330.205(b), by failing to dispose of waste at an authorized solid waste management facility; 30 TAC §330.7(a), by failing to obtain a permit to continue operations following the termination of a registration; 30 TAC §330.203(c)(2), by failing to conduct annual analysis on outgoing solids; and 30 TAC §281.25(a)(4) and 40 CFR §122.26, by failing to obtain authorization for storm water discharges under the multi-sector industrial general permit; PENALTY: $17,706; ENFORCEMENT COORDINATOR: Danielle Porras, (512) 239-2602; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(19) COMPANY: SandRidge CO2, LLC; DOCKET NUMBER: 2009-1379-AIR-E; IDENTIFIER: RN104379672; LOCATION: Pecos County; TYPE OF FACILITY: gas compression station; RULE VIOLATED: 30 TAC §122.146(2) and THSC, §382.085(b), by failing to submit the PCC; 30 TAC §122.145(2)(C) and THSC, §382.085(b), by failing to submit a deviation report no later than 30 days after the end of the reporting period; 30 TAC §122.146(1) and THSC, §382.085(b), by failing to certify compliance; and 30 TAC §122.145(2)(A) and THSC, §382.085(b), by failing to submit deviation reports when deviations had occurred; PENALTY: $13,800; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 3300 North A Street, Building 4-107, Midland, Texas 79705-5406, (432) 570-1359.

(20) COMPANY: City of Shavano Park; DOCKET NUMBER: 2009-1404-EAQ-E; IDENTIFIER: RN105749592; LOCATION: Shavano Park, Bexar County; TYPE OF FACILITY: fire station; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of a water pollution abatement plan (WPAP) prior to commencing regulated activities over the Edwards Aquifer; PENALTY: $1,875; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(21) COMPANY: Southeastern Freight Lines, Inc.; DOCKET NUMBER: 2009-1744-WQ-E; IDENTIFIER: RN105784607; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: trucking company; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit; PENALTY: $700; ENFORCEMENT CO-

ORDINATOR: Jordan Jones, (512) 239-2569; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(22) COMPANY: Southern Crushed Concrete, LLC; DOCKET NUMBER: 2009-0686-AIR-E; IDENTIFIER: RN100889492, RN100904838, RN101089001, RN102764479, and RN102765260; LOCATION: Houston, Harris County; TYPE OF FACILITY: portable concrete crushers; RULE VIOLATED: 30 TAC §116.115(c), NSR Portable Permit Numbers 8959D, 40072, 9733c, 9464F, and 51583L001, SC Number 1, and THSC, §382.085(b), by failing to maintain production rates below the maximum allowable limit; 30 TAC §116.115(c), NSR Portable Permit Numbers 40072, 8959D, 9733C, 9464F, and 51583L001, SC Number 8A, and THSC, §382.085(b), by failing to obtain change of location authorization prior to relocating the portable concrete crusher; and 30 TAC §116.115(c), NSR Portable Permit Numbers 40072, 8959D, 51583L001, 9464F, and 9733C, SC Number 7C, and THSC, §382.085(b), by failing to maintain adequate records of repairs performed on pollution abatement systems (nozzle replacement records); PENALTY: $65,662; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(23) COMPANY: Syed Sher Shah and Joseph Shylore dba Speedo Gas Food Store; DOCKET NUMBER: 2009-0981-PST-E; IDENTIFIER: RN102327079; LOCATION: Spring, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.246(3), (5), and (6) and THSC, §382.085(b), by failing to maintain Stage II records and make them immediately available for inspection; 30 TAC §115.244(3) and THSC, §382.085(b), by failing to conduct required monthly inspections of the Stage II vapor recovery system (VRS); and 30 TAC §115.248(1) and THSC, §382.085(b), by failing to ensure that at least one station representative received training in the operation and maintenance of the Stage II VRS; PENALTY: $3,368; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(24) COMPANY: Spring Center, Inc.; DOCKET NUMBER: 2009-1054-MWD-E; IDENTIFIER: RN102076825; LOCATION: Harris County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0012637001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permit effluent limits for ammonia-nitrogen and flow; PENALTY: $17,765; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(25) COMPANY: Texas Parks and Wildlife Department; DOCKET NUMBER: 2009-0892-IWD-E; IDENTIFIER: RN102469988; LOCATION: Harris County; TYPE OF FACILITY: air conditioning cooling water system; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0004317000, Effluent Limitations and Monitoring Requirements Number 1 for Outfall Number 002, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations for total copper and total zinc; PENALTY: $4,032; SEP offset amount of $4,032 applied to repairing a gated weir in the Santa Anna Bayou marsh at the San Jacinto Battleground State Park that was damaged by Hurricane Ike; ENFORCEMENT COORDINATOR: Lauren Smitherman, (512) 239-5223; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(26) COMPANY: Thomas Enterprises, Inc.; DOCKET NUMBER: 2009-0876-EAQ-E; IDENTIFIER: RN105092746; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: commercial development site; RULE VIOLATED: 30 TAC §213.23(a) and Edwards Aquifer Protection Plan (EAPP) Numbers 2589.00 and 2589.01, Standard Conditions Number 3, by failing to obtain approval of a modification to an Edwards Aquifer Contributing Zone Plan (CZP) prior to beginning a regulated activity over the Edwards Aquifer CZ; 30 TAC §213.23(j) and EAPP Number 2589.01, SC Number 11, by failing to provide proof of recordation of notice in the county deed records, with the volume and page number(s) of the county deed records of the county in which the property is located; and 30 TAC §213.23(j), EAPP Number 2589.00, SC Number VI, Standard Conditions Numbers 5 and 9, and EAPP Number 2589.01, SC Number VI, Standard Conditions Numbers 5 and 9, by failing to install temporary erosion and sedimentation controls during construction and maintain the controls during construction; PENALTY: $16,500; ENFORCEMENT COORDINATOR: Lauren Smitherman, (512) 239-5223; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(27) COMPANY: VILLAGE FARMS, L.P. dba Village Farms of Marfa; DOCKET NUMBER: 2009-1177-MSW-E; IDENTIFIER: RN100817873; LOCATION: Marfa, Presidio County; TYPE OF FACILITY: hydroponic tomato farm; RULE VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; PENALTY: $4,600; SEP offset amount of $1,840 applied to RC&D - Unauthorized Trash Dump Clean-Up; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(28) COMPANY: W & W Fiberglass Tank Company; DOCKET NUMBER: 2009-0822-AIR-E; IDENTIFIER: RN102004314; LOCATION: Pampa, Gray County; TYPE OF FACILITY: fiberglass tank manufacturing plant; RULE VIOLATED: 30 TAC §116.115(b)(2)(F), Air Permit Number 47294, General Condition Number 8, and THSC, §382.085(b), by exceeding the rolling 12-month volatile organic compound permitted emission limit of 39.44 tons per year; 30 TAC §101.20(2) and §116.115(c), 40 CFR §63.9(h) and §63.5910(b), Air Permit Number 47294, SC Number 4, and THSC, §382.085(b), by failing to submit four semi-annual compliance reports on or before the required due date; 30 TAC §122.143(4) and §122.145(2), FOP Number O-02448, GTC, and THSC, §382.085(b), by failing to report all instances of deviations on five submitted deviation reports; 30 TAC §122.143(4) and §123.146(2), FOP Number O-02448, GTC, and THSC, §382.085(b), by failing to timely submit a PCC; and 30 TAC §116.115(c), Air Permit Number 47294, SC Number 11A, and THSC, §382.085(b), by failing to maintain and have available on file for two years records in order to demonstrate compliance with permit conditions and the maximum allowable emission rates table; PENALTY: $21,444; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(29) COMPANY: Wright City Water Supply Corporation; DOCKET NUMBER: 2009-1363-PWS-E; IDENTIFIER: RN101237063; LOCATION: Troup, Smith County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by failing to comply with the maximum contaminant level for total trihalomethanes; PENALTY: $347; ENFORCEMENT COORDINATOR: Amanda Henry, (713) 767-3500; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(30) COMPANY: Z-Lab, Inc. dba Cypress Valley Canopy Tours; DOCKET NUMBER: 2009-1082-PWS-E; IDENTIFIER: RN105744106; LOCATION: Spicewood, Travis County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.39(c) and (h)(1) and THSC, §341.035(a) and (c), by failing to submit and

receive commission approval of plans and specifications; and 30 TAC §290.42(e)(1) and (3), by failing to provide disinfection equipment so that disinfection occurs prior to distribution and continuous and effective disinfection of the water can be secured under all conditions; PENALTY: $350; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

TRD-200905184
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: November 10, 2009

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Notice of a Public Hearing on Proposed Revisions to 30 TAC Chapters 295 and 297

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to 30 TAC Chapter 295, Water Rights, Procedural and Chapter 297, Water Rights, Substantive, under the requirements of Texas Health and Safety Code, §382.017; and Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking would implement House Bill 4231, 81st Legislature, 2009, Regular Session, relating to the conveyance or transfer in Texas of water imported into Texas from a source located outside the state.

A public hearing on this proposal will be held in Austin on January 5, 2010 at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons planning to attend the hearing with special communication or other accommodation needs should contact Charlotte Horn, Office of Legal Services, at (512) 239-0779. Requests should be made as far in advance as possible.

Comments may be submitted to Patricia Durón, MC 205, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at http://www5.tceq.state.tx.us/rules/ecomments. File size restrictions may apply to comments being submitted via the eComments system. The comment period closes January 11, 2010. All comments should reference Rule Project Number 2009-040-295-PR. The proposed revisions may be viewed on the commission's Web site at http://www.tceq.state.tx.us/nav/rules/propose_adopt.html. For further information or questions concerning this proposal, please contact Ronald Ellis, Water Supply Division, at (512) 239-1282.

TRD-200905032
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: November 5, 2009

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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 **December 21, 2009.** 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 December 21, 2009.** 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: Ann Robinson dba Beachview Acres Water Association; DOCKET NUMBER: 2008-0103-PWS-E; TCEQ ID NUMBER: RN101437135; LOCATION: Farm-to-Market Road 2604, West of Farm-to-Market Road 933, Hill County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.46(f)(2) and (3)(A)(ii)(III), by failing to provide the water system's operating records for commission review during its inspections; 30 TAC §290.41(c)(1)(A), by failing to locate a well site for public drinking water at least 150 feet from a septic tank drainfield; 30 TAC §290.46(n)(2), by failing to provide an accurate and up-to-date map of the distribution system; 30 TAC §290.44(d)(4), by failing to provide an accurate metering device for each residential, commercial, or industrial service connection for the accumulation of water usage data; 30 TAC §290.43(d)(3), by failing to provide an air filter on the air injection line; 30 TAC §290.46(m)(1)(A), by failing to conduct an annual inspection of the water system's ground storage tank; 30 TAC §290.42(l), by failing to compile and maintain a thorough plant operations manual for operator review and reference; 30 TAC §290.121, by failing to have a complete and up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that Beachview Acres will use to comply with the monitoring requirements; 30 TAC §290.110(c)(4)(A), by failing to monitor the disinfectant residual at representative locations in the distribution system at least once every seven days; 30 TAC §290.46(t), by failing to maintain a legible sign at each production, treatment, and storage facility that includes the name of the water supply and an emergency telephone number where a responsible official can be contacted; 30 TAC §290.109(c)(2)(A) and Texas Health and Safety Code (THSC), §341.033(d), by failing to collect and submit monthly water samples for bacteriological analysis for the months of August, September, and October 2007; and 30 TAC §290.44(d)(6), by failing

to provide all dead-end mains with acceptable flush valves; and TWC, §26.121(a)(2), by failing to prevent an unauthorized discharge of liquid plant sludge from the surface water treatment plant; PENALTY: $3,093; STAFF ATTORNEY: Benjamin O. Thompson, Litigation Division, MC 175, (512) 239-1297; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(2) COMPANY: City of Corpus Christi; DOCKET NUMBER: 2008-1521-MLM-E; TCEQ ID NUMBER: RN101385151; LOCATION: 13101 Leopard Street, Corpus Christi, Nueces County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.110(b)(4) and §290.46(d)(2)(B) and THSC, §341.0315(c), by failing to maintain a minimum chloramine residual of at least 0.5 milligrams per liter (mg/L) throughout the distribution system at all times; 30 TAC §290.42(e)(3)(D), by failing to provide disinfection facilities for determining the amount of disinfectant used daily as well as the amount of disinfectant remaining for use; 30 TAC §290.42(e)(4)(B), by failing to properly house the chlorine cylinders so that they are protected from adverse weather conditions and vandalism; 30 TAC §290.42(m), by failing to provide an intruder-resistant fence around the Sand Dollar Pump Station, the Morgan elevated storage tank, and the east side of the water treatment plant; 30 TAC §290.42(d)(2)(E), by failing to provide an air gap connection to waste for the filter-to-waste connection at the facility; 30 TAC §290.111(d)(2)(B), by failing to ensure that the disinfection contact time used by the city is based on tracer study data or a theoretical analysis and approved by the executive director and the actual flow rate that is occurring at the time that monitoring occurs; 30 TAC §290.43(c)(4), by failing to calibrate the pressure gauge at no more than two foot intervals; and 30 TAC §290.46(1), by failing to flush all dead-end mains at monthly intervals; and 30 TAC §26.121(a)(2), by failing to prevent an unauthorized discharge of liquid plant sludge from the surface water treatment plant; PENALTY: $10,481; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(3) COMPANY: City of Overton; DOCKET NUMBER: 2008-1650-PWS-E; TCEQ ID NUMBER: RN103934733; LOCATION: 1498 Farm-to-Market Road 850 East, Rusk County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to provide a sanitary control easement covering all land within 150 feet of three of the facility's wells; 30 TAC §290.43(c)(8), by failing to maintain the facility's ground storage tank in a strict accordance with American Water Works Association standards; 30 TAC §290.45(b)(1)(D)(iii) and THSC, §341.0315(c), by failing to provide two or more pumps that have a total capacity of 2.0 gallons per minute per connection; 30 TAC §290.46(j), by failing to complete a customer service inspection certificate prior to providing continuous service to new construction, on any existing service either when the water purveyor has reason to believe that cross-connections or other potential contaminant hazards exist, or after any material improvement correction, or addition to the facility; 30 TAC §290.43(e) and §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the facility and its equipment and failing to provide a properly constructed intruder-resistant fence in order to protect the facility's equipment; and 30 TAC §290.39(h)(1), by failing to obtain written approval of plans and specifications prior to any construction of the public water system and make it available at the time of the investigation; PENALTY: $2,108; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(4) COMPANY: Eastman Chemical Company; DOCKET NUMBER: 2008-1449-AIR-E; TCEQ ID NUMBER: RN100219815; LOCATION: 300 Kodak Boulevard, Longview, Harrison County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 40 Code of Federal Regulations §63.168(b) and §63.174(a), THSC, §382.085(b), 30 TAC §§113.130, 116.115(c) and 122.143(4), Air New Source Review (NSR) Permit Number 6419, Special Condition (SC) Number 2.F. and Air NSR Permit Number 6777, SC 6.F., and Federal Operating Permit (FOP) Number O-01974, Special Terms and Conditions (STC) Numbers 1.A. and 6.A. and FOP Number O-01977, STC 10.A., by failing to monitor 265 components at the Solvent Plant and by failing to monitor eight relief valves in the Texanol Plant; and THSC, §382.085(b), 30 TAC §106.433(5) and §122.143(4), FOP Number O-01976 and STC Number 9.A., by failing to maintain the opacity limit below 5% while performing surface coating operations in the Building 83 area; PENALTY: $75,839; Supplemental Environmental Project offset amount of $37,919 applied to Texas Association of Resource Conservation and Development Areas, Inc. Abandoned Tire Clean Up; STAFF ATTORNEY: Anna Treadwell, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(5) COMPANY: Fair Road Properties, Inc.; DOCKET NUMBER: 2007-1699-MLM-E; TCEQ ID NUMBER: RN101181576; LOCATION: approximately 6.8 miles east of United States (U.S.) Highway 377 on the north side of Farm-to-Market Road 455, Denton County; TYPE OF FACILITY: retail public water utility and public water system; RULES VIOLATED: 30 TAC §291.101, TWC, §13.242(a) and §13.244, Agreed Order Docket Number 2002-0032-PWS-E, Ordering Provision 2.c.ii, by failing to obtain a Certificate of Convenience and Necessity prior to rendering retail water service directly to the public, 30 TAC §290.41(c)(1)(F) and AO Docket Number 2002-0032-PWS-E, Ordering Provisions 2.i.i. and 2.j.ii(4), by failing to obtain a sanitary control easement or exception to the easement requirement that covers the land within 150 feet of the facility's two uncapped wells; 30 TAC §290.41(c)(3)(B) and AO Docket Number 2002-0032-PWS-E, Ordering Provision 2.g.iii., by failing to provide a well casing for well number one that is a minimum of 18 inches above the natural ground; 30 TAC §290.41(c)(3)(K) and AO Docket Number 2002-0032-PWS-E, Ordering Provision 2.j.ii.(3), by failing to provide a well casing vent for well number one that has a 16-mesh or finer corrosion-resistant screen, faces downward, and is located so as to minimize the drawing of contaminants into the well; 30 TAC §290.42(1) and AO Docket Number 2002-0032-PWS-E, Ordering Provisions 2.i.ii., by failing to compile a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.43(c)(2) and AO Docket Number 2002-0032-PWS-E, Ordering Provision 2.i.iv., by failing to design and construct the ground storage tank in accordance with American Water Works Association standards, including providing a roof access opening that is a minimum of 30 inches in diameter; 30 TAC §290.46(j) and AO Docket Number 2002-0032-PWS-E, Ordering Provision 2.e.i., by failing to complete customer service inspection certifications prior to providing continuous water service to new construction, on any existing service either when the water purveyor has reason to believe that cross-connections or other potential contaminant hazards exist, or after any material improvement, correction, or addition to the private water distribution facilities; 30 TAC §290.46(m)(1)(A) and AO Docket Number 2002-0032-PWS-E, Ordering Provision 2.a.v., by failing to conduct annual inspections of the water system's one ground storage tank; 30 TAC §290.46(m)(1)(B) and AO Docket Number 2002-0032-PWS-E, Ordering Provision 2.a.v., by failing to conduct annual inspections of the water system's three pressure tanks; 30 TAC §290.46(u) and AO Docket Number 2002-0032-PWS-E, Ordering Provision 2.j.i., by

failing to plug the water system's one abandoned well with cement or return the well to a non-deteriorated condition; 30 TAC §290.46(n)(3) and AO Docket Number 2002-0032-PWS-E, Ordering Provisions 2.e.ii. and 2.j.ii.(1), by failing to maintain a copy of the well completion data on file for the two uncapped wells in the water system; 30 TAC §290.46(v) and AO Docket Number 2002-0032-PWS-E, Ordering Provision 2.j.ii.(2), by failing to securely install all electrical wiring at well number two in accordance with a local or national electrical code; and 30 TAC §290.117(b) and (c) and AO Docket Number 2002-0032-PWS-E, Ordering Provisions 2.c.i. and 2.e.iv., by failing to complete a materials survey of the water system and identify a pool of tap sampling sites from which lead and copper sampling is to be conducted and failing to conduct lead and copper sampling on a routine basis; PENALTY: $14,455; STAFF ATTORNEY: Tracy Chandler, Litigation Division, MC 175, (512) 239-0629; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Northwind Properties, Ltd. dba Westfield Garden Mobile Home Park; DOCKET NUMBER: 2009-1040-PWS-E; TCEQ ID NUMBER: RN101245090; LOCATION: 520 Gulf Bank Road, Houston, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(1)(D)(v) and THSC, §341.0315(c), by failing to provide emergency power that will deliver water at a rate of 0.35 gallons per minute per connection in the event of the loss of normal power supply; and 30 TAC §290.41(c)(3)(B), by failing to provide well casing that extends a minimum of 18 inches above the elevation of the finished floor of the pump house or natural ground surface; PENALTY: $385; STAFF ATTORNEY: Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(7) COMPANY: Patricia Nelson; DOCKET NUMBER: 2009-1438-MLM-E; TCEQ ID NUMBER: RN105508394; LOCATION: 14000 Block of Rollins Road, Winnie, Jefferson County; TYPE OF FACILITY: unauthorized municipal solid waste; RULES VIOLATED: 30 TAC §111.201 and THSC, §382.085(b), by failing to comply with the general prohibition on outdoor burning; and 30 TAC §330.15(a), by failing to prevent the unauthorized disposal of scrap tires; PENALTY: $5,975; STAFF ATTORNEY: Stephanie J. Frazee, Litigation Division, MC 175, (512) 239-3693; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(8) COMPANY: R & S Concrete, L.L.C.; DOCKET NUMBER: 2008-0576-MLM-E; TCEQ ID NUMBER: RN101976997; LOCATION: 14508 Chrisman Road, Houston, Harris County; TYPE OF FACILITY: concrete batch plant; RULES VIOLATED: 30 TAC §335.4 and General Permit Number TXG110384 Part III Section F.2(c)(3), by failing to follow the storm water pollution prevention plan (SWP3) and promptly remediate all spills; 30 TAC §305.125(11)(B) and (C), and General Permit Number TXG110384 Part IV Standard Permit Conditions Number 7(g) and (h), by failing to maintain and provide records at the facility; 30 TAC §305.125(1) and General Permit Number TXG110384 Part III Section F.2(c)(1), by failing to prevent or minimize the discharge or exposure of spilled materials and fine granular solids from paved portions of the facility that are exposed to storm water; TWC, §26.121(a)(1), 30 TAC §305.125(1), and General Permit Number TXG110384 Part III Section A, by failing to comply with the total suspended solids permitted effluent limit of 65 milligrams per liter; 30 TAC §305.125(1) and General Permit Number TXG110384 Part III Section F.2(b)(1)(i), by failing to identify all outfall locations on the site drainage map; TWC, §26.121(a)(1) and General Permit Number TXG110384 Part III Section I.3, by failing to prevent the unauthorized discharge of solids; 30 TAC §305.125(17) and General Permit Number TWG110384 Part IV Standard Permit Conditions Number 7(f), by failing to submit discharge monitoring reports and report monitoring results for March and July 2007; PENALTY: $14,544; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13; (210) 403-4016; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(9) COMPANY: Reed S. Lehman Grain, Ltd.; DOCKET NUMBER: 2009-0693-MLM-E; TCEQ ID NUMBER: RN105560072; LOCATION: Southton Road and Little Lane, San Antonio, Bexar County; TYPE OF FACILITY: real property; RULES VIOLATED: 30 TAC §330.15(a)(1) and TWC, §26.121, by failing to prevent the unauthorized disposal of municipal solid waste at an unauthorized disposal site; PENALTY: $1,050; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(10) COMPANY: Star Fuels, Inc. dba Crest Bell Star Fuels; DOCKET NUMBER: 2008-1886-PST-E; TCEQ ID NUMBER: RN102245834; LOCATION: 10902 Bellaire Boulevard, Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2)(A)(i) and TWC, §26.3475(a), by failing to equip each separate pressurized line with an automatic line leak detector capable of detecting a release from the piping associated with the underground storage tank system; and 30 TAC §334.51(b)(2)(C) and TWC, §26.3475(c)(2), by failing to equip each tank with a valve or other appropriate device designed to automatically shut off the flow of regulated substances into the tank when the liquid level in the tank reaches a preset level no higher than the 97% capacity level for the tank; PENALTY: $6,075; STAFF ATTORNEY: Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(11) COMPANY: Zoltek Corporation; DOCKET NUMBER: 2007-0580-AIR-E; TCEQ ID NUMBER: RN100543867; LOCATION: 1221 Fulwiler Road, Abilene, Taylor County; TYPE OF FACILITY: polyacrylonotrile carbon fiber manufacturing plant; RULES VIOLATED: 30 TAC §101.4 and §116.115(c), Permit Number 35215, SC Number 3, and THSC, §382.085(a) and (b), by failing to take necessary measures to prevent the release of odors and visible emissions from the Thermal Oxidizer (TO) stacks; 30 TAC §116.115(c), Permit Number 35215, SC Number 14(a) and (b), and THSC, §382.085(b), by failing to report in writing to the TCEQ all instances of failing to maintain minimum temperatures and of any visible emissions from TO stacks; 30 TAC §101.201(a)(1) and THSC, §382.085(b), by failing to notify the commission of a reportable emission event no later than 24 hours after the discovery of the event; 30 TAC §116.115(c), Permit Number 35215, SC Number 7, and THSC, §382.085(b), by failing to maintain minimum operating temperatures of 1300 degrees Fahrenheit and 1500 degrees Fahrenheit at the outlets of TO Numbers 1 and 2; 30 TAC §101.201(a)(1) and THSC, §382.085(b), by failing to notify the commission of a reportable emission event no later than 24 hours after the discovery of the event; 30 TAC §116.115(b)(2)(G) and (c), Permit Number 35215, SC Numbers 1, 3, 4, and 7, and THSC, §382.085(b), by failing to properly operate emissions control equipment during normal operations, which resulted in an excessive emissions event; 30 TAC §101.4 and §116.115(b)(2)(G) and (c), Permit Number 35215, SC Numbers 1, 3, 4, and 7, and THSC, §382.085(a) and (b), by failing to properly operate emission control equipment during normal operations, which resulted in the release of nuisance odors, as well as visible and excessive emissions; PENALTY: $21,590; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914;

REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

TRD-200905189
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: November 10, 2009

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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 **December 21, 2009.** 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 December 21, 2009.** 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: Flat Rock Minerals, L.L.C.; DOCKET NUMBER: 2009-0421-WQ-E; TCEQ ID NUMBER: RN105497176; LOCATION: Lafayette Creek Ranch on Farm-to-Market (FM) Road 2796, 3.2 miles west of the intersection of FM Road 2796 and FM 557, Upshur County; TYPE OF FACILITY: sand and gravel mining operation; RULES VIOLATED: TWC, §26.121, by failing to prevent the unauthorized discharge of any pollutant into or adjacent to any water in the state; PENALTY: $10,650; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(2) COMPANY: Gerald Grimes dba Corporate Cleaners & Laundry; DOCKET NUMBER: 2008-0038-DCL-E; TCEQ ID NUMBER: RN104247861; LOCATION: 11048 Shady Trail, Dallas County; TYPE OF FACILITY: dry cleaning facility; RULES VIOLATED: 30 TAC §337.11(e), Texas Health and Safety Code (THSC), §374.102, and the TCEQ Agreed Order Docket Number 2006-1356-DLC-E, Ordering Provisions 3.a. and 3.b., by failing to renew the facility's registration by completing and submitting the required registration form to the TCEQ for a dry cleaning facility; and 30 TAC §337.14(c), TWC, §5.702, and the TCEQ Agreed Order Docket Number 2006-1356-DLC-E, Ordering Provisions 1 and 3.b., by failing to pay registration fees to TCEQ Financial Account Number 24002548 and failing to pay an administrative penalty assessed by the prior Agreed Order; PENALTY: $1,537; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Gerald Lowrey; DOCKET NUMBER: 2009-0574-MSW-E; TCEQ ID NUMBER: RN105701239; LOCATION: 1242 Farm Road 1510, Brookston, Lamar County; TYPE OF FACILITY: unauthorized municipal solid waste disposal site; RULES VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; PENALTY: $2,500; STAFF ATTORNEY: Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(4) COMPANY: Herlinda Deleon Enterprises, Inc.; DOCKET NUMBER: 2009-0614-IWD-E; TCEQ ID NUMBER: RN105594097; LOCATION: 1521 Erskine Street, Lubbock, Lubbock County; TYPE OF FACILITY: ready-mix concrete plant; RULES VIOLATED: TWC, §26.121(a), 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXG110856, Part III, Permit Requirements, Section A, by failing to comply with permit effluent limits; and 30 TAC §305.125(1) and §319.5(b) and TPDES General Permit Number TXG110856, Part III, Permit Requirements, Section A, by failing to monitor for each parameter at the frequency specified in the permit; PENALTY: $2,279; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: Lubbock Regional Office, 5012 50th Street, Suite 100, Lubbock, Texas 79414-3520, (806) 796-7092.

(5) COMPANY: Syll Holt dba Walnut Bend Water System; DOCKET NUMBER: 2009-0737-PWS-E; TCEQ ID NUMBER: RN102315124; LOCATION: near the intersection of Flurry and Lakeview Drive, Angelina County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(m), by failing to provide written notification to the commission of the reactivation of an existing public water supply system; and 30 TAC §290.46(d)(2)(A) and THSC, §341.0315(c), by failing to operate the disinfection equipment to maintain a residual disinfectant concentration in the water of at least 0.2 milligrams per liter free chlorine throughout the distribution system at all times; PENALTY: $305; STAFF ATTORNEY: Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(6) COMPANY: We Are Crazy, Inc. dba Country Pantry 16; DOCKET NUMBER: 2009-0637-PST-E; TCEQ ID NUMBER: RN102260007; LOCATION: 3148 Texas Avenue, Bridge City, Orange County; TYPE OF FACILITY: three inactive underground storage tanks; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.54(b)(2), (c)(2) and (d)(2), by failing to maintain all piping, pump, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons, failing to monitor for releases a temporarily out of use underground storage tank (UST) system for which regulated substances have not been removed, failing to provide proper

corrosion protection for a temporarily out of service UST system, and by failing to ensure that any residue from stored regulated substances which remained in the temporarily out-of-service UST system did not exceed a depth of 2.5 centimeters at the deepest point and did not exceed 0.3% by weight of the system at full capacity; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable 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; and TWC, §26.3475(c)(2) and 30 TAC §334.51(b)(2)(B)(ii), by failing to ensure the spill and overfill prevention equipment is equipped with a liquid-tight lid or cover designed to minimize the entrance of any surface water, groundwater, or other foreign substances into the USTs; PENALTY: $8,873; STAFF ATTORNEY: Barham Richard, Litigation Division, MC 175, (512) 239-0107; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(7) COMPANY: William Randle McLarrin; DOCKET NUMBER: 2009-0556-PST-E; TCEQ ID NUMBER: RN102229465; LOCATION: 10260 United States Highway 190 East, Pointblank, San Jacinto County; TYPE OF FACILITY: three inactive underground storage tanks; RULES 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, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; and 30 TAC §334.22(a) and TWC, §5.702, by failing to pay outstanding UST fees and associated late fees for TCEQ Financial Account Number 0025332U for Fiscal Years 1989 - 2007; PENALTY: $5,600; STAFF ATTORNEY: Sharesa Alexander, Litigation Division, MC 175, (512) 239-3503; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-200905190
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: November 10, 2009

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Notice of Receipt of Application and Intent to Obtain a New Municipal Solid Waste Permit

MAJOR AMENDMENT PERMIT NO. 2234C APPLICATION Liquid Environmental Solutions of Texas, LLC, 1801 Royal Lane, Suite 500, Dallas, Dallas County, Texas 75229, has applied to the Texas Commission on Environmental Quality (TCEQ) for an amendment to their current Type V municipal solid waste permit. The applicant is requesting a major amendment to the permit to increase the permitted liquid waste treatment capacity from 6 million gallons per month to 8.35 million gallons per month; to change the name from Liquid Environmental Solutions of Texas, L.P., to Liquid Environmental Solutions of Texas, LLC, and to replace the boiler. The facility is located at 250 Gellhorn Drive, Houston, Harris County, Texas 77013. The TCEQ received the application on September 9, 2009. The permit amendment application is available for viewing and copying at the Harris County Public Library, 1026 Mercury Drive, Houston, Texas 77029.

ADDITIONAL NOTICE. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; and, the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose. Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission will only grant a contested case hearing on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised in timely filed comments that were not subsequently withdrawn.

MAILING LIST. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

AGENCY CONTACTS AND INFORMATION. All written public comments and requests must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 or electronically at www.tceq.state.tx.us/about/comments.html. If you need more information about this permit application or the permitting

process, please call TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. Si desea información en Español, puede llamar al 1-800-687-4040. General information about TCEQ can be found at our web site at www.tceq.state.tx.us. Further information may also be obtained from Liquid Environmental Solutions of Texas, LLC at the address stated above or by calling Ms. Tekla L. Taylor, R.G., Consultant, Brown and Caldwell at (303) 239-5400.

TRD-200905196
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 10, 2009

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Notice of Water Quality Applications

The following notices were issued on October 22, 2009 through November 6, 2009.

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

THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ) has initiated a major amendment of TPDES Permit No. WQ0001169000 issued to BASF Corporation, which operates an agricultural chemicals (herbicides and insecticides) manufacturing plant, to replace the incorrect effluent flow rate of daily average flow not to exceed 1,200,000 gallons per day with the correct effluent flow rate of intermittent and flow variable. The existing permit authorizes storm water from non-process area, river water treatment backwash, uncontaminated hydrostatic test waters, uncontaminated steam condensate, potable line flushing, other uncontaminated utility waters, and treated domestic wastewater at a daily average flow of effluent not to exceed 1,200,000 gallons per day via Outfall 001; storm water from non-process areas, river water treatment backwash, uncontaminated hydrostatic test waters, uncontaminated steam condensate, potable line flushing water, and other uncontaminated utility waters on an intermittent and flow variable basis via Outfall 002; and storm water from non-process areas, river treatment backwash, uncontaminated hydrostatic test waters, uncontaminated steam condensate, potable line flushing water, other utility waters, and drainage from experimental rice field wastewater on an intermittent and flow variable basis via Outfall 003. The facility is located approximately two miles northwest of the Jefferson County Airport, on the west side of West Port Arthur Road, approximately five miles south of Cardinal Drive in the City of Beaumont, Jefferson County, Texas 77705.

NALCO COMPANY which operates the Nalco Company Plant, has applied for a renewal of TPDES Permit No. WQ0001806000, which authorizes discharge previously monitored effluent (process wastewater, sanitary wastewater, utility wastewater, storm water and treated groundwater) on a flow variable basis via Outfall 001; storm water on an intermittent and flow variable basis via Outfalls 002, 003, 004, and 005. The facility is located 2322 County Road 229, approximately 1.25 miles east of the intersection of County Road 229 and Farm-to-Market Road 523, northeast of City of Freeport, Brazoria County, Texas 77541.

AQUA DEVELOPMENT INC has applied for a renewal of TPDES Permit No. WQ0014181001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 225,000 gallons per day. The facility is located approximately 2,000 feet southeast of the intersection of Huffsmith-Kohrville Road and Mahaffey Road in Harris County, Texas 77375.

LOWER COLORADO RIVER AUTHORITY has applied for a renewal of TPDES Permit No. WQ0014296001, which authorizes the discharge of filter backwash effluent from a water treatment plant at a daily average flow not to exceed 230,000 gallons per day. The facility is located at 1062 County Road 2509, south of Santa Fe Lake, on the north side of Lampasas County Road 2509, approximately 0.9 mile west of the intersection of Lampasas County Road 2509 and U. S. Highway 183 in Lampasas County, Texas 76853.

BEACH ROAD MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0013563001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located on the east side of Farm-to-Market Road 2031, approximately 2.8 miles south of the intersection of State Highway 60 and Farm-to-Market Road 2031 and approximately 2.8 miles south of the City of Matagorda in Matagorda County, Texas 77457.

HOUSTON REFINING LP which operates Houston Refining Plant, has applied for a major amendment TPDES Permit No. WQ0000392000 to authorize an increase of the effluent limitations for total suspended solids at Outfalls 001, 002 and 003; the reduction in monitoring frequency at Outfalls 001, 002 and 003; the addition of a new provision to address sampling during adverse weather conditions; and the addition of utility wastewater to the wastestream at Outfalls 001, 002 and 003. The current permit authorizes the discharge of overflow of equalized contaminated storm water, storm water, and process wastewater on an intermittent and flow variable basis via Outfalls 001 and 003; and emergency sump overflow of partially treated process wastewater, contaminated storm water, and storm water being routed to Gulf Waste Disposal Authority on an intermittent and flow variable basis via Outfall 002. The facility is located at 12000 Lawndale Avenue in the City of Houston, Harris County, Texas 77017. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the action is consistent with the applicable CMP goals and policies.

CITY OF LA GRANGE has applied for a renewal of TPDES Permit No. WQ0010019001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 900,000 gallons per day. The facility is located southeast of Lower Line Street and approximately 500 feet northeast of the Colorado River at a point approximately 2000 feet southeast of State Highway 71 in the City of La Grange in Fayette County, Texas 78945.

JACKSON COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO 2 has applied for a renewal of TPDES Permit No. WQ0010196001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 45,000 gallons per day. The facility is located approximately 2000 feet east of Farm-to-Market Road 234 and approximately 1,200 feet north of Farm-to-Market Road 616 in Vanderbilt in Jackson County, Texas 77991.

CITY OF SEGUIN has applied for a renewal of TPDES Permit No. WQ0010277003, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,130,000 gallons per day. The facility is located at 450 Seitz Road, approximately one mile east of Farm-to-Market Road 466, 1.8 miles southeast of the intersection of State Highway 123 and U.S. Highway 90A, and 3/4 mile north of the Guadalupe River in Guadalupe County, Texas 78155.

THE CITY OF IDALOU has applied for a major amendment to TCEQ Permit No. WQ0010421001, to authorize the addition of 35 acres of agricultural land to the 100 acres of public access golf course land currently used for irrigation. The wastewater treatment facilities and adjacent 35 acre disposal site are located approximately one mile southwest of the intersection of U.S. Highway 82-62 (State Highway 114) and Farm-to-Market Road 400; one half mile south of Highway 82-62 on Pecan Street. The remaining irrigation disposal site is located on a city owned golf course approximately 2 miles southwest of the intersection of Highway 82-62 and Farm-to-Market Road 400 in Lubbock County, Texas. This permit will not authorize a discharge of pollutants into waters in the State.

THE CITY OF HOOKS has applied for a renewal of TPDES Permit No. WQ0010507001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 900,000 gallons per day. The facility is located approximately 2,000 feet northeast of the intersection of Interstate Highway 30 and Farm-to-Market Road 1398 in Bowie County, Texas 75561.

ELLINGER SEWER AND WATER SUPPLY CORPORATION have applied for a renewal of TPDES Permit No. WQ0010945001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 46,000 gallons per day. The facility is located approximately 1400 feet northeast of State Highway 71 and 1900 feet northwest of Farm-to-Market Road 2503 in Fayette County, Texas 78938.

CITY OF KENDLETON has applied for a renewal of TPDES Permit No. WQ0010996001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 80,000 gallons per day. The facility is located approximately 1,500 feet east of the intersection of Farm-to-Market Road 2219 and U.S. Highway 59 and 1,000 feet south of U.S. Highway 59 in Fort Bend County, Texas 77051.

BELL COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 2 has applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment to TPDES Permit No. WQ0011091001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 80,000 gallons per day to a daily average flow not to exceed 160,000 gallons per day. The facility is located immediately east of the Missouri-Kansas-Texas Railroad, approximately 2000 feet south of Farm-to-Market Road 436 in Bell County, Texas 76554.

THE ROBERT GENE GLISSON TRUST previously known as "Palo Gaucho, Inc", has applied for a renewal of TPDES Permit No. WQ0011432001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 12,000 gallons per day. The notice was combined because of the permit transfer made between Palo Gaucho, Inc. and The Robert Gene Glisson Trust since the publication of the Notice of Receipt of Application and Intent to Obtain a Water Quality Permit. The facility is located on the east side of Farm-to-Market Road 3121 at a point approximately 2.5 miles north of the intersection of Farm-to-Market Roads 3121 and 83 in Sabine County, Texas.

CITY OF SOMERSET 7360 East 6th Street, Somerset, Texas 78069, has applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment to TPDES Permit No. WQ0011822001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 180,000 gallons per day to a daily average flow not to exceed 380,000 gallons per day. TCEQ received this application on July 1, 2009. The facility is located approximately 2,300 feet southwest of the City of Somerset City Hall and approximately 3,500 feet south of Loop 1604 in Bexar County, Texas 78069.

THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ) has initiated a minor amendment of the Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014916001 issued to J. West Development, Inc., 3502 Westelm Court, Richmond, Texas 77469, to authorize an update to Other Requirement No. 4 to refer to the buffer zone requirements being met by ownership. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 75,000 gallons per day. The facility will be located approximately 4,000 feet northeast of the intersection of State Highway 60 and Farm-to-Market Road 2031 in the community of Matagorda in Matagorda County, Texas 77457.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO119 has applied for a renewal of TPDES Permit No. WQ0012714001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility is located at 9011 Willow Quill Drive, approximately 800 feet southeast of the intersection of Breen Road and North Houston Rosslyn Road in Harris County, Texas 77088.

TRI COUNTY POINT PROPERTY OWNERS ASSOCIATION has applied for a renewal of TPDES Permit No. WQ0012880001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 24,000 gallons per day. The facility is located approximately 12,000 feet southwest of the point where State Highway 35 crosses Five Mile Branch in Jackson County, Texas 77465.

MIDFIELD WATER SUPPLY CORPORATION applied for a renewal of TPDES Permit No. WQ0013091001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day. The facility is located 1,200 feet southwest of the intersection of State Highway 71 and State Highway 111 in Matagorda County, Texas.

SPRINGLAKE EARTH INDEPENDENT SCHOOL DISTRICT has applied for a major amendment to TCEQ Permit No. WQ0013385001, to authorize an increase in the daily average flow from 1,000 gallons per day to 12,000 gallons per day and to change the disposal method from evaporation to surface irrigation of 14.0 acres of non-public access agricultural land. The wastewater treatment facility and disposal site are located approximately 0.5 miles west of the intersection of Farm-to-Market Roads 302 and 2901 and approximately 3.5 miles northwest of the City of Springlake in Lamb County, Texas 79031.

MILITARY HIGHWAY WATER SUPPLY CORPORATION has applied for a major amendment to TPDES Permit No. WQ0013462001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 400,000 gallons per day to a daily average flow not to exceed 750,000 gallons per day. The facility is located approximately 2 miles northeast of the intersection of Farm-to-Market Road 1015 and U.S. Highway 281 in Hidalgo County, Texas 78579.

GUADALUPE BLANCO RIVER AUTHORITY AND CORDILLERA RANCH LTD has applied for a renewal of TCEQ Permit No. WQ0014385001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 192,000 gallons per day via surface irrigation of 102 acres of golf course. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located 2293 Rio Cordillera, Boerne, Texas in Kendall County, Texas 78006.

CITY OF ARCHER CITY has applied for a renewal of TPDES Permit No. WQ0014549001, which authorizes the discharge of treated filter backwash water at a daily average flow not to exceed 40,000 gallons per day. The facility is located at 614 W. South Street in Archer City

approximately 1,800 feet west of the intersection of State Highway 79 and South Street in Archer County, Texas 76351.

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. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200905195
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 10, 2009

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Request for Nominations for Appointment to Serve on the Irrigator Advisory Council

The Texas Commission on Environmental Quality (TCEQ) is requesting nominations for three individuals to serve on the Irrigator Advisory Council (council). Two of the individuals must be an irrigator licensed to work in Texas and the third individual represents the public. Council members will be asked to serve a six-year term beginning in 2011.

The Texas Occupations Code, Title 12, Chapter 1903, Subchapter D (see 30 TAC §344.10) provides the structure of the nine-member council appointed by the TCEQ. The council is comprised of nine members appointed by the TCEQ: six licensed irrigators who are residents of Texas, experienced in the irrigation business, and familiar with irrigation methods and techniques; and three public members.

The council provides valuable feedback and suggestions to improve landscape irrigation in Texas. The council members are required to attend half of the annual meetings. The council members generally meet for one day in Austin in March, July, and November of each year. Council members are not paid for their services but are eligible for reimbursement of travel expenses at state rates as appropriated by the legislature.

To nominate an individual: 1) ensure the individual is qualified for the position for which he/she is being considered; 2) submit a brief resume which includes relevant work experience; and 3) provide the nominee a copy of this request. The nominee must submit a letter indicating his/her agreement to serve, if appointed.

Written nominations and letters from nominees must be received by **5:00 p.m. on February 1, 2010.** The appointment will be considered by the TCEQ at a future agenda. Please mail all correspondence to Candice Garrett, Texas Commission on Environmental Quality, Field Operations Support Division, MC 235, P.O. Box 13087, Austin, Texas 78711-3087 or fax to (512) 239-2249. Questions regarding the council can be directed to Ms. Garrett at (512) 239-1451, or e-mail: *cgarrett@tceq.state.tx.us.* Additional information regarding the council is available on the Web site: *http://www.tceq.state.tx.us/compliance/compliance_support/regulatory/irrigation/irr_advisory.html.*

TRD-200905185
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: November 10, 2009

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Request for Nominations for the Tax Relief for Pollution Control Equipment Advisory Committee

In 1993, Texans voted in favor of a ballot initiative listed as Proposition 2, amending the Texas Constitution to authorize the Texas Legislature to exempt from ad valorem taxation "all or part of real and personal property used, constructed, acquired, or installed wholly or partly to meet or exceed rules or regulations adopted by an environmental protection agency of the United States, this state, or a political subdivision of this state for the prevention, monitoring, control, or reduction of air, water, or land pollution." The Legislature implemented Prop 2 by enacting the Texas Tax Code (TTC) §11.31. The Texas Commission on Environmental Quality (TCEQ) adopted Title 30 Texas Administrative Code (30 TAC) Chapter 17, establishing the procedures for obtaining a "positive use determination" under the program. The goal of the program is to provide tax relief to individuals, companies, and political subdivisions that make capital investments to meet or exceed federal, state, or local environmental rules or regulations.

House Bills 3206 and 3544, 81st Legislature, amended TCC §11.31 to require the TCEQ to form a permanent advisory committee that will make recommendations to the TCEQ commissioners on matters relating to property tax exemptions for pollution control property. Tax Relief for Pollution Control Equipment Advisory Committee members will be appointed by the TCEQ commissioners for four-year staggered terms. Once members are selected by the commission, a random drawing will be used to assign term lengths. Advisory committee members are expected to be appointed by the commission in January 2010 and the initial committee meeting is tentatively scheduled for February 2010.

The TCEQ is currently accepting applications for potential Tax Relief for Pollution Control Equipment Advisory Committee members that represent any of the following groups: industry; appraisal districts; taxing units; environmental groups; and members who are not representatives of any of the aforementioned entities but have substantial technical expertise in pollution control technology and environmental engineering.

Applications for the advisory committee can be found on the TCEQ Web site at: *http://www.tecq.state.tx.us/implementation/air/rules/tax-advisory/tax_advisory.html.* To apply, complete the nomination form and submit it to the TCEQ by 5:00 p.m. on December 15, 2009. Applications postmarked after that date will only be considered if there are insufficient qualified individuals in specific groups. You can apply to nominate yourself or someone else to the advisory committee, but the TCEQ asks that only interested persons be nominated.

Questions regarding the advisory committee application process can be directed by phone to Ron Hatlett of the Tax Relief Program at (512) 239-6348 or by e-mail to *txrelief@tceq.state.tx.us.*

TRD-200905186
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: November 10, 2009

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Revised Notice of Opportunity to Request a Public Meeting for a New Municipal Solid Waste Transfer Station Registration Application

APPLICATION. No. 40243 Ms. Karen Rodewald, P. O. Box 142028, Austin, Texas 78714-2028, has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Registration No. 40243, to construct and operate a Type V municipal solid waste transfer station. The proposed facility, River City Recycles, will be located 8000 Daffan Lane, Austin, Texas 78724, in Travis County. This facility is requesting

authorization to recycle and transfer municipal solid waste which includes construction and demolition waste. The registration application is available for viewing and copying at the TCEQ Region 11 Office, 2800 S IH 35, Suite 100, Austin, Travis County, TX 78704-5712 and may be viewed online at http://fcnaustin.com/rivercityrolloffs/RCR-Registration Application.pdf.

PUBLIC COMMENT/PUBLIC MEETING. Written public comments or written requests for a public meeting must be submitted to the Office of Chief Clerk at the address included in the information section below. Comments may also be received if a public meeting is held on the facility. A public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the development is to be located, or if there is a substantial public interest in the proposed development. The purpose of the public meeting is for the public to provide input for consideration by the commission, and for the applicant and the commission staff to provide information to the public. A public meeting is not a contested case hearing. The executive director will review and consider public comments and written requests for a public meeting submitted prior to the notice of final determination. The executive director is not required to file a response to comments.

EXECUTIVE DIRECTOR ACTION. The executive director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. If the executive director acts on an application, the chief clerk shall mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion to reconsider the executive director's decision. The chief clerk shall mail this notice to the owner and operator, the public interest counsel, to adjacent landowners as shown on the required land ownership map and landowners list, and to other persons who timely filed public comment in response to public notice. Not all persons on the mailing list for this notice will receive the notice letter from the Office of the Chief Clerk.

INFORMATION. Written public comments or requests to be placed on the permanent mailing list for this application should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-30887 or electronically submitted to http://www5.tceq.state.tx.us/ecmnts/index.cfm. 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. Further information may also be obtained from Ms. Karen Rodewald, President at the address stated above or by calling (512) 832-8300. Additionally, information may be obtained from Mr. James F. Neyens, P.E. of TRC Environmental Corporation at (512) 329-6080.

TRD-200905197
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 10, 2009

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Texas Facilities Commission

Request for Proposals #303-0-10643

The Texas Facilities Commission (TFC), on behalf of the Health and Human Services Commission (HHSC), announces the issuance of Request for Proposals (RFP) #303-0-10643. TFC seeks a five (5) or ten (10) year lease of approximately 6,622 square feet of office space in Lancaster, Dallas County, Texas.

The deadline for questions is November 30, 2009 and the deadline for proposals is December 15, 2009 at 3:00 p.m. The award date is February 17, 2010. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Purchaser Sandy Williams at (512) 475-0453. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=85950.*

TRD-200905203
Kay Molina
General Counsel
Texas Facilities Commission
Filed: November 10, 2009

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Office of the Governor

Request for Grant Applications for the American Recovery and Reinvestment Act of 2009, S.T.O.P. Violence Against Women Act Program - VAWA Recovery Act

The Criminal Justice Division (CJD) of the Governor's Office is soliciting applications for projects that reduce and prevent violence against women.

Purpose: The purpose of the VAWA Recovery Act Program is to assist in developing and strengthening effective law enforcement and prosecution strategies to combat violent crimes against women and to develop and strengthen victim services in such cases.

Available Funding: Federal funds are authorized under the American Recovery and Reinvestment Act of 2009 (Public Law 111-5). Funds will be managed in accordance with the federal guidelines for the Violence Against Women Act of 2000 (VAWA 2000) and by the Violence Against Women Act of 2005 (VAWA 2005) as amended (U.S.C. §§3796gg through 3796gg-5).

This solicitation is being issued in accordance with federal guidance issued as of the posting of the Request for Applications (RFA). Applicants are advised that additional federal guidance could become available and could affect information requested, timelines, reporting requirements, certifications, and other matters related to this RFA.

Funding Levels: Minimum grant award - $5,000.

Required Match: None.

Standards: Grantees must comply with the accountability and transparency requirements of the Recovery Act and all statutes, requirements, and guidelines cited in the *Texas Administrative Code* (1 TAC Chapter 3) applicable to this funding.

Prohibitions: Grantees may not use grant funds or program income to support the following services, activities, and costs:

(1) proselytizing or sectarian worship;

(2) lobbying;

(3) any portion of the salary of, or any other compensation for, an elected or appointed government official;

(4) vehicles or equipment for governmental agencies that are for general agency use;

(5) weapons, ammunition, explosives, or military vehicles;

(6) admission fees or tickets to any amusement park, recreational activity, or sporting event;

(7) promotional gifts;

(8) food, meals, beverages, or other refreshments unless the expense is for a working event where full participation by participants mandates the provision of food and beverages and that event is not related to amusement and/or social activities in any way;

(9) membership dues for individuals;

(10) any expense or service that is readily available at no cost to the grant project or that is provided by other federal, state, or local funds (e.g., supplanting), including the Texas Crime Victims Compensation Fund;

(11) fundraising;

(12) cash payments to victims;

(13) employment agency fees;

(14) legal assistance and representation in civil matters other than protective orders;

(15) legal defense services for perpetrators of violence against women;

(16) liability insurance on buildings;

(17) major maintenance on buildings;

(18) property loss. Grant funds may not be used to reimburse victims for expenses incurred as a result of a crime, such as insurance deductibles, replacement of stolen property, funeral expenses, lost wages, and medical bills;

(19) services for programs that focus on children or men;

(20) activities exclusively related to violence prevention, such as media campaigns to educate the general public about violence against women;

(21) services to any person incarcerated for committing a crime of domestic violence, dating violence, sexual assault, or stalking;

(22) relocation expenses. Grant funds may not support expenses for victim of domestic violence, sexual assault, or stalking such as moving household goods to a new location in another state or acquiring furniture or housing in a new location;

(23) creation of a voucher program. Grant funds may not support the creation of a voucher program where victims are directly given vouchers for such services as housing or counseling; and

(24) prosecution of child abuse. Grant funds may not be used to pay for the prosecution of child sexual abuse when the victim is now an adult.

Eligible Applicants:

(1) State agencies;

(2) Units of local government;

(3) Nonprofit corporations;

(4) Indian tribal governments;

(5) Crime control and prevention districts;

(6) Universities;

(7) Colleges;

(8) Community supervision and corrections departments;

(9) Councils of governments (COGs); and

(10) Faith-based organizations. Faith-based organizations must be tax-exempt nonprofit entities as certified by the Internal Revenue Service.

Program Eligibility:

(1) Applicants must have a Data Universal Numbering System (DUNS) number assigned to its agency at http://fedgov.dnb.com/webform/displayHomePage.do;

(2) Applicants must be registered in the federal Central Contractor Registry (CCR) database at http://www.ccr.gov; and

(3) Programs funded with VAWA Recovery Act funds must meet one of the following goals as identified in the Recovery Act S.T.O.P. Violence Against Women Implementation Plan:

(a) Promote training to criminal justice and victim service professionals that improve those systems' response to victims of violence against women.

(i) Train law enforcement, first responder dispatch operators, and court personnel on the dynamics of sexual assault, domestic violence, stalking, and acquaintance/dating violence, especially in rural areas.

(ii) Encourage and train on-site victim advocates within law enforcement and prosecution agencies.

(iii) Train service providers and first responders on how to build their capacity to assure they are adequately prepared to provide quality services to victims.

(iv) Develop stronger training programs and materials for courts, prosecutors, law enforcement, and victim service providers to strengthen community response and collaboration.

(v) Provide training to Apartment Associations and others on Texas' new Lease Termination statute, Senate Bill 83, for victims of sexual assault. Senate Bill 83 effective January 1, 2010, amends Property Code §92.016 and provides victims the ability to terminate a lease agreement before the end date without penalties and fees if certain documentation is met.

(vi) Promote training for law enforcement, selected medical personnel, and rape crisis advocates on non-reporting forensic exams.

(b) Improve the criminal justice system's response to adult female victims of sexual assault, domestic violence, stalking and acquaintance/dating violence.

(i) Support innovative programs such as the rollout of a new court bench book, development of prosecutor training guides, as well as specialized courts, prosecution units, and law enforcement units.

(ii) Accommodate victims who have limited English proficiency through contracts for services and by supporting training and certification expenses for translators.

(iii) Provide for technology and equipment upgrades.

(c) Strengthen victim restoration services and processes.

(i) Provide core services to victims giving priority to those that focus on reducing the economic burden of victims. Examples include connecting victims with local food banks, arranging for long-term housing and transportation services, improving the job prospects for victims by arranging for skills building training, and providing child care services while victims participate in the criminal justice process or receive assistance.

(ii) Review current standards and prepare recommendations for best practices.

(iii) Accommodate victims who have limited English proficiency (LEP) and promote model pathways to safety and victim restoration for victims with LEP through contracts for services and by supporting training and certification expenses for translators/interpreters.

(iv) Strengthen victim services data collection systems including upgrades.

(d) Increase collaboration and communication across all levels of government and among all victim service systems.

(i) Retain and further develop skills of existing crime victim coordinators, liaisons, and direct victim services staff to continue strong victim service programs across communities.

(ii) Support initiatives to increase long-term communication between law enforcement and survivors.

(iii) Support family violence and sexual assault research projects that focus not only on gaps in existing victim service systems or identifying unreported victims, but that also provide an evaluation of the state's system of addressing domestic violence and sexual assault in Texas.

(iv) Promote local level multi-disciplinary teams to coordinate services within communities and to perform community assessments that evaluate how well communities are working together toward victim restoration.

Project Period: Grant-funded projects must begin on or after April 1, 2010, and will expire on or before March 31, 2011.

Application Process: Applicants can access CJD's eGrants website at https://cjdonline.governor.state.tx.us to register and apply for funding.

Preferences: Preference will be given to applicants that promote comprehensive victim restoration while incorporating an emphasis on cultural competency in underserved populations. Applicants are also encouraged to streamline administrative and reporting processes by consolidating grant requests whenever possible in lieu of submitting multiple applications.

Closing Date for Receipt of Applications: All applications must be certified via CJD's eGrants website on or before December 21, 2009.

Selection Process:

(1) For eligible local and regional projects:

(a) Applications will be forwarded by CJD to the appropriate regional council of governments (COG).

(b) The COG's criminal justice advisory committee will prioritize all eligible applications based on identified community and/or comprehensive planning, cost and program effectiveness.

(c) CJD will accept priority listings that are approved by the COG's executive committee.

(d) CJD will make all final funding decisions based on approved COG priorities, reasonableness of the project, availability of funding, and cost-effectiveness.

(2) For state discretionary projects, applications will be reviewed by CJD staff members or a group selected by the executive director of CJD. CJD will make all final funding decisions based on eligibility, reasonableness of the project, availability of funding, and cost-effectiveness.

Contact Person: If additional information is needed, contact Angie Martin at amartin@governor.state.tx.us or (512) 463-1919.

TRD-200905188
Kate Fite
Assistant General Counsel
Office of the Governor
Filed: November 10, 2009

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Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Dallas	Louisiana Texas Healthcare Management L.L.C. dba Renaissance Healthcare Systems	L06259	Dallas	00	10/23/09
Throughout TX	Bullock Bennett & Associates L.L.C.	L06289	Bertram	00	10/15/09

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Addison	Rockwell Regional Hospital L.L.C.	L06103	Addison	02	10/23/09
Amarillo	Texas Oncology P.A. dba Texas Oncology Cancer Center-Amarillo	L06149	Amarillo	03	10/27/09
Arlington	Arlington Memorial Hospital dba Texas Health Arlington Memorial Hospital	L02217	Arlington	95	10/16/09
Austin	St. David's Healthcare Partnership L.P.L.L.P. dba North Austin Medical Center	L04910	Austin	85	10/15/09
Austin	East Texas Medical Center	L02470	Austin	43	10/21/09
Austin	Austin Radiology Association	L00545	Austin	159	10/27/09
Austin	Texas Cardiovascular Consultants P.A.	L05246	Austin	34	10/29/09
Baytown	Rashid M. Siddiqi, M.D. P.A.	L06097	Baytown	02	10/21/09
Beaumont	Advanced Cardiovascular Specialists L.L.P.	L05512	Beaumont	16	10/16/09
Beaumont	Baptist Hospital of Southeast Texas	L00358	Beaumont	119	10/20/09
Beaumont	E. I. Dupont De Nemours & Company Inc.	L00517	Beaumont	78	10/27/09
Bedford	Columbia North Hills Outpatient Imaging Center Subsidiary L.P. dba Bedford Imaging Center	L03455	Bedford	51	10/21/09
Bellaire	Texas Nuclear Imaging Inc.	L05009	Bellaire	34	10/28/09
Carrollton	Trinity MC L.L.C. dba Baylor Medical Center at Carrollton	L03765	Carrollton	58	10/16/09
Comanche	Comanche County Consolidated Hospital District dba Comanche County Medical Center	L06200	Comanche	03	10/19/09
Corpus Christi	Christus Health System dba Christus Spohn Hospital Corpus Christi Memorial	L00265	Corpus Christi	91	10/15/09
Cypress	North Cypress Medical Center Operating Company L.L.C.	L06020	Cypress	16	10/26/09
Denison	UHS of Texoma Inc.	L01624	Denison	63	10/19/09
Denton	Trace Life Sciences Inc.	L05435	Denton	23	10/28/09
Dumas	Moore County Hospital District dba Memorial Hospital	L03540	Dumas	24	10/27/09
El Paso	Tenet Hospitals Limited dba Sierra Providence East Medical Center	L06152	El Paso	06	10/15/09
El Paso	Tenet Hospitals Limited dba Sierra Medical Center	L02365	El Paso	65	10/15/09
El Paso	Providence Memorial Hospital	L02353	El Paso	96	10/15/09
El Paso	El Paso Healthcare System Ltd. dba Del Sol Medical Center	L02551	El Paso	53	10/23/09
El Paso	Blood Systems Inc. dba United Blood Services	L05841	El Paso	07	10/26/09
Fort Worth	Baylor All Saints Medical Center dba Baylor Medical Center at Southwest Fort Worth	L04105	Fort Worth	30	10/27/09

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
Fort Worth	Texas Health Harris Methodist Hospital-Fort Worth	L01837	Fort Worth	121	10/28/09
Houston	Memorial Hermann Hospital System dba Memorial Hospital-Memorial City	L01168	Houston	111	10/21/09
Houston	NIS Holdings Inc. dba Nuclear Imaging Services	L05775	Houston	58	10/22/09
Houston	Columbia/HCA Healthcare Corporation dba Spring Branch Medical Center	L02473	Houston	72	10/27/09
Houston	The PET Scan Center	L05411	Houston	13	10/28/09
Houston	Memorial City Cardiology Associates dba Katy Cardiology Associates	L05713	Houston	11	10/27/09
Houston	SJ Medical Center L.L.C.	L02279	Houston	69	10/27/09
Houston	Cardiology Consultants of Houston	L05046	Houston	11	10/29/09
Houston	Houston Refining L.P.	L00187	Houston	63	10/29/09
Katy	Memorial Hermann Hospital System dba Memorial Hermann Katy Hospital	L03052	Katy	58	10/21/09
Longview	Good Shepherd Medical Center	L02411	Longview	82	10/19/09
Lubbock	Cardinal Health	L02737	Lubbock	55	10/19/09
Lubbock	Covenant Medical Center	L00483	Lubbock	143	10/26/09
McAllen	Columbia Rio Grande Healthcare L.P.	L03288	McAllen	49	10/23/09
McKinney	Complete Heart Care P.A.	L05935	McKinney	04	10/23/09
Midland	Midland County Hospital District dba Midland Memorial Hospital	L00728	Midland	94	10/19/09
Midland	Midland County Hospital District dba Midland Memorial Hospital	L00728	Midland	95	10/21/09
Mount Pleasant	Titus County Memorial Hospital	L02921	Mount Pleasant	32	10/23/09
New Braunfels	Cancer Care Network of South Texas P.A.	LO5717	New Braunfels	13	10/21/09
North Richland Hills	Columbia North Hills Hospital Subsidiary L.P. dba North Hills Hospital	L02271	North Richland Hills	62	10/21/09
Paris	Turner Industries Group L.L.C. dba Pipe Fabrications Division Texas Operations	L05237	Paris	23	10/27/09
San Antonio	Christus Santa Rosa Health Care	L02237	San Antonio	112	10/16/09
San Antonio	The University of Texas Health Science Center at San Antonio dba UTHSCSA Research Imaging Center	L05556	San Antonio	11	10/14/09
San Antonio	UT Medicine-San Antonio Nuclear Cardiology	L05410	San Antonio	14	10/21/09
San Antonio	Alamo Cement Company Ltd.	L04951	San Antonio	10	10/22/09
San Antonio	VHS San Antonio Imaging Partners L.P.	L04506	San Antonio	71	10/27/09
San Antonio	Radiation Oncology of San Antonio P.A.	L05853	San Antonio	07	10/23/09
Stephenville	Stephenville Medical and Surgical Clinic	L05309	Stephenville	18	10/19/09
Throughout TX	Desert Industrial X-Ray L.P.	L04590	Abilene	102	10/20/09
Throughout TX	Texas Department of Transportation Construction	L00197	Austin	148	10/27/09
Throughout TX	Weld Spec Inc.	L05426	Beaumont	89	10/28/09
Throughout TX	Construction Services	L05625	Christoval	08	10/29/09
Throughout TX	NDE Solutions L.L.C.	L05879	College Station	26	10/29/09
Throughout TX	Wilson Inspection X-Ray Services Inc.	L04469	Corpus Christi	64	10/16/09
Throughout TX	National Inspection Services L.L.C.	L05930	Crowley	27	10/28/09
Throughout TX	IRISNDT Inc.	L04769	Deer Park	83	10/22/09
Throughout TX	IRISNDT Inc.	L04769	Deer Park	84	10/26/09
Throughout TX	IRISNDT Inc.	L04769	Deer Park	85	10/27/09
Throughout TX	Comprobe Incorporated	L01667	Fort Worth	32	10/28/09
Throughout TX	City of Fort Worth Transportation and Public Works Soil Lab	L01928	Fort Worth	22	10/28/09
Throughout TX	Key Electric Wireline Services L.L.C.	L06003	Houston	06	10/20/09

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
Throughout TX	Varco L.P. (Formerly known as Tuboscope Vetco International Inc.)	L00287	Houston	127	10/20/09
Throughout TX	Professional Services Industries Inc.	L04942	Houston	22	10/29/09
Throughout TX	Professional Services Industries Inc.	L03642	Houston	25	10/27/09
Throughout TX	Marco Inspection Services L.L.C.	L06072	Kilgore	25	10/21/09
Throughout TX	Turner Specialty Services L.L.C.	L05417	Nederland	38	10/22/09
Throughout TX	Fugro Consultants Inc.	L04322	Pasadena	103	10/15/09
Throughout TX	Conam Inspection & Engineering Inc.	L05010	Pasadena	172	10/15/09
Throughout TX	Conam Inspection & Engineering Inc.	L05010	Pasadena	173	10/26/09
Throughout TX	Total Petrochemicals USA Inc.	L03498	Port Arthur	26	10/28/09
Throughout TX	Ruiz Testing Services Inc.	L04948	San Antonio	19	10/22/09
Throughout TX	INTEC	L05150	San Antonio	14	10/20/09
Throughout TX	SYMB Environmental L.L.C.	L06197	Wallisville	01	10/20/09

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	TOPS Specialty Hospital Ltd.	L05441	Houston	16	10/23/09
Throughout TX	Catch-A-Fault	L02725	Ponder	24	10/29/09

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Dallas	Renaissance Hospital Dallas Inc.	L05900	Dallas	08	10/23/09
Fairfield	TXU Mining Company Big Brown Mine	L06098	Fairfield	01	10/21/09
Grapevine	Grapevine Imaging & Pain Management L.L.C.	L05922	Grapevine	10	10/28/09
San Diego	Sabia Inc.	L06141	San Diego	02	10/15/09

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of 25 Texas Administrative Code (TAC) Chapter 289, regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - Mail Code 2835, P.O. Box 149347, Austin, TX 78714-9347. For information call (512) 834-6688.

TRD-200905029
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: November 4, 2009

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Texas Department of Housing and Community Affairs

Request for Proposal for Financial Advisor Services

The Texas Department of Housing and Community Affairs (TDHCA) is issuing a Request for Proposal (RFP) from firms interested in providing financial advisor services for one or more of its single family and multifamily mortgage revenue bond new issues and/or refundings requested.

Responses to the RFP must be received at TDHCA no later than 4:00 p.m CST on Friday, January 8, 2010. To obtain a copy of the RFP, please email your request to the attention of Heather Hodnett at heather.hodnett@tdhca.state.tx.us or visit the Bond Finance Division web page at www.tdhca.state.tx.us.

TRD-200905205
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: November 10, 2009

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Texas Department of Licensing and Regulation

Public Notice - Updated Criminal Conviction Guidelines

The Texas Commission of Licensing and Regulation (Commission) provides this public notice that, at their regularly scheduled meeting held October 20, 2009, the Commission adopted the Texas Department of Licensing and Regulation's (Department) updated Criminal Conviction Guidelines pursuant to Texas Occupations Code, §53.025(a). These guidelines describe the process by which the Department determines whether a criminal conviction renders an applicant an unsuitable candidate for the license, or whether a conviction warrants revocation or suspension of a license previously granted. The guidelines present the general factors that are considered in all cases and the reasons why particular crimes are considered to relate to each type of license issued by the Department.

House Bill 2447, Acts of the 81st Texas Legislature, Regular Session, 2009, transferred the regulation of property tax professionals from the Board of Tax Professional Examiners to the Texas Department of Licensing and Regulation effective June 19, 2009, and amended Texas Occupations Code, Chapter 1151 relating to the regulation of property tax professionals.

The updated Criminal Conviction Guidelines include Property Tax Professionals and will become a part of the overall guidelines that are already in place for other Department programs. The Department presented the guidelines applicable to property tax professionals to the Tax Professionals Advisory Committee at their meeting of October 14, 2009, and received recommendation of approval.

A copy of the updated Criminal Conviction Guidelines is posted on the Department's website and may be downloaded at www.license.state.tx.us. You may also contact the Enforcement Division at (512) 539-5600 or by email at enforcement@license.state.tx.us to obtain a copy of the updated guidelines.

TRD-200905204
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: November 10, 2009

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Texas Lottery Commission

Instant Game Number 1199 "Match & Win"

The Texas Lottery Commission filed for publication Instant Game Number 1199, "Match & Win". The document was published in the July 10, 2009, issue of the *Texas Register* (34 TexReg 4672). The information in Table 1 was incomplete. Table 1 should read as follows:

Figure 1: GAME NO. 1199 - 1.2D

PLAY SYMBOL	CAPTION
11 (red)	
12 (red)	
13 (red)	
14 (red)	
15 (red)	
16 (red)	
17 (red)	
18 (red)	
19 (red)	
20 (red)	
31 (red)	
32 (red)	
33 (red)	
34 (red)	
35 (red)	
36 (red)	
37 (red)	
38 (red)	
39 (red)	
40 (red)	
51 (red)	
52 (red)	
53 (red)	
54 (red)	
55 (red)	
56 (red)	
57 (red)	
58 (red)	
59 (red)	
60 (red)	
71 (red)	
72 (red)	
73 (red)	
74 (red)	
75 (red)	
76 (red)	
77 (red)	
78 (red)	
79 (red)	
80 (red)	
1 (black)	
2 (black)	
3 (black)	
4 (black)	
5 (black)	
6 (black)	

7 (black)	
8 (black)	
9 (black)	
10 (black)	
21 (black)	
22 (black)	
23 (black)	
24 (black)	
25 (black)	
26 (black)	
27 (black)	
28 (black)	
29 (black)	
30 (black)	
41 (black)	
42 (black)	
43 (black)	
44 (black)	
45 (black)	
46 (black)	
47 (black)	
48 (black)	
49 (black)	
50 (black)	
61 (black)	
62 (black)	
63 (black)	
64 (black)	
65 (black)	
66 (black)	
67 (black)	
68 (black)	
69 (black)	
70 (black)	
$3.00 (black)	THREE$
$4.00 (black)	FOUR$
$5.00 (black)	FIVE$
$10.00 (black)	TEN$
$20.00 (black)	TWENTY
$30.00 (black)	THIRTY
$50.00 (black)	FIFTY
$100 (black)	ONE HUND
$200 (black)	TWO HUND
$400 (black)	FOR HUND
$1,000 (black)	ONE THOU
$4,000 (black)	FOR THOU
$30,000 (black)	30 THOU
$3.00 (red)	THREE$
$4.00 (red)	FOUR$

$5.00 (red)	FIVE$
$10.00 (red)	TEN$
$20.00 (red)	TWENTY
$30.00 (red)	THIRTY
$50.00 (red)	FIFTY
$100 (red)	ONE HUND
$200 (red)	TWO HUND
$400 (red)	FOR HUND
$1,000 (red)	ONE THOU
$4,000 (red)	FOR THOU
$30,000 (red)	30 THOU

TRD-200905193
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: November 10, 2009

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Instant Game Number 1230 "Triple Payout"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1230 is "TRIPLE PAYOUT". The play style is "key number match with doubler and tripler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1230 shall be $3.00 per ticket.

1.2 Definitions in Instant Game No. 1230.

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, MONEY BAG SYMBOL, DOLLAR SIGN SYMBOL, $3.00, $6.00, $8.00, $9.00, $10.00, $15.00, $18.00, $24.00, $30.00, $60.00, $90.00, $100, $300, $1,000, $3,000, and $30,000.

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. 1230 - 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
25	TWFV
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
MONEYBAG SYMBOL	TPL
DOLLAR SIGN SYMBOL	DBL
$3.00	THREE$
$6.00	SIX$
$8.00	EIGHT$
$9.00	NINE$

$10.00	TEN$
$15.00	FIFTN
$18.00	EGHTN
$24.00	TWY FOR
$30.00	THIRTY
$60.00	SIXTY
$90.00	NINTY
$100	ONE HUND
$300	THR HUND
$1,000	ONE THOU
$3,000	THR THOU
$30,000	30 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 $3.00, $6.00, $9.00, $15.00, $18.00 or $24.00.

G. Mid-Tier Prize - A prize of $30.00, $60.00, $90.00 and $300.

H. High-Tier Prize - A prize of $3,000 or $30,000.

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 (1230), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1230-0000001-001.

K. Pack - A pack of "TRIPLE PAYOUT" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). There will be 2 fanfold configurations for this game. Configuration A will show the front of ticket 001 and the back of ticket 125. Configuration B will show the back of ticket 001 and the front of ticket 125.

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 "TRIPLE PAYOUT" Instant Game No. 1230 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "TRIPLE PAYOUT" Instant Game is determined once the latex on the ticket is scratched off to expose 32 (thirty-two) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to either WINNING NUMBER play symbol, the player wins the PRIZE shown for that number. If the player reveals a "DOLLAR SIGN" play symbol, the player wins DOUBLE the PRIZE shown for that symbol. If a player reveals a "MONEYBAG" play symbol, the player wins TRIPLE 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 32 (thirty-two) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 32 (thirty-two) Play Symbols under the latex overprint on the front portion

of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 32 (thirty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 32 (thirty-two) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. The "$" (doubler) and "moneybag" (tripler) play symbols will only appear on intended winning tickets and only as dictated by the prize structure.

C. No four or more matching non-winning prize symbols on a ticket.

D. No duplicate WINNING 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. 3 and $3).

H. The top prize will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "TRIPLE PAYOUT" Instant Game prize of $3.00, $6.00, $9.00, $15.00, $18.00, $24.00, $30.00, $60.00, $90.00 or $300, 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 $30.00, $60.00, $90.00 or $300 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "TRIPLE PAYOUT" Instant Game prize of $3,000 or $30,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "TRIPLE PAYOUT" 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 lia-

bility for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "TRIPLE PAYOUT" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "TRIPLE PAYOUT" 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. 1230. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1230 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$3	384,000	15.63
$6	528,000	11.36
$9	108,000	55.56
$15	36,000	166.67
$18	60,000	100.00
$24	48,000	125.00
$30	48,000	125.00
$60	18,450	325.20
$90	6,500	923.08
$300	1,400	4,285.71
$3,000	18	333,333.33
$30,000	7	857,142.86

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.85. 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. 1230 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing the game will be made in accordance with the instant game closing procedures and the Instant Game Rules, 16 TAC §401.302(j).

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. 1230, 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-200905194
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: November 10, 2009

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North Central Texas Council of Governments

Consultant Qualification Request

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

The North Central Texas Council of Governments (NCTCOG) is requesting qualifications from consultant firms to serve as the Qualified Environmental Professional (QEP) for the NCTCOG Brownfields Revolving Loan Fund (RLF) Program. The consultant will perform QEP functions as required by the NCTCOG Cooperative Agreement with the United States Environmental Protection Agency (EPA). The QEP will be responsible to provide the required environmental oversight of cleanup activities at one or more sites throughout the NCTCOG 12-county region. Consultants will need to be familiar with the local, State, and federal rules and regulations of various hazardous and petroleum cleanup processes. The QEP will oversee the cleanup process and invoice submission of sites entered in the NCTCOG Brownfield RLF Program from beginning to end of cleanup. The number of sites entered in the program may range depending on local government participation and funding requested per site, but it is anticipated to range from 1-6 sites for the program.

Due Date

Qualifications must be received no later than 5 p.m., Central Daylight Time, on Friday, December 18, 2009, to Natalie Bettger, Senior Program Manager, 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 Request for Qualifications (RFQ), contact Therese Bergeon, at (817) 695-9267.

Contract Award Procedures

The firm or individual selected will be recommended by a Consultant Selection Committee (CSC). The CSC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Qualifications. The NCTCOG Executive Board will review the CSC's recommendations.

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 qualifications 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-200905208
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: November 10, 2009

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Texas Parks and Wildlife Department

Notice of Hearing and Opportunity for Public Comment

This is a notice of an opportunity for public comment and a public hearing on an application by Mr. Ben Patterson to obtain a Texas Parks and Wildlife Department (TPWD) permit to remove or disturb 20,000 cubic yards of sand and gravel for construction projects within the bed of the Nueces River and Hackberry Creek in Edwards County.

The location is: starting at a point approximately six miles downstream from the Ranch Road 335 crossing of Hackberry Creek and extending downstream to a point approximately three miles upstream of the Ranch Road 335 crossing of the Nueces River.

The hearing will be held on December 14, 2009 at 1:00 p.m at TPWD Headquarters, 4200 Smith School Road, Austin, Texas 78744.

Written comments must be submitted within 30 days of the publication of this notice in the *Texas Register* or the newspaper, whichever is later, or at the public hearing.

Submit written comments, questions, or requests to review the application to: Tom Heger, TPWD, by mail to the above address; e-mail tom.heger@tpwd.state.tx.us; phone (512) 389-4583.

TRD-200905031
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: November 5, 2009

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Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on November 6, 2009, 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 37643 before the Public Utility Commission of Texas.

The requested amendment is to expand the service area footprint to include the City Limits of White Oak, 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 37643.

TRD-200905200

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 10, 2009

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Announcement of Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on November 9, 2009, for 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 Centrovision, Inc. for a State-Issued Certificate of Franchise Authority, Project Number 37650 before the Public Utility Commission of Texas.

The Applicant requests to be cable service provider. The requested CFA service area includes the City Limits of Troy, 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 37650.

TRD-200905201
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 10, 2009

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Notice of Application for Designation as a Resale Eligible Telecommunications Provider

Notice is given to the public of an application filed with the Public Utility Commission of Texas on November 9, 2009, for designation as a resale eligible telecommunications provider (RETP) pursuant to P.U.C. Substantive Rule §26.419.

Docket Title and Number: Application of TelOps International, Inc. d/b/a AmTel for Designation as a Resale Eligible Telecommunications Provider Pursuant to P.U.C. Substantive Rule §26.419. Docket Number 37651.

The Application: TelOps International, Inc. d/b/a AmTel (AmTel) is requesting RETP designation in order to be eligible to receive funds for Lifeline Service from the Texas Universal Service Fund. AmTel seeks RETP designation that will cover all of the wire centers of AT&T Texas and Verizon which are non-rural incumbent local exchange carriers. In addition, AmTel seeks RETP designation in the service areas of the rural carriers, CenturyTel and Embarq. The company holds Service Provider Certificate of Operating Authority Number 60790.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. The deadline for intervention in this proceeding is December 10, 2009. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 37651.

TRD-200905202
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 10, 2009

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Notice of Application for Designation as an Eligible Telecommunications Carrier

Notice is given to the public of an application filed with the Public Utility Commission of Texas on November 6, 2009, for designation as an eligible telecommunications carrier (ETC) pursuant to P.U.C. Substantive Rule §26.418.

Docket Title and Number: Application of All American Home Phone for Designation as an Eligible Telecommunications Carrier Pursuant to P.U.C. Substantive Rule §26.418. Docket Number 37641.

The Application: The company is requesting ETC designation in order to be eligible to receive federal universal service funding to assist it in providing universal service in Texas. Pursuant to 47 U.S.C. §214(e), the commission, either upon its own motion or upon request, shall designate qualifying common carriers as ETCs for service areas set forth by the commission. All American Home Phone seeks ETC designation in the service areas of Southwestern Bell Telephone Company d/b/a AT&T Texas and GTE Southwest d/b/a Verizon Southwest. The company holds Service Provider Certificate of Operating Authority Number 60673.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. The deadline for intervention in this proceeding is December 10, 2009. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 37641.

TRD-200905198
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 10, 2009

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Notice of Application for Designation as an Eligible Telecommunications Carrier

Notice is given to the public of an application filed with the Public Utility Commission of Texas on November 6, 2009, for designation as an eligible telecommunications carrier (ETC) pursuant to P.U.C. Substantive Rule §26.418.

Docket Title and Number: Application of Tennessee Telephone Service, LLC d/b/a Freedom Communications USA, LLC for Designation as an Eligible Telecommunications Carrier Pursuant to P.U.C. Substantive Rule §26.418. Docket Number 37642.

The Application: The company is requesting ETC designation in order to be eligible to receive federal universal service funding to assist it in providing universal service in Texas. Pursuant to 47 U.S.C. §214(e), the commission, either upon its own motion or upon request, shall designate qualifying common carriers as ETCs for service areas set forth by the commission. Tennessee Telephone Service, LLC d/b/a Freedom Communications USA, LLC seeks ETC designation in the service areas of Southwestern Bell Telephone Company d/b/a AT&T Texas and

GTE Southwest d/b/a Verizon Southwest. The company holds Service Provider Certificate of Operating Authority Number 60673.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. The deadline for intervention in this proceeding is December 10, 2009. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 37642.

TRD-200905199
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 10, 2009

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Texas Department of Transportation

Border Trade Advisory Committee Meeting

The following committee meeting was posted to the Open Meetings site on November 5, 2009:

Border Trade Advisory Committee (BTAC)

IBC Bank

130 E. Travis Street

San Antonio, TX 78205

Tuesday, December 1, 2009

10:30 a.m.

1. Call to order

2. Welcome and introductions

3. Approval of minutes from the September 10, 2009 meeting (action item)

4. Report from the Reauthorization Subcommittee regarding federal transportation reauthorization legislation

5. Discussion and possible action on the Reauthorization Subcommittee's proposed recommendations related to federal transportation reauthorization legislation (action item)

6. Discussion of border crossing studies and reports (Joint Working Committee/TTI study on wait times)

7. Discussion and possible action regarding creation of the committee's goals and priorities for 2010 (action item)

8. Set date for next meeting (action item)

9. Adjourn

TRD-200905050
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: November 5, 2009

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Public Notice - Deadline Extended for Public Comments

In the October 9, 2009, issue of the *Texas Register* (34 TexReg 7050), the Texas Department of Transportation proposed the repeal of §2.22 and new §§2.101 - 2.112 all concerning Chapter 2, Environmental Policy, Subchapters B and new Subchapter E, Memorandum of Understanding with Texas Parks and Wildlife Department.

The deadline for receipt of comments on the proposed repeal and new sections was originally set for November 9, 2009. This notice is to extend the public comment period to 5:00 p.m. on **December 31, 2009.** Additional information may be obtained from Dianna F. Noble, Director, Environmental Affairs Division, 125 East 11th Street, Austin, Texas 78701-2483.

TRD-200905148
Bob Jackson
General Counsel
Texas Department of Transportation
Filed: November 9, 2009

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University of North Texas Health Science Center at Fort Worth

Notice of Invitation for Consultants to Provide Offers of Consulting Services Related to Development of an Information Technology Strategic Plan for UNT Health

Pursuant to the provisions of the Texas Government Code, Chapter 2254, the University of North Texas Health Science Center at Fort Worth (UNTHSC) extends this invitation (Invitation) to qualified and experienced consultants interested in providing the consulting services described in this Invitation to the UNTHSC. The President and Chief Executive Officer of the UNTHSC has made a finding that the consulting services are necessary. While the UNTHSC and UNT Health have a substantial need for the consulting services, the UNTHSC nor UNT Health cannot adequately perform the services with its own personnel or obtain such services through a contract with another state governmental entity.

The selected consulting firm will be responsible for assisting UNT Health, the clinical enterprise of the UNTHSC with the development of an Information Technology Strategic Plan.

Any consultant submitting an offer in response to this Invitation must provide a response to the Request for Proposals posted on the University of North Texas Health Science Center at Fort Worth website under the Bid Opportunities Page found at http://www.hsc.unt.edu/departments/purchasing/. The following information will need to be included in the response: The Execution of Offer; HUB Subcontracting Plan; Vendor Qualifications and Pricing, which includes vendor information, qualifications, history, experience, credit rating, and project pricing; proposed project workplan; project timeline that includes a detailed list of tasks and due dates; proposed staffing who will be assigned to the project; and a description of all project deliverables.

An award will be made by the process indicated in the UNTHSC Request for Proposals. The UNTHSC will: (1) base its choice on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services; and (2) if other considerations are equal, give preference to a consultant firm whose principal place of business is in the state or who will manage the consulting contract wholly from an office in the state.

The consulting services do not relate to services previously provided to UNTHSC or UNT Health.

The individual to be contacted with an offer to provide such consulting or to obtain a copy of the Request for Proposals for the consulting services identified in this invitation is: Carolyn Cross, Associate Director of Purchasing, University of North Texas Health Science Center at Fort Worth, 3500 Camp Bowie Blvd, Fort Worth, Texas 76107; or

email cacross@hsc.unt.edu. Offers must be submitted in accordance with the posted Request for Proposals.

The proposal submission deadline will be 3:00 p.m., December 7, 2009.

TRD-200905092
Carolyn Cross
Associate Director of Purchasing
University of North Texas Health Science Center at Fort Worth
Filed: November 6, 2009

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Texas State University System

Notice of Request for Qualifications - Indefinite Quantity Facilities Design and Construction Program Management Services

The Texas State University System (TSUS) invites consultants experienced in providing program management services for planning, design and construction of facilities for Owner's System Office ("System Office") and its component institutions ("Components") on a hourly fee basis as needed by the Owner. Such services are expected to be required but are not limited to pre-project planning, estimating, programming, design, bid and construction phases of the project delivery process or any other service that is beneficial in the delivery of facilities. The Consultant will render these services both to the System Office and directly to a Component as needed, with no minimum or maximum amount of services specified. In particular, the Consultant must be prepared to assign at least one person with significant project planning and management experience to be available as needed to support the oversight efforts of the System Office. A contract with the selected firm will be issued as an indefinite quantity contract with a three-year initial term and an option for the Owner to extend the contract for one additional year. The total value of the Contract will not exceed $750,000 per contract year.

Any firm intending to respond to this notice should obtain Request for Proposals No. 758-10-00010 and follow the instructions for responding contained therein. A copy of the Request for Proposals may be downloaded from the Electronic Business Daily at http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=85848.

The deadline for proposals is November 24, 2009, 3:00 p.m. (C.S.T). The award date is anticipated to be on or before January 4, 2010. TSUS reserves the right to accept or reject any or all proposals submitted. TSUS is under no legal or other obligation to execute a contract or agreement on the basis of this notice or the distribution of a Request for Qualifications (RFQ). Neither this notice nor the RFQ commits TSUS to pay for any costs incurred prior to the award of a contract or agreement.

The Chancellor, as chief executive officer of TSUS, has found that the consulting services sought pursuant to this notice are both reasonable and necessary to TSUS and its components. The System Office of TSUS, with a very limited staff, has the responsibility of managing $200 million or more in construction projects at any given time at up to nine different locations.

The Chancellor finds that System Office personnel can manage these projects in a cost-effective manner by utilizing the planning and construction expertise of consultants on an as-needed basis only. The alternative is to hire a permanent, full-time salaried employee and to pay benefits and other administrative costs occasioned by such a hire. The proposed structure (hiring a consultant for the duration of the task only) will allow TSUS to have the benefit of expertise that it could not reasonably expect to find in a salaried employee and to pay only for the services that it needs to support existing staff's administrative efforts. Moreover, staffing in the planning and construction area at the component institutions differs widely, and the Chancellor finds that the proposed consulting arrangement will be cost effective in providing assistance to components on an as-needed basis.

TRD-200905192
Peter E. Graves
Vice Chancellor for Contract Administration
Texas State University System
Filed: November 10, 2009

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How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 34 (2009) is cited as follows: 34 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 "34 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 34 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 (512) 463-5561.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Index of Rules***. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register***. If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with the ***Texas Register*** page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
40 TAC §3.704.....950 *(P)*

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).