TEXAS REGISTER

Volume 34 Number 51 *December 18, 2009* *Pages 9061 - 9264*

Kimberly Reyes

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*.

Texas Register, **(ISSN 0362-4781, USPS 120-090),** is published weekly (52 times per year) for $211.00 ($311.00 for first class mail delivery) by LexisNexis Matthew Bender & Co., Inc., 1275 Broadway, Albany, N.Y. 12204-2694.

The ***Texas Register*** is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Albany, N.Y. and at additional mailing offices.

POSTMASTER: Send address changes to the ***Texas Register,*** 136 Carlin Rd., Conklin, N.Y. 13748-1531.

a section of the
Office of the Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
(512) 463-5561
FAX (512) 463-5569

http://www.sos.state.tx.us
register@sos.state.tx.us

IN THIS ISSUE

IN ADDITION

Open Meetings

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

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

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

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

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

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://www.oag.state.tx.us/opinopen/opengovt.shtml

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

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

...

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

THE ATTORNEY GENERAL

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

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

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

Request for Opinions

RQ-0841-GA

Requestor:

The Honorable Richard P. Bianchi

Aransas County Attorney

301 North Live Oak Street

Rockport, Texas 78382

Re: Use and management of a county jail commissary fund under section 351.0415, Local Government Code (RQ-0841-GA)

Briefs requested by January 4, 2010

RQ-0842-GA

Requestor:

Mr. Robert Scott

Commissioner of Education

Texas Education Agency

1701 North Congress Avenue

Austin, Texas 78701-1494

Re: Whether section 11.1513, Education Code, currently prohibits a school superintendent to whom final selection of personnel is delegated from employing persons related to trustees of his district (RQ-0842-GA)

Briefs requested by January 6, 2010

RQ-0843-GA

Requestor:

The Honorable Glenn Hegar

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Constitutionality of section 5.017(b), Property Code, when applied to restrictive covenants that were recorded and in existence prior to the effective date of that statute (RQ-0843-GA)

Briefs requested by January 6, 2010

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

TRD-200905671
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: December 8, 2009

♦ ♦ ♦

TEXAS ETHICS COMMISSION

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

Ethics Advisory Opinions

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the report referenced in EAO-487 is not included in the print version of the Texas Register. The report is available in the on-line version of the December 18, 2009, issue of the Texas Register.)

EAO-486. The Texas Ethics Commission has been asked to consider whether House Bill 3445 adopted during the regular session of the 81st Legislature applies retroactively to prohibit certain lobby contracts that were effective before September 1, 2009. (AOR-550)

SUMMARY

Section 305.022, as amended by HB 3445, does not prohibit a person from retaining, employing, or compensating another or rendering services if the person is obligated to perform such activity pursuant to a contract that was legally binding prior to September 1, 2009. All reporting requirements under chapter 305 of the Government Code, including §305.022 as amended by HB 3445, would also apply in such circumstances.

EAO-487. The Texas Ethics Commission has been asked whether a report relating to a measure that a city is considering posting on its Internet website complies with §255.003 of the Election Code. (AOR-551)

SUMMARY

For purposes of §255.003 of the Election Code, the attached report is not "political advertising," and, therefore, may be posted on a city's Internet website unless an officer or employee of the city authorizing such posting knows that the report contains false information.

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-200905551
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Filed: December 2, 2009

♦ ♦ ♦

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 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION

DIVISION 10. IMPLEMENTATION OF HOUSE BILL 4409

28 TAC §§5.4902 - 5.4908

The Texas Department of Insurance is renewing the effectiveness of the emergency adoption of new §§5.4902 - 5.4908, for a 60-day period. The text of the new sections were originally published in the September 11, 2009, issue of the *Texas Register* (34 TexReg 6202).

Filed with the Office of the Secretary of State on December 7, 2009.

TRD-200905629
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Original Effective Date: August 31, 2009
Expiration Date: February 27, 2010
For further information, please call: (512) 463-6327

♦ ♦ ♦

PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 67. REVIEW OF PUBLIC INFORMATION REDACTIONS

1 TAC §§67.1 - 67.6

The Office of the Attorney General (OAG) proposes a new chapter of rules consisting of six new sections to be added at Texas Administrative Code, Title 1, Administration, Part 3, Office of the Attorney General, Chapter 67, Review of Public Information Redactions, §§67.1 - 67.6. The proposed rules would establish the process by which the attorney general reviews the public information redacted by a governmental body pursuant to Texas Government Code §552.024(c)(2), 552.1175(f), or 552.138(c). The purpose of the proposed rules is to implement Senate Bill (SB) 1068, enacted by the 81st Legislature, Regular Session (2009), which amends Chapter 552 of the Texas Government Code (the Public Information Act). SB 1068 requires the attorney general to adopt rules establishing the procedures and deadlines for a requestor to seek an attorney general review of a governmental body's redaction of public information when the redaction is based on SB 1068 instead of an attorney general decision.

Section 67.1 (Purpose and Application) identifies the sections of the Public Information Act under which a requestor may seek review of a governmental body's redaction of public information. Section 67.1 also makes the Public Information Act's mailbox rule applicable to all deadlines in Chapter 67.

Section 67.2 (Request for Review by the Attorney General) describes the steps a requestor must take in order to request an attorney general review of a governmental body's decision to redact information when the redaction is based on SB 1068 instead of an attorney general decision.

Section 67.3 (Notice) establishes the deadline and manner in which the attorney general must notify a governmental body and requestor of a request for review.

Section 67.4 (Submission of Documents and Comments) requires a governmental body to submit certain information to the attorney general upon receiving notice from the attorney general of a request for review, allows interested persons to submit written comments to the attorney general, and requires both the governmental body and an interested person to provide the requestor with copies of their written comments.

Section 67.5 (Additional Information) allows the attorney general to obtain additional information from the governmental body if necessary and sets a deadline for the submission of such information.

Section 67.6 (Rendition of Attorney General Decision; Issuance of Written Decision) sets a deadline for the attorney general to issue a written decision and requires that the decision be provided to the requestor, the governmental body, and any interested person who submitted comments.

Amanda Crawford, Division Chief, Open Records Division, has determined that for each of the first five years the proposed rules are in effect, the public benefit expected as a result of the rules is that governmental bodies and requestors using the Public Information Act can refer to the rules to understand their rights and obligations when information is redacted based on SB 1068 instead of an attorney general decision.

Ms. Crawford has also determined that for the first five-year period in which the proposed rules are in effect, there will be no foreseeable fiscal implications for any state or local government entities. Further, she has determined that for the first five-year period in which the proposed rules are in effect, there will no economic cost to persons required to comply with the rules, and therefore there is no need to consider less costly alternatives to the rules. Finally, Ms. Crawford has determined that the adoption of §§67.1 - 67.6 will have no adverse effect on small business or micro-business or local employment.

Written comments on the proposed rules may be submitted for 30 days following the publication of this notice to Karen Hattaway, Deputy Division Chief, Open Records Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 936-6736, karen.hattaway@oag.state.tx.us.

New §§67.1 - 67.6 are proposed in accordance with Texas Government Code §§552.024(c-1), 552.1175(g), and 552.138(d), which require the OAG to establish the procedures and deadlines for a requestor to seek an attorney general review of a governmental body's redaction of public information when the redaction is based on SB 1068 instead of an attorney general decision.

The proposed rules do not affect any other statutes.

§67.1. Purpose and Application.

(a) This chapter governs the procedures by which the attorney general shall render a decision sought by a requestor under Texas Government Code §552.024(c-1), 552.1175(g), or 552.138(d).

(b) Texas Government Code §552.308 applies to all deadlines established in this chapter.

§67.2. Request for Review by the Attorney General.

(a) If a governmental body redacts or withholds information under Texas Government Code §552.024(c)(2), 552.1175(f), or

552.138(c) without requesting a decision from the attorney general about whether the information may be redacted or withheld, the requestor may ask the attorney general to review the governmental body's determination that the information at issue is excepted from required disclosure.

(b) A request for review by the attorney general must:

(1) be in writing and signed by the requestor;

(2) state the name of the governmental body to whom the original request for information was made; and

(3) state the date the original request was made.

(c) The requestor must submit a copy of the original request with the request for review. If the requestor is unable to do so, the requestor must include a written description of the original request in the request for review.

(d) The requestor may submit written comments to the attorney general stating reasons why the information at issue should be released.

(e) The deadlines in §§67.3, 67.4, and 67.6 of this chapter commence on the date on which the attorney general receives from the requestor all of the information required by subsections (b) and (c) of this section.

§67.3. Notice.

(a) The attorney general shall notify the governmental body in writing of a request for review and provide the governmental body a copy of the request for review not later than the 5th business day after the date of receiving the request for review.

(b) The attorney general shall provide the requestor a copy of the written notice to the governmental body, excluding a copy of the request for review, not later than the 5th business day after the date of receiving the request for review.

§67.4. Submission of Documents and Comments.

(a) A governmental body shall provide to the attorney general within a reasonable time but not later than the 10th business day after the date of receiving written notice of the request for review:

(1) an unredacted copy of the specific information requested, or representative samples of the information if a voluminous amount of information was requested;

(2) a copy of the specific information requested, or representative samples of the information if a voluminous amount of information was requested, illustrating the information redacted or withheld;

(3) written comments stating the reasons why the information at issue was redacted or withheld;

(4) a copy of the written request for information; and

(5) a copy of the form letter the governmental body provided to the requestor as required by Texas Government Code §§552.024(c-2), 552.1175(h), and 552.138(e).

(b) A governmental body that submits written comments to the attorney general shall send a copy of those comments to the requestor within a reasonable time but not later than the 10th business day after the date of receiving written notice of the request for review. If the written comments disclose or contain the substance of the information at issue, the copy of the comments provided to the requestor must be a redacted copy.

(c) A person may submit written comments to the attorney general stating why the information at issue in a request for review should or should not be released.

(d) A person who submits written comments under subsection (c) of this section shall send a copy of those comments to both the requestor and the governmental body. If the written comments disclose or contain the substance of the information at issue, the copy of the comments sent to the requestor must be a redacted copy.

§67.5. Additional Information.

(a) The attorney general may determine whether a governmental body's submission of information under §67.4(a) of this chapter is sufficient to render a decision.

(b) If the attorney general determines that information in addition to that required by §67.4(a) of this chapter is necessary to render a decision, the attorney general shall give written notice of that fact to the governmental body and the requestor.

(c) A governmental body notified under subsection (b) of this section shall submit the necessary additional information to the attorney general not later than the seventh calendar day after the date the notice is received.

§67.6. Rendition of Attorney General Decision; Issuance of Written Decision.

(a) The attorney general shall promptly render a decision requested under this chapter, not later than the 45th business day after the date of receiving the request for review.

(b) The attorney general shall issue a written decision and shall provide a copy of the decision to the requestor, the governmental body, and any interested person who submitted necessary information or a brief to the attorney general about the matter.

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 December 7, 2009.

TRD-200905635
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Earliest possible date of adoption: January 17, 2010
For information regarding this publication, contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

♦ ♦ ♦

TITLE 10. COMMUNITY DEVELOPMENT

PART 6. TEXAS DEPARTMENT OF RURAL AFFAIRS

CHAPTER 257. STATE OFFICE OF RURAL HEALTH

SUBCHAPTER N. RURAL HEALTH INFORMATION TECHNOLOGY PROGRAM

10 TAC §§257.961 - 257.966

The Texas Department of Rural Affairs proposes new rules at 10 TAC Chapter 257, §§257.961 - 257.966, for the Rural Health

Information Technology Program. The proposed new rules establish guidelines for the purpose, structure, and use of a Health Information Technology Program for rural hospitals.

Charles S. (Charlie) Stone, Executive Director, has determined that for each year of the first five years there will be no fiscal implications for state or local government as a result of enforcing or administering the rules as proposed. There will be no cost to small business or individuals.

Mr. Stone has also determined that for the first five year period the public benefit will be an increased sharing of health information for rural hospitals across the state.

Comments on the proposal may be submitted to Ms. Theresa Cruz, Director of the State Office of Rural Health and Compliance, Texas Department of Rural Affairs, P.O. Box 12877, Austin, TX 78711, telephone: (512) 936-6719. Comments will be accepted for 30 days following the date of publication of this proposal in the *Texas Register.*

The rules are proposed under §487.052 of the Government Code which authorizes the Department to adopt rules as necessary to implement Chapter 487.

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

§257.961. 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 eleven member governing body of the Texas Department of Rural Affairs.

(2) Executive Director--Executive Director of the Texas Department of Rural Affairs.

(3) Program--The Rural Health Information Technology Grant Program.

(4) Rural County--A county in Texas that has a population of 50,000 or less.

(5) Rural Hospital--A hospital located in a rural county of less than 50,000 in population.

(6) Rural Health Information Technology--The management of health information and its secure exchange among consumers, providers, government and quality assurance entities, such as the Center for Medicaid Services, and insurers that improves the quality, safety and efficiency of the health delivery system.

(7) Consortium--A coalition of rural hospitals set up as a network to participate in the Program.

§257.962. Purpose and Goal.

(a) The purpose of the Program, subject to available funds, is to award grants to a consortium of rural hospitals to fund the acquisition of Rural Health Information Technology.

(b) The goal of the Program is to increase the management of health information in rural hospitals in order to provide quality health care in rural communities.

§257.963. Administration of the Program.

(a) The Texas Department of Rural Affairs administers the Program.

(b) The governing board delegates to the executive director the necessary powers, duties and functions to administer the Program.

(c) The Texas Department of Rural Affairs may seek, receive, and spend money received through an appropriation, grant, donation, or reimbursement from any public or private source to implement this subchapter.

(d) The Texas Department of Rural Affairs has the authority to:

(1) determine the purpose of the grant pursuant to the law and this subchapter;

(2) approve or deny the grant application;

(3) determine the number, size and duration of the grant; and

(4) modify or terminate the grant.

§257.964. Eligibility Criteria for Grant Applicants.

(a) Rural hospitals that enter into a consortium are eligible to apply to the Program for a grant.

(b) The consortium will be required to enter into a memorandum of understanding between each individual facility and the Texas Department of Rural Affairs.

§257.965. Application Procedures.

(a) Before applications are requested, the Texas Department of Rural Affairs shall publish one or more notices of grant availability in the *Texas Register.* The notices will include details about the grants, instructions for obtaining an application, and the names of the persons to contact at the Texas Department of Rural Affairs for further information.

(b) The Texas Department of Rural Affairs shall develop and publish the guidance and application for the Program, which shall contain details concerning, but not limited to, the following:

(1) the nature and purpose of the grant;

(2) the amount of funds available for the grant;

(3) the information required for the grant application;

(4) the closing date of the application cycle.

(c) Texas Department of Rural Affairs may specify any reasonable requirements for the grant applications, including, but not limited to length, format, authentication, and supporting documentation.

(d) Applications that are incomplete or substantially inconsistent with the requirements of this subchapter may be rejected without further consideration at the discretion of the Texas Department of Rural Affairs.

(e) Applications received after the closing date will not be considered, unless the closing date is extended by the Texas Department of Rural Affairs.

(f) Applicants will be given a minimum of 30 calendar days to file applications after applications are made available. Applications must be received by the Texas Department of Rural Affairs on or before the closing date specified in the grant application.

(g) Each application shall be reviewed by the Texas Department of Rural Affairs for completeness, relevance and adherence to the Texas Department of Rural Affairs policies, general quality, and technical merit in accordance with internal scoring developed by the Texas Department of Rural Affairs.

§257.966. Monitoring, Reporting and Compliance.

(a) Grant recipients shall cooperate with the Texas Department of Rural Affairs in compliance with the conditions of the grant and monitoring the use of the grants awarded.

(b) Grant recipients shall submit periodic reports to the Texas Department of Rural Affairs, with content, form and time determined by the Texas Department of Rural Affairs.

(c) Grant recipients shall maintain all records required by the Texas Department of Rural Affairs and applicable state laws.

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 December 4, 2009.

TRD-200905602
Charles S. (Charlie) Stone
Executive Director
Texas Department of Rural Affairs
Earliest possible date of adoption: January 17, 2010
For further information, please call: (512) 936-6722

♦ ♦ ♦

TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

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

SUBCHAPTER E. APPROVAL OF DISTANCE EDUCATION, OFF-CAMPUS, AND EXTENSION COURSES AND PROGRAMS FOR PUBLIC INSTITUTIONS

19 TAC §§4.101 - 4.108

(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 Higher Education Coordinating Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of §§4.101 - 4.108 concerning Approval of Distance Education, Off-Campus, and Extension Courses and Programs for Public Institutions. Specifically, this repeal will allow Board staff to revise and divide information from Subchapter E in order to clarify requirements Texas institutions of higher education must meet in order to deliver distance education courses and programs, and to deliver off-campus and on-campus self-supporting courses and programs. Board staff will add a new Subchapter P, relating to the Approval of Distance Education Courses and Programs for Public Institutions, and a new Subchapter Q, relating to the Approval of Off-Campus and Self-Supporting Courses and Programs for Public Institutions.

Dr. MacGregor M. Stephenson, Assistant Commissioner for Academic Affairs and Research, has determined that for each year of the first five years the repeal of the subchapter is in effect, there will not be any fiscal implications to state or local government as a result of repealing this subchapter.

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

Comments on the proposed repeal may be submitted to MacGregor M. Stephenson, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or macgregor.stephenson@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The repeal is proposed under the Texas Education Code, Chapter 61, Subchapter C, §61.051, which provides the Coordinating Board with the authority to coordinate institutions of higher education.

The repeal affects implementation of Texas Education Code, Subchapter C, §61.051(j).

§4.101. Purpose.

§4.102. Authority.

§4.103. Definitions.

§4.104. General Provisions.

§4.105. Functions of Regional Councils.

§4.106. Institutional Report for Distance Education, Off-Campus Instruction, and On-Campus Extension Programs.

§4.107. Standards and Criteria for Distance Education, Off-Campus Instruction, and On-Campus Extension Courses and Programs.

§4.108. Non-Formula-Funded (Extension) Course and Program General 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.

Filed with the Office of the Secretary of State on December 7, 2009.

TRD-200905631
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: January 28, 2010
For further information, please call: (512) 427-6114

♦ ♦ ♦

SUBCHAPTER P. APPROVAL OF DISTANCE EDUCATION COURSES AND PROGRAMS FOR PUBLIC INSTITUTIONS

19 TAC §§4.255 - 4.264

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §§4.255 - 4.264 regarding Rules Applying to all Public Institutions of Higher Education in Texas. Specifically, the new sections will allow Board staff to clarify requirements Texas institutions of higher education must meet in order to deliver distance education courses and programs, and

to develop rules relating to the Approval of Distance Education Courses and Programs for Public Institutions.

Dr. MacGregor M. Stephenson, Assistant Commissioner for Academic Affairs and Research, has determined that for each year of the first five years the new sections are in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Stephenson has also determined that for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of administering the sections will be increased efficiency. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There will be no impact on local employment.

Comments on the proposal may be submitted to Dr. MacGregor M. Stephenson, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or by email at macgregor.stephenson@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposed rules in the *Texas Register.*

The new sections are proposed under the Texas Education Code, Chapter 61, Subchapter C, §61.051, which provides the Coordinating Board with the authority to coordinate institutions of higher education.

The new sections affect the Texas Education Code, Subchapter C, §61.051(j).

§4.255. Purpose.

This subchapter establishes rules for all public institutions of higher education in Texas regarding the delivery of distance education courses and programs. The rules are designed to provide Texas residents with access to courses and programs that meet their needs, to ensure course and program quality, and to prevent the unnecessary duplication of these courses and programs.

§4.256. Authority.

Authority for these provisions is provided by Texas Education Code §61.051(j), which provides the Board with the authority to approve courses for credit and distance education programs.

§4.257. Definitions.

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

(1) Academic credit course--A college-level course that, if successfully completed, can be applied toward the number of courses required for achieving a degree, diploma, certificate, or other formal award.

(2) Board--The Texas Higher Education Coordinating Board.

(3) Commissioner--The Commissioner of Higher Education; as used in this subchapter, "Commissioner" means the agency acting through its executive, and his or her designees, staff, or agents.

(4) Community College--Any public community college as defined in Texas Education Code, §61.003 and §130.005, and whose role, mission, and purpose is outlined in Texas Education Code, §130.0011 and §130.003.

(5) Continuing Education Course--A Coordinating Board-approved higher education technical course offered for continuing education units and conducted in a competency-based format. Such a course has specific occupational and/or apprenticeship training objectives.

(6) Continuing Education Unit or CEU--Ten contact hours of participation in an organized educational experience under responsible sponsorship, capable direction, and qualified instruction and not offered for academic credit.

(7) Degree--Any title or designation, mark, abbreviation, appellation, or series of letters or words, including "associate", "bachelor's", "master's", and "doctor's" and their equivalents and foreign cognates, which signifies satisfactory completion of the requirements of a program of study which is generally regarded and accepted as an academic degree-level program by accrediting agencies recognized by the Board.

(8) Distance Education--The formal educational process that occurs when students and instructors are not in the same physical setting for the majority (more than 50 percent) of instruction.

(9) Distance Education Course--A course in which a majority (more than 50 percent) of the instruction occurs when the student(s) and instructor(s) are not in the same place. Two categories of distance education courses are defined:

(A) Fully Distance Education Course--A course which may have mandatory face-to-face sessions totaling no more than 15 percent of the instructional time. Examples of face-to-face sessions include orientation, laboratory, exam review, or an in-person test.

(B) Hybrid/Blended Course--A course in which a majority (more than 50 percent but less than 85 percent), of the planned instruction occurs when the students and instructor(s) are not in the same place.

(10) Distance Education Degree or Certificate Program--A program in which a student may complete a majority (more than 50 percent) of the credit hours required for the program through distance education courses.

(11) Doctoral Degree--An academic degree beyond the level of a master's degree that typically represents the highest level of formal study or research in a given field.

(12) First-Professional Degree--An award that requires completion of a program that meets all of the following criteria:

(A) completion of the academic requirements to begin practice in the profession;

(B) at least two years of college work prior to entering the program; and

(C) a total of at least six academic years of college work to complete the degree program, including prior required college work plus the length of the professional program itself. First-Professional degrees are discipline-specific, including, but not limited to, degrees such as: Dentistry (D.D.S. or D.M.D.); Medicine (M.D.); Veterinary Medicine (D.V.M.); Law (L.L.B, J.D.); and Pharmacy (Pharm.D).

(13) Formula Funding--The method used to allocate appropriated sources of funds among institutions of higher education.

(14) Formula-funded Course--An academic credit course delivered face-to-face or by distance education whose semester credit hours are submitted for formula funding.

(15) Institution of Higher Education or Institution--Any public technical institute, public community college, public senior college or university, medical or dental unit, or other agency of higher education as defined in Texas Education Code, §61.003.

(16) Institutional Plan for Distance Education--A plan that must be submitted for Coordinating Board approval prior to an institution offering distance education courses or programs for the first time.

(17) Non-credit Course--A course that results in the award of continuing education units (CEU) as specified by Southern Association of Colleges and Schools (SACS) criteria. Only courses that result in the award of CEUs may be submitted for state funding.

(18) Non-Resident Student--A student who is not a Texas resident and/or does not qualify for Texas resident tuition.

(19) Out-of-state/Out-of-country Courses and Programs--Academic credit courses and programs delivered outside Texas/United States to individuals or groups who are not regularly enrolled, on-campus students. Out-of-state and out-of-country courses do not receive formula funding.

(20) Program or Program of Study--Any grouping of courses which are represented as entitling a student to a degree or certificate.

(21) Public Health-Related Institution or Health-Related Institution--A medical or dental unit as defined by Texas Education Code, §61.003(5).

(22) Public University or University--A general academic teaching institution as defined by Texas Education Code, §61.003(3).

(23) Regular On-Campus Student--A student who is admitted to an institution, the majority of whose semester credit hours are reported for formula funding and whose coursework is primarily taken at an institution's main campus or on one or more of the campuses within a multi-campus community college system.

(24) Self-Supporting Courses and Programs--Academic credit courses and programs (formerly defined as extension courses or programs) whose semester credit hours are not submitted for formula funding.

(25) Semester Credit Hour--A unit of measure of instruction consisting of 60 minutes, of which 50 minutes must be direct instruction over a 15-week period in a semester system.

(26) Workforce Continuing Education Course--A course of ten contact hours of participation in an organized continuing education experience under responsible sponsorship, capable direction, and qualified instruction, as outlined in the Guidelines for Instructional Programs in Workforce Education with an occupationally specific objective and supported by state appropriations. Workforce continuing education courses are offered by community and technical colleges and differ from a community service course which is not eligible for state reimbursement and is offered for recreational or a vocational purposes.

§4.258. General Provisions.

(a) This subchapter governs the following types of instruction provided through distance education:

(1) Academic credit courses, degree and certificate programs, and self-supporting courses and programs provided by all public institutions of higher education; and

(2) Formula-funded workforce continuing education provided by a public community college, Lamar State College, or public technical college.

(b) This subchapter does not apply to the following types of instruction provided through distance education:

(1) Non-credit adult and continuing education courses provided by a senior college or university or health-related institution; and

(2) Non-formula-funded continuing education provided by a public community college, Lamar State College, or public technical college.

§4.259. Institutional Plan for Distance Education.

(a) Prior to offering any distance education courses or programs for the first time, institutions of higher education shall submit an Institutional Plan for Distance Education to the Board for approval. The Commissioner shall provide guidelines for development of the report and a schedule for any periodic submission of updated reports.

(b) Institutional academic and administrative policies shall reflect a commitment to maintain the quality of distance education courses and programs in accordance with the provisions of this subchapter. An Institutional Plan for Distance Education shall conform to Board guidelines and criteria of the Commission on Colleges of the Southern Association of Colleges and Schools in effect at the time of the Report's approval. These criteria shall include provisions relating to:

(1) Institutional Issues;

(2) Educational Programs;

(3) Faculty;

(4) Student Support Services; and

(5) Distance Education Facilities and Support.

§4.260. Standards and Criteria for Institutions.

The following provisions apply to all institutions covered under this subchapter, unless otherwise specified:

(1) Institutions shall comply with the standards and criteria of the Commission on Colleges of the Southern Association of Colleges and Schools.

(2) Institutions shall adhere to criteria outlined in Principles of Good Practice for Degree and Certificate Programs and Courses Offered Through Distance Education.

(3) The Commissioner shall establish procedures governing the quality, review, and approval of distance education programs and courses. The Commissioner may also require institutions to provide reports on distance education programs and courses.

(4) Students shall be provided academic support services appropriate for distance education, such as advising, career counseling, library, and other learning resources.

(5) Institutions shall report enrollments, courses, and graduates associated with distance education offerings as required by the Commissioner.

(6) If a non-Texas resident student enrolls in regular, on-campus courses for at least one-half of the normal full-time course load as determined by the institution, the institution may report that student's fully distance education or hybrid/blended courses for formula funding enrollments.

§4.261. Standards and Criteria for Distance Education Programs.

The following provisions apply to all programs covered under this subchapter, unless otherwise specified:

(1) Each program shall be within the role and mission of the institution responsible for offering the instruction and shall be on its inventory of approved programs.

(2) Prior Board approval may be required before an institution may offer programs in certain subject area disciplines or under other conditions specified by the Board or Commissioner.

(3) An institution shall not offer doctoral or first-professional degree programs by distance education without specific prior approval by the Board. The Commissioner may approve for delivery by other delivery modes doctoral and special professional degree programs that have previously been approved by the Board for electronic or off-campus delivery.

(4) An institution offering a degree or certificate program shall comply with the standards and criteria of any specialized accrediting agency or professional certification board.

(5) Each degree program offered via distance education shall be approved by an institution's governing board or the governing board's institutional designee. Certification of approval shall be submitted to the Board upon request.

(6) Institutions shall require that students (except for students in out-of-country programs) enrolled in a distance education degree program satisfy the same requirements for admission to the institution and the program as required of regular on-campus students. Students in degree programs to be offered collaboratively shall meet the admission standards of their home institution.

(7) Out-of-country students shall meet equivalent standards for admission into programs and shall be assessed for academic guidance purposes in a manner determined by the admitting institution.

§4.262. Standards and Criteria for Distance Education Courses. The following provisions apply to all courses covered under this subchapter, unless otherwise specified:

(1) Each course shall be within the role and mission of the institution responsible for offering the instruction and shall be on its inventory of approved courses.

(2) All courses covered under this subchapter shall meet the quality standards applicable to on-campus courses.

(3) Institutions shall report to the Coordinating Board, in accordance with Board policy and procedures, all distance education courses and programs.

(4) Except for students in out-of-country courses, students shall satisfy the same requirements for enrollment in an academic credit course as required of on-campus students.

(5) Out-of-country students shall meet equivalent standards for enrollment in an academic credit course and shall be assessed for academic guidance purposes in a manner determined by the admitting institution.

(6) The instructor of record shall bear responsibility for the delivery of instruction and for evaluation of student progress.

(7) Prior Board approval may be required before an institution may offer programs in certain subject area disciplines or under other conditions specified by the Board or Commissioner.

§4.263. Standards and Criteria for Distance Education Faculty. The following provisions apply to faculty teaching in programs covered under this subchapter, unless otherwise specified:

(1) Faculty shall be selected and evaluated by equivalent standards, review, and approval procedures used by the institution to select and evaluate faculty responsible for on-campus courses.

(2) Institutions shall provide training and support to enhance the added skills required of faculty teaching courses through electronic means.

(3) The supervision, monitoring, and evaluation processes for faculty shall be equivalent to those for on-campus courses.

§4.264. Formula Funding General Provisions.

(a) Institutions shall report distance education courses submitted for formula funding in accordance with the Board's uniform reporting system and the provisions of this subchapter.

(b) Institutions may submit for formula funding academic credit courses delivered by distance education to any student located in Texas or to Texas residents located out-of-state or out-of-country.

(c) Institutions shall not submit for formula funding distance education courses taken by non-resident students who are located out-of-state or out-of-country, courses in out-of-state or out-of-country programs taken by any student, or self-supporting courses.

(d) For courses not submitted for formula funding, institutions shall charge fees that are equal to or greater than Texas resident tuition and applicable fees and that are sufficient to cover the total cost of instruction and overhead, including administrative costs, benefits, computers and equipment, and other related costs. Institutions shall report fees received for self-supporting and out-of-state/country courses in accordance with general institutional accounting practices.

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 December 7, 2009.

TRD-200905632
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: January 28, 2010
For further information, please call: (512) 427-6114

♦ ♦ ♦

SUBCHAPTER Q. APPROVAL OF OFF-CAMPUS AND SELF-SUPPORTING COURSES AND PROGRAMS FOR PUBLIC INSTITUTIONS

19 TAC §§4.270 - 4.279

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §§4.270 - 4.279 regarding Rules Applying to all Public Institutions of Higher Education in Texas. Specifically, the new sections will allow Board staff to clarify requirements Texas institutions of higher education must meet in order to deliver off-campus and on-campus self-supporting courses and programs, and to develop rules relating to the Approval of Off-Campus and Self-Supporting Courses and Programs for Public Institutions.

Dr. MacGregor M. Stephenson, Assistant Commissioner for Academic Affairs and Research, has determined that for each year of the first five years the new sections are in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Stephenson has also determined that for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of administering the sections will be increased efficiency. There will be no effect on small businesses. There are no anticipated economic costs to persons who are re-

quired to comply with the section as proposed. There will be no impact on local employment.

Comments on the new sections may be submitted to Dr. MacGregor M. Stephenson, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or by email at macgregor.stephenson@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposed rules in the *Texas Register.*

The new sections are proposed under the Texas Education Code, Chapter 61, Subchapter C, §61.051(j), which provides the Coordinating Board with the authority to approve courses for credit and distance education programs, and Texas Education Code §130.008 and §28.009, which provide for the offering of dual credit courses by public institutions of higher education.

The new sections affect the Texas Education Code, Subchapter C, §61.051(j).

§4.270. Purpose.

This subchapter establishes rules for all public institutions of higher education in Texas regarding the delivery of off-campus and on-campus self-supporting courses and programs. The rules are designed to provide Texas residents with access to off-campus courses and self-supporting courses and programs that meet their needs, to ensure course and program quality, and to assure the adequacy of the technical and managerial infrastructure necessary to support such courses and programs.

§4.271. Authority.

Authority for these provisions is provided by Texas Education Code §61.051(j) which provides the Board with the authority to approve courses for credit and distance education programs, including off-campus and self-supporting programs, and Texas Education Code §130.008 and §28.009, which provide for the offering of dual credit courses by public institutions of higher education.

§4.272. Definitions.

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

(1) Academic credit course--A college-level course that, if successfully completed, can be applied toward the number of courses required for achieving a degree, diploma, certificate, or other formal award.

(2) Area Institution--A university, health-related institution, independent institution, or legislatively established or Board-approved higher education center which is within a 50-mile radius of a proposed off-campus instruction site.

(3) Board--The Texas Higher Education Coordinating Board.

(4) Commissioner--The Commissioner of Higher Education; as used in this subchapter, "Commissioner" means the agency acting through its executive, and his or her designees, staff, or agents.

(5) Community College--Any public community college as defined in Texas Education Code, §61.003 and §130.005, and whose role, mission, and purpose is outlined in Texas Education Code, §130.0011 and §130.003.

(6) Continuing education course--A Coordinating Board-approved higher education technical course offered for continuing education units and conducted in a competency-based format. Such a course has specific occupational and/or apprenticeship training objectives.

(7) Continuing Education Unit or CEU--Ten contact hours of participation in an organized educational experience under responsible sponsorship, capable direction, and qualified instruction and not offered for academic credit.

(8) Degree--Any title or designation, mark, abbreviation, appellation, or series of letters or words, including "associate", "bachelor's", "master's", and "doctor's" and their equivalents and foreign cognates, which signifies satisfactory completion of the requirements of a program of study which is generally regarded and accepted as an academic degree-level program by accrediting agencies recognized by the Board.

(9) Doctoral Degree--An academic degree beyond the level of a master's degree that typically represents the highest level of formal study or research in a given field.

(10) First-Professional Degree--An award that requires completion of a program that meets all of the following criteria:

(A) completion of the academic requirements to begin practice in the profession;

(B) at least two years of college work prior to entering the program; and

(C) a total of at least six academic years of college work to complete the degree program, including prior required college work plus the length of the professional program itself. First-Professional degrees are discipline-specific, including, but not limited to, degrees such as: Dentistry (D.D.S. or D.M.D.); Medicine (M.D.); Veterinary Medicine (D.V.M.); Law (L.L.B, J.D.); and Pharmacy (Pharm.D).

(11) Formula Funding--The method used to allocate appropriated sources of funds among institutions of higher education.

(12) Formula-funded Course--An academic credit course delivered face-to-face or by distance education whose semester credit hours are submitted for formula funding.

(13) Institution of Higher Education or Institution--Any public technical institute, public community college, public senior college or university, medical or dental unit, or other agency of higher education as defined in Texas Education Code, §61.003.

(14) Main Campus--The primary campus or campuses of an institution of higher education supplying instruction and supported by on-site administration, also referred to as on-campus.

(15) Non-credit course--A course that results in the award of continuing education units (CEU) as specified by Southern Association of Colleges and Schools (SACS) criteria. Only courses that result in the award of CEUs may be submitted for state funding.

(16) Off-Campus Course--A course in which a majority (more than 50 percent) of the instruction occurs when the students and instructor(s) are in the same physical location and which meets one of the following criteria: for public senior colleges and universities, Lamar state colleges, or public technical colleges, off-campus locations are locations away from the main campus; for public community colleges, off-campus locations are sites outside the service area.

(17) Off-Campus Degree or Certificate Program--A program in which a student may complete a majority (more than 50 percent) of the credit hours required for the program through off-campus courses.

(18) Off-Campus Instruction--The formal educational process in which a majority (more than 50 percent) of the instruction occurs when the students and instructor(s) are in the same physical location and which meets one of the following criteria: for public

senior colleges and universities, Lamar state colleges, or public technical colleges, off-campus locations are locations away from the main campus; for public community colleges, off-campus locations are sites outside the service area.

(19) Out-of-State/Out-of-Country Courses and Programs--Academic credit courses and programs delivered outside Texas/United States to individuals or groups who are not regularly enrolled on-campus students. Out-of-state and out-of-country courses do not receive formula funding.

(20) Public Health-Related Institution or Health-Related Institution--A medical or dental unit as defined by Texas Education Code, §61.003(5).

(21) Public Technical Institute or College--The Lamar Institute of Technology or any campus of the Texas State Technical College System.

(22) Public University or University--A general academic teaching institution as defined by Texas Education Code, §61.003(3).

(23) Regional Council--A cooperative arrangement among representatives of all public, private or independent institutions of higher education within a Uniform State Service Region, as established under Texas Education Code, §51.662.

(24) Regular On-Campus Student--A student who is admitted to an institution, the majority of whose semester credit hours are reported for formula funding and whose coursework is primarily taken at an institution's main campus or on one or more of the campuses within a multi-campus community college system.

(25) Self-Supporting Courses and Programs--Academic credit courses and programs (formerly defined as extension courses or programs) whose semester credit hours are not submitted for formula funding.

(26) Semester Credit Hour--A unit of measure of instruction consisting of 60 minutes, of which 50 minutes must be direct instruction, over a 15-week period in a semester system.

(27) Service Area--The territory served by a community college district as defined in Texas Education Code, §130.161.

(28) Study-in-America Courses--Off-campus, academic credit instruction which is delivered outside Texas but in the United States primarily to regular on-campus students.

(29) Study-Abroad Courses--Off-campus, academic credit instruction which is delivered outside the United States primarily to regular on-campus students.

(30) Workforce Continuing Education Course--A course of ten contact hours of participation in an organized continuing education experience under responsible sponsorship, capable direction, and qualified instruction, as outlined in the Guidelines for Instructional Programs in Workforce Education with an occupationally specific objective and supported by state appropriations. Workforce continuing education courses are offered by community and technical colleges and differ from a community service course which is not eligible for state reimbursement and is offered for recreational or a vocational purposes.

§4.273. General Provisions.

(a) This subchapter governs the following types of instruction offered by institutions of higher education:

(1) Academic credit courses, degree and certificate programs, and formula-funded workforce continuing education provided by a community college outside the boundaries of its service area through off-campus instruction;

(2) Academic credit courses, and degree and certificate programs provided by a public technical college, Lamar State College, public senior college or university, or public health-related institution through off-campus instruction;

(3) Formula-funded workforce continuing education provided by a public technical college or Lamar State College through off-campus instruction;

(4) Academic credit courses and programs offered by any public institution of higher education outside of Texas, including Study-Abroad, Study-in-America, out-of-state, and out-of-country courses; and

(5) Self-supporting courses and programs that are offered through off-campus instruction.

(b) This subchapter does not apply to the following types of instruction:

(1) Non-credit adult and continuing education courses provided through off-campus delivery or as on-campus self-supporting courses or programs by a senior college or university or health-related institution.

(2) Continuing education, except formula-funded workforce continuing education, provided by public two-year colleges.

§4.274. Standards and Criteria for Institutions.

The following provisions apply to all institutions covered under this subchapter, unless otherwise specified:

(1) Institutions shall comply with the standards and criteria of the Commission on Colleges of the Southern Association of Colleges and Schools.

(2) The Commissioner shall establish procedures governing the quality, review, and approval of off-campus and self-supporting programs and courses. The Commissioner may also require institutions to provide reports on off-campus, out-of-state/country, and self-supporting programs and courses.

(3) For off-campus programs and self-supporting programs, the parent institution shall notify all potentially affected area institutions in accordance with Board policy and procedures.

(4) The Commissioner shall develop procedures and standards for offering out-of-state/country programs and courses and for Study-in-America and Study-Abroad offerings.

(5) Institutions shall report enrollments, courses and graduates associated with self-supporting offerings as required by the Commissioner.

(6) Institutions shall report fees received for self-supporting and out-of-state/country courses in accordance with general institutional accounting practices.

(7) Students shall be provided academic support services appropriate for off-campus instruction such as academic advising, career counseling, library, and other learning resources.

(8) Off-campus instruction sites shall be of sufficient quality for the delivery methods and courses offered.

§4.275. Standards and Criteria for Off-Campus and Self-Supporting Programs.

The following provisions apply to all programs covered under this subchapter, unless otherwise specified:

(1) Each program shall be within the role and mission of the institution responsible for offering the instruction and shall be on its inventory of approved programs.

(2) Prior Board approval may be required before an institution may offer programs in certain subject area disciplines or under other conditions specified by the Board or Commissioner.

(3) An institution shall not offer doctoral or first-professional degree programs off-campus or as a self-supporting program without specific prior approval by the Board. The Commissioner may approve for delivery by other modes doctoral and special professional degree programs that have previously been approved by the Board for delivery through off-campus instruction or as a self-supporting program.

(4) An institution offering an off-campus degree or certificate program shall comply with the standards and criteria of any specialized accrediting agency or professional certification board.

(5) Each degree program offered off-campus shall be approved by an institution's governing board or the governing board's institutional designee. Certification of approval shall be submitted to the Board upon request.

(6) Institutions shall require that students (except for students in out-of-country programs) enrolled in an off-campus or self-supporting degree program satisfy the same requirements for admission to the institution and the program as required of regular on-campus students. Students in degree programs to be offered collaboratively shall meet the admission standards of their home institution. Out-of-country students shall meet equivalent standards for admission into programs.

§4.276. Standards and Criteria for Off-Campus and Self-Supporting Courses.

The following provisions apply to all courses covered under this subchapter, unless otherwise specified:

(1) Each course shall be within the role and mission of the institution responsible for offering the instruction and shall be on its inventory of approved courses.

(2) Prior Board approval may be required before an institution may offer courses in certain subject area disciplines or under other conditions specified by the Board or Commissioner.

(3) Study-in-America and Study-Abroad courses offered by institutions of higher education, or by an approved consortium composed of Texas public institutions, must be reported to the Board in the manner prescribed by the Commissioner in order for the semester credit hours or contact hours generated in those courses to receive formula funding.

(4) All courses shall meet the quality standards applicable to on-campus courses.

(5) Institutions shall report to the Coordinating Board and notify all potentially affected area institutions all off-campus courses and programs in accordance with Coordinating Board policy and procedures.

(6) Except for students in out-of-country courses, students shall satisfy the same requirements for enrollment in an academic credit course as required of on-campus students. Out-of-country students shall be assessed for academic guidance purposes.

(7) The instructor of record shall bear responsibility for the delivery of instruction and for evaluation of student progress.

§4.277. Standards and Criteria for Off-Campus and Self-Supporting Courses Faculty.

The following provisions apply to faculty teaching in programs covered under this subchapter, unless otherwise specified:

(1) Faculty shall be selected and evaluated by equivalent standards, review, and approval procedures used by the institution to select and evaluate faculty responsible for on-campus courses.

(2) Institutions shall provide training and support to enhance the added skills required of faculty teaching off-campus or self-supporting courses.

(3) The supervision, monitoring, and evaluation processes for faculty shall be equivalent to those for on-campus courses.

§4.278. Functions of Regional Councils.

(a) Regional Councils shall advise the Commissioner on appropriate policies and procedures for effective state-level administration of off-campus lower-division instruction.

(b) With the exception of subsections (e) and (i) of this section, Regional Councils in each of the ten Uniform State Service Regions shall make recommendations to the Commissioner and shall resolve disputes regarding plans for lower-division courses and programs proposed by public institutions.

(c) With the exception of subsections (e) and (i) of this section, for any dispute arising from off-campus delivery of lower-division courses to groups, any institution party to the disagreement may appeal first to the Regional Council, and then to the Commissioner and then the Board.

(d) Each Regional Council shall make recommendations to the Commissioner regarding off-campus courses and programs proposed for delivery within its Uniform State Service Region in accordance with the consensus views of Council members, except for courses and programs proposed to be offered by public community colleges in their designated service areas and courses and programs governed by the provisions of subsections (e) and (i) of this section.

(e) A public community college may enter into an agreement to offer only a dual credit course with a high school located in the service area of another public community college only if the other public community college is unable to provide the requested course to the satisfaction of the school district and the school district has explicitly invited the institution to do so.

(f) A public community college proposing to offer a dual credit course at a high school outside of the college's service area shall notify the Regional Council in whose service area the high school is located. It must provide a letter from the school district stating that the local community college is not offering the proposed dual credit course to the satisfaction of the school district and that the school district has invited the other community college to offer the course.

(g) Public community colleges shall submit for the appropriate Regional Council's review all off-campus lower-division courses proposed for delivery to sites outside their service areas.

(h) With the exception of subsection (i) of this section, universities, health-related institutions, public technical colleges, and Lamar state colleges shall submit for Regional Council review all off-campus lower-division courses proposed for delivery to sites in the Council's Service Region.

(i) Universities, health-related institutions, public technical colleges, and Lamar state colleges may enter into an agreement to offer lower-division dual credit courses with a school district and/or high school that makes such a request. Regional Council approval is not required in order to offer requested lower-division, dual credit courses.

(j) It is recommended that all institutions of higher education provide notice to the Higher Education Regional Councils when planning to offer requested dual credit courses in the Council's service area.

§4.279. Formula Funding General Provisions.

(a) Institutions shall report off-campus courses submitted for formula funding in accordance with the Board's uniform reporting system and the provisions of this subchapter.

(b) Institutions shall not submit for formula funding courses in out-of-state or out-of-country programs.

(c) Institutions shall not submit self-supporting courses for formula funding.

(d) Institutions shall not submit non-state funded lower-division credit courses to Regional Councils.

(e) Institutions shall not jeopardize or diminish the status of formula-funded on-campus courses and programs in order to offer self-supporting courses. Self-supporting courses shall not be a substitute for offering a sufficient number of formula-funded on-campus courses.

(f) For courses not submitted for formula funding, institutions shall charge fees that are equal to or greater than Texas resident tuition and applicable fees, and that are sufficient to cover the total cost of instruction and overhead, including administrative costs, benefits, computers and equipment, and other related costs. Institutions shall report fees received for self-supporting and out-of-state/country courses in accordance with general institutional accounting practices.

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 December 7, 2009.

TRD-200905633
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: January 28, 2010
For further information, please call: (512) 427-6114

♦ ♦ ♦

TITLE 22. EXAMINING BOARDS

PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 271. EXAMINATIONS

22 TAC §271.3

The Texas Optometry Board proposes amendments to §271.3 concerning modification of administration requirements for the Jurisprudence Examination such that Internet technology can be utilized.

Chris Kloeris, executive director of the Texas Optometry Board, has determined that for the first five-year period the proposed repeal of the rule is in effect, there will be no fiscal implications for local governments as a result of enforcing or administering the rule. For state government, travel costs of approximately $500.00 will be saved each year with the amendments. No other fiscal implications are predicted.

Chris Kloeris also has determined that for each of the first five years the amendments are in effect, the public benefit anticipated is that the Board and applicants will be able to take advantage of current technology to administer and take the Jurisprudence Exam. Applicants and the Board will no longer be required to travel to an exam site and the Board will not be required to arrange for sites. This will save the agency money and make the licensing of new optometrists more efficient. The amendments will not require any additional costs for persons applying for license, and therefore no disparate effect is foreseen on small or micro-businesses.

Comments on the proposal may be submitted to Chris Kloeris, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is thirty days after publication in the *Texas Register.*

The amendment is proposed under the Texas Optometry Act, Texas Occupations Code, §§351.151, 351.253, 351.255, and 351.257. No other sections are affected by the amendments.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession, §351.253 to require passing an examination for license, and §351.255 and §351.257 as setting out the requirements for exam administration.

§271.3. Jurisprudence Examination Administration.

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

(d) Applicants shall not communicate any words or signs, in person, in writing, or electronically, with another applicant while the applicant's [~~the~~] examination is in progress. Applicants shall not collaborate in any manner with any other person, including another applicant, a licensee, or a staff member of the Board, on examination matters while the applicant's examination is in progress [~~without the permission of the presiding examiner, nor leave the examination room except when so permitted by the presiding examiner~~]. Violations of this rule shall subject the offender to disciplinary action [~~expulsion~~].

[~~(e) The executive director or designee shall at all times be in the examination room while the examination is in progress and no persons except applicants, board members, employees of the board, or persons having the express permission of the board shall be permitted in the examination rooms.~~]

[~~(f) At the beginning of an examination each applicant shall select a number. Applicants shall use the number for purposes of identification throughout the examination, and no applicant name or any other identification mark other than the selected number shall be entered on any paper containing answers to the questions of an examination. Members of the board shall in every way endeavor to avoid identification of an applicant prior to the awarding of the general averages.~~]

(e) [~~(g)~~] Examination materials [~~papers~~] are the property of the board and shall not be returned to the applicant. An [~~All test papers must be retained in the board office to be preserved for a period of 30 days after final grading in order to allow an~~] unsuccessful candidate may [~~the opportunity to~~] request an analysis of such person's performance, which request must be made in writing within 30 days after final grading [~~such 30-day period~~].

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 December 4, 2009.

TRD-200905610
Chris Kloeris
Executive Director
Texas Optometry Board
Earliest possible date of adoption: January 17, 2010
For further information, please call: (512) 305-8502

♦ ♦ ♦

TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 265. GENERAL SANITATION
SUBCHAPTER B. TEXAS YOUTH CAMPS SAFETY AND HEALTH

25 TAC §§265.11 - 265.16, 265.19, 265.20, 265.23, 265.24, 265.27, 265.28, 265.30

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes amendments to §§265.11 - 265.16, 265.19, 265.20, 265.23, 265.24, 265.27 and 265.28, and new §265.30, concerning the regulation of Texas youth camps.

BACKGROUND AND PURPOSE

The amendments and new rule to the Texas Youth Camps Safety and Health Rules are in response to recommendations made by the Youth Camp Advisory Committee, as well as by state program personnel based on statutory authority found in the Texas Youth Camp Safety and Health Act, Health and Safety Code, Chapter 141. The changes correct information in the rules, add clarification, and expand requirements to better protect children attending youth camps.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 265.11 - 265.29 have been reviewed and the department has determined that the reasons for adopting the sections continue to exist because rules on this subject are needed to regulate the safety of youth camp facilities and to protect the health and well-being of youth attending these facilities.

SECTION-BY-SECTION SUMMARY

Proposed amendments to §265.11 add new definitions and clarify other definitions. Section 265.12 modifies how a criminal background check may be conducted, updates web sites and contact information, and identifies persons whose presence at a youth camp shall or may be precluded. Changes to §265.13 increase regulation of the safety of the camp facility, public and private water supplies, and playground equipment, and updates the items that may be inspected during a food service inspection. Amendments to §§265.14, 265.19 and 265.20 change "must" to "shall" as was done throughout the rules for consistency throughout the chapter. Amended §265.15 clarifies the reporting procedure for incidences of child abuse or neglect of a minor, and modifies requirements for isolation of a child with a communicable disease and for storing and dispensing prescription medication to campers.

Proposed amendments to §265.16(c) require compliance with rules for interactive water features and fountains, and §265.16(f) modifies and expands waterfront lifesaving equipment requirements.

Amendments to §265.23 include changes to the criteria for application and for denial of a new license, while amended §265.24 changes the criteria for application for a renewal license. Proposed amendments to §265.23 and §265.24 include the timeframes by which the department must process initial and renewal applications for licensure as a youth camp, and a complaint procedure for use when applications are not processed timely, as required by Government Code, §2005.003 and §2005.006. The following information is provided to satisfy Government Code, §2005.003(d), which requires the department to disclose the amount of time that it took to process initial applications within the preceding 12-month period and to justify the proposed timeframes. During the past 12-month period, the minimum number of days to process an application for a youth camp was two days, the maximum number of days to process an application for a youth camp was 150 days, the median number of days to process an application for a youth camp was 60 days. The timeframes allow the department sufficient time to process an application for licensure while not imposing undue hardships on applicants.

Amended §265.27 updates the legal citations for the conduct of hearings. Section 265.28 adds fees for a duplicate license, camp name change, and non-sufficient funds. Proposed new §265.30 defines entities that may not obtain a youth camp license.

FISCAL NOTE

Susan E. Tennyson, Section Director, Environmental and Consumer Safety Section, has determined that for each year of the first five-year period that the sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed. Fees are charged in an amount designed to cover the costs of the regulatory services required by the rules, in keeping with Health and Safety Code, §12.0111.

SMALL AND MICRO-BUSINESS ECONOMIC IMPACT STATEMENT

Ms. Tennyson has also determined that there are anticipated economic costs to small businesses or micro-businesses required to comply with the sections as proposed. The amendments that are expected to result in economic costs are the updated requirements for criminal background checks and water system improvements. Youth camps that do not currently conduct a criminal background check on all staff and volunteers will need to do so in the future. The cost is estimated to be between $5 and $40 per person, depending on the service used. The cost to an individual camp cannot be determined because the size of the camp does not necessarily determine the number of staff or volunteers working at the camp. Also, some camps retain the same staff throughout the camp operation, while other camps replace staff as frequently as weekly. Additionally, it is not known how many or which camps currently run background checks on all staff and volunteers.

Additionally, camps with private water wells not regulated by the Texas Commission on Environmental Quality may need to upgrade their systems to meet new water requirements. This may include installing an automatic chlorinator and periodically testing the water quality. Monthly bacteriological testing is estimated

to cost $10/month/operating month, and chemical analysis is predicted to cost $100 every three years.

REGULATORY FLEXIBILITY ANALYSIS

No alternative methods of achieving the purpose of the proposed amendments are consistent with the health, safety, and environmental welfare of the state. Previously it was possible to meet the criminal background check requirement by asking an employee or volunteer if they had ever been convicted of a felony or a misdemeanor. It has been determined that this method does not adequately protect the campers or the camp if a person does not tell the truth. Therefore, a criminal background check must be conducted.

Additionally, the youth camp rules do not specifically address safe drinking water systems at youth camps utilizing private, non-regulated water wells. Due to absence of any specific requirements for private wells in the current youth camp rules, camps are currently required to comply with 25 Texas Administrative Code, Chapter 265, Subchapter D, concerning minimal acceptable operating standards for water systems serving camps. Subchapter D is outdated and will be repealed at a future council meeting. The proposed amendment to §265.13 will bring rules addressing water systems at youth camps in line with current Texas Commission on Environmental Quality regulations. Although camps may comply with the requirement for safe drinking water by other means than improving camp water systems, those alternatives are expected to be more costly and are not likely to be utilized.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons other than to businesses required to comply with the rules as proposed. There is no anticipated impact on local employment as a result of this rulemaking.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC BENEFIT

In addition, Ms. Tennyson has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of administering and enforcing the sections is to better ensure the health and safety of children attending youth camps.

PUBLIC COMMENT

Comments on the proposal may be submitted to Paula Anderson, Public Health Sanitation and Consumer Product Safety Group, Department of State Health Services, Mail Code 1987, P.O. Box 149347, Austin, Texas 78714-9347, (512) 834-6770, extension 2303, or by email to paula.anderson@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

LEGAL CERTIFICATION

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

STATUTORY AUTHORITY

The amendments and new rules are authorized by Health and Safety Code, §141.008, which authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules to implement the Youth Camp Safety and Health Act; and by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039, which requires each state agency to review and consider for readoption each rule adopted by the agency pursuant to the Government Code, Chapter 2001.

The amendments and new rule affect the Health and Safety Code, Chapters 141 and 1001; and Government Code, Chapter 531.

§265.11. Definitions.

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

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

(5) Day camp--A camp that operates during the day or any portion of the day between 7:00 a.m. and 10:00 p.m. for four or more consecutive days and that offers no more than two overnight stays during each camp session. To be eligible to be licensed as a youth camp, the camp's schedule shall [~~must~~] be structured so that each camper attends for more than four hours per day for four consecutive days. The term does not include a facility that is required to be licensed with the Department of Family and Protective Services (formerly the Department of Protective and Regulatory Services).

(6) Department--Department of State Health Services, P.O. Box 149347 [~~1100 West 49th Street~~], Austin, Texas 78714-9347 [~~78756-3199~~].

(7) - (12) (No change.)

(13) Playground--An outdoor area designed for children to play freely. Playgrounds often have recreational equipment such as the see-saw, merry-go-round, swing set, slide, climber, walking bridge, jungle gym, chin-up bars, sandbox, spring rider, monkey bars, overhead ladder, trapeze and trapeze rings, playhouses, and maze, many of which help children develop physical coordination, strength, and flexibility, as well as providing recreation and enjoyment.

(14) [~~(13)~~] Primitive camp--A youth camp that does not provide either permanent structures or utilities for camper use.

(15) Public water system, as defined in 30 Texas Administrative Code (TAC), §290.38(63)--A system for the provision to the

public of water for human consumption through pipes or other constructed conveyances, which includes all uses described under the definition for drinking water (30 TAC, §290.38(21)). Such a system shall have at least 15 service connections or serve at least 25 individuals at least 60 days out of the year. This term includes any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system, and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Two or more systems with each having a potential to serve less than 15 connections or less than 25 individuals but owned by the same person, firm, or corporation and located on adjacent land will be considered a public water system when the total potential service connections in the combined systems are 15 or greater or if the total number of individuals served by the combined systems total 25 or greater at least 60 days out of the year. Without excluding other meanings of the terms "individual" or "served," an individual shall be deemed to be served by a water system if he lives in, uses as his place of employment, or works in a place to which drinking water is supplied from the system.

(16) [~~(14)~~] Resident camp--A camp that for a period of four or more consecutive days continuously provides residential services to each camper, including overnight accommodations for at least three consecutive nights.

(17) [~~(15)~~] Supervisor/counselor--Camp personnel or youth group leader, 18 years of age or older, who is responsible for the immediate supervision of campers.

(18) Swim test--A test to determine each child's swimming ability. A swim test includes at least the following skill evaluations, or some equivalent method of determining swimming ability.

(A) Non-swimmer: Get into the shallow water, sit down, stand up, and exit the water.

(B) Intermediate swimmer: Jump feet first into water at least twelve inches deeper than the height of the child. Level off, swim 25 feet, turn around and swim back. Exit the water.

(C) Swimmer: Jump feet-first into water at least twelve inches deeper than the height of the child and swim 75 yards in a strong stroke on your stomach or side (breaststroke, sidestroke, crawl, trudgen, or any combination). Then swim 25 yards on your back (elementary back stroke), then float and rest on your back for one minute. Exit the water.

(19) [~~(16)~~] Travel camp--A day or resident camp, lasting for four or more consecutive days, that begins and ends at a fixed location, but may move from location to location on a daily basis.

(20) [~~(17)~~] TCEQ--Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-1000 [~~512-239-1000~~].

(21) [~~(18)~~] Waterfront--A natural, or artificial body of water that includes, but is not limited to, a lake, ocean, bay, pond, river, swimming pool, or spa, which is the site of any water activity.

(22) [~~(19)~~] Waterfront activity--A recreational or instructional activity, occurring in, on, or near a waterfront. Waterfront activity includes, but is not limited to, swimming, boating, water skiing, scuba diving, rafting, tubing, synchronized swimming or sailing.

(23) [~~(20)~~] Youth camp--A facility or property, other than a facility required to be licensed by the Department of Family and Protective Services that:

(A) has the general characteristics of a day camp, resident camp, or travel camp;

(B) is used for recreational, athletic, religious, or educational activities;

(C) accommodates at least five minors who attend or temporarily reside at the camp for all or part of at least four consecutive days; and

(D) is not a facility or program operated by or on the campus of an institution of higher education or a private or independent institution of higher education as those terms are defined by the Education Code, §61.003, that is regularly inspected by one or more local governmental entities for compliance with health and safety standards.

(24) [~~(21)~~] Youth camp, general characteristics of. A youth camp:

(A) provides supervision, instruction, and recreation;

[~~(A) a youth camp provides supervision, instruction, and recreation, utilizing a variety of activities primarily in an outdoor, natural environment, for children who are apart from their parents or legal guardians;~~]

(B) accommodates at least five minors during each camp session;

[~~(B) a youth camp operates only during school vacation periods, and not more than 120 days per calendar year; and~~]

(C) operates as a youth camp for no more than 120 days each calendar year;

[~~(C) a youth camp accepts a camper for a minimum of four consecutive days for more than four hours per day.~~]

(D) hosts children who are apart from parents or legal guardians;

(E) operates as a youth camp for a period of four or more consecutive days;

(F) operates as a youth camp for more than four consecutive hours per day;

(G) operates as a youth camp only during school vacation periods;

(H) offers a variety of activities in an outdoor setting; and

(I) schedules activities so that campers spend a minimum of 60% of their time out-of-doors between the hours of 7:00 a.m. and 10:00 p.m.

(25) [~~(22)~~] Youth camp operator--Any person who owns, operates, controls, or supervises a youth camp, whether or not for profit.

§265.12. Directors, Supervisors, and Staff.

(a) (No change.)

(b) Adult supervisors. Each youth camp shall have at least one adult supervisor who is responsible for the supervision of no more than ten children in the camp. For any hazardous activity the supervisor(s) shall [~~must~~] be in the immediate vicinity (within sight and/or hearing) of the campers. An "all camp" sedentary activity, not requiring physical activity, may require less supervision, and each camp shall establish its own guidelines, but not less than one adult supervisor to every 25 campers. The camp director shall not be included in the supervisor to camper ratio in camps serving over 50 campers at one time.

(c) - (e) (No change.)

(f) Criminal conviction and sex offender background check [~~registration record~~] requirements. The camp management shall have on file a record of any criminal conviction and a sex offender registration check for all adult staff members and all adult volunteers working at the camp before the staff member or volunteer has unsupervised contact with children at the camp. [~~Camp management shall also have on file a written evaluation for an adult staff member or volunteer, showing that management has determined the person is suitable for a position at the youth camp despite a criminal conviction.~~] If the records are located off-site, a letter from the national or regional headquarters of the camp organization stating the names of individuals at the camp site for whom background [~~these~~] checks have been conducted, shall [~~must~~] be available at the camp site. All records of criminal convictions and written evaluations for a camp or camping organization shall [~~must~~] be located at a specific site within Texas, and shall [~~must~~] be made available to department personnel within two business days upon request. Youth camps are responsible for ensuring that criminal and sex offender background checks have been conducted for international staff obtained through the J-1 visa process, and that documentation of these checks are located with other staff background checks at the specific site within Texas. Records of criminal convictions and sex offender status shall [~~may~~] be obtained by:

(1) performing an annual criminal background check using a criminal history database for each adult staff member's and each adult volunteer's permanent residence. If the staff member or adult volunteer has a temporary or an educational residence, an annual criminal background check shall include searching under the permanent, temporary and educational address, as applicable. The criminal history database used for the criminal background check is to be based on the individual's residences, and may include state, national or international databases. Documentation of the search results, whether or not the results are positive, shall be maintained with the sex offender background documentation; and

[~~(1) an annual criminal background check consisting of either:~~]

[~~(A) performing a criminal background check, such as the Texas Department of Public Safety Public Criminal Records check, which may be accessed at https://records.txdps.state.tx.us/dps_web/APP_PORTAL/index.aspx. A hard copy printout of the search results, whether or not the results are positive, must be maintained with the sex offender background documentation; or~~]

[~~(B) including a question on an employment or volunteer application asking for a history of criminal convictions, such as "Have you ever been convicted of a felony or a misdemeanor?" If this question is answered with "Yes," then the camp must obtain documentation of the criminal conviction; and~~]

(2) performing an annual background check using a sex offender registration [~~Sex Offender Registration~~] database for each adult staff member's and each adult volunteer's permanent residence and educational residence if applicable, such as the TXDPS - Sex Offender Registry, which may be accessed at Texas Department of Public Safety - Crime Records Service. [~~In Texas, the Sex Offender Registration database may be found at https://records.txdps.state.tx.us/soSearch/default.cfm.~~] Documentation of the search results, whether or not the results are positive, shall be maintained with the criminal background documentation. [~~A hard copy printout of the search results, whether or not the results are positive, must be maintained with the criminal background documentation.~~]

(g) Persons whose presence at a youth camp shall be precluded. Youth camps shall not employ paid or unpaid staff members or volunteers at a youth camp, or permit any person to have unsupervised contact with campers other than their own children if the person has the following types of criminal convictions or deferred adjudications: a misdemeanor or felony under Texas Penal Code, Title 5 (Offenses Against the Person), Title 6 (Offenses Against the Family), Chapter 29 (Robbery) of Title 7, Chapter 43 (Public Indecency) or §42.072 (Stalking) of Title 9, §15.031 (Criminal Solicitation of a Minor) of Title 4, §38.17 (Failure to Stop or Report Aggravated Sexual Assault of Child) of Title 8, or any like offense under the law of another state or under federal law.

(h) Persons whose presence at a youth camp may be precluded.

(1) Youth camps may preclude a person from being a paid or unpaid staff member or volunteer at a youth camp; or may preclude a person from having unsupervised contact with campers other than the person's own children, if the person has the following types of criminal convictions or deferred adjudications:

(A) a misdemeanor or felony committed within the past ten years under §46.13 (Making a Firearm Accessible to a Child) or Chapter 49 (Intoxication and Alcoholic Beverage Offenses) of Title 10 of the Texas Penal Code, or any like offense under the law of another state or under federal law; or

(B) any other felony under the Texas Penal Code or any like offense under the law of another state or under federal law that the person committed within the past ten years.

(2) Camp management shall have on file a written evaluation for any staff member or volunteer with a criminal conviction or deferred adjudication included in paragraph (1) of this subsection, showing that management has determined the person is suitable for a position at the youth camp despite a criminal conviction or deferred adjudication.

(i) [~~(g)~~] Sexual abuse and child molestation awareness training and examination program.

(1) Effective June 1, 2006, a youth camp licensee may not employ or accept the volunteer service of an individual for a position involving contact with campers at a youth camp unless:

(A) the individual submits to the licensee or the youth camp has on file documentation that verifies the individual within the preceding two years has successfully completed the training and examination program required by this subsection; or

(B) the individual successfully completes the youth camp's training and examination program approved by the department during the individual's first workweek, and prior to any contact with campers unless supervised during the first workweek by an adult who has successfully completed the program. The youth camp shall [~~must~~] have documentation on file and available for inspection within two business days of request by the department verifying that the individual successfully completed the youth camp's training and examination program.

(2) For purposes of this subsection, the term "contact with campers" does not include visitors such as a guest speaker, an entertainer, or a parent who visits for a limited purpose or a limited time if the visitor has no direct and unsupervised interaction with campers. A visitor may have direct and unsupervised contact with a camper to whom the visitor is related. A camp may require training and an examination for visitors if it chooses.

(3) A youth camp licensee shall [~~must~~] retain in the person's personnel record a copy of the documentation required or issued under paragraph (1)(A) of this subsection for each employee or volunteer until the second anniversary of the examination date.

(4) Prior to their use, the department may approve training and examination programs offered by trainers under contract with youth camps, by online training organizations, or programs offered in another format, such as a videotape, authorized by the department.

(5) A training and examination program on sexual abuse and child molestation approved by the department shall [~~must~~] at a minimum include training and an examination on:

(A) the definitions and effects of sexual abuse and child molestation;

(B) the typical patterns of behavior and methods of operation of child molesters and sex offenders that put children at risk;

(C) the warning signs and symptoms associated with sexual abuse or child molestation, recognition of the signs and symptoms, and the recommended methods of reporting suspected abuse; and

(D) the recommended rules and procedures for youth camps to implement to address, reduce, prevent, and report suspected sexual abuse or child molestation. Training shall include the need to minimize one-on-one isolated encounters between an adult and a minor or between two minors.

(6) The training program shall [~~must~~] last for a minimum of one hour and discuss each of the topics described in paragraph (5) of this subsection.

(7) The examination shall [~~must~~] consist of a minimum of 25 questions which shall cover each of the topics described in paragraph (5) of this subsection.

(8) To successfully complete the training program, each employee or volunteer shall [~~must~~] achieve a score of 70% or more correct on an individual examination. If the examination is taken on-line, the employee or volunteer shall [~~must~~] retain a certificate of completion indicating they successfully completed the course.

(9) The department may assess a fee of $125 to each applicant to cover the costs of the department's initial review and each follow-up review of a training and examination program.

(10) Applications [~~All applications~~] and fees shall be mailed to the Environmental and Sanitation Licensing Group, Department of State Health Services, MC 2003, P.O. Box 149347 [~~1100 West 49th Street~~], Austin, Texas 78714-9347 [~~78756~~]. Applications [~~A blank application~~] may be obtained by calling the Environmental and Sanitation Licensing Group at (512) 834-6600 or may be downloaded from http://www.dshs.state.tx.us/youthcamp/default.shtm [~~www.dshs.state.tx.us/ben/gs/youth.htm~~].

(11) The department, at least every five years from the date of initial approval, shall review each training and examination program approved by the department to ensure the program continues to meet the criteria and guidelines established under this subsection.

(j) [~~(h)~~] Records retention. All applications, background check reports, training documentation, and other required personnel documentation required by these rules shall be maintained in hard copy or electronic format for a minimum of two years following a person's last day of service.

§265.13. Site and Physical Facilities.

(a) Safety of camp facility. The buildings, structures, common areas adjoining camp facilities, and grounds shall not present a fire, health, or safety hazard. [~~the location. The location of a camp shall not present a fire, health, or safety hazard.~~]

(b) - (j) (No change.)

(k) Hand cleanser required. Each lavatory shall [~~must~~] be equipped with one of the following methods to sanitize hands:

(1) lavatories with hot and cold running water shall [~~must~~] have soap or hand cleanser available at all times;

(2) lavatories with only cold running water shall [~~must~~] have hand sanitizer or anti-bacterial soap available at all times; or

(3) privies and portable toilet facilities not equipped with lavatories providing water shall [~~must~~] have waterless hand sanitizer available at all times.

(l) Shower facilities. Resident youth camps shall [~~must~~] provide at least one shower for every 15 females and one shower for every 15 males. Each shower shall be equipped with water to meet the needs of the campers. There shall be soap or body cleanser available at all times.

(m) - (p) (No change.)

(q) Public water supply. If a youth camp water supply meets the definition of a public water system, then all water used for human consumption or which may be used in the preparation of foods or beverages or for the cleaning of any utensil or article used in the course of preparation or consumption of food or beverages for human beings, or which is used for bathing, swimming in a pool or spa, or any other use in which incidental ingestion may occur, shall come from a Texas Commission on Environmental Quality (TCEQ) approved drinking water source that meets all applicable standards of 30 Texas Administrative Code (TAC), Chapter 290, Public Drinking Water, Subchapter D, Rules and Regulations for Public Water Systems, as amended, and 30 TAC Chapter 290, Public Drinking Water, Subchapter F, Drinking Water Standards Governing Drinking Water Quality And Reporting Requirements For Public Water Systems, as amended.

[~~(q) Potable water supply required. Camps shall ensure that all water used for ingestion comes from a TCEQ approved potable water source that meets all applicable standards of 30 Texas Administrative Code (TAC), Chapter 290, Public Drinking Water, Subchapter D, Rules and Regulations for Public Water Systems, as amended.~~]

(r) Private water supply. Youth camps having water supplies that do not meet the definition of a public water system or that are not regulated by the TCEQ shall comply with the following requirements when the camp is open or operational unless otherwise indicated.

(1) Water supply. An adequate supply of water shall be available at all times in each camp in accordance with the following table.

Figure: 25 TAC §265.13(r)(1)

(2) Water pressure. The system shall be designed to maintain a minimum pressure of 35 psi at all points within the distribution network at flow rates of at least 1.5 gallons per minute per connection. When the system is intended to provide fire fighting capability, it shall also be designed to maintain a minimum pressure of 20 psi under combined fire and drinking water flow conditions. Minimum distribution pressure shall not be less than 20 psi at any time.

(3) Bacteriological properties.

(A) Water systems serving camps shall submit a minimum of one water sample for total coliform, fecal coliform, *E. coli,* or other fecal indicator organisms, for the month prior to camp opening and each month the camp is in operation.

(B) Testing for microbial contaminants shall be performed at a laboratory certified by TCEQ.

(C) If a routine distribution coliform sample is coliform-positive, then the camp shall issue a written boil water notification to all camp staff and volunteers. The notification shall state, "To ensure destruction of all harmful bacteria and other microbes, water for drinking, cooking, and ice making shall be boiled and cooled prior to consumption. The water shall be brought to a vigorous rolling boil and then boiled for two minutes. In lieu of boiling, purchased bottled water, water obtained from some other suitable source, or ice obtained from an approved source may be used."

(D) The boil water notification shall remain in effect until a repeat distribution coliform sample is coliform-negative.

(E) Records of all bacteriological tests and of any boil water notification shall be kept on site.

(4) Chemical properties.

(A) Camps shall submit a water sample obtained from the entry point to the distribution system to a laboratory for chemical analysis at least once every three years.

(B) The chemical analysis shall be for secondary constituent levels.

(C) Maximum secondary constituent levels are as described in the following table.
Figure: 25 TAC §265.13(r)(4)(C)

(D) Records of all chemical testing shall be kept on site.

(5) Minimum residual disinfectant concentrations and maximum residual disinfectant levels (MRDLs).

(A) The minimum residual disinfectant concentration in the water entering the distribution system and the water within the distribution system shall be 0.2 milligrams per liter (mg/L) free chlorine or 0.5 mg/L chloramine.

(B) The MRDL of chlorine dioxide in the water entering the distribution system shall be 0.8 mg/L.

(C) The MRDL of free chlorine or chloramine in the water within the distribution system shall be 4.0 mg/L based on a running annual average.

(6) Backflow prevention. The plumbing system shall preclude backflow of a solid, liquid, or gas contaminant into the water supply system at each point of use, including on a hose bib, by:

(A) providing an air gap between the water supply inlet and the flood level rim of a plumbing fixture, equipment, or nonfood equipment that is at least twice the diameter of the water supply inlet and not less than 25 mm (1 inch); or

(B) installing an approved backflow prevention device that meets the American Society of Sanitary Engineering (ASSE) standards for construction, installation, maintenance, inspection, and testing for that specific application and type of device.

(7) Disinfection of new or repaired water system facilities.

(A) When repairs are made to existing mains or when new main extensions are installed, they shall be disinfected using such amounts of chlorine compounds as to fill the repaired or new mains and appurtenances with water containing 50 ppm chlorine.

(B) After the water containing this amount of chlorine, which is greater than that normally present in drinking water, has been in contact with the pipe and appurtenances for at least 24 hours, the main shall be flushed until the free chlorine or chloramine in the water within the new or repaired distribution system is less than 4.0 mg/L.

(C) A sample of water from the new or repaired main shall be submitted to a laboratory certified by TCEQ for bacteriological examination so as to be assured that the disinfection procedure was effective.

(8) Calcium hypochlorite. A supply of calcium hypochlorite disinfectant shall be kept on hand for use when making repairs and repairing line breaks.

(9) Lead control. Use of pipes and pipe fittings that contain more than 8.0% lead or solders and flux that contain more than 0.2% lead is prohibited for installation or repair of any water supply and for installation or repair of any plumbing in a residential or nonresidential facility providing water for human consumption. This requirement may be waived for lead joints that are necessary for repairs to cast iron pipe.

(10) Flushing of water system mains. All dead-end mains should be flushed at monthly intervals or more frequently to maintain water quality.

(11) Collection system location.

(A) No sanitary sewers or septic tanks shall be allowed within a distance of 50 feet of any well used for drinking water. No cesspool or septic tank open-jointed drain field shall be allowed within a distance of 150 feet of any well used for drinking water.

(B) Storm sewers located within specified distances for sanitary sewers shall be constructed so as to prevent leakage from them.

(C) Water lines and sanitary sewers shall be installed no closer to each other than nine feet.

(12) Well logs. Copies of well material setting data, geological log, sealing information (pressure cementing and surface protection), disinfection information, bacteriological sample results, and a chemical analysis report of a representative sample of water from the well shall be kept on file.

(13) Interconnection. No physical connection between the distribution system of a camp water supply and that of any other water supply shall be permitted.

(14) Abandoned wells. Abandoned water supply wells owned by the camp shall be plugged with cement according to 16 Texas Administrative Code (TAC), Chapter 76 (relating to Water Well Drillers and Water Well Pump Installers). Wells that are not in use and are non-deteriorated as defined in those rules in this paragraph shall be tested every five years to demonstrate that they are in a non-deteriorated condition. Deteriorated wells shall be either plugged with cement or repaired to a non-deteriorated condition.

[~~(r) Private water wells at youth camps. Camps utilizing a private well system for water must have written confirmation from the TCEQ that the water quality meets 30 TAC, Chapter 290, Public Drinking Water, Subchapter F, Drinking Water Standards Governing Drinking Water Quality And Reporting Requirements For Public Water Systems, as amended. The written confirmation must be given to a department representative upon request.~~]

(s) Disposal of youth camp wastewater. All camp wastewater shall [~~must~~] be disposed of into a community sanitary sewage system or an approved On-site Sewage Facility in accordance with 30 TAC, Chapter 285, On-Site Sewage Facilities. In remote areas, the use of chemical toilets or pit privies is allowed, if the facilities are built and maintained in accordance with manufacturer designs or the Texas Community Sanitation Handbook.

(t) (No change.)

(u) Permanent food preparation, storage and service areas. Permanent food preparation, storage and service areas shall [~~must~~] be maintained in compliance with 25 TAC, Chapter 229, Subchapter K, Texas Food Establishments, §229.161 *et seq.*, [~~Texas Food Establishments,~~] as amended. Items inspected may include, but are not limited to:

(1) (No change.)

(2) cold hold (41 degrees Fahrenheit/45 degrees Fahrenheit);

[~~(2) proper cooking temperatures;~~]

(3) hot hold (135 degrees Fahrenheit);

[~~(3) proper/adequate hand washing and good hygienic practices;~~]

(4) proper cooking temperatures;

[~~(4) approved source/labeling;~~]

(5) rapid reheating (165 degrees Fahrenheit in 2 hrs);

[~~(5) proper handling of ready-to-eat foods;~~]

(6) personnel with infections restricted/excluded;

[~~(6) cross-contamination of raw/cooked foods/other;~~]

(7) proper/adequate hand washing;

[~~(7) approved systems (Hazard Analysis and Critical Control Points (HACCP) plans/time as public health control);~~]

(8) good hygienic practices (eating/drinking/smoking/other);

[~~(8) hot and cold water under pressure;~~]

(9) approved source/labeling;

[~~(9) hand wash facilities adequate, accessible, and with soap and towels;~~]

(10) sound condition - food is not from unapproved sources or in unsound condition;

[~~(10) evidence of insect contamination;~~]

(11) proper handling of ready-to-eat foods;

[~~(11) toxic items properly labeled/stored/used;~~]

(12) no cross-contamination of raw/cooked foods/other;

[~~(12) manual or mechanical ware washing and sanitizing;~~]

(13) approved systems (HACCP (Hazard Analysis and Critical Control Points) plans/time as public health control);

[~~(13) food contact surfaces of equipment and utensils cleaned/sanitized/good repair; and~~]

(14) water supply - approved sources/sufficient capacity/hot and cold water under pressure;

[~~(14) consumer advisories posted (Heimlich, raw shellfish warning, buffet plate).~~]

(15) equipment adequate to maintain product temperature;

(16) hand wash facilities adequate and accessible;

(17) hand wash facilities equipped with soap and towels;

(18) no evidence of insect contamination;

(19) no evidence of rodents/other animals;

(20) toxic items properly labeled/stored/used;

(21) manual/mechanical warewashing and sanitizing at proper ppm/temperature;

(22) manager demonstration of knowledge of safe food handling procedures;

(23) approved sewage/wastewater disposal system, proper disposal;

(24) thermometers provided/accurate/properly calibrated (±2 degrees Fahrenheit);

(25) food contact surfaces of equipment and utensils cleaned/sanitized/good repair; and

(26) posting of consumer advisories (abdominal thrust/disclosure/reminder/ buffet plate).

(v) Playgrounds and equipment. Playgrounds and playground equipment shall meet the standards set forth in the U.S. Consumer Product Safety Commission Publication Number 325, "Handbook for Public Playground Safety" as amended.

§265.14. Primitive or Wilderness Camp.

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

(c) Toilet facilities at primitive campsites. Primitive campsites that are not provided with approved toilet facilities shall have a separate toilet area designated for each sex. Slit trenches or cat holes with a readily available supply of clean earth backfill or other disposal methods approved by the department's Policy, Standards, and Quality Assurance Unit, shall be utilized for the disposal of human excreta in these areas. Approval shall [~~must~~] be received in writing prior to implementation. Toilet areas shall be located at least 150 feet from a stream, lake, or well, and at least 75 feet from a campsite, tent, or other sleeping or housing facility.

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

§265.15. Medical and Nursing Care.

(a) (No change.)

(b) Emergency transportation. Transportation shall [~~must~~] be available at all times to transport any sick or injured camper in an emergency.

(c) (No change.)

(d) Requirement to report incidents of abuse or neglect of a minor.

(1) Requirement to report incidents of abuse or neglect of a minor at a youth camp. If a person, including any member of camp staff, a camp counselor, or camp director has cause to believe that a minor has been or may have been abused or neglected as those terms are defined in the Family Code, Chapter 261, and the abuse or neglect occurred at the youth camp, then that person shall immediately make a report, in accordance with Family Code, §261.101(a), to the Health and Human Services Commission Office of Inspector General, as required by Family Code, §261.103. To make an online report go to https://oig.hhsc.state.tx.us/Fraud_Report_Home.aspx. A report intake form, entitled HHSE Office of Internal Affairs: Texas Youth Camp Waste, Abuse and Fraud Referral Form may be faxed to the Office of Inspector General, Internal Affairs, (512) 833-6493. A report shall be made to the Health and Human Services Commission Office of Inspector General and may be made to a local or state law enforcement agency or other agency listed in Family Code, §261.103.

(2) Requirement to report incidents of abuse or neglect of a minor other than at a youth camp. If a person, including any member of

camp staff, a camp counselor, or camp director has cause to believe that a minor has been or may have been abused or neglected as those terms are defined in the Family Code, Chapter 261, and the abuse or neglect did not occur at the youth camp, then that person shall immediately make a report, in accordance with Family Code, §261.103.

(A) Except as provided by subparagraphs (B), (C) and (D) of this paragraph, a report shall be made to:

(i) any local or state law enforcement agency;

(ii) the Department of Family and Protective Services; or

(iii) the agency designated by the court to be responsible for the protection of children.

(B) A report may be made to the Texas Youth Commission instead of the entities listed under subparagraph (A) of this paragraph if the report is based on information provided by a child while under the supervision of the commission concerning the child's alleged abuse of another child.

(C) Notwithstanding subparagraph (A) of this paragraph, a report, other than a report under subparagraph (D) of this paragraph, shall be made to the Department of Family and Protective Services if the alleged or suspected abuse or neglect involves a person responsible for the care, custody, or welfare of the child.

(D) A report of alleged abuse, neglect, or exploitation in any juvenile justice program or facility shall be made to the Texas Juvenile Probation Commission and a local law enforcement agency for investigation.

~~[(d) Requirement to report incidents of abuse or neglect of a minor. If a person, including any member of camp staff, a camp counselor, or camp director has cause to believe that a minor has been or may have been abused or neglected as those terms are defined in the Texas Family Code, Chapter 261, then that person shall immediately make a report, in accordance with Family Code, §261.101(a) to the department's Policy, Standards and Quality Assurance Unit, as required by §261.103(a)(3). The report can be made by telephone (512-834-6773), by fax (512-834-6707), or by email (the current email address may be found at www.dshs.state.tx.us/youthcamp/default.shtm). A report must be made to the department and may be made to a local or state law enforcement agency or other agency listed in Family Code, §261.103.]~~

(e) - (f) (No change.)

(g) Isolation of a child with a communicable disease. A child ill with a confirmed or suspected case of a communicable disease shall be isolated to provide safety to other children and quiet to the patient. Any child that is isolated shall be supervised as determined by the Camp Health Officer. A child with a staphylococcal skin infection is not required to be isolated, if the infection is kept completely covered by a bandage.

(h) - (j) (No change.)

(k) Emergency plans required. A written plan of procedures to be implemented in case of a disaster, serious accident, epidemic, or fatality shall be formulated and posted in the camp's administrative on-site office or location. All camp staff and volunteers shall [~~must~~] be made aware of this plan during the staff-training program or volunteer briefing. Documentation of this training shall [~~must~~] be kept at the camp's administrative on-site office or location.

(l) Storing and dispensing prescription medication to campers. If a child is taking a prescription medication when he or she reports to camp, the medication shall [~~must~~] be in the original container with the prescription label, and the medical staff shall place that medication and related paraphernalia or devices in a lockable cabinet or other secure location that is not accessible to campers. The medication shall be administered by the Camp Health Officer or camp counselor, if authorized in writing by the Camp Health Officer. At no time shall [~~will~~] the child be allowed to self-administer the medication without adult supervision. Medications needed for immediate use for life-threatening conditions (e.g., bee-sting medication, inhaler) and limited medications approved for use in first-aid kits may be carried by a camper or staff person. The camp shall have on file a written statement of medical necessity from the prescribing doctor or the written approval of the Camp Health Officer for any camper to carry medication and related paraphernalia or devices.

(m) (No change.)

§265.16. Waterfront Safety.

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

(c) Maintenance and operation of swimming areas.

(1) Swimming areas shall be maintained and operated in a safe and clean condition. Youth camp swimming pools are class C pools, and shall [~~must~~] be built, operated, and maintained in accordance with 25 Texas Administrative Code (TAC) [~~TAC~~], Chapter 265, General Sanitation, Subchapter L, Standards for Public Pools and Spas.

(2) Interactive water features and fountains at youth camps shall be maintained and operated in a safe and clean condition. Interactive water features and fountains at youth camps shall be built, operated, and maintained in accordance with 25 TAC, Chapter 265, General Sanitation, Subchapter M, Interactive Water Features and Fountains.

(d) Camper's swimming ability shall [~~must~~] be determined. Camps shall test to determine each child's swimming ability. Children shall then be confined to the limits of swimming skills for which they have been classified. Also, the swimming area shall have areas for non-swimmers, intermediate swimmers [~~intermediates~~], and swimmers clearly marked.

(e) (No change.)

(f) Waterfront lifesaving equipment shall be provided. Lifesaving equipment suitable for the waterfront activity shall be provided at the waterfront activity area and placed so the equipment is immediately available in case of an emergency. All lifesaving equipment shall be kept in good repair and ready condition. At a minimum, this equipment shall include:

(1) a throwing rope that is 1/4-inch to 3/8-inch diameter, with a length at least two-thirds the maximum width of the pool or 20 feet, whichever is greater. A ring buoy that is approved by the United States Coast Guard and that has an outside diameter of 15 to 24 inches shall be attached to the throwing rope;

(2) one or more backboards with a minimum of 3 tie down straps and head immobilizer for back and neck injuries; and

(3) a first aid kit meeting Occupational Safety and Health Administration (OSHA) requirements. First aid kits shall be a standard 24-unit kit and housed in a durable weather-resistant container and kept filled and ready for use. First aid kits shall include disease transmission barriers and cleansing kits that meet OSHA standards.

(g) - (h) (No change.)

§265.19. Maintenance and Safe Use of Motor Vehicles.

(a) Inspection of vehicles used for transportation of campers. Any vehicle used for transporting children on public roadways shall [~~must~~] have all current and applicable Department of Public Safety vehicle inspections.

(b) (No change.)

(c) Drivers shall have a valid driver's license. All drivers shall [~~must~~] be adults and hold a valid driver's license appropriate for the type of vehicle being driven.

§265.20. Farm and Domestic Animals.

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

(d) Rabies vaccinations of animals. All dogs and cats owned or under the supervision of anyone on the camp premises shall be currently vaccinated against rabies in compliance with Health and Safety Code, §826.021. Evidence of vaccination shall [~~must~~] be provided to a department representative upon request.

§265.23. Application and Denial of a New License; Non-transferable [~~Application for a New License~~].

(a) License required. A person shall [~~must~~] possess a valid youth camp license prior to operating a youth camp.

(1) Submitting an application. An application is made by submitting:

(A) a completed youth camp application; [~~and~~]

(B) an activity schedule showing dates and detailed information about the activities that are conducted both at the camp and at other locations;

(C) any other required documents and information; and

(D) paying the license fee as described in §265.28 of this title (relating to Fees).

(2) Obtaining an application. A blank application may be obtained by calling the Environmental and Sanitation Licensing Group at (512) 834-6600 [~~512-834-6600~~], or may be downloaded from the website at www.dshs.state.tx.us/youthcamp/default.shtm. Applications may be submitted [~~All applications may be mailed~~] to the Environmental and Sanitation Licensing Group, Department of State Health Services, Mail Code 2003, P.O. Box 149347 [~~1100 West 49th Street~~], Austin, Texas 78714-9347 [~~78756~~].

(3) Qualifying for a youth camp license. The department shall issue a license if the facility:

(A) meets the definition of a "Youth camp" as described in §265.11(23) of this title (relating to Definitions);

(B) meets the definition of "Youth camp, general characteristics of:" in §265.11(24) of this title; and

(C) is in compliance with all provisions of the Act and the rules prior to operation as determined by:

(i) submitting a complete application as described in paragraph (1) of this subsection; and

(ii) passing a pre-licensing inspection conducted by the department.

(b) Processing applications.

(1) Applications for a new license issued under this chapter shall be submitted to the Environmental and Sanitation Licensing Group at least 90 calendar days prior to camp operation.

(2) The department shall issue the new license or a written notice that the application is complete or that the application is deficient within the following periods of time. The department shall identify deficiencies in the notice, provide a deadline by which the deficiencies shall be corrected, and inform the applicant of the need for a pre-licensing inspection. Deficiencies may include the failure to provide required information, documents, or fees. An application is not considered complete until all required documentation, information, and fees have been received.

(A) Letter of acceptance of application for licensure approving the license and authorizing operation after successfully passing the pre-licensing inspection - within 30 days after the date of passing the pre-licensing inspection. The original license may serve as the letter of acceptance.

(B) Letter of application deficiency - within 30 days after receipt of a deficient application.

(C) Letter of pre-licensing inspection deficiency - a notice of deficiency will be issued to the camp representative on site at the conclusion of the pre-licensing inspection if any deficiencies were noted during the inspection. The camp shall provide documentation that all deficiencies have been corrected within 10 days of the inspection or prior to camp operation, whichever comes first.

(3) In the event that an application for a new license is not processed within the timeframe established in paragraph (2)(A) of this subsection, and no good cause exists for the delay, the applicant has the right to request reimbursement of all fees paid in that particular application process so long as a complete application was submitted at least 90 calendar days prior to camp operation. Requests for reimbursement shall be made in writing to the Environmental and Sanitation Licensing Group. Good cause for exceeding the time period is considered to exist if the number of applications for licensure exceeds by 15% or more the number of applications processed the same calendar quarter of the preceding year or any other condition exists giving the department good cause for exceeding the time period.

(4) If the request for reimbursement as authorized by paragraph (3) of this subsection is denied, the applicant may then appeal to the commissioner for a resolution of the dispute. The applicant shall give written notice to the commissioner requesting reimbursement of the fee paid because the application was not processed within the established time period. The department shall submit a written report of the facts related to the processing of the application and good cause for exceeding the established time periods. The commissioner shall make the final decision and provide written notification of the decision to the applicant and to the department.

[~~(b) Processing applications. All applications will be processed promptly after the completed application form and fees are received. Those who submit incomplete applications will be notified either by telephone or in writing as soon as possible.~~]

(c) Record availability. All records, except criminal background and sex offender registration database checks, required by these rules shall be made available to the department immediately upon request. Criminal background and sex offender registration database checks shall be made available to the department within two business days upon request.

[~~(c) Qualifying for a youth camp license. The department shall determine if the facility meets the definition of a Youth Camp as described in §265.11(20) of this title (relating to Definitions) and the definition of "Youth camp, general characteristics of:" in §265.11(21) of this title. If the facility does not qualify for a license, the application will be denied and the license fee, less a handling fee of $50, refunded. If an application is denied because the facility does not meet the definition of a youth camp, the applicant should determine if a license from another agency is required.~~]

(d) Term of license. The term of a youth camp license shall be one year, beginning on the date of issuance.

(e) License non-transferable. A youth camp license is not transferable and may not be sold, assigned, or otherwise transferred. Any new entity that acquires the operation of a youth camp through sale, assignment, or other transfer shall obtain a new license.

(f) Ownership change. A new application, fee, pre-licensing inspection, and license is required if there is a change in ownership.

(g) Name change. If a camp changes its name during operation, but does not change location or ownership, then a new license may be issued if requested using the form designated by the department, available at http://www.dshs.state.tx.us/youthcamp/forms.shtm, accompanied by a nonrefundable fee of $20.

(h) Location change. A new application, fee, pre-licensing inspection, and license is required if there is a change in physical camp location.

(i) Duplicate license. A duplicate license may be issued if requested using the form designated by the department, available at http://www.dshs.state.tx.us/youthcamp/forms.shtm, accompanied by a nonrefundable fee of $20.

(j) Denials.

(1) The department may deny an application for licensing to those who fail to meet the standards established by these rules. When the department proposes to deny an application, it shall give notice of the proposed action in writing and shall provide information on how to request an administrative hearing. The applicant shall make a written request for a hearing within 30 days from the date on the notice letter sent by the department. The hearing shall be conducted in accordance with the Act, the Administrative Procedure Act, Government Code, Chapter 2001, and the formal hearing procedures of the department at 25 Texas Administrative Code, §1.21 *et seq.*

(2) A letter of denial of licensure may be issued within 60 days of the receipt of application if the applicant does not meet the requirements of subsection (a)(3)(A) or (B) of this section.

(3) A letter of denial of licensure may be issued if the applicant does not meet the requirements of subsection (a)(3)(C) of this section:

(A) within 60 days following the first scheduled date of camp operations if a pre-licensing inspection has not been completed; or

(B) within 60 days following the first scheduled date of camp operations if the camp does not pass the pre-licensing inspection.

(4) A license holder whose license has been denied or revoked may not reapply for a new license for two years from the date of final denial or revocation.

(k) Refunds.

(1) If the applicant does not meet the requirements of subsection (a)(3)(A) or (B) of this section, the application may be denied and the license fee, less a handling fee of $50, may be refunded. If an application is denied because the facility does not meet the requirements of subsection (a)(3)(A) or (B) of this section, the applicant should determine if a license from another agency is required.

(2) If the applicant does not meet the requirements of subsection (a)(3)(C) of this section, the application may be denied and the license fee may not be refunded.

§265.24. Application and Denial of [~~for~~] a Renewal License.

(a) Renewal of a youth camp license. A person holding a license under the Act shall [~~must~~] renew the license annually before the license expires [~~from the date of issuance~~].

(b) Renewal notice. At least 60 [~~30~~] days before a license expires, the department, as a service to the licensee, shall send a renewal notice to the licensee or registrant, by first-class mail to the last known address of the licensee. It remains the responsibility of the licensee to keep the department informed of the licensee's [~~their~~] current address and to take action to renew the license [~~their certificate~~] whether or not they have received the notification from the department. The renewal notice shall [~~will~~] state:

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

(c) Renewal requirements. Renewal applications and fees shall be submitted to the department prior to the license's annual expiration date.

(1) Submitting an application. A renewal application is made by submitting:

(A) a completed youth camp renewal application;

(B) an activity schedule showing dates and detailed information about the activities that are conducted both at the camp and at other locations;

(C) any other required documents and information; and

(D) paying the renewal license fee as described in §265.28 of this title (relating to Fees).

(2) Obtaining an application. A blank renewal application may be obtained by calling the Environmental and Sanitation Licensing Group at (512) 834-6600, or may be downloaded from the website at www.dshs.state.tx.us/youthcamp/default.shtm. Renewal applications may be submitted to the Environmental and Sanitation Licensing Group, Department of State Health Services, Mail Code 2003, P.O. Box 149347, Austin, Texas 78714-9347.

(3) Qualifying for renewal of a youth camp license. The department shall issue a renewal license if the facility:

(A) meets the definition of a "Youth camp" as described in §265.11(23) of this title (relating to Definitions);

(B) meets the definition of "Youth camp, general characteristics of:" in §265.11(24) of this title; and

(C) is in compliance with all provisions of the Act and the rules prior to operation as determined by:

(i) submitting a complete renewal application as described in this subsection;

(ii) passing a pre-licensing inspection conducted by the department, if required; and

(iii) complying with all final orders resulting from any violations of these sections before the application for renewal is submitted.

[~~(c) Renewal requirements. All renewal applications and fees shall be submitted to the department prior to the license's annual expiration date and shall be mailed to the Environmental and Sanitation Licensing Group, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756. The department will renew the license if the applicant meets the standards in these sections, meets the definition of a "Youth camp" as described in §265.11(20) of this title (relating to Definitions) and the definition of "Youth camp, general characteristics of:" in §265.11(21) of this title, submits a complete renewal application on the prescribed form along with all required documentation, pays the required fee, and has complied with all final orders resulting from any violations of these sections.~~]

(d) Processing renewal applications.

(1) Applications for license renewal under this chapter shall be received by the Environmental and Sanitation Licensing Group prior to the expiration date of the license or 45 days prior to camp operation, whichever is earlier.

(2) The department shall issue the renewal license or a written notice that the renewal application is complete or that the renewal application is deficient within the following periods of time from the date of receipt of the renewal application. The department shall identify deficiencies in the notice and provide a deadline by which the deficiencies shall be corrected in order for the department to renew the license or to schedule the pre-licensing inspection if required. Deficiencies may include the failure to provide required information, documents, or fees, or the failure to schedule or successfully pass the pre-licensing inspection if required. An application is not considered complete until all required documentation, information, and fees have been received. If a camp is subject to pre-licensing inspection, the time period for issuing a letter of acceptance of application for license renewal begins upon successfully passing inspection.

(A) Letter of acceptance of application for license renewal approving the license and authorizing operation - within 30 days. The original license may serve as the letter of acceptance.

(B) Letter of renewal application deficiency - within 30 days after receipt of a deficient renewal application.

(C) Letter of pre-licensing inspection deficiency - a notice of deficiency will be issued to the camp representative on site at the conclusion of the pre-licensing inspection if any deficiencies were noted during the inspection. The camp shall provide documentation that all deficiencies have been corrected within 10 days of the inspection or prior to camp operation, whichever comes first.

(3) In the event that a timely and complete application for license renewal is not processed within timeframe established in paragraph (2)(A) of this subsection, and no good cause exists for the delay, the applicant has the right to request reimbursement of all fees paid in that particular application process. Requests for reimbursement shall be made in writing to the Environmental and Sanitation Licensing Group. Good cause for exceeding the time period is considered to exist if the number of applications for licensure exceeds by 15% or more the number of applications processed the same calendar quarter of the preceding year or any other condition exists giving the department good cause for exceeding the time period.

(4) If the request for reimbursement as authorized by paragraph (3) of this subsection is denied, the applicant may then appeal to the commissioner for a resolution of the dispute. The applicant shall give written notice to the commissioner requesting reimbursement of the fee paid because the application was not processed within the established time period. The department shall submit a written report of the facts related to the processing of the application and good cause for exceeding the established time periods. The commissioner shall make the final decision and provide written notification of the decision to the applicant and to the department.

(e) Late renewal. If a license is not renewed within one year after the expiration date, the license may not be renewed. A new license may be obtained by submitting a new application in compliance with §265.23 of this title (relating to Application and Denial of a New License; Non-transferable). If the license is renewed after its expiration date, the renewed license shall expire on the date the license would have expired had it been renewed timely.

(f) [~~(d)~~] Non-renewal. The department may refuse to renew a license if the applicant has not complied with all final orders resulting from any violations of these sections. Eligibility for license renewal may be reestablished by meeting all conditions of the orders and complying with the requirements of this section. The department may not renew the license of a youth camp that has not corrected deficiencies identified in a final order before the application for renewal is submitted. Evidence of corrections, such as photography or documentation satisfactory to the department, shall be submitted to and approved by the Environmental Health Enforcement Unit of the Division for Regulatory Services prior to submitting the renewal application to the Regulatory Licensing Unit of the Division. [~~decide not to renew a license unless the applicant has complied with all final orders resulting from any violations of these sections.~~]

(g) Application determination affecting license expiration. If a license holder makes timely and sufficient application for the renewal of a license, the existing license does not expire until the application has been finally determined by the department. If the application is denied, the existing license does not expire until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(h) Reapplication for license upon denial or revocation. A license holder whose license has been denied or revoked may not reapply for a new license for two years from the date of final denial or revocation.

(i) [~~(e)~~] Opportunity for a hearing. When the department proposes to deny an initial or renewal application, it shall [~~will~~] give notice of the proposed action in writing and shall [~~will~~] provide information on how to request an administrative hearing. The applicant shall [~~must~~] make a written request for a hearing within 30 days from the date on the notice letter sent by the department.

(j) Pre-licensing inspections. A youth camp applying for a license renewal may be subject to a pre-licensing inspection. Youth camps shall be in compliance with all provisions of the Act and the rules prior to operation.

(k) Denials.

(1) The department may deny a renewal application for licensing to those who fail to meet the standards established by these rules. Prior to denying a renewal license, the department shall give the applicant an opportunity for a hearing. The hearing shall be conducted in accordance with the Act, the Administrative Procedure Act, Government Code, Chapter 2001, and the formal hearing procedures of the department at 25 Texas Administrative Code, §1.21 *et seq.*

(2) A letter of denial of license renewal may be issued within 60 days of the receipt of application if the applicant does not meet the requirements of subsection (c)(3)(A) or (B) of this section.

(3) A letter of denial of license renewal may be issued within 60 days following the first scheduled date of camp operations if the applicant does not meet the requirements of subsection (c)(3)(C) of this section.

(l) Refunds.

(1) If the applicant does not meet the requirements of subsection (c)(3)(A) or (B) of this section, the renewal application may be denied and the renewal license fee, less a handling fee of $50, may be refunded. If an applicant is denied because the facility does not meet the requirements of subsection (c)(3)(A) or (B) of this section, the applicant should determine if a license from another agency is required.

(2) If the applicant does not meet the requirements of subsection (c)(3)(C) of this section, the renewal application may be denied and the renewal license fee may not be refunded.

§265.27. Revocation, Administrative Penalties, and Hearings.

(a) - (d) (No change.)

(e) Opportunity for a hearing. Prior to revoking a license or assessing an administrative penalty, the department shall give the person charged an opportunity for a hearing. The hearing shall be conducted in accordance with the Act, the Administrative Procedures Act, Government Code, Chapter 2001, and the formal hearing procedures of the department at 25 Texas Administrative Code, §1.21 *et seq.* [~~and the department's fair hearing procedures in 25 TAC, §1.41, et seq.~~]

(f) (No change.)

§265.28. Fees.

(a) (No change.)

(b) Miscellaneous fees are as follows:

(1) duplicate license fee--$20;

(2) camp name change during operation--$20; and

(3) non-sufficient fund fee--$20.

(c) [~~(b)~~] Applicants may submit applications and renewal applications for a license under these sections electronically by the Internet through Texas Online at www.texasonline.state.tx.us. The department is authorized to collect fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online.

~~[(c) A current license shall only be issued when all past due fees and late fees are paid.]~~

(d) An applicant whose payment for the application and initial license fee is returned due to any reason including insufficient funds, account closed, or payment stopped shall be allowed to reinstate the application by remitting to the department a money order or check for guaranteed funds in the amount of the application and initial license fee plus the Non-Sufficient Fund Fee within 30 days after the date of receipt of the department's notice. An application is incomplete until the fee has been received and cleared through the appropriate financial institution.

~~[(d) All fees are non-refundable, except as specifically noted in these rules.]~~

(e) An applicant whose license has been approved and whose payment for the license fee is returned due to any reason including insufficient funds, account closed, or payment stopped shall remit to the department a money order or check for guaranteed funds in the amount of the license fee plus the Non-Sufficient Fund Fee within 30 days after the date of receipt of the department's notice. Failure to comply with this subsection renders the application and the license approval invalid.

(f) A license holder whose payment for the renewal fee is returned due to any reason including insufficient funds, account closed, or payment stopped shall remit to the department a money order or check for guaranteed funds in the amount of the renewal fee plus the Non-Sufficient Fund Fee within 30 days after the date of receipt of the department's notice. Failure to comply shall result in non-renewal of the license. If a renewal license has already been issued, it shall be invalid.

(g) Upon return unclaimed of the department's notice, as set out in subsections (c) - (e) of this section, the department shall mail the notice to the applicant or license holder by certified mail. If a money order or check for guaranteed funds is not received by the department's cashier within 30 days after the postmarked date on the certified mailing, the approval granted or license issued shall be invalid.

(h) The department may notify the applicant or the license holder's owner that the person has failed to comply with this section and that any approval granted or license issued is invalid.

(i) Initial application or renewal fees shall be refunded only if the fee amounts paid are in excess of the correct fee amount or if there is a double payment. The department shall not refund fees if the application was abandoned due to the applicant's failure to respond within 90 days to a written request from the department.

(j) [~~(c)~~] All fees shall be submitted in the form of personal checks, certified checks, money orders, or checks from state agencies, municipalities, counties, or other political subdivisions of the state made payable to the department.

§265.30. Youth Camp, Ineligibility for Licensure.

The following entities may not obtain a youth camp license.

(1) Entities that do not offer programs that satisfy the characteristics under §265.11(24) of this title (relating to Definitions), "Youth camp, general characteristics of."

(2) Entities that operate a program at or on the campus of an institution of higher education or a private or independent institution of higher education as those terms are defined by the Education Code, §61.003, that is regularly inspected by one or more local governmental entities for compliance with health and safety standards.

(3) Institutions of higher education or a private or independent institution of higher education as defined by the Education Code, §61.003, that is regularly inspected by one or more local governmental entities for compliance with health and safety standards.

(4) Entities that are required to be licensed by the Department of Family and Protective Services.

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

Filed with the Office of the Secretary of State on December 7, 2009.

TRD-200905636
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: January 17, 2010
For further information, please call: (512) 458-7111 x6972

♦ ♦ ♦

TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 122. COMPENSATION PROCEDURE--CLAIMANTS

SUBCHAPTER B. CLAIMS PROCEDURE FOR BENEFICIARIES OF INJURED EMPLOYEES

28 TAC §122.100

The Texas Department of Insurance, Division of Workers' Compensation (Division) proposes amendments to §122.100 of this title (relating to Claim for Death Benefits). This proposal concerns situations where an eligible parent's failure to file a claim for death benefits timely will not bar the claim.

These proposed amendments to §122.100 of this title are necessary due to legislative amendments to Labor Code §408.182 made by House Bill (HB 1058), enacted by the 81st Legislature, Regular Session, effective September 1, 2009. Prior to the enactment of HB 1058, Labor Code §408.182(d-2) authorized the Commissioner of Workers' Compensation (Commissioner) to extend an eligible parent's time for filing a claim for death benefits only if the parent submitted proof satisfactory to the Commissioner of a compelling reason for the parent's delay in filing the claim. HB 1058 amended Labor Code §408.182(d-2) by replacing the "compelling reason" standard with the "good cause" standard, a standard used in various other contexts in the Texas Workers' Compensation Act (Act). This legislative amendment provides that an eligible parent's failure to file a claim in the time required bars the claim unless good cause exists for the failure to file the claim timely. This legislative amendment applies only to a claim for workers' compensation benefits (death benefits) based on a compensable injury that occurs on or after September 1, 2009 (the effective date of HB 1058). The compelling reason standard will remain applicable to claims for death benefits by eligible parents that are based on a compensable injury that occurs on or after September 1, 2007 but prior to September 1, 2009. September 1, 2007 is the effective date of HB 724, enacted by the 80th Legislature, Regular Session, which first made eligible parents entitled to death benefits under the Act.

HB 1058 also amended the definition of "eligible parent" in Labor Code §408.182(f)(4) by removing the requirement that the parent receive burial benefits in order to qualify as an "eligible parent." The Division is proposing elsewhere in this issue of the *Texas Register* amendments to §132.6 and §132.11 of this title (relating to Eligibility of Other Surviving Dependents and Eligible Parents To Receive Death Benefits, and relating to the Distribution of Death Benefits, respectively) which address this legislative amendment to the definition of "eligible parent."

This proposal incorporates into §122.100 of this title HB 1058's amendments pertaining to filing extensions for death benefit claims. These proposed amendments must be read in conjunction with the proposed amendments to §132.6 this title which redefine the term "eligible parent." The proposed amendments to §132.6 of this title deletes the current definition of "eligible parent" in that section and add to that section proposed new subsections (e) and (f). Proposed §132.6(e) defines "eligible parent" for compensable injuries occurring on or after September 1, 2007 but prior to September 1, 2009 to require the parent to receive burial benefits. Proposed §132.6(f) defines "eligible "parent" for compensable injuries occurring on or after September 1, 2009 to not require the parent to receive burial benefits.

These proposed amendments amend §122.100(e)(2) and (e)(3) of this title. The proposed amendments to §122.100(e)(2) will make the good cause exception applicable to all legal beneficiaries including an eligible parent filing a claim for death benefits based on a compensable injury occurring on or after September 1, 2009, but not to an eligible parent filing a claim for death benefits based on a compensable injury occurring on or after September 1, 2007 but prior to September 1, 2009. The proposed amendments to §122.100(e)(3) of this title will make the compelling reason standard applicable only to an eligible parent filing a claim for death benefits based on a compensable injury occurring on or after September 1, 2007 but prior to September 1, 2009.

Mr. Brent Hatch, Special Advisor for Health Care Management and System Monitoring, has determined that for each year of the first five years the proposed amendments are in effect there will be a reduction in the amount of death benefits paid into the Subsequent Injury Fund that equals a maximum of 104 weeks of death benefits multiplied by the number of new legal beneficiaries created by HB 1058. A copy of the fiscal note for HB 1058 can be viewed at http://www.house.state.tx.us. The reduction in revenue to the Subsequent Injury Fund is a result of the legislative enactment of HB 1058 and not a result of these proposed amendments.

Mr. Hatch has determined that for each year of the first five years the proposed amendments are in effect there will be no fiscal impact on local government as a result of enforcing or administering these proposed amendments. Mr. Hatch has also determined that there will be no measurable effect on local employment or the local economy as a result of enforcing or administering these proposed amendments.

Mr. Hatch has determined that for each year of the first five years the proposed amendments will be in effect the anticipated public benefit will be Division rules that reflect HB 1058's legislative amendments to Labor Code §408.182(d-2) concerning the good cause exception to the filing deadline applicable to eligible parents. Mr. Hatch has determined that these proposed amendments do not impose costs upon insurance carriers, health care providers, or employers because these proposed amendments do not impose requirements upon those entities. Mr. Hatch has also determined that these proposed amendments do not impose costs upon eligible parents as these amendments merely change the legal standard an eligible parent must meet in order to extend the time period for filing a claim for death benefits.

As required by Government Code §2006.002(c), the Division has determined that these proposed amendments will not have an adverse economic effect on small or micro-businesses. The Division's analysis of any possible costs for compliance with these proposed amendments that are detailed in the Public Benefit/Cost Note section of this proposal is also applicable to small and micro-businesses. Because these proposed amendments will not have an adverse economic effect on small or micro-businesses, Government Code §2006.002(c) does not require an economic impact statement or regulatory flexibility analysis.

The Division has determined that no private real property interests are affected by these proposed amendments and that these proposed amendments do not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

To be considered, written comments on the proposed amendments must be submitted no later than 5:00 p.m. on January 18, 2010. Comments may be submitted via the Internet through the Division's Internet website at http://www.tdi.state.tx.us/wc/rules/proposedrules/ or by mailing your comments to Texas Department of Insurance, Division of Workers' Compensation, Maria Jimenez, Legal Services, MS-4D, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744.

Any request for a public hearing must be submitted separately to the Texas Department of Insurance, Division of Workers' Compensation, Office of General Counsel, MS-1, 7551 Metro Center Drive, Austin, Texas 78744 by 5:00 p.m. on January 18, 2010. If a hearing is held, written and oral comments presented at the hearing will be considered.

These proposed amendments are proposed under Labor Code §§402.00111, 402.061, 408.181, 408.182, 408.183, and 409.007. Labor Code §402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under Labor Code Title 5. Labor Code §402.061 provides that the Commissioner of Workers' Compensation shall adopt rules as necessary for the implementation and enforcement of the Texas Workers' Compensation Act. Labor Code §408.181 requires an insurance carrier to pay death benefits to the legal beneficiary if a compensable injury to the employee results in death. Labor Code §408.182 requires death benefits to be paid to surviving eligible parents, as defined by that section, of the deceased if there is no eligible spouse, no eligible child, and no eligible grandchild, and there are no surviving dependents of the deceased employee who are parents, siblings, or grandparents of the deceased. Labor Code §408.182 also provides that the failure of an eligible parent to file a claim for death benefits in the time required bars the claim unless good cause exists for the failure to file a claim under this section. Labor Code §408.183 provides that an eligible parent is entitled to receive death benefits until the earlier of the date the eligible parent dies or the date of the expiration of 104 weeks of death benefit payments. Labor Code §409.007 provides that a person must file a claim for death benefits with the Division not later than the first anniversary of the date of the employee's death.

The following sections are affected by this proposal: Labor Code §403.007; Labor Code Subchapter J, Chapter 408; Labor Code §409.007.

§122.100. Claim for Death Benefits.

(a) - (d) (No change.)

(e) Failure to file a claim for death benefits within one year after the date of the employee's death shall bar the claim of a legal beneficiary, other than the subsequent injury fund, unless:

(1) that legal beneficiary is a minor or otherwise legally incompetent;

(2) except as provided by paragraph (3) of this subsection [~~for a legal beneficiary other than an eligible parent~~], good cause exists for failure to file the claim in a timely manner; or

(3) for a legal beneficiary who is an eligible parent as defined by §132.6(e) of this title (relating to Eligibility of Other Surviving Dependents and Eligible Parents To Receive Death Benefits), the parent submits proof satisfactory to the Commissioner of Workers' Compensation of a compelling reason for the delay in filing the claim for death benefits.

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 December 4, 2009.

TRD-200905624
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Earliest possible date of adoption: January 17, 2010
For further information, please call: (512) 804-4703

♦ ♦ ♦

CHAPTER 132. DEATH BENEFITS--DEATH AND BURIAL BENEFITS

28 TAC §132.6, §132.11

The Texas Department of Insurance, Division of Workers' Compensation (Division) proposes amendments to §132.6 and §132.11 of this title (relating to Eligibility of Other Surviving Dependents and Eligible Parents To Receive Death Benefits, and relating to the Distribution of Death Benefits, respectively). These proposed amendments concern an eligible parent's entitlement to death benefits under the Texas Workers' Compensation Act (Act) and the duration and distribution of those death benefits. The Division is proposing elsewhere in this issue of the *Texas Register* amendments to §122.100 of this title (relating to Claim for Death Benefits) which pertain to situations where an eligible parent's failure to file a claim for death benefits timely will not bar the claim.

These proposed amendments to §132.6 and §132.11 of this title are necessary due to legislative amendments to Labor Code §408.182 made by House Bill (HB) 1058, enacted by the 81st Legislature, Regular Session, effective September 1, 2009. Labor Code §408.182 entitles an eligible non-dependent parent to death benefits under the Act in cases where there are no other legal beneficiaries. Prior to September 1, 2009 (the effective date of HB 1058), the non-dependent parent must have received burial benefits in order to qualify for the death benefits. HB 1058 repealed the receipt of burial benefits requirement that was set out in Labor Code 408.182(f)(4). As a result, a surviving non-dependent parent is entitled to receive death benefits under the Act in cases where there are no other legal beneficiaries regardless of whether the parent received burial benefits under the Act. Labor Code §408.182 also provides that payment of death benefits to an eligible non-dependent parent(s) may not exceed 104 weeks. The above described legislative amendments to Labor Code §408.182 apply only to a claim for workers' compensation benefits (death benefits) based on a compensable injury that occurs on or after September 1, 2009. The receipt of burial benefits requirement will still apply to a non-dependant parent filing a claim for death benefits that is based on a compensable injury occurring on or after September 1, 2007 but prior to September 1, 2009. September 1, 2007 is the effective date of HB 724, enacted by the 80th Legislature, Regular Session, which first made eligible parents entitled to death benefits under the Act.

The proposed amendments to §132.6 and §132.11 of this title incorporate the above described legislative amendments into those rules. This proposal first deletes from §132.6(b) of this title the definition of "eligible parent." This proposal then adds to §132.6 of this title proposed new subsections (e) and (f) which define "eligible parent" depending on when the compensable injury occurred. Proposed new subsection (e) of §132.6 of this title defines "eligible parent" for compensable injuries occurring on or after September 1, 2007 but prior to September 1, 2009 that results in the death of the employee to mean the mother or the father of a deceased employee, including an adoptive parent or a stepparent, who receives burial benefits under §132.13 of this title (relating to Burial Benefits), but does not include a parent whose parental rights have been terminated. This proposal provides that a parent who as provided by proposed new subsection (e) is required to receive burial benefits in order to qualify as an eligible parent must include with a claim for death benefits proof that the parent received burial benefits. Proposed new subsection (f) of §132.6 of this title defines eligible parent for compensable injuries occurring on or after September 1, 2009 that results

in the death of the employee to mean the mother or the father of a deceased employee, including an adoptive parent or a stepparent, but does not include a parent whose parental rights have been terminated. For purposes of proposed new subsection (f), whether the parent received burial benefits is irrelevant. This proposal finally adds language to §132.11(e) of this title providing that total payments to an eligible parent may not exceed 104 weeks regardless of the number of surviving eligible parents.

Mr. Brent Hatch, Special Advisor for Health Care Management and System Monitoring, has determined that for each year of the first five years the proposed amendments are in effect there will be a reduction in the amount of death benefits paid into the Subsequent Injury Fund that equals a maximum of 104 weeks of death benefits multiplied by the number of new legal beneficiaries created by HB 1058. A copy of the fiscal note for HB 1058 can be viewed at http://www.house.state.tx.us. The reduction in revenue to the Subsequent Injury Fund is a result of the legislative enactment of HB 1058 and not a result of these proposed amendments.

Mr. Hatch has determined that for each year of the first five years the proposed amendments are in effect there will be no fiscal impact on local government as a result of enforcing or administering these proposed amendments. Mr. Hatch has also determined that there will be no measurable effect on local employment or the local economy as a result of enforcing or administering these proposed amendments.

Mr. Hatch has determined that for each year of the first five years the proposed amendments will be in effect the anticipated public benefit will be Division rules that reflect HB 1058's amendments to Labor Code §408.182 concerning eligible parents and their entitlement to death benefits, and the distribution of death benefits to eligible parents. Mr. Hatch has determined that there are no costs imposed upon health care providers, employers, or legal beneficiaries by these proposed amendments because these proposed amendments do not impose requirements upon these persons. With regard to insurance carriers, HB 1058 nor these proposed amendments increase the amount of death benefits an insurance carrier must pay as a result of an employee's compensable injury that results in death. HB 1058 and these proposed amendments require insurance carriers to pay 104 weeks of death benefits to the new legal beneficiaries created by HB 1058, an amount that the insurance carrier would have otherwise paid to the Subsequent Injury Fund.

As required by Government Code §2006.002(c), the Division has determined that these proposed amendments will not have an adverse economic effect on small or micro-businesses. The Division's analysis of any possible costs for compliance with these proposed amendments that are detailed in the Public Benefit/Cost Note section of this proposal is also applicable to small and micro-businesses. Because these proposed amendments will not have an adverse economic effect on small or micro-businesses, Government Code §2006.002(c) does not require an economic impact statement or regulatory flexibility analysis.

The Division has determined that no private real property interests are affected by these proposed amendments and that these proposed amendments do not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

To be considered, written comments on the proposed amendments must be submitted no later than 5:00 p.m. on January 18, 2010. Comments may be submitted via the Internet through the Division's Internet website at http://www.tdi.state.tx.us/wc/rules/proposedrules/ or by mailing your comments to Texas Department of Insurance, Maria Jimenez, Legal Services, MS-4D, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744.

Any request for a public hearing must be submitted separately to the Texas Department of Insurance, Division of Workers' Compensation, Office of General Counsel, MS-1, 7551 Metro Center Drive, Austin, Texas 78744 by 5:00 p.m. on January 18, 2010. If a hearing is held, written and oral comments presented at the hearing will be considered.

These proposed amendments are proposed under Labor Code §§402.00111, 402.061, 408.181, 408.182, and 408.183. Labor Code §402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under Labor Code Title 5. Labor Code §402.061 provides that the Commissioner of Workers' Compensation shall adopt rules as necessary for the implementation and enforcement of the Texas Workers' Compensation Act. Labor Code §408.181 requires an insurance carrier to pay death benefits to the legal beneficiary if a compensable injury to the employee results in death. Labor Code §408.182 requires death benefits to be paid to surviving eligible parents, as defined by that section, of the deceased if there is no eligible spouse, no eligible child, and no eligible grandchild, and there are no surviving dependents of the deceased employee who are parents, siblings, or grandparents of the deceased. Labor Code §408.182 also provides that total payments under that section may not exceed 104 weeks regardless of the number of surviving eligible parents. Labor Code §408.183 provides that an eligible parent is entitled to receive death benefits until the earlier of the date the eligible parent dies or the date of the expiration of 104 weeks of death benefit payments.

The following sections are affected by this proposal: Labor Code §403.007; Labor Code, Subchapter J, Chapter 408.

§132.6. Eligibility of Other Surviving Dependents and Eligible Parents To Receive Death Benefits.

(a) (No change.)

(b) A surviving eligible parent is entitled to receive death benefits only if there is no eligible spouse, no eligible child, and no eligible grandchild, and there are no surviving dependents of the deceased employee who are parents, siblings, or grandparents of the deceased. [~~The term "eligible parent" means the mother or the father of a deceased employee, including an adoptive parent or a stepparent, who receives burial benefits under §132.13 of this title (relating to Burial Benefits), but does not include a parent whose parental rights have been terminated.~~]

(c) A person claiming to be a beneficiary under subsection (a) or (b) of this section is required to present proof of the relationship to the deceased employee to the insurance carrier or along with the claim for death benefits. The evidence presented as proof of a relationship shall include certified copies of applicable birth certificates, or decrees of adoption, or proof of marriage. If these documents do not exist, the claimant shall submit other proof of relationship, such as baptismal records, court orders establishing paternity, voluntary admissions of paternity, or affidavits of persons who have personal knowledge of the relationship to the deceased employee. A person claiming to be a ben-

eficiary under subsection (a) of this section shall submit evidence of dependence on the deceased employee as defined in §132.2 of this title (relating to Determination of Facts of Dependent Status). A person claiming to be a beneficiary under subsection (b) of this section shall designate all eligible parents on the claim for death benefits. An insurance carrier is not liable for payment to any eligible parent not designated on the claim for death benefits. A person claiming to be a beneficiary under subsection (b) of this section who is required to receive burial benefits in order to qualify as an eligible parent as provided in subsection (e) of this section shall also submit proof of receipt of burial benefits unless the claim for burial benefits is filed with the insurance carrier pursuant to §132.13 of this title (relating to Burial Benefits) at the same time the claim for death benefits is filed with the division [~~Division~~] or the claim for burial benefits has been filed with the insurance carrier but is still pending at the time the claim for death benefits is filed with the division [~~Division~~].

(d) (No change.)

(e) For a compensable injury occurring on or after September 1, 2007 but prior to September 1, 2009 that results in the death of the employee, the term "eligible parent" means the mother or the father of a deceased employee, including an adoptive parent or a stepparent, who receives burial benefits under §132.13 of this title, but does not include a parent whose parental rights have been terminated.

(f) For a compensable injury occurring on or after September 1, 2009 that results in the death of the employee, the term "eligible parent" means the mother or the father of a deceased employee, including an adoptive parent or a stepparent, but does not include a parent whose parental rights have been terminated.

§132.11. Distribution of Death Benefits.

(a) - (d) (No change.)

(e) If there is no eligible spouse, no eligible child, and no eligible grandchild, and there are no surviving dependents of the deceased employee who are parents, siblings, or grandparents of the deceased, the death benefits shall be paid in equal shares to surviving eligible parents. The amount paid may not exceed one payment per household and total payments may not exceed 104 weeks regardless of the number of surviving eligible parents.

(f) - (g) (No change.)

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

Filed with the Office of the Secretary of State on December 4, 2009.

TRD-200905623
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Earliest possible date of adoption: January 17, 2010
For further information, please call: (512) 804-4703

♦ ♦ ♦

TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER O. STATE SALES AND USE TAX

34 TAC §3.333

The Comptroller of Public Accounts proposes an amendment to §3.333, concerning security services. This rule is being amended pursuant to House Bill 3155, 76th Legislature, 1999, which enacted the adoption of the Occupations Code, including Private Investigators and Private Security Agencies, Chapter 1702, House Bill 2617, 76th, Legislature, 1999, which changed the title of Private Investigators and Private Security Agencies Act to Private Security Act, House Bill 2812, 77th Legislature, 2001, which amended the Tax Code by changing the definition of a security service to mean a service for which a license is required under Occupations Code, §1702.101 or §1702.102, Senate Bill 1252, 78th Legislature, 2003, which added a license for providers of electronic access control devices, House Bill 1531, 79th Legislature, 2005, which excepted certain telematics service providers from licensing requirements, Senate Bill 568, 79th Legislature, 2005, which excepted certain personal emergency response systems providers from licensing requirements, House Bill 3140, 79th Legislature, 2005, which added e-commerce to the types of sales which, if performed exclusively, can enable a seller of protective devices to be excepted from licensing requirements, House Bill 808, 79th Legislature, 2005, which excepted accountants from licensing requirements, House Bill 2833, 80th Legislature, 2007, which added locksmith companies and private security consulting companies to those requiring a contractor's license, and House Bill 142 80th Legislature, 2007, which changed the sourcing of local taxes for transit authorities to origin-based sourcing.

Subsection (a) is amended to change licensing authority to Occupations Code, Chapter 1702, to add a new license required under §1702.1025, and to add electronic access control device company, locksmith company and private security consultant company to those requiring a license. Subsection (i) is amended to delete locksmiths from, and to add certain persons who provide telematics services, certain persons who provide personal emergency response systems, accountants, and persons selling alarm systems through e-commerce to the list of persons excepted from the licensing requirements. Subsection (j) is added to exclude from sales tax the use of a slim-jim or similar device to unlock a vehicle. Subsection (m) is amended to reflect change in treatment of local taxes by transit authorities. Subsections (g), (n) and (o) are amended for clarity.

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

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

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

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

The amendment implements Occupations Code, §§1702.001, 1702.101, 1702.102, 1702.1025, 1702.324, 1702.331 and 1702.332. It implements the repeal of Tax Code, §322.105(d) and §322.107. It also implements Tax Code, §151.0075.

§3.333. Security Services.

(a) What a security service is. Security service means any service for which a license is required under Occupations Code, §§1702.101, 1702.102, or 1702.1025 [~~the Texas Civil Statutes, Article 4413(29bb)~~], [~~Private Investigators and~~] Private Security [~~Agencies~~] Act[~~, §13~~], and includes any service provided within the scope of the required license as an investigations company, guard company, alarm systems company, armored car company, courier company, guard dog company, security services contractor, private security officer, detective service, [~~or~~] private investigator, electronic access control device company, locksmith company, or private security consultant company.

(b) Hold permits. A provider of security services must obtain a Texas sales and use tax permit and collect tax on the total amount charged for security services, or accept a properly completed resale or exemption certificate in lieu of collecting tax. See §3.285 of this title (relating to Resale Certificate; Sales for Resale) and §3.287 of this title (relating to Exemption Certificates).

(c) Employees. Security services performed by an employee for his employer in the regular course of business, within the scope of the employee's duties, and for which the employee is paid his regular wages or salary are not taxable.

(d) Temporary security service personnel. A security service is taxable even when provided on a temporary basis unless:

(1) the security service is performed by a temporary help service for an employer to supplement the employer's existing security service personnel on a temporary basis;

(2) the security service is normally performed by the employer's own employees;

(3) the employer provides all supplies and equipment necessary; and

(4) the temporary employee is under the direct or general supervision of the employer to whom the security service is furnished.

(e) Security services provided in Texas. Charges for providing security service to property or persons located in Texas are subject to Texas sales tax. Unless a customer claims multistate benefit as provided in subsection (p) [~~(o)~~] of this section, if any portion of the security service originates in Texas, Texas sales tax is due even though a portion of the service may be performed in another state. Credit will not be allowed against Texas sales tax for use tax imposed by another state when the service benefit location is in Texas. Detective and investigation services of corporate locations or premises located outside Texas are not taxable if the investigation is unrelated to any investigation of corporate locations in Texas.

(f) Credit for security services originating in another state. If a security service originates in another state and sales tax is legally paid on that service in the other state, credit against the Texas use tax will be allowed. See §3.338 [~~§3.340~~] of this title (relating to Multistate Tax Credits and Allowance of Credit for Tax Paid to Suppliers).

(g) Resale certificates.

(1) A seller of a security service may issue a resale certificate in lieu of tax to a supplier of tangible personal property only if care, custody, and control of the property will be transferred to the service provider's client. For example, a security service provider purchases a DVD [~~magnetic tape~~] to transfer the results of an investigation to a customer. The DVD [~~tape~~] is transferred to the customer, and the customer owns and uses the DVD [~~tape~~] to review the results of the security service. The security service provider may purchase the DVD [~~tape~~] tax free by issuing a resale certificate. Tax is due on the total amount charged the customer, including amounts for the DVD [~~tape~~] and for the services.

(2) A resale certificate may be issued for a taxable service if the buyer intends to transfer the service as an integral part of a taxable service. A service will be considered an integral part of a taxable service if the service purchased is essential to the performance of the taxable service and without which the taxable service could not be rendered.

(3) A resale certificate may be issued for a taxable service if the buyer intends to incorporate the service into tangible personal property that will be resold. If the entire service is not incorporated into the tangible personal property, it will be presumed the service is subject to tax and the service will be exempt only to the extent the buyer can establish the portion of the service actually incorporated into the tangible personal property. If the buyer does not intend to incorporate the entire service into the tangible personal property, no resale certificate may be issued, but credit may be claimed at the time of sale of the tangible personal property to the extent the service was actually incorporated into the tangible personal property.

(h) Unrelated services.

(1) A service will be considered unrelated if:

(A) it is not a security service, nor a service taxable under other provisions of [~~the~~] Tax Code, Chapter 151;

(B) it is of a type that is commonly provided on a stand-alone basis; and

(C) the performance of the unrelated service is distinct and identifiable. Examples of unrelated services that may be excluded from the tax base include a service for which no license is required, such as coin-wrapping services by a courier or armored car service, or providing court testimony, training, or filing legal documents.

(2) Where nontaxable unrelated services and taxable services are sold or purchased for a single charge and the portion relating to taxable services represents more than 5.0% of the total charge, the total charge is presumed to be taxable. The service provider may overcome the presumption by separately stating to the customer at the time the transaction occurs a reasonable charge for the taxable services. However, if the charge for the taxable portion of the services is not separately stated at the time of the transaction, the service provider or the purchaser may later establish for the comptroller, through documentary evidence, the percentage of the total charge that relates to nontaxable unrelated services. The service provider's books must support the apportionment between taxable and nontaxable activities based on the cost of providing the service or on a comparison to the normal charge for each service if provided alone. If the charge for nontaxable services is unreasonable when the overall transaction is reviewed, the comptroller will adjust the charges and assess additional tax, penalty, and interest on the taxable services.

(3) Charges for services or expenses directly related to and incurred while providing a taxable service are taxable and may not be separated for the purpose of excluding those charges from the tax base.

Examples include charges for meals, telephone calls, hotel rooms, or airplane tickets.

(i) Excepted persons. Persons excepted from the licensing requirements of the [~~Private Investigators and~~] Private Security [~~Agencies~~] Act[~~, §13~~], are not providing security services subject to the sales tax because they are not required to hold a license to provide their services. Examples include, but are not limited to:

(1) persons employed exclusively and regularly by one employer in connection with the affairs of the employer;

(2) officers or employees of the United States, this state, or a political subdivision of either, while engaged in the performance of official duties;

(3) persons who have full-time employment as peace officers as defined by Code of Criminal Procedure, Article 2.12, and who receive compensation for private employment on an individual or an independent contractor basis as patrolmen, guards, or watchmen;

(4) persons who provide telematics services (a service that may rely on global positioning system satellite data to fix the exact location of a vehicle) as defined in Occupations Code, §1702.332(a), and who have satisfied exemption requirements as set out in Occupations Code, §1702.332(c);

[~~(4) locksmiths who do not install or service detection devices, do not conduct investigations, and are not security service contractors;~~]

(5) persons who sell burglar alarm or other protective devices exclusively over-the-counter, [~~or~~] by mail order or by e-commerce; [~~and~~]

(6) persons who sell or install automobile burglar alarm devices;[~~.~~]

(7) persons set out in Occupations Code, §1702.331(b), who provide personal emergency response systems as defined in Occupations Code, §1702.331(a), that are not part of a combination of alarm systems that include burglar alarm or fire alarm; and

(8) a person or firm licensed as an accountant or accounting firm under Occupations Code, Chapter 901, an owner of an accounting firm, or an employee of an accountant or accounting firm.

(j) A charge for using a slim-jim or similar device to open a locked vehicle, is not taxable, even when the service provider is a licensed locksmith.

(k) [~~(j)~~] Taxable under other provisions. Persons whose activities are not defined as security services may nonetheless be performing a service that is taxable under other provisions. Examples include, but are not limited to:

(1) persons engaged in the business of obtaining and furnishing credit information. See §3.343 of this title (relating to Credit Reporting Services);

(2) insurance adjusters, insurance investigators, and/or claims processors performing services in connection with a policy of insurance. Although not taxable as security services, some insurance services are subject to sales and use tax. See §3.355 of this title (relating to Insurance Services).

(l) [~~(k)~~] Undercover agents. The fact that a security service provider may be performing his services by furnishing an undercover agent will not affect the applicability of sales tax to the service transaction between the employer and the consumer. The employer of the undercover agent is considered to be providing security services to a client, and that transaction is subject to the sales tax.

(m) [~~(l)~~] Local taxes. Local sales and use taxes (city, county, transit authority, and special purpose district) apply to services in the same way as they apply to tangible personal property. A [~~Generally, a~~] service provider must collect local sales taxes if the service provider's place of business is within a local taxing jurisdiction, even if the service is actually provided at a location outside that jurisdiction. [~~However, transit sales taxes do not apply to services provided outside the boundaries of the transit area.~~] If the place of business is outside such a jurisdiction but the service is provided to a customer within a local taxing jurisdiction, local use taxes apply and the service provider is responsible for collecting them. For information on the collection and reporting responsibilities of providers and purchasers of taxable services, see §3.374 of this title (relating to Collection and Allocation of the City Sales Tax) and[~~,~~] §3.375 of this title (relating to City Use Tax)[~~, §3.424 of this title (relating to Collection and Allocation of Transit Sales Tax), and §3.425 of this title (relating to Transit Use Tax)~~].

(n) [~~(m)~~] Use tax. If a seller of a service is not engaged in [~~doing~~] business in Texas or in a specific local taxing jurisdiction and is not required to collect Texas state or local tax, it is the Texas customer's responsibility to report the use tax directly to this office.

(o) [~~(n)~~] Service benefit location. If the security service provider is in Texas and the customer is located only in Texas, Texas tax is due, and must be collected by the security service provider.

(p) [~~(o)~~] Service benefit location--multistate customer.

(1) To the extent a security service is provided for a separate, identifiable segment of a customer's business, the service is presumed to benefit the location where that part of the customer's business is conducted.

(2) To the extent the use of the service cannot be assigned to an identifiable segment of a customer's business, the service is presumed to be used to support the administration or operation of the customer's business generally. The security service is presumed to be used at the customer's principal place of business. The principal place of business means the place from which the trade or business is directed or managed.

(3) If a multistate customer claims that part of the security service benefits the customer's business at locations both within and outside the state, the customer must provide the security service provider with an exemption certificate in lieu of tax. It will then be the customer's responsibility to report the tax to this office for that portion of the security service that benefits Texas locations. The security service will not be taxable to the extent the customer can establish benefit outside Texas. A multistate customer may use any reasonable method for allocation that is supported by business records.

(4) A security service provider who accepts an exemption certificate in good faith is relieved of responsibility for collecting and remitting tax on transactions to which the certificate relates.

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

Filed with the Office of the Secretary of State on December 3, 2009.

TRD-200905552
Ashley Harden
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: January 17, 2010
For further information, please call: (512) 475-0387

♦ ♦ ♦

CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)

SUBCHAPTER C. CLAIMS PROCESSING--TRAVEL VOUCHERS

34 TAC §5.22

The Comptroller of Public Accounts proposes an amendment to §5.22, concerning state of Texas travel guidance. The section is being amended to implement House Bill 605, 81st Legislature, 2009. This bill eliminated the requirement that the comptroller's office must maintain a mileage guide. The proposed amendment implements this change in law by removing all references to The Texas Mileage Guide. Other changes to the section are for clarity.

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

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by clarifying travel provisions for government agencies and their employees. The proposed amendment would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Macy Douglas, Statewide Fiscal Services Division, P.O. Box 13528 Austin, Texas 78711.

This amendment is authorized under Government Code, §660.021, which provides the comptroller the authority to adopt rules for the administration of travel provisions for the state of Texas.

The amendment implements Government Code, §660.043(c).

§5.22. State of Texas Travel Guidance.

(a) General travel information will be maintained on the comptroller's Web site. The information will include procedures, as provided in this rule, Government Code, Chapter 660, and the General Appropriations Act; examples; guidelines that will help support the travel expense reimbursement process for state agencies[~~; and The Texas Mileage Guide providing the number of miles for the shortest or most cost-effective route between two points~~]. Procedures, amounts, timing, limits, required documentation, permissible payees, distinctions among different types of state employees, or any other details concerning travel expense payments or reimbursements by a state agency are governed by Government Code, Chapter 660, the General Appropriations Act, and the rules adopted by the comptroller under Government Code, Chapter 660.

(b) Eligible expenses. A travel expense must be incurred before it is eligible for reimbursement.

(1) For lodging and transportation expenses, proof of payment must be documented to validate that the expenses were actually incurred.

(2) A state employee who receives free transportation or lodging in exchange for points or other non-monetary credits has not incurred an expense for reimbursement purposes.

(c) Erroneous processing and erroneous vouchers.

(1) A state agency or a state employee may not seek reimbursement of a travel expense that the agency or employee knows or reasonably should know is not reimbursable.

(2) The comptroller's omission of a particular travel expense reimbursement as erroneous during a post-payment audit does not prevent the comptroller from designating a similar reimbursement as erroneous in a subsequent audit.

(d) Meal and lodging expenses.

(1) A state employee may be reimbursed for meal and/or lodging expenses that are incurred on a day that the employee conducts state business. The reimbursement is limited to the rates set forth in the General Appropriations Act. The reimbursement limit applies without a carry-over from one day to another.

(2) Meal and lodging expenses incurred at a duty point the night before state business begins are reimbursable.

(3) Meal and lodging expenses incurred more than one night before state business begins are not reimbursable unless traveling to the duty point reasonably requires more than one day or the expenses are incurred to qualify for a discount airfare.

(e) Apartment or house rental expenses.

(1) An apartment or house rental expense may be reimbursed if:

(A) the purpose of the rental is the conservation of state funds; and

(B) the agency reasonably anticipates that the employee will be using the apartment or house while conducting state business throughout the term of the lease.

(2) Application fees and other mandatory costs associated with applying for rental of the apartment or house are reimbursable.

(f) Other reimbursable expenses.

(1) In accordance with Government Code, §660.141, a state employee may be reimbursed for travel expenses incurred while staying extra days at a duty point to qualify for a discount airfare. Such expenses may be reimbursed only if:

(A) the amount of the reimbursement plus the amount of the discount is less than the average coach airfare or the contracted airfare; and

(B) the employing agency determines that the employee's absence for the extra days is not detrimental to the agency.

(2) Incidental expenses.

(A) Pursuant to Government Code, §660.002, a state employee or legislator is entitled to be reimbursed for incidental expenses when they are incurred for a state business reason.

(B) Examples of reimbursable incidental expenses include, but are not limited to: mandatory charges or mandatory service charges; telephone calls; toll charges; parking charges; repair charges for a state-owned vehicle; postage; passport or visa charges required for foreign travel; and currency exchange fees.

(C) Tips or gratuities and excess baggage charges for personal belongings are not reimbursable expenses.

(g) Mileage.

(1) Amount of mileage reimbursement.

(A) The mileage reimbursement rate is established by the legislature in the General Appropriations Act.

(B) With the exception of tolls and parking expenses, the mileage reimbursement rate is inclusive of all expenses associated with the operation of the employee's personal vehicle.

(2) Determination of reimbursable mileage.

(A) The number of miles traveled by an employee for state business may be determined by [~~the Texas Mileage Guide as published on the comptroller's Web site or by using~~] point-to-point itemization.

(B) Point-to-point mileage may be documented by an employee's vehicle odometer reading or by a readily available electronic mapping service such as MapQuest, Yahoo Maps, Google Maps, satellite-based navigation systems, etc., as determined by each agency, institution of higher education, or other entity required to comply with Government Code, Chapter 660.

(h) Travel advance accounts.

(1) A state agency may establish an account for advancing funds to a state employee for the employee's projected travel expenses.

(2) A state agency that declines to establish a travel advance account may not make travel advances.

(3) A travel advance account may not be used for any purpose other than to make travel advances.

(4) A state agency may not issue a travel advance to:

(A) a prospective state employee;

(B) an employee of another state agency unless the employee will be providing services to the agency issuing the travel advance; or

(C) a person who is not a state employee, including a commercial transportation company, a commercial lodging establishment, a credit card issuer, and a travel agency.

(5) The comptroller may not reimburse the travel advance account of a state agency for a travel advance to a state employee who at the time of the advance had been properly reported to the comptroller as being indebted to the state.

(6) Under and over advances.

(A) If a state employee received a travel advance that is less than the reimbursable expenses incurred, the employing state agency may reimburse the employee for the difference.

(B) If an employee received a travel advance that is greater than the reimbursable expenses incurred, then the employee shall promptly reimburse the account for the difference.

(7) A travel advance account may not be reimbursed for a travel expense that would not have been reimbursed if the account had not been used.

(i) Voucher and documentation requirements.

(1) The comptroller requires supporting information and/or documentation to be included on a voucher prior to submission for payment.

(2) Supporting documentation must be sufficient to detail the expenses claimed. Supporting documentation requirements apply to a travel expense that is paid directly and to a travel expense reimbursement made by an agency. The information or documentation required changes periodically; however, it generally includes the following: documentation of employee's headquarters, required itemizations, purpose of trip, and required receipts.

(j) Audits conducted by the comptroller.

(1) Under Government Code, §660.028, the comptroller is required to periodically audit travel vouchers submitted for payment either before or after the comptroller issues a warrant or initiates an electronic funds transfer in response to the voucher. These audits and examinations assist the comptroller's office in determining whether:

(A) the expenses were reasonable and necessary;

(B) the purpose of travel clearly involved state business and was consistent with the agency's legal authority;

(C) the travel conducted and expenses incurred complied with the Travel Regulations Act, comptroller rules, travel provisions of the General Appropriations Act, the Texas Procurement and Support Services contract requirements, and policies and procedures adopted by the comptroller's office; and

(D) the number of individuals traveling for the same or a similar purpose was necessary to perform state business.

(2) The comptroller may question the fiscal responsibility of a payment even if it is technically legal.

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 December 3, 2009.

TRD-200905553
Ashley Harden
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: January 17, 2010
For further information, please call: (512) 475-0387

♦ ♦ ♦

SUBCHAPTER D. CLAIMS PROCESSING--PAYROLL

34 TAC §5.48

The Comptroller of Public Accounts proposes an amendment to §5.48, concerning deductions of contributions to charitable organizations. Subsection (n) is being amended to delete a requirement which requires the State Employee Charitable Campaign (SECC) State Policy Committee (SPC) to enter into a contract with the organization that the SPC selects as the state campaign manager. Because the SECC statutes do not provide the SPC with specific authority to contract with the campaign manager and because the statutes contemplate that the campaign manager be selected through an application process, there is no need for this provision. Subsections (n) - (r) are amended to correct erroneous references to Government Code, Chapter 659, Subchapter H. Subchapter H, which previously contained the SECC statutory provisions, was relettered as Subchapter I by Acts 2001, 77th Legislature, 2001, Chapter 1420, §21.001(57). Other nonsubstantive changes are made throughout the rule for greater clarity and readability.

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

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by clarifying the administrative procedures of the state employee charitable campaign. The proposed amendment would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be addressed to Suzy Whittenton, Director, Fiscal Management Division, P.O. Box 13528, Austin, Texas 78711. If a person wants to ensure that the comptroller considers and responds to a comment made about this proposal, then the person must ensure that the comptroller receives the comment not later than the 30th day after the issue date of the *Texas Register* in which this proposal appears. If the 30th day is a state or national holiday, Saturday, or Sunday, then the first workday after the 30th day is the deadline.

The amendment is proposed under Government Code, §§659.132(f) - (g), (j), 659.133(b), 659.136(c), 659.137(a), 659.140(e)(6), 659.141(6) and 659.148(d), which generally authorize the comptroller to adopt rules for administration of various aspects of the state employee charitable campaign, including payroll deduction, the duties of the SPC, and the duties of the state campaign manager.

The amendment implements Government Code, §659.140(e)(2).

§5.48. Deductions for Contributions to Charitable Organizations.

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

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

(4) Charitable organization--Has the meaning assigned by [~~the~~] Government Code, §659.131.

(5) Comptroller--The Comptroller of Public Accounts [~~comptroller of public accounts~~] for the State of Texas.

(6) Comptroller's electronic funds transfer system--The system authorized by [~~the~~] Government Code, §403.016, that the comptroller uses to initiate payments instead of issuing warrants.

(7) - (8) (No change.)

(9) Direct services--Has the meaning assigned by [~~the~~] Government Code, §659.131.

(10) Eligible charitable organization--A charitable organization that is determined to be eligible to participate in the state employee charitable campaign as provided by this section and [~~the~~] Government Code, §659.146.

(11) - (12) (No change.)

(13) Federated community campaign organization--Has the meaning assigned by [~~the~~] Government Code, §659.131.

(14) Federation or fund--Has the meaning assigned by [~~the~~] Government Code, §659.131.

(15) (No change.)

(16) Health and human services--Has the meaning assigned by [~~the~~] Government Code, §659.131.

(17) Holiday--A state or national holiday as specified by [~~the~~] Government Code, §662.003. The term does not include a state or national holiday if the General Appropriations Act prohibits state agencies from observing the holiday.

(18) (No change.)

(19) Indirect services--Has the meaning assigned by [~~the~~] Government Code, §659.131.

(20) Institution of higher education--Has the meaning assigned by [~~the~~] Education Code, §61.003. The term does not include a public junior college that has decided not to participate in the state employee charitable contribution program in accordance with subsection (x) of this section.

(21) Local campaign area--Has the meaning assigned by [~~the~~] Government Code, §659.131.

(22) Local campaign manager--A federated community campaign organization or a charitable organization that is selected by a local employee committee as provided by this section and [~~the~~] Government Code, §659.144.

(23) (No change.)

(24) Local charitable organization--Has the meaning assigned by [~~the~~] Government Code, §659.131.

(25) Local employee committee--Has the meaning assigned by [~~the~~] Government Code, §659.131.

(26) - (27) (No change.)

(28) Public junior college--Has the meaning assigned by [~~the~~] Education Code, §61.003. The term includes a community college.

(29) (No change.)

(30) State advisory committee--Has the meaning assigned by [~~the~~] Government Code, §659.131.

(31) State agency--Has the meaning assigned by [~~the~~] Government Code, §659.131.

(32) - (33) (No change.)

(34) State employee charitable campaign--Has the meaning assigned by [~~the~~] Government Code, §659.131.

(35) State employee charitable contribution program--The charitable deduction program authorized by [~~the~~] Government Code, Chapter 659, Subchapter D (exclusive of the deductions authorized by [~~the~~] Government Code, §659.1311(b) - (c)).

(36) State policy committee--Has the meaning assigned by [~~the~~] Government Code, §659.131.

(37) - (39) (No change.)

(b) - (f) (No change.)

(g) Procedure for federations or funds to apply for statewide participation.

(1) Request for statewide participation. A federation or fund may not be a statewide federation or fund unless the federation or fund applies to the state policy committee for that status in accordance with this section, [~~the~~] Government Code, §659.146, and the committee's procedures.

(2) Requirements for the application. The application of a federation or fund to be a statewide federation or fund must include:

(A) a letter from the presiding officer of the federation or fund's board of directors certifying compliance by the federation or fund and its affiliated agencies with the eligibility requirements of [~~the~~] Government Code, §659.146;

(B) - (F) (No change.)

(3) - (6) (No change.)

(h) Procedure for charitable organizations to apply for local participation.

(1) Request for local participation.

(A) A charitable organization may not be an eligible local charitable organization unless it applies to the appropriate local employee committee for that status in accordance with this section, [~~the~~] Government Code, §659.147, and the committee's procedures.

(B) (No change.)

(2) Requirements for applications from federations or funds. If a charitable organization applying to be an eligible local charitable organization is a federation or fund, then the organization must provide to the appropriate local employee committee:

(A) a letter from the presiding officer of the federation or fund's board of directors certifying compliance by the federation or fund and its affiliated agencies with the eligibility requirements of [~~the~~] Government Code, §659.147;

(B) - (F) (No change.)

(3) (No change.)

(i) - (m) (No change.)

(n) Responsibilities of the state policy committee.

(1) Statutory responsibilities. The state policy committee shall fulfill its statutory responsibilities as set forth in [~~the~~] Government Code, Chapter 659, Subchapter I [~~H~~].

(2) Additional responsibilities. In addition to its statutory responsibilities, the state policy committee:

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

[~~(H) shall contract with the organization selected as the state campaign manager;~~]

(H) [~~(I)~~] may establish policies and procedures for the operation and administration of the state employee charitable campaign, including policies and procedures about the hearing of any grievance concerning the operation and administration of the campaign;

(I) [~~(J)~~] shall consult with the state campaign manager and the state advisory committee before approving the campaign plan, budget, and materials;

(J) [~~(K)~~] may not approve campaign materials if:

(i) they do not state that statewide federations or funds may or may not provide services in all local campaign areas;

(ii) they list a charitable organization as both a statewide federation or fund and an eligible local charitable organization;

(iii) they list a charitable organization as an affiliate of two or more statewide federations or funds unless the organization serves separate and distinct populations as part of each statewide federation or fund;

(iv) they list similarly named eligible local charitable organizations in the same local campaign area unless the appropriate local employee committee has determined that each organization delivers services in different geographical areas within the local campaign area;

(v) they list a charitable organization as an affiliate of more than one federation or fund certified as an eligible local charitable organization unless the appropriate local employee committee has determined that the charitable organization delivers services to separate and distinct populations in the local campaign area as part of its membership in the federations or funds;

(vi) they do not state that a local campaign manager or a statewide federation or fund may distribute quarterly a state employee's deductions;

(vii) they do not state that a local campaign manager or a statewide federation or fund is required to distribute a state employee's deductions based on the percentage method instead of matching deducted amounts received by the local campaign manager or statewide federation or fund to the employee's designations; or

(viii) they do not accurately describe the percentage method;

(K) [~~(L)~~] shall review and approve or disapprove the generic materials used by the state campaign manager and local campaign managers;

(L) [~~(M)~~] shall ensure that local campaign areas do not overlap;

(M) [~~(N)~~] shall ensure that only one local campaign manager is responsible for solicitation of all state employees in the local campaign area for which the manager has responsibility;

(N) [~~(O)~~] shall submit to the comptroller the name and boundaries of each local campaign area not later than the 30th day after the end of the annual application period;

(O) [~~(P)~~] shall compile and submit to the comptroller not later than the 30th day after the end of the annual application period a list of the local campaign managers and the name, address, and telephone number of each manager's primary contact;

(P) [~~(Q)~~] shall notify the comptroller immediately after a change occurs to the name or mailing address of a statewide federation or fund or local campaign manager;

(Q) [~~(R)~~] shall notify the comptroller immediately after a change occurs to the name, title, telephone number, or mailing address of the primary contact of a local campaign manager or a statewide federation or fund; and

(R) [~~(S)~~] shall represent all statewide federations or funds and local campaign managers for the purposes of:

(i) communicating with the comptroller, including receiving and responding to correspondence from the comptroller; and

(ii) disseminating information, including information about the requirements of this section, to representatives of federations or funds, local employee committees, and local campaign managers.

(3) - (5) (No change.)

(o) Responsibilities of the state advisory committee. The state advisory committee shall fulfill its statutory responsibilities as set forth in [~~the~~] Government Code, Chapter 659, Subchapter I [~~H~~].

(p) Responsibilities of local employee committees.

(1) Statutory responsibilities. A local employee committee shall fulfill its statutory responsibilities as set forth in [~~the~~] Government Code, Chapter 659, Subchapter I [~~H~~].

(2) - (4) (No change.)

(q) Responsibilities of the state campaign manager.

(1) Statutory responsibilities. The state campaign manager shall fulfill the manager's statutory responsibilities as set forth in [~~the~~] Government Code, Chapter 659, Subchapter I [~~H~~].

(2) - (3) (No change.)

(r) Responsibilities of local campaign managers.

(1) Statutory responsibilities. A local campaign manager shall fulfill the manager's statutory responsibilities as set forth in [~~the~~] Government Code, Chapter 659, Subchapter I [~~H~~].

(2) - (4) (No change.)

(s) - (x) (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 December 3, 2009.

TRD-200905554
Ashley Harden
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: January 17, 2010
For further information, please call: (512) 475-0387

♦ ♦ ♦

CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER B. PERFORMANCE AUDIT ADMINISTRATION

34 TAC §9.301

The Comptroller of Public Accounts proposes new §9.301, concerning appraisal district reviews. This section implements House Bill 8, 81st Legislature, 2009, effective January 1, 2010. The section establishes administrative and procedural guidelines for reviews of appraisal districts' governance, taxpayer assistance, operating standards, appraisal standards, appraisal procedures and appraisal methodology at least once every two years.

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

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by improving the procedures for the review of county appraisal district operations. The proposed rule will have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the new section may be submitted to Deborah Cartwright, Director, Property Tax Assistance Division, P.O. Box 13528, Austin, Texas 78711-3528.

This new section is proposed under House Bill 8's amendment to Tax Code, §5.102(a) which allows the comptroller to adopt rules for conducting and scoring the review after consulting with the comptroller's Property Value Study Advisory Committee.

This new section implements Tax Code, §5.102.

§9.301. Appraisal District Reviews.

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

(1) Comptroller--The Texas Comptroller of Public Accounts or the comptroller's designee.

(2) District--A county appraisal district.

(3) Division--The Property Tax Assistance Division of the Office of the Comptroller of Public Accounts.

(4) Generally accepted appraisal standards, procedures, and methodology--Standards and procedures adopted or recommended by the International Association of Assessing Officers (IAAO) concerning appraisal, contracting, personnel, and administration of ad valorem taxation, and The Appraisal Foundation's Uniform Standards of Professional Appraisal Practice.

(5) Review--The comptroller's review of the governance of each appraisal district, taxpayer assistance provided, and the operating and appraisal standards, procedures, and methodology used by each appraisal district as required by Tax Code, §5.102.

(6) Score--The measure of performance indicated at the conclusion of a review.

(7) Study--The property value studies required by Government Code, §403.302 and Tax Code, §5.10.

(8) Remedial action--Activities and decisions made by the board of directors of a district that demonstrate awareness of and concern for implementing the review's recommendations and actions taken which demonstrate significant progress towards implementing the recommendations in a timely manner.

(b) Biennial Review. A review of every district shall be conducted once every two years according to a schedule in which approximately one-half of the districts are subject to reviews each year. The comptroller may determine the schedule of reviews and assignments of districts based on considerations which include, but are not limited to, the efficient use of comptroller resources and coordination with the schedule for conducting the study.

(c) Scope of Review. The review shall be based on requirements of the Tax Code, comptroller rules, other laws, and generally accepted appraisal standards, procedures and methodology. The division shall develop questions, conduct physical inspections of property and appraisal records, and use other methods that are designed to determine compliance with these requirements and to develop a score. Compliance with §§9.3001, 9.3002, 9.3003, and 9.3004 of this title (relating to Appraisal Cards; Tax Maps; Uniform Tax Records System; and Appraisal Records of All Property) is mandatory and required to obtain a passing score.

(d) Scores. The results of a district review shall be scored at the conclusion of the review. Scores shall include pass or fail determinations for compliance requirements deemed mandatory by the comptroller. A district must pass all mandatory compliance requirements in order for a school district to be in compliance with the requirements of Government Code, §403.3011(2)(D). A recommendation shall be made by the division for each indication of non-compliance. Scores for other requirements shall be divided into the following categories:

(1) governance;

(2) taxpayer assistance;

(3) district operations; and

(4) appraisal standards, procedures and methodology.

(e) Reporting. The division shall provide a draft report of the review findings and recommendations to the district's chief appraiser by June 1 or as soon thereafter as practicable. The review for each district shall be completed by the division no later than December 31. As soon as practicable, the comptroller shall deliver by regular, first-class mail to the district's chief appraiser and board of directors and the superintendent and board of trustees of each school district participating in the district the comptroller's recommendations for improvement resulting from the review.

(f) Compliance with review recommendations. The district and its board of directors shall take remedial action reasonably designed to ensure substantial compliance with each recommendation in the review within 12 months from the date that the results of the review were delivered as required by this section. The comptroller shall determine substantial compliance during December of the year following the year of the review. Substantial compliance may be determined if the district has taken remedial action for each recommendation in the review. If the comptroller determines that the district has not achieved substantial compliance, the Texas Department of Licensing and Regulation shall be notified and provided copies of the results and recommendations of the review within 30 days of the comptroller's 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 December 3, 2009.

TRD-200905555
Ashley Harden
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: January 17, 2010
For further information, please call: (512) 475-0387

♦ ♦ ♦

SUBCHAPTER C. APPRAISAL DISTRICT ADMINISTRATION

34 TAC §9.417

The Comptroller of Public Accounts proposes an amendment to §9.417, concerning applications for charitable organization property tax exemptions. Tax Code, §11.184(g) authorizes the comptroller to adopt rules to implement the section and prescribe the form of an application for a determination letter.

The proposed amendment makes changes to the rule to implement the provisions of House Bill 2555, 80th Legislature, 2009, effective January 1, 2010. The bill repeals Tax Code §11.184(b), to change the exemption for organizations engaged primarily in performing charitable functions from optional to mandatory. The bill also amends Tax Code §11.184(c) and adds subsections (l), (m) and (n) to allow corporations that do not qualify as a charitable organization under §11.18 to qualify for an exemption under this section if they are exempt from federal income taxation under certain provisions of the Internal Revenue Code. The rule, as amended, would also adopt by reference a revised Form 50-299 for application for primarily charitable organization property tax exemption and 501(c)(2) property tax exemptions. The revised rule and form provide revised requirements for an organization to receive the exemption.

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

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

Comments on the proposal may be submitted to Deborah Cartwright, Director, Property Tax Assistance Division, P.O. Box 13528, Austin, Texas 78711-3528.

The amendment is proposed under Tax Code, §11.184, which allows the comptroller to adopt rules to implement the section.

The amendment implements Tax Code, §11.184.

§9.417. Property Tax Exemption for Organizations Engaged Primarily in Charitable Activities.

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

(1) Local charitable organization--An organization that is a chapter, subsidiary, or branch of a statewide charitable organization and that is engaged primarily in performing functions that are listed in Tax Code, §11.18(d).

(2) Statewide charitable organization--An organization that is statewide and that is engaged primarily in performing functions that are listed in Tax Code, §11.18(d).

(b) A statewide or local charitable organization is entitled to [~~taxing unit may adopt~~] a tax exemption for property that the [~~a statewide or local~~] charitable organization owns if the property is used exclusively by the charitable organization or by other organizations that are eligible for tax exemption under Tax Code, §11.18 or §11.184, except as provided in subsection (c) of this section. [~~The exemption may be adopted either by the governing body of the taxing unit or by the voters at an election that is called by the governing body of a taxing unit.~~]

(c) Use of exempt property by persons who are not charitable organizations eligible for exemption does not result in the loss of an exemption authorized by this section if the use is incidental to use by those charitable organizations and limited to activities that benefit the charitable organization that owns or uses the property.

(d) A charitable [~~An~~] organization that seeks a tax exemption under this section must obtain from the comptroller and submit with its application a determination letter that verifies that the organization is exempt from sales tax and, if applicable, franchise tax, as a charitable organization. For information or procedures on obtaining a determination letter from the comptroller, see §3.322 of this title (relating to Exempt Organizations) and other publications that the comptroller issues.

(e) A determination by the comptroller that a statewide charitable organization is exempt from sales tax and, if applicable, franchise

tax, will also constitute a determination of exempt status for any local charitable organizations that have been identified in the statewide charitable organization's application for determination. The comptroller will send a determination letter to that statewide organization and to any subchapters that are included in the statewide organization's application.

(f) A corporation that is not a qualified charitable organization that seeks a tax exemption under this section must obtain from the comptroller and submit with its application a determination letter that verifies that the organization meets the requirements of Tax Code, §11.184(l). A determination letter issued under this subsection will also include a statement that the qualified charitable organization for which the corporation holds title to the property would qualify for an exemption from taxation of the property if the qualified organization owned the property.

(g) [~~(f)~~] An organization must submit a copy of the comptroller's determination letter to the chief appraiser at the same time that the organization submits its application for property tax exemption. The chief appraiser shall determine if the charitable organization is using its property exclusively for charitable activities.

(h) [~~(g)~~] An organization must comply with the filing requirements for application for property tax exemption that are stated in Tax Code, §11.43(d). A request to the comptroller for a determination letter for purposes of compliance with subsection (d) or (f) of this section does not automatically extend the filing due date of April 30.

(1) If an organization has not received a determination letter from the comptroller, the organization may use the following procedure to request that the chief appraiser extend the filing due date for an application for exemption.

(A) The organization must submit to the chief appraiser a written request for an extension by no later than April 1;

(B) The request for extension should state that the organization has submitted a request for a determination letter to the comptroller and should have as an attachment a copy of the request for determination letter that the organization submitted to the comptroller;

(C) The chief appraiser shall grant the organization's request for extension for a period of not longer than 60 days if the organization has complied with subparagraphs (A) and (B) of this paragraph;

(D) The chief appraiser may verify with the comptroller that a request for a determination letter has been submitted.

(2) Notwithstanding paragraph (1) of this subsection, the chief appraiser may extend the deadline for filing an application for exemption at any time under the authority provided by Tax Code, §11.43.

(i) [~~(h)~~] If the chief appraiser, upon receipt of the application for tax exemption, disagrees with the comptroller's determination, then the chief appraiser may request a review of the determination by submitting a written request to the comptroller.

(1) The written request for reconsideration must be directed to the manager of the Tax Policy [~~Property Tax~~] Division, must contain specific grounds on which the chief appraiser disagrees with the comptroller's determination, and must be accompanied by specific evidence that supports each ground that the chief appraiser asserts.

(2) The comptroller will respond to the written request for reconsideration within 30 calendar days from the date on which the request for reconsideration was received.

(3) The comptroller's decision to uphold the determination is conclusive evidence that an organization is engaged primarily in performing charitable function as well as whether the corporation meets the requirements of Tax Code, §11.184(l)(1) and (2). The decision is not subject to further appeal.

(j) [~~(i)~~] An exemption under this section expires at the end of the fifth tax year after the year in which the exemption is granted. The organization may obtain a new determination letter and reapply for the exemption.

(k) [~~(j)~~] An application for exemption must be substantially in the form of the Application for Primarily Charitable Organization Property Tax Exemption (Form 50-299). The comptroller adopts this form by reference. Copies of the form are available for inspection at the office of the Texas Register or may be obtained from the Comptroller of Public Accounts, P.O. Box 13528, Austin, Texas 78711. Copies may also be requested by calling our toll-free number, 1-800-252-9121. In Austin, call (512) 305-9999. [~~From a Telecommunications Device for the Deaf (TDD), call 1-800-248-4099, toll free. In Austin, the local TDD number is (512) 463-4621.~~]

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 December 4, 2009.

TRD-200905603
Ashley Harden
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: January 17, 2010
For further information, please call: (512) 475-0387

♦ ♦ ♦

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 27. CRIME RECORDS
SUBCHAPTER A. REVIEW OF PERSONAL CRIMINAL HISTORY RECORD

37 TAC §27.1

The Texas Department of Public Safety (the department) proposes amendments to §27.1, relating to the right of a person with criminal history record information on file with the department to access and review that information. The proposed amendments are necessary to clarify the methods by which a person may access and receive a copy of criminal history record information maintained by the department that relates to the person.

Cheryl MacBride, Assistant Director, Finance, has determined that for each year of the first five-year period the rule is in effect there will be no significant fiscal implications for state or local government, or local economies.

Ms. MacBride also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. The anticipated economic cost to individuals who are required to comply with the rule as proposed is the $24.95 administrative fee for obtaining a copy of criminal history record information maintained by the de-

partment that relates to the individual. There is no anticipated negative impact on local employment.

In addition, Ms. MacBride has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be publication of the different methods available to a person to review and access criminal history record information relating to that person.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that 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.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

Comments on the proposal may be submitted to Louis Beaty, Manager, Crime Records Service, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0230, (512) 424-5836.

The amendments are proposed pursuant to: Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Government Code, §411.086, which requires the department to adopt rules that provide a uniform method of requesting criminal history record information from the department; Texas Government Code, §411.083(b)(3), which requires the department to grant access to criminal history record information to the person who is the subject of the information; and Texas Government Code, §411.088, which allows the department to charge an individual a fee for processing inquires for criminal history record information.

Texas Government Code, §§411.004(3), 411.086 and 411.083(b)(3) and 411.088 are affected by this proposal.

§27.1. Right of Review.

(a) It is the policy of the Texas Department of Public Safety (department) that a person may access and receive a copy of criminal history record information maintained by the department that relates to the person upon payment of a fee as authorized by §411.088, Texas Government Code. A person with criminal history record information on file with the Federal Bureau of Investigation (FBI) must contact the Special Correspondence Bureau of the FBI at (304)[-]625-3878 to review or correct those records. In this section, "criminal history record information" means information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations and other formal criminal charges and their dispositions. This term does not include identification information, including fingerprint records, to the extent that the identification information does not indicate involvement of the person in the criminal justice system or driving record information maintained by the department under Subchapter C, Chapter 521, Transportation Code.

(b) A person may personally appear at the Texas Department of Public Safety, Criminal History and Fingerprint Services, 108 Denson Drive, Austin, Texas 78752 [~~department's headquarters in Austin~~] during normal business hours and request the person's criminal history record information as follows:

[~~(1) The person must submit a signed, written request to the Assistant Chief of Administration, Crime Records Service, or his/her designee located at Texas Department of Public Safety, Criminal History and Fingerprint Services, 108 Denson Drive, Austin, Texas 78752.~~]

(1) [~~(2)~~] The person must present a government issued photo identification document, be fingerprinted by a designee of the department to establish identification and provide the following information:

(A) the person's complete printed name (LAST, FIRST, MIDDLE), including any other names used by the person; and

(B) the person's sex, race and date of birth (MONTH, DAY, YEAR).

(2) [~~(3)~~] The person must remit [~~cash,~~] check, U.S. money order or other method of payment accepted by the department in the amount of $24.95 ($9.95 L-1 Enrollment Services Fingerprint Fee and $15 Texas Record Check Fee [~~$15~~] per fingerprint submission.

(3) [~~(4)~~] Upon receipt of a request described by this subsection and the required fee, the department will conduct a fingerprint based search of the Texas Computerized Criminal History Database. If criminal history record information relating to the person is located, the department will provide the person with a printout of the information. If criminal history record information relating to the person is not located, a certified letter [~~notation of such fact will be made on the fingerprint card and the fingerprint card~~] will be provided [~~returned~~] to the person stating, "No record on file". The department will provide the person with the results of the search at Texas Department of Public Safety, Criminal History and Fingerprint Services, 108 Denson Drive, Austin, Texas 78752 after 3:00 p.m. on the next business day after the day the department receives the request.

(c) A person who is unable to personally appear at the Criminal History and Fingerprint Services office [~~department's headquarters~~] in Austin may request the person's criminal history record information as follows:

(1) The person must be fingerprinted by a criminal justice agency or other entity [~~approved by the department~~] on a department approved fingerprint card, or by the department approved electronic fingerprint submission vendor. The criminal justice agency, [~~or~~] other entity or the department approved vendor for the electronic submission of fingerprints must establish the person's identity by requiring the person to produce a government issued photo identification document.

(2) The criminal justice agency or other entity [~~approved by the department~~] must include the following identifying information of the person on the fingerprint card:

(A) the person's complete name (LAST, FIRST, MIDDLE), including any other names used by the person;

(B) the person's sex, race and date of birth (MONTH, DAY, YEAR); and

(C) a complete, legible set of ten rolled fingerprints and simultaneous impressions taken from the person.

(3) If the [~~The~~] person mails [~~must mail~~] the completed fingerprint card, a signed, written request that the department search the criminal history files for criminal history record information relating to the person and a check or U.S. money order in the amount of $15 [~~$15.00~~] per fingerprint card must be submitted to Crime Records

Service, Attn: Criminal History Inquiry Unit [~~Correspondence Supervisor~~], Texas Department of Public Safety, P.O. Box 15999, Austin, Texas 78761-5999. The written request must include the printed name, phone number and return mailing address of the person designated to receive the criminal history results.

(4) Fingerprint cards with illegible prints or incomplete information will be returned to the [~~return~~] address provided in the written request for proper re-submission. When re-submitting fingerprints, the rejected card must be included with the re-submission.

(5) Upon receipt of a request described by this subsection and the required fee, the department will conduct a fingerprint based search of the Texas Computerized Criminal History Database. If criminal history record information relating to the person is located, a printout of the information[~~, the submitted fingerprint card~~] and the requesting letter will be returned to the designee [~~person~~]. If criminal history record information relating to the person is not located, a certified letter will be returned to the designee stating, "No record on file" [~~notation of such fact will be made on the fingerprint card and the fingerprint card~~] and the requesting letter will be returned to the person.

(d) If a person believes criminal history record information maintained by the department relating to the person is incorrect or incomplete, the person may contact the Error Resolution Unit at P.O. Box 4143, Austin, Texas 78765-4143 or ErrorResolution@txdps.state.tx.us.

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 December 4, 2009.

TRD-200905604
Stuart Platt
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: January 17, 2010
For further information, please call: (512) 424-5848

♦ ♦ ♦

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 376. REGISTRATION OF FACILITIES

40 TAC §376.1

The Texas Board of Occupational Therapy Examiners proposes an amendment to §376.1, concerning Facility Definitions. The amendment will remove the definition for linked facility, as this category will no longer be recognized. The amendment will add Facility to describe the title Definitions.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Maline also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be an easier way to make facilities the same category with the same fee. This will remove confusion about the type of facility and the appropriate fee(s). There will be no effect on small businesses or micro-businesses. There are anticipated economic costs to some persons who are required to comply with the rule as proposed, which has been outlined in 22 TAC §§651.1 - 651.3 in the fee changes and economic impact statement published in the October 2, 2009, issue of the *Texas Register* (34 TexReg 6822).

Comments on the proposed rule may be submitted to Augusta Gelfand, OT Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701, (512) 305-6900, or through email: augusta.gelfand@mail.capnet.state.tx.us.

The amendment is proposed under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this amended section.

§376.1. Facility Definitions.

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

(1) Occupational Therapy Facility--A physical site, such as a building, office, or portable facility, where the practice of occupational therapy takes place. An Occupational Therapy Facility must be under the direction of an occupational therapist, registered or occupational therapist licensed by the board. The definition of Occupational Therapy Facility does not include a physical site such as a building, office, or portable facility if it meets all three conditions:

(A) It is not in the care, custody or control of the individual or company providing occupational therapy services therein; and

(B) Occupational therapy services are not provided on a predictable or regular basis at any one location; and

(C) Healthcare delivery is not the primary purpose, activity, or business of the site where the services are provided.

(2) The OT or OTR in Charge--An occupational therapist who is designated on the application for registration and who has the authority and responsibility for the facility's compliance with the Act and Rules pertaining to the practice of occupational therapy in the facility.

[~~(3) An OT linked facility--Facility in which PT services are already registered at the same location with the same owner(s). If the PT facility registration is not current, full OT registration must be paid.~~]

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 December 4, 2009.

TRD-200905625
John Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Earliest possible date of adoption: January 17, 2010
For further information, please call: (512) 305-6900

♦ ♦ ♦

40 TAC §376.3

The Texas Board of Occupational Therapy Examiners proposes an amendment to §376.3, concerning Requirements for Registration Application. The amendment will remove the terms additional facility and linked facility, as these categories of facilities will no longer exist. The proposed amendment will also remove the requirement for the notarization of the Therapist in Charge form.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Maline also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be an easier way to make facilities the same category with the same fee. This will remove much confusion about the type of facility and the appropriate fee. There will be no effect on small businesses. There are anticipated economic costs to some persons who are required to comply with the rule as proposed, which has been outlined in 22 TAC §§651.1 - 651.3 in the fee changes and economic impact statement published in the October 2, 2009, issue of the *Texas Register* (34 TexReg 6822).

Comments on the proposed rule may be submitted to Augusta Gelfand, OT Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701, (512) 305-6900, or through email: augusta.gelfand@mail.capnet.state.tx.us.

The amendment is proposed under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this amended section.

§376.3. Requirements for Registration Application.

(a) Registration applications must include:

(1) name of the Occupational Therapy Facility;

(2) physical/street address of the Occupational Therapy Facility;

(3) mailing address, if different from the street address;

(4) the name and following information about the entity or individual (in the case of a sole proprietorship) holding themselves out as offering occupational therapy services at the facility.

(A) Sole proprietor:

(i) name, home address, date of birth, social security number of the sole proprietor;

(ii) federal employer identification number if applicable.

(B) Partnership:

(i) name, home address, date of birth, social security number of the managing partner;

(ii) federal employer identification number.

(C) Corporation:

(i) names, home addresses, dates of birth, and social security numbers of managing officers (for purposes of this subsection, managing officers are defined as the top four executive officers, including the corporate officer in charge of occupational therapy Facility operations);

(ii) federal employer identification number.

(D) Governmental entity (federal, state, county, local):

(i) name, home address, date of birth, social security number of the individual completing the application;

(ii) federal employer identification number;

(5) the name and license number of the OT or OTR in Charge and his or her [~~notarized~~] signature;

(6) the names and license numbers of other licensees of the Act who practice in the Occupational Therapy Facility;

(7) the Social Security Number and [~~notarized~~] signature of the individual, managing partner or officer or person authorized to complete the form;

(8) the non-refundable application fee, as set by the Executive Council.

(b) An individual or entity that holds themselves out as offering occupational therapy at more than one facility is required to submit a [~~one primary facility application and an additional~~] facility application for each [~~additional~~] Occupational Therapy Facility registered.

(c) All of the facilities owned by an individual, partnership, corporation or other entity will receive synchronized expiration dates. [~~Such additional Occupational Therapy Facility that is registered less than six months before the primary facility registration expires will receive an expiration date in the same month as the primary, but in the following year.~~] An additional Occupational Therapy Facility registered six or more months [~~month~~] before the first [~~primary~~] facility expiration date will receive the same expiration date as for the first [~~primary~~] facility.

(d) An Occupational Therapy Facility that has not been registered previously must complete the registration process and have the registration certificate before the first patient treatment.

(e) The Occupational Therapy Facility application is valid one year after it is received by the board.

[~~(f) The Occupational Therapy Facility will be charged a registration fee(s) for the primary site(s) and/or additional site(s). In some cases an OT linked facility fee may apply. An OT linked facility is a facility in which PT services are already registered at the same location with the same owner(s). If the PT facility registration is not current, full OT registration must be paid.~~]

(f) [~~(g)~~] The Occupational Therapy Facility registration fee(s) [~~for the primary site and/or additional site(s)~~] will be waived in circumstances which are temporary in nature, such as a natural disaster or events for special populations, such as the Special Olympics.

(g) [~~(h)~~] Waiver from Occupational Therapy Facility registration fees does not nullify all other sections as set forth in the TBOTE Rules, Chapter 376.

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 December 4, 2009.

TRD-200905626
John Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Earliest possible date of adoption: January 17, 2010
For further information, please call: (512) 305-6900

♦ ♦ ♦

40 TAC §376.6

The Texas Board of Occupational Therapy Examiners proposes an amendment to §376.6, concerning Renewal of Registration Application. The amendment will remove the terms additional facility and linked facility, as these categories of facilities will no longer exist. The proposed amendment will also remove the requirement for the notarization of the Therapist in Charge form.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Maline also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be an easier way to make facilities the same category, with the same fee. This will remove much confusion about the type of facility and the appropriate fee. There will be no effect on small businesses. There are anticipated economic costs to some persons who are required to comply with the rule as proposed, which has been outlined in 22 TAC §§651.1 - 651.3 in the fee changes and economic impact statement published in the October 2, 2009, issue of the *Texas Register* (34 TexReg 6822).

Comments on the proposed rule may be submitted to Augusta Gelfand, OT Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701, (512) 305-6900, or through email: augusta.gelfand@mail.capnet.state.tx.us.

The amendment is proposed under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this amended section.

§376.6. Renewal of Registration Application.

(a) An individual or entity registered as an Occupational Therapy Facility under this Rule must renew its registration annually. Licensee may not provide occupational therapy services in a facility if the registration is not current.

(b) Requirements to renew a facility are:

(1) a renewal signed by the owner, managing partner or officer, or a person authorized by the owner to complete the form and the OT or OTR-in-charge;

(2) a list of all occupational therapy practitioners working at the facility;

(3) the renewal fee as set by the Executive Council, and any late fees, which may be due; and

(4) an Occupational Therapist-in-Charge form with the [~~notarized~~] signature of the occupational therapist.

(c) The annual renewal date of a [~~primary~~] Occupational Therapy Facility registration is the last day of the month in which the registration was originally issued, or as synchronized with the first facility registered by an owner. [~~The renewal date for an additional facility will be the same as the renewal date for the primary facility.~~] The owner of OT facilities may request that the renewal date of the OT facilities be synchronized with the PT facilities in the same locations [~~with which they are associated~~].

(d) The board will notify the Occupational Therapy Facility at least 30 days before the registration expiration date. An individual or entity offering occupational therapy bears the responsibility for ensuring that the registration is renewed. Failure to receive a renewal notice from the board does not exempt the requirement to pay the renewal fee in a timely manner.

(e) The Occupational Therapy Facility renewal certificate must be displayed with the original certificate and is the property of the board.

(f) An Occupational Therapy Facility will be allowed to renew without a late fee if the renewal application and fee are received prior to the expiration date. However, the board will not issue the certificate until the Board receives the signed [~~and notarized~~] OT or OTR-in-Charge form and a list of the name(s) of the occupational therapy practitioners employed at that facility.

[~~(g) The registration renewal fee for an OT linked facility will be for OT primary and/or additional facility where the same owner has previously registered a PT facility at the same location. The PT facility registration must be current in order for the owner to pay the OT linked facility fee.~~]

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 December 4, 2009.

TRD-200905627
John Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Earliest possible date of adoption: January 17, 2010
For further information, please call: (512) 305-6900

♦ ♦ ♦

40 TAC §376.9

The Texas Board of Occupational Therapy Examiners proposes an amendment to §376.9, concerning Disciplinary Action. The amendment will allow disciplinary action by the agency against the owner for one or all of the facilities should there be a violation.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Maline also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to allow the discipline to effectively be on the owner should there be a violation by the owner. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed, as the intent of the amendment was in the old language as well. There are anticipated economic costs to some persons who are required to comply with the rule as proposed, which has been outlined in 22 TAC §§651.1 - 651.3 in the fee changes and economic impact statement published in the October 2, 2009, issue of the *Texas Register* (34 TexReg 6822).

Comments on the proposed rule may be submitted to Augusta Gelfand, OT Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe St., Suite 2-510, Austin, Texas 78701, (512) 305-6900, or through email: augusta.gelfand@mail.capnet.state.tx.us.

The amendment is proposed under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this amended section.

§376.9. Disciplinary Action.

(a) The board may assign disciplinary action to an individual or entity registering a facility under this Rule for violation of the Act or Rules. The disciplinary action may include: revocation or suspension of the registration; probation; penalty fees; or other appropriate disciplinary action.

(b) The processing of complaints against individuals or entities registering Occupational Therapy Facilities under this Rule is accomplished in accordance with Chapter 374 of this title (relating to Complaints).

(c) A revocation or suspension of a registration affects all facilities registered by the same owner [~~under one primary 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.

Filed with the Office of the Secretary of State on December 4, 2009.

TRD-200905628
John Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Earliest possible date of adoption: January 17, 2010
For further information, please call: (512) 305-6900

♦ ♦ ♦

TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 208. EMPLOYMENT PRACTICES
SUBCHAPTER A. JOB APPLICATION PROCEDURES

43 TAC §208.7

The Texas Department of Motor Vehicles (department) proposes new §208.7, concerning Transition of Vacant Positions.

EXPLANATION OF PROPOSED NEW SECTION

New §208.7 is necessary to implement the provisions of House Bill 3097, 81st Legislature, Regular Session, 2009, which created the Texas Department of Motor Vehicles (department) 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 section establishes employment practices for filling the vacant positions transferred to the department during the establishment of the department.

The Texas Department of Transportation transferred vacant full-time equivalent employee positions to the department through a Memorandum of Understanding (MOU) executed on November 4, 2009. The purpose of the MOU was to reach an agreement on how to efficiently and effectively transition the department into a self-sufficient agency. The transfer of the vacant positions was intended to provide positions that would be needed to fulfill the administrative functions of the department.

In filling these positions, in accordance with §6.03 of House Bill 3097 and the MOU, the department will give first consideration to an applicant who, as of September 1, 2009, was a full-time employee of the Texas Department of Transportation and primarily supported one or more of the transferred divisions.

FISCAL NOTE

Brian Ragland, Interim Chief Financial Officer, has determined that for each of the first five years the new section 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 section as the full-time equivalent positions are being transferred from one state agency to another.

George Ebert, Interim Human Resources Director, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the new section.

PUBLIC BENEFIT AND COST

Mr. Ebert has also determined that for each year of the first five years the new section is in effect, the public benefit anticipated as a result of enforcing or administering the new section will be to smoothly transition the former functions of the Texas Department of Transportation to the department.

There are no anticipated economic costs for persons required to comply with the new section. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the new section may be submitted to Executive Director, Texas Department of Motor Vehicles, 4000 Jack-

son Avenue, Building 1, Austin, Texas 78731. The deadline for receipt of comments is 5:00 p.m. on January 18, 2010.

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, §1002.001.

§208.7. Transition of Vacant Positions.

When filling the vacant full-time equivalent employee positions transferred by the Texas Department of Transportation in the November 4, 2009, Memorandum of Understanding with the department, the department shall give first consideration to an applicant who, as of September 1, 2009:

(1) was a full-time employee of the Texas Department of Transportation; and

(2) primarily supported one or more of the transferred divisions.

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 December 4, 2009.

TRD-200905588
Jennifer Soldano
Legal Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: January 17, 2010
For further information, please call: (512) 463-8683

♦ ♦ ♦

CHAPTER 217. VEHICLE TITLES AND REGISTRATION

The Texas Department of Motor Vehicles (department) proposes new Chapter 217, to include: Subchapter A, Motor Vehicle Certificates of Title, §§217.1 - 217.8; Subchapter B, Motor Vehicle Registration, §§217.20 - 217.44; Subchapter C, Registration and Title System, §§217.53 - 217.55; Subchapter D, Non-repairable and Salvage Motor Vehicles, §§217.60 - 217.68; and Subchapter E, Salvage Vehicle Dealers, §§217.70 - 217.81 all concerning vehicle titles and registration.

EXPLANATION OF PROPOSED NEW CHAPTER

New Chapter 217 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 motor vehicle certificates of title, motor vehicle registration, and non-repairable and salvage vehicles. It also provides for the regulation of salvage motor vehicle dealers.

Throughout the sections, the Texas Department of Transportation and the Texas Transportation Commission have been replaced by the Texas Department of Motor Vehicles and the Board of Motor Vehicles.

New Chapter 217, Subchapter A incorporates the same content as 43 TAC Chapter 17, Subchapter A, except that it removes the requirement of §17.3(b)(2)(I) for the applicant to submit a social security number when applying for a certificate of title. The removal of this requirement is in accordance with House Bill 3517, Regular Session, 2009, which repealed Transportation Code, §501.0235. New §217.3(b) clarifies that a person must apply for the certificate of title within 20 working days after the date of receiving the transfer documents, except that in a seller-financed sale, the certificate of title must be applied for not later than the 45th day after the date the motor vehicle is delivered to the purchaser in accordance with Tax Code, §152.069, as amended by Senate Bill 1235, Regular Session, 2009. A dealer may also apply as provided by 43 TAC §215.144(e).

New Chapter 217, Subchapter B incorporates the contents of 43 TAC Chapter 17, Subchapter B, with the following revisions.

New §217.21 adds the definition of "construction machinery" for clarification. It removes the definition of "special district" as that term is not used in the subchapter. The definition of "sponsoring entity" is clarified to apply only to non-profit entities as specialty plates for for-profit entities are required to be marketed and sold in accordance with Transportation Code, §504.802, as amended by Senate Bill 1616, 81st Legislature, Regular Session, 2009.

New §217.22 adds a provision in subsection (c)(3)(B)(i) to revise the standard for rejecting alphanumeric patterns. The rejection category added is patterns that display excretory material because such material is considered objectionable to the general public. The new provision clarifies that "derogatory" is considered to be an expression of hate directed toward people or groups that is demeaning to people or groups or associated with an organization that advocates such expressions. The section also defines the term "vulgarity" as curse words, and adds that a pattern will be rejected if the pattern is considered indecent, defined as a sex act or excretory material. Rejection of material that is not generally considered appropriate has been removed as those types of patterns should be included in the more specific criteria listed.

New §217.23(d) removes the requirement that temporary tags be constructed from cardboard in accordance with Senate Bill 1235, 81st Legislature, Regular Session, 2009, which amended Transportation Code, §§501.022, 503.038, 503.062, 503.0625, 503.0626, 503.063, 503.0631, 503.065, 503.067 - 503.069, and 601.002.

New §217.24(b)(2) simplifies the application for disabled person identification placards in accordance with House Bill 3095, 81st Legislature, Regular Session, 2009, which delineates that blue placards signify a permanent disability and red placards signify a temporary disability. Section 217.24(c)(3)(E) and (F) are added to allow licensed optometrists, registered nurses, or physician assistants to prescribe initial placards in accordance with Transportation Code, §681.003 as amended by Senate Bills 1367 and 1984, Regular Session, 2009. New §217.24(g)(2) adds a provision that authorizes the department to resolve a seized placard dispute under Transportation Code, §1003.2 as a routine matter, by entering into settlement discussions with the placard owner before referring a case to the State Office of Administrative Hearings. The petitioner will agree to abide by all laws regarding placards in the settlement. This procedure will provide an effec-

tive and streamlined process for resolving disputes concerning seized placards.

New §217.25 reduces the fee for construction machinery plates from $5.30 to $5.00 as the thirty cent reflectorization is provided for in Transportation Code, §502.170.

New §217.26, Golf Carts, adds a new section to the subchapter to allow issuance of license plates only in accordance with Transportation Code, §504.510 to an owner who resides on real property that is owned or controlled by the United States Corps of Engineers in a county that borders another state and has a population of more than 110,000 but less than 111,000. House Bill 2553, 81st Legislature, Regular Session, 2009, added Transportation Code, §551.402 which prohibits the department from registering golf carts.

New §217.28(b)(3) adds Legion of Valor plates to the types of plates for which application must be made directly to the department. There are not a great number of these plates issued, so the work can be accommodated by the department's staff who will verify the requirements for issuance of this plate. Section 217.28(c)(5) removes registration for golf carts in accordance with House Bill 2553, 81st Legislature, Regular Session, 2009.

Senate Bill 1616, 81st Legislature, Regular Session, 2009 repealed Transportation Code, §504.101 which authorized the department to issue personalized non-specialty license plates. Section 217.28(h)(7) adds that the department will collect a $25 fee whenever the transfer right of ownership of a pattern is exercised. This fee is authorized by Transportation Code, §504.854(c) to pay for the cost of the department's transfer action.

The amendments do not alter the fee for a personalized specialty plate issued by the department. Section 217.28(h)(8) clarifies that the fee for the personalization of license plates applied for prior to November 19, 2009 is $40 if the plates are renewed annually. The personalization fee for plates applied for after November 19, 2009 is $40 if the plates are issued pursuant to Transportation Code, Subchapters G and I.

A provision is added to §217.28(i) to standardize that in reviewing the comments, the executive director or designee will consider whether the negative comments suggest that the plate would fall under the criteria of §217.22(c)(3)(B)(i).

New §217.31 contains the same content as existing §17.52. It has been renumbered §217.31 to provide numbering consistency.

New §217.40(e) replaces the level of designee of Assistant Executive Director with division director as the Department of Motor Vehicles is not expected to have an Assistant Executive Director. This subsection adds that the executive director or designee will consider whether the negative comments suggest that the plate would fall under the criteria of §217.22(c)(3)(B)(i).

New §217.49 adds a provision, in accordance with Transportation Code, §502.0023, as amended by House Bills 1759 and 3433, 81st Legislature, Regular Session, 2009, to authorize the registration of fleet vehicles for a duration of up to eight years. A commercial fleet must be registered with no fewer than twenty five vehicles. The section contains the procedure for registration, including submitting annual proof of payment of Heavy Vehicle Use Tax. Fees will be charged for the entire registration period selected.

New §217.50(a)(3)(D) adds that in order to maintain reflectivity standards, exempt plates will be marked with the replacement year.

New Chapter 217, Subchapter C, Registration and Title System, and Subchapter D, Non-repairable and Salvage Motor Vehicles, incorporate the same content as 43 TAC Chapter 17, Subchapters C and D.

New Chapter 217, Subchapter E incorporates the contents of 43 TAC Chapter 17, Subchapter E, except that it changes several similar provisions in §17.81. Section 217.81(a)(4) and (b)(13) are changed to correspond with the application procedures of §217.73(b)(1)(E) and (2)(A)(vi), and §217.74(2)(F). The change clarifies that officers and directors may not be convicted of a felony for which less than three years have elapsed since the termination of the sentence, parole, mandatory supervision, or probation, or their license may be denied, suspended, or revoked.

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 the new subchapter. There will be some positive fiscal implications to general revenue as a result of the auction provision in new §217.40. This amount cannot be determined because the amount of revenue generated is dependent on the number of plates auctioned and the auction prices.

Rebecca Davio, Director, Vehicle Titles and Registration Division, 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. Davio 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 17 is an efficient transition of the responsibilities of the Texas Department of Transportation for this chapter to the new Texas 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. There is a public benefit to businesses with fleets as registering vehicles in accordance with §217.49 for up to eight years will result in time savings.

SUBMITTAL OF COMMENTS

Written comments on the new chapter may be submitted to Executive Director, 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 January 18, 2010.

SUBCHAPTER A. MOTOR VEHICLE CERTIFICATES OF TITLE

43 TAC §§217.1 - 217.8

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, §§502.0023, 501.022, 503.038, 503.062, 503.0625, 503.0626, 503.063, 503.0631, 503.065, 503.067, 503.068, 503.069, 504.510, 504.802, 504.854, 551.402, 601.002, 681.003, and 1003.2; and Tax Code, §152.069.

§217.1. Purpose and Scope.

The Certificate of Title Act, Transportation Code, Chapter 501, charges the department with the responsibility of issuing certificates of title for motor vehicles, unless they are otherwise exempted by law. For the department to efficiently and effectively issue motor vehicle certificates of title, maintain records, and collect the applicable fees, and to ensure proper application by motor vehicle owners, this subchapter prescribes the policies and procedures for the application for and issuance of motor vehicle certificates of title.

§217.2. Definitions.

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

(1) Alias--The name of a vehicle owner reflected on a certificate of title, when the name on the certificate of title is different from the name of the legal owner of the vehicle.

(2) Alias certificate of title--A title document issued by the department for a vehicle that is used by an exempt law enforcement agency in covert criminal investigations.

(3) Bond release letter--Written notification from the United States Department of Transportation authorizing United States Customs to release the bond posted for a motor vehicle imported into the United States to ensure compliance with federal motor vehicle safety standards.

(4) Certificate of title--A written instrument that may be issued solely by and under the authority of the department and that reflects the transferor, transferee, vehicle description, license plate and lien information, and rights of survivorship agreement as specified in this subchapter or as required by the department.

(5) Certificate of title application--A form prescribed by the division director that reflects the information required by the department to create a motor vehicle title record.

(6) Date of sale--The date of the transfer of possession of a specific vehicle from a seller to a purchaser.

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

(8) Distributor--A person engaged in the business of selling to a dealer motor vehicles bought from a manufacturer.

(9) Division director--The director of the department's Vehicle Titles and Registration Division.

(10) Executive administrator--The director of a federal agency, the director of a Texas state agency, the sheriff of a Texas county, or the chief of police of a Texas city who by law possesses the authority to conduct covert criminal investigations.

(11) Exempt agency--A governmental body exempt by law from paying registration fees for motor vehicles.

(12) Federal motor vehicle safety standards--Motor vehicle safety requirements promulgated by the United States Department of Transportation, National Highway Traffic Safety Administration, set forth in Title 49, Code of Federal Regulations.

(13) First sale--A bargain, sale, transfer, or delivery with intent to pass an interest, other than a lien, and accompanied by registration, of a motor vehicle that has not been previously registered in this state or elsewhere.

(14) House moving dolly--An apparatus consisting of metal beams and axles used to move houses. House moving dollies, by nature of their construction and use, actually form large semitrailers.

(15) House trailer--A vehicle without automotive power designed for human habitation, for carrying persons and property on its own structure, and for being drawn by a motor vehicle, not including manufactured housing.

(16) Identification certificate--A form issued by an inspector of an authorized safety inspection station in accordance with Transportation Code, §548.256.

(17) Implements of husbandry--Farm implements, machinery, and tools used in tilling the soil, including self-propelled machinery specifically designed or especially adapted for applying plant food materials or agricultural chemicals. This term does not include an implement unless it is designed or adapted for the sole purpose of transporting farm materials or chemicals. This term does not include any passenger car or truck.

(18) Lien--A security interest, as defined in Business and Commerce Code, §1.201(b)(35), of whatsoever kind or character whereby an interest, other than an absolute title, is sought to be held or given in a motor vehicle. This term includes a lien created or given by constitution or statute in a motor vehicle.

(19) Manufacturer--A person regularly engaged in the business of manufacturing or assembling new motor vehicles, either within this state or elsewhere.

(20) Manufacturer's certificate of origin--A form prescribed by the department showing the original transfer of a new motor vehicle from the manufacturer to the original purchaser, whether importer, distributor, dealer, or owner, and when presented with an application for certificate of title, showing, on appropriate forms prescribed by the department, each subsequent transfer between distributor and dealer, dealer and dealer, and dealer and owner.

(21) Moped--A motor driven cycle whose attainable speed is not more than 30 miles per hour and that is equipped with a motor that produces not more than two-brake horsepower. If an internal combustion engine is used, the piston displacement may not exceed 50 cubic centimeters and the power drive system may not require the operator to shift gears.

(22) Motor vehicle--Any motor driven or propelled vehicle required to be registered under the laws of this state; a trailer or semitrailer, other than manufactured housing, that has a gross vehicle weight that exceeds 4,000 pounds; a house trailer; an all-terrain vehicle designed by the manufacturer for off-highway use that is not required to be registered under the laws of this state; or a motorcycle, motor-driven cycle, or moped that is not required to be registered under the laws of this state, other than a motorcycle, motor-driven cycle, or moped designed for and used exclusively on a golf course.

(23) Motor vehicle importation form--A declaration form prescribed by the United States Department of Transportation and certified by United States Customs that relates to any motor vehicle being brought into the United States and the motor vehicle's compliance with federal motor vehicle safety standards.

(24) New motor vehicle--A motor vehicle that has never been the subject of a first sale either within this state or elsewhere.

(25) Non United States standard motor vehicle--A motor vehicle not manufactured in compliance with federal motor vehicle safety standards.

(26) Obligor--An individual who is required to make payments under the terms of a support order for a child.

(27) Owner--A person, firm, association, or corporation, other than a manufacturer, importer, distributor, or dealer, claiming title to a motor vehicle, or having a right to operate a motor vehicle pursuant to a lien after the motor vehicle has been the subject of a first sale, except the Federal Government and its agencies, and except the State of Texas and a governmental subdivision or agency not required by law to register motor vehicles owned or used in this State.

(28) Person--An individual, firm, corporation, company, partnership, or other entity.

(29) Safety certification label--A label placed on a motor vehicle by a manufacturer certifying that the motor vehicle complies with all federal motor vehicle safety standards.

(30) Semitrailer--A vehicle of the trailer type having a gross weight in excess of four thousand (4,000) pounds so designed or used in conjunction with a motor vehicle that some part of its own weight and that of its load rests on or is carried by another vehicle.

(31) Statement of fact--A written declaration that supports an application for a certificate of title, that is executed by the seller of a motor vehicle or another involved party to a transaction involving a motor vehicle, and that clarifies an error made on a certificate of title or other negotiable evidence of ownership. When a written declaration is necessary to correct an odometer disclosure error, the signatures of both the seller and buyer are required.

(32) Subsequent sale--The bargain, sale, transfer, or delivery of a motor vehicle that has been previously registered or licensed in this state or elsewhere, with intent to pass an interest in the vehicle, other than a lien, regardless of where the bargain, sale, transfer, or delivery occurs, and the registration of the vehicle if registration is required under the laws of this state.

(33) Token trailer fee--A registration fee paid for certain semitrailers, meeting the qualifications delineated in Transportation Code, §502.167, and used in combination with truck tractors or commercial motor vehicles whose registration is based on a combined gross weight.

(34) Trailer--Every vehicle having a gross unloaded weight in excess of four thousand (4,000) pounds and designed or used to carry its load wholly on its own structure and to be drawn by a motor vehicle.

(35) Used motor vehicle--A motor vehicle that has been the subject of a first sale, whether within this state or elsewhere.

(36) Vehicle identification number--A number, assigned by the manufacturer of a motor vehicle or the department, which describes the motor vehicle for purposes of identification.

(37) Verifiable proof--Additional documentation required of a vehicle owner, lienholder, or agent executing an application for a certified copy of a certificate of title.

(A) Individual applicant. If the applicant is an individual, verifiable proof consists of a copy of a current photo identification issued by this state or by the United States.

(B) Business applicant. If the applicant is a business, verifiable proof consists of a letter of signature authority on original letterhead, a business card, or a copy of employee identification and a copy of current photo identification issued by this state or by the United States.

(C) Power of attorney. If the applicant is a person in whose favor a power of attorney has been executed by the owner or lienholder, verifiable proof consists of the documentation required under subparagraph (A) or (B) of this paragraph both for the owner or lienholder and for the person in whose favor the power of attorney is executed.

§217.3. Motor Vehicle Certificates of Title.

(a) Certificates of title. Unless otherwise exempted by law or this chapter, the owner of any motor vehicle that is required to be registered in accordance with Transportation Code, Chapter 502, shall apply for a Texas certificate of title in accordance with Transportation Code, Chapter 501.

(1) Motorcycles, motor-driven cycles, and mopeds.

(A) The title requirements of a motorcycle are the same requirements prescribed for any motor vehicle.

(B) A motorcycle, motor-driven cycle, or moped designed for or used exclusively on golf courses is not classified as a motor vehicle and, therefore, title cannot be issued until the unit is registered.

(C) A vehicle that meets the criteria for a moped and has been certified as a moped by the Department of Public Safety will be registered and titled as a moped. If the vehicle does not appear on the list of certified mopeds published by that agency, the vehicle will be treated as a motorcycle for title and registration purposes.

(D) A motor installed on a bicycle must be certified by the Department of Public Safety before the vehicle may be classified as a moped.

(2) Farm vehicles.

(A) The term motor vehicle does not apply to implements of husbandry, which may not be titled.

(B) Farm tractors owned by agencies exempt from registration fees in accordance with Transportation Code, §502.202, are required to be titled and registered with "Exempt" license plates issued in accordance with Transportation Code, §502.201.

(C) Farm tractors used as road tractors to mow rights of way or used to move commodities over the highway for hire are required to be registered and titled.

(D) Farm semitrailers with a gross weight of more than 4,000 pounds that are registered in accordance with Transportation Code, §504.504 may be issued Texas certificates of title.

(3) Neighborhood electric vehicles.

(A) The title requirements of a neighborhood electric vehicle (NEV) are the same requirements prescribed for any motor vehicle.

(B) A "neighborhood electric vehicle" is a motor vehicle that:

(i) is originally manufactured to meet, and meets, the equipment requirements and safety standards established for "low speed vehicles" in Federal Motor Vehicle Safety Standard 500 (49 C.F.R. §571.500);

(ii) is a slow moving vehicle, as defined by Transportation Code, §547.001 that is able to attain a speed of more than 20 miles per hour, but not more than 25 miles per hour in one mile on a paved, level surface;

(iii) is a four-wheeled motor vehicle;

(iv) is powered by electricity or alternative power sources;

(v) has a gross vehicle weight rating (GVWR) of less than 3,000 pounds; and

(vi) is not a golf cart as defined in Transportation Code, §502.001(7).

(4) Exemptions from title. Vehicles registered with the following distinguishing license plates may not be titled under Transportation Code, Chapter 501:

(A) vehicles eligible for machinery license plates and permit license plates in accordance with Transportation Code, §504.504; and

(B) vehicles eligible for farm trailer license plates in accordance with Transportation Code, §502.163, unless the owner chooses to title a farm semitrailer as provided by Transportation Code, §501.036.

(5) Trailers, semitrailers, and house trailers. Owners of trailers and semitrailers shall apply for and receive a Texas certificate of title for any stand alone (full) trailer, including homemade full trailers, or any semitrailer having a gross weight in excess of 4,000 pounds. Farm semitrailers with a gross weight of more than 4,000 pounds that are registered in accordance with Transportation Code, §504.504, may be issued Texas certificates of title. House trailer-type vehicles must meet the criteria outlined in subparagraph (C) of this paragraph to be titled.

(A) In the absence of a manufacturer's rated carrying capacity for a trailer or semitrailer, the rated carrying capacity will not be less than one-third of its empty weight.

(B) Mobile office trailers, mobile oil field laboratories, and mobile oil field bunkhouses are not designed as dwellings, but are classified as commercial semitrailers and must be registered and titled as commercial semitrailers if operated on the public streets and highways.

(C) House trailer-type vehicles and camper trailers must meet the following criteria in order to be titled.

(i) A house trailer-type vehicle designed for living quarters and that is eight body feet or more in width or forty body feet or more in length (not including the hitch), is classified as a manufactured home or mobile home and is titled under the Texas Manufactured Housing Standards Act, Occupations Code, Chapter 1201, administered by the Texas Department of Housing and Community Affairs.

(ii) A house trailer-type vehicle that is less than eight feet in width and less than forty feet in length is classified as a travel trailer and shall be registered and titled.

(iii) A camper trailer shall be titled as a house trailer and shall be registered with travel trailer license plates.

(iv) A recreational park model type trailer that is primarily designed as temporary living quarters for recreational, camping or seasonal use, is built on a single chassis, and is 400 square feet or less when measured at the largest horizontal projection when in the set up mode shall be titled as a house trailer and may be issued travel trailer license plates. If the park model type trailer exceeds eight feet in width or forty feet in length, the title will include a brand to indicate that an oversize permit must be obtained to move the trailer on the public roads.

(b) Initial application for certificate of title.

(1) Time for application. A person must apply for the certificate of title within 20 working days after the date of receiving the transfer documents, except:

(A) that in a seller-financed sale, the certificate of title must be applied for not later than the 45th day after the date the motor vehicle is delivered to the purchaser; or

(B) as provided by §215.144(e) of this title (relating to Record of Sales and Inventory).

(2) Place of application. When motor vehicle ownership is transferred, except as provided by Transportation Code, Chapters 501 and 502 and by §217.63(a) of this chapter (relating to Application for Non-repairable or Salvage Vehicle Title), a certificate of title application must be filed with the county tax assessor-collector in the county in which the applicant resides or in the county in which the motor vehicle was purchased or encumbered, as selected by the applicant.

(3) Information to be included on application. An applicant for an initial certificate of title must file an application on a form prescribed by the department. The form will at a minimum require the:

(A) motor vehicle description including, but not limited to, the motor vehicle's:

(i) year;

(ii) make;

(iii) model;

(iv) identification number;

(v) body style;

(vi) manufacturer's rated carrying capacity in tons for commercial motor vehicles; and

(vii) empty weight;

(B) license plate number, if the motor vehicle is subject to registration under Transportation Code, Chapter 502;

(C) odometer reading and brand, or the word "exempt" if the motor vehicle is exempt from federal and state odometer disclosure requirements;

(D) previous owner's name and city and state of residence;

(E) name and complete address of the applicant;

(F) name and mailing address of any lienholder and the date of lien, if applicable;

(G) signature of the seller of the motor vehicle or the seller's authorized agent and the date the certificate of title application was signed; and

(H) signature of the applicant or the applicant's authorized agent and the date the certificate of title application was signed.

(4) Serial number. If no serial number is die-stamped by the manufacturer on a motor vehicle, house trailer, trailer, semitrailer, or item of equipment required to be titled, or if the serial number assigned and die-stamped by the manufacturer has been lost, removed, or obliterated, the department will on proper application, presentation of evidence of ownership, and presentation of evidence of a law enforcement physical inspection, assign a serial number to the motor vehicle, trailer, or equipment. The manufacturer's serial number or the assigned serial number will be used by the department as the major identification of the motor vehicle or trailer in the issuance of a certificate of title.

(5) Accompanying documentation. The certificate of title application must be supported by, at a minimum, the following documents:

(A) evidence of vehicle ownership, as described in subsection (c) of this section;

(B) an odometer disclosure statement properly executed by the seller of the motor vehicle and acknowledged by the purchaser, if applicable;

(C) proof of financial responsibility in the applicant's name, as required by Transportation Code, §502.153, unless otherwise exempted by law;

(D) an identification certificate if required by Transportation Code, §548.256, and Transportation Code, §501.030, and if the vehicle is being titled and registered, or registered only; and

(E) a release of any liens, provided that if any liens are not released, they will be carried forward on the new certificate of title application with the following limitations.

(i) A lien recorded on out-of-state evidence as described in subsection (c) of this section cannot be carried forward to a Texas title when there is a transfer of ownership, unless a release of lien or authorization from the lienholder is attached.

(ii) A lien recorded on out-of-state evidence as described in subsection (c) of this section is not required to be released when there is no transfer of ownership from an out-of-state title and the same lienholder is being recorded on the Texas application as is recorded on the out-of-state title.

(c) Evidence of motor vehicle ownership. Evidence of motor vehicle ownership properly assigned to the applicant must accompany the certificate of title application. Evidence must include, but is not limited to, the following documents.

(1) New motor vehicles. A manufacturer's certificate of origin assigned by the manufacturer or the manufacturer's representative or distributor to the original purchaser is required for a new motor vehicle that is sold or offered for sale.

(A) The manufacturer's certificate of origin must be in the form prescribed by the division director and must contain, at a minimum, the following information:

(i) motor vehicle description including, but not limited to, the motor vehicle's year, make, model, identification number, body style and empty weight;

(ii) the manufacturer's rated carrying capacity in tons when the manufacturer's certificate of origin is invoiced to a licensed Texas motor vehicle dealer and is issued for commercial motor vehicles as that term is defined in Transportation Code, Chapter 502;

(iii) a statement identifying a motor vehicle designed by the manufacturer for off-highway use only; and

(iv) if the vehicle is a "neighborhood electric vehicle", a statement that the vehicle meets Federal Motor Vehicle Safety Standard 500 (49 C.F.R. §571.500) for low-speed vehicles.

(B) When a motor vehicle manufactured in another country is sold directly to a person other than a manufacturer's representative or distributor, the manufacturer's certificate of origin must be assigned to the purchaser by the seller.

(2) Used motor vehicles. A certificate of title issued by the department, a certificate of title issued by another state if the motor vehicle was last registered and titled in another state, or other evidence of ownership must be relinquished in support of the certificate of title application for any used motor vehicle. A letter of Title and Registration verification is required from a vehicle owner coming from a state that no longer titles vehicles after a certain period of time.

(3) Motor vehicles brought into the United States. An application for certificate of title for a motor vehicle last registered or titled in a foreign country must be supported by documents including, but not limited to, the following:

(A) the motor vehicle registration certificate or other verification issued by a foreign country reflecting the name of the applicant as the motor vehicle owner, or reflecting that legal evidence of ownership has been legally assigned to the applicant;

(B) verification of the vehicle identification number of the vehicle, on a form prescribed by the department, executed by a member of:

(i) the National Insurance Crime Bureau;

(ii) the Federal Bureau of Investigation; or

(iii) a law enforcement auto theft unit; and

(C) for motor vehicles that are less than 25 years old, proof of compliance with United States Department of Transportation (USDOT) regulations, including, but not limited to, the following documents:

(i) the original bond release letter with all attachments advising that the motor vehicle meets federal motor vehicle safety requirements or a letter issued by the USDOT, National Highway Traffic Safety Administration, verifying the issuance of the original bond release letter;

(ii) a legible copy of the motor vehicle importation form validated with an original United States Customs stamp, date, and signature as filed with the USDOT confirming the exemption from the bond release letter required in clause (i) of this subparagraph, or a copy thereof certified by United States Customs;

(iii) a verification of motor vehicle inspection by United States Customs certified on its letterhead and signed by its agent verifying that the motor vehicle complies with USDOT regulations;

(iv) a written confirmation that a physical inspection of the safety certification label has been made by the department and that the motor vehicle meets United States motor vehicle safety standards;

(v) the original bond release letter, verification thereof, or written confirmation from the previous state verifying that a bond release letter issued by the USDOT was relinquished to that jurisdiction, if the non United States standard motor vehicle was last titled or registered in another state for one year or less; or

(vi) verification from the vehicle manufacturer on its letterhead stationary.

(4) Alterations to documentation. An alteration to a registration receipt, certificate of title, manufacturer's certificate, or other evidence of ownership constitutes a valid reason for the rejection of any transaction to which altered evidence is attached.

(A) Altered lien information on any surrendered evidence of ownership requires a release from the original lienholder or a statement from the proper authority of the state in which the lien originated. The statement must verify the correct lien information.

(B) A strikeover that leaves any doubt about the legibility of any digit in any document will not be accepted.

(C) A corrected manufacturer's certificate of origin will be required if the manufacturer's certificate of origin contains an:

(i) incomplete or altered vehicle identification number;

(ii) alteration or strikeover of the vehicle's model year;

(iii) alteration or strikeover to the body style, or omitted body style on the manufacturer's certificate of origin; or

(iv) alteration or strikeover to the manufacturer's rated carrying capacity.

(D) A Statement of Fact may be requested to explain errors, corrections, or conditions from which doubt does or could arise concerning the legality of any instrument. A Statement of Fact will be required in all cases:

(i) in which the date of sale on an assignment has been erased or altered in any manner; or

(ii) of alteration or erasure on a Dealer's Reassignment of Title.

(5) Rights of survivorship. A signed "rights of survivorship" agreement may be executed by a natural person acting in an individual capacity in accordance with Transportation Code, §501.031.

(d) Certificate of title issuance.

(1) Issuance. The department or its designated agent will issue a receipt and process the application for certificate of title on receipt of:

(A) a completed application for certificate of title;

(B) accompanying documentation required by subsections (b)(4) and (c) of this section;

(C) the statutory fee for a title application, unless exempt under:

(i) Transportation Code, §501.138; or

(ii) Government Code, §431.039 and copies of official military orders are presented as evidence of the applicant's active duty status and deployment orders to a hostile fire zone; and

(D) any other applicable fees.

(2) Titles. The department will issue and mail or deliver a certificate of title to the applicant or, in the event that there is a lien disclosed in the application, to the first lienholder.

(3) Receipt. The receipt issued at the time of application for title may be used only as evidence of title and may not be used to transfer any interest or ownership in a motor vehicle or to establish a new lien.

(e) Replacement of certificate of title. If a certificate of title is lost or destroyed, the department will issue a certified copy of the title to the owner, the lienholder, or a verified agent of the owner or lienholder in accordance with Transportation Code, Chapter 501, on proper application and payment of the appropriate fee to the department.

(1) Certified copy.

(A) Issuance. An application for a certified copy must be properly executed and supported by appropriate verifiable proof for the vehicle owner, lienholder, or agent regardless of whether the application is submitted in person or by mail.

(i) If the applicant requests that a certified copy be issued before the fourth business day following application, the application must be made in person.

(ii) An applicant other than the vehicle owner, lienholder, or verified agent must apply for a certified copy of a certificate of title by mail.

(B) Denial. If issuance of a certified copy is denied, the applicant may resubmit the request with the required verifiable proof or may pursue the privileges available in subsection (g)(2)(A) and (B) of this section.

(2) Certified copy designation. A certified copy of an existing certificate of title will be marked "Certified Copy" until ownership of the vehicle is transferred, when the words "Certified Copy" will be eliminated from the new certificate of title.

(3) Fees. The fee for obtaining a certified copy of a certificate of title is $2.00 if the application is submitted to the department by mail and $5.45 if the application is submitted in person for expedited processing at one of the department's regional offices.

(f) Department notification of second hand vehicle transfers. A transferor of a motor vehicle may voluntarily make written notification to the department of the sale of the vehicle, in accordance with Transportation Code, §520.023. The written notification may be submitted to the department by mail, in person at one of the department's regional offices, or electronically through the department's Internet website.

(1) Records. On receipt of written notice of transfer from the transferor of a motor vehicle, the department will mark its records to indicate the date of transfer and will maintain a record of the information provided on the written notice of transfer.

(2) Certificate of title issuance. A certificate of title will not be issued in the name of a transferee until the transferee files an application for the certificate of title as described in this section.

(g) Suspension, revocation, or refusal to issue Certificates of Title.

(1) Grounds for title suspension, revocation, or refusal to issue. The department will refuse issuance of a certificate of title, or having issued a certificate of title, will suspend or revoke the certificate of title if the:

(A) application contains any false or fraudulent statement;

(B) applicant has failed to furnish required information requested by the department;

(C) applicant is not entitled to the issuance of a certificate of title under Transportation Code, Chapter 501;

(D) department has reasonable grounds to believe that the vehicle is a stolen or converted vehicle or that the issuance of a certificate of title would constitute a fraud against the rightful owner or a lienholder;

(E) registration of the vehicle stands suspended or revoked; or

(F) required fee has not been paid.

(2) Contested case procedure. Any person who has an interest in a motor vehicle to which the department has refused to issue a certificate of title or has suspended or revoked the certificate of title may contest the department's decision in accordance with Transportation Code, §501.052 and §501.053, in the following manner.

(A) Hearing. Any person who has an interest in a motor vehicle to which the department has refused to issue a certificate of title or has suspended or revoked the certificate of title may apply for

a hearing to the designated agent of the county in which the applicant resides. At the hearing the applicant and the department may submit evidence, and a ruling of the designated agent will bind both parties. An applicant wishing to appeal the ruling of the designated agent may do so to the County Court of the county in which the applicant resides.

(B) Alternative to hearing. In lieu of a hearing, any person who has an interest in a motor vehicle to which the department has refused to issue a certificate of title or has suspended or revoked a certificate of title may file a bond with the department, in an amount equal to one and one-half times the value of the vehicle as determined by the department, and in a form prescribed by the department. On the filing of the bond, the department may issue a certificate of title. The bond shall expire three years after the date it becomes effective and will be returned to the person posting bond, on expiration, unless the department has been notified of the pendency of an action to recover on the bond.

(h) Discharge of lien. A lienholder shall provide the owner, or the owner's designee, a discharge of the lien after receipt of the final payment within the time limits specified in Transportation Code, Chapter 501. The lienholder shall submit one of the following documents:

(1) the certificate of title including an authorized signature in the space reserved for release of lien;

(2) a release of lien form prescribed by the department, with the form filled out to include the:

(A) certificate of title or document number, or a description of the motor vehicle including, but not limited to, the motor vehicle's:

(i) year;

(ii) make;

(iii) vehicle identification number; and

(iv) license plate number, if the motor vehicle is subject to registration under Transportation Code, Chapter 502;

(B) printed name of lienholder;

(C) signature of lienholder or an authorized agent;

(D) printed name of the authorized agent if the agent's signature is shown;

(E) telephone number of lienholder; and

(F) date signed by the lienholder;

(3) signed and dated correspondence submitted on company letterhead that includes:

(A) a statement that the lien has been paid;

(B) a description of the vehicle as indicated in paragraph (2)(A) of this subsection;

(C) a certificate of title or document number; or

(D) lien information;

(4) any out-of-state prescribed release of lien form, including an executed release on a lien entry form;

(5) out-of-state evidence with the word "Paid" or "Lien Satisfied" stamped or written in longhand on the face, followed by the name of the lienholder, countersigned or initialed by an agent, and dated; or

(6) original security agreements or copies of the original security agreements if the originals or copies are stamped "Paid" or "Lien Satisfied" with a company paid stamp or if they contain a statement in longhand that the lien has been paid followed by the company's name.

§217.4. Alias Certificate of Title.

(a) Authority to issue. Upon receipt of the exempt agency's affidavit for alias certificate of title properly executed by the executive administrator, certificate of title application, and evidence of ownership, the division director may authorize the issuance of an alias certificate of title for a vehicle used by an exempt law enforcement agency in covert criminal investigations.

(b) Affidavit for alias certificate of title.

(1) The affidavit for an alias certificate of title shall be in a form prescribed by the division director and must contain, but is not limited to, the following information:

(A) the vehicle description;

(B) the name of exempt agency;

(C) a sworn statement that the vehicle will be used in covert criminal investigations; and

(D) the signature of the executive administrator or an authorized designee as provided in paragraph (2) of this subsection.

(2) The executive administrator of an exempt law enforcement agency, by annually filing an authorization with the division director, may appoint a staff designee to execute the affidavit for alias certificate of title. Upon the appointment of a new executive administrator or his designee, a new authorization must be filed.

(c) Certificate of title application.

(1) The application for certificate of title in the name of an alias shall be in a form prescribed by the division director and must contain, but is not limited to, the following information:

(A) the vehicle description;

(B) the odometer reading;

(C) the empty weight;

(D) the name and address of the alias; and

(E) the name and address of the alias previous owner.

(2) Notarization of the application for certificate of title in the name of an alias is not required.

(d) Evidence of ownership. A certificate of title in the name of an alias will not be issued to an exempt law enforcement agency, including an agency of the federal government, unless such agency furnishes evidence of vehicle ownership.

(e) Cancellation. An alias certificate of title will be cancelled if the vehicle for which it was issued ceases to be used by the exempt law enforcement agency in a covert criminal investigation.

§217.5. Landowner's Lien.

(a) Filing of lien. Pursuant to Property Code, Chapter 70, Subchapter F, a landowner may file a lien against the motor vehicle of a person who damages the landowner's fence with the motor vehicle upon issuance of a court ordered judgment.

(b) Perfection. The landowner's lien must be perfected in accordance with Transportation Code, Chapter 501, Subchapter F. The applicant must file an application for certificate of title through a county tax assessor-collector on a form prescribed by the department. The application must be accompanied by an original or certified copy of the court order and the statutory fee for a title application.

(c) Release of Lien. Upon receipt of the final payment, the landowner must provide the vehicle owner with a discharge of lien in accordance with §217.3(h) of this subchapter (relating to Motor Vehicle Certificates of Title).

§217.6. Child Support Liens.

Pursuant to Family Code, Chapter 157, a child support lien arises by operation of law through court ordered payment of past due child support.

(1) A child support lien must be perfected in accordance with Transportation Code, Chapter 501.

(2) The person filing the lien must provide the department with the obligor's evidence of motor vehicle ownership, as described in §217.3(c) of this subchapter (relating to Motor Vehicle Certificates of Title), and an application for a certificate of title for the same vehicle, and

(A) a certified copy of the child support lien notice containing the information required by Family Code, §157.313 which has been filed with the county clerk's office; or

(B) an abstract of judgment for past due child support.

(3) The lien is perfected when the department has issued a subsequent title disclosing that the vehicle is subject to a child support lien.

§217.7. Restitution Liens.

(a) Purpose. Pursuant to the Code of Criminal Procedure, Article 42.22, the victim or an attorney for the state may file a lien on any interest in a motor vehicle of a person convicted of a criminal offense to secure payment of restitution or fines or costs. This section establishes the procedures to perfect the filing and the removal of the lien on any interest of the defendant in a motor vehicle whether then owned or after-acquired.

(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) Restitution lien--A lien placed against a defendant's motor vehicle in order to recoup a judgment or fines or costs.

(3) State--The State of Texas and all its political subdivisions.

(4) Victim--A close relative of a deceased victim, guardian of a victim, or victim, as those terms are defined by the Code of Criminal Procedure, Article 56.01.

(c) Persons who may file a restitution lien. The following persons may file a restitution lien:

(1) a victim of a criminal offense to secure the amount of restitution to which the victim is entitled under the order of a court in a criminal case; and

(2) an attorney of the state to secure the amount of fines or costs entered against a defendant in a judgment in a felony criminal case.

(d) Perfection of a restitution lien. A restitution lien against any interest in a motor vehicle must be perfected in accordance with Transportation Code, Chapter 501, and in the name of the court which established the restitution lien, in care of the court clerk. The victim or the attorney representing the state must file an application for certificate of title with a county tax-assessor collector to perfect the restitution lien. The application must be on a form prescribed by the department as described in §217.3(b)(2) of this subchapter (relating to Motor Vehicle Certificates of Title), and shall be supported by, at a minimum, the following documents:

(1) evidence of motor vehicle ownership, as described in §217.3(c) of this subchapter, which is properly assigned to or issued in the name of the defendant;

(2) an original or certified copy of the court order or judgment establishing the restitution lien and requiring the defendant to pay restitution, fines, or costs; and

(3) an affidavit to perfect a restitution lien which must include, at a minimum:

(A) the name and birth date of the defendant whose interest in the motor vehicle is subject to the lien;

(B) the residence or principal place of business of the person named in the lien, if known;

(C) the criminal proceeding giving rise to the lien, including the name of the court, the name of the case, and the court's file number for the case;

(D) the name and address of the attorney representing the state and the name and address of the person entitled to restitution;

(E) a statement that the notice is being filed pursuant to Code of Criminal Procedure, Article 42.22;

(F) the amount of restitution, fines, and costs the defendant has been ordered to pay by the court;

(G) a statement that the amount of restitution owed at any one time may be less than the original balance and that the outstanding balance is reflected in the records of the clerk of the court hearing the criminal proceeding giving rise to the lien;

(H) the vehicle description (year, make, and vehicle identification number) of the motor vehicle for which the restitution lien is to be perfected; and

(I) the signature of the attorney representing the state or a magistrate.

(e) Fees. The applicant will be required to pay a $5.00 restitution lien filing fee, in addition to a title application fee in accordance with Transportation Code, §501.138, and any other applicable fees required by Transportation Code, Chapters 501, 502, and 520.

(f) Recording a restitution lien. Upon receiving a completed application for certificate of title, the required supporting documents and any applicable fees, the department or its designated agent will process and issue a certificate of title recording the restitution lien. The original certificate of title shall be mailed to the first lienholder, in accordance with Transportation Code, §501.027.

(g) Release of perfected restitution liens. The clerk of the court recorded as the lienholder will receive payments from the defendant and maintain a record of the outstanding balance of restitution, fines, or costs owed by the defendant. Upon satisfaction of the lien, the clerk of the court shall execute the release of lien as described in §217.3(h) of this subchapter. The release of lien must be provided to the owner or owner's designee. A photocopy of the release of lien shall be forwarded to the department for filing.

§217.8. Electronic Lien Title Program.

(a) The Electronic Lien Title (ELT) Program provides an electronic method for the department to exchange lien and title information with lienholders. Lienholder participation in this program is voluntary.

(b) To participate in the ELT Program, a lienholder must enter into a contract with the department. The contract must contain all terms and conditions necessary to implement the ELT Program, as agreed on by the department and the participating lienholder.

(c) An application for title recording an electronic lien must be filed in the usual manner with a county tax assessor-collector.

(1) The department will notify the lienholder electronically of the date the lien was recorded. The notification will include a request for verification of the lien and vehicle information.

(2) The participating lienholder shall verify the lien and vehicle information in the message and electronically notify the department whether the information is correct.

(3) The lienholder shall send an error message electronically to the department if any information in the notification is incorrect. The department will then verify the lien and vehicle information submitted by the applicant in the title application. Any error will be corrected, and if necessary, the department will send a new notification to the lienholder with corrected information. If it is found that the title applicant submitted incorrect lienholder or vehicle information, the transaction will be rejected and returned to the county tax assessor-collector.

(d) When a lien is satisfied, the lienholder shall electronically notify the department within 10 days. The ELT remark and the lien will be removed from the record and a title will be printed in the name of the owner of record and mailed to the address specified by the lienholder.

(e) When requested by a lienholder, the department will remove the ELT remark from a vehicle record and provide the lienholder with a paper title.

(f) When requested by a lienholder, the department will reassign a lien electronically to a new lienholder if the new lienholder meets all requirements for participation in the ELT Program.

(g) The department will not issue a certified copy of a title with an ELT remark.

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 December 4, 2009.

TRD-200905589
Jennifer Soldano
Legal Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: January 17, 2010
For further information, please call: (512) 463-8683

♦ ♦ ♦

SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

43 TAC §§217.20 - 217.44

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

Transportation Code, §§502.0023, 501.022, 503.038, 503.062, 503.0625, 503.0626, 503.063, 503.0631, 503.065, 503.067, 503.068, 503.069, 504.510, 504.802, 504.854, 551.402, 601.002, 681.003, and 1003.2; and Tax Code, §152.069.

§217.20. Purpose and Scope.

Transportation Code, Chapter 502, charges the department with the responsibility of registering vehicles operated on the public streets and highways of this state; maintaining vehicle registration records; and collecting and reporting statutory registration fees. For the department to perform these duties efficiently and effectively and to ensure proper application by motor vehicle registrants in accordance with statutory provisions, this subchapter prescribes the policies and procedures for the application and issuance of vehicle registration.

§217.21. Definitions.

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

(1) Affidavit for alias exempt registration--A form prescribed by the director that must be executed by an exempt law enforcement agency to request the issuance of exempt registration in the name of an alias.

(2) Agent--A duly authorized representative possessing legal capacity to act for an individual or legal entity.

(3) Alias--The name of a vehicle registrant reflected on the registration, different than the name of the legal owner of the vehicle.

(4) Alias exempt registration--Registration issued under an alias to a specific vehicle to be used in covert criminal investigations by a law enforcement agency.

(5) Apportioned license plate--A license plate issued in lieu of a truck license plate or combination license plate to a motor carrier in this state who proportionally registers a vehicle owned by the carrier in one or more other states.

(6) Axle load--The total load transmitted to the road by all wheels whose centers may be included between two parallel transverse vertical planes 40 inches apart, extending across the full width of the vehicle.

(7) Border commercial zone--A commercial zone established under Title 49, C.F.R., Part 372 that is contiguous to the border with Mexico.

(8) Carrying capacity--The maximum safe load that a commercial vehicle may carry, in tons, as determined by the manufacturer.

(9) Character--A numeric or alpha symbol displayed on a license plate.

(10) "Construction machinery" means a vehicle that:

(A) is used for construction;

(B) is built from the ground up;

(C) is not mounted or affixed to another vehicle such as a trailer;

(D) was originally and permanently designed as machinery;

(E) was not in any way originally designed to transport persons or property; and

(F) does not carry a load, including fuel.

(11) Combination license plate--A license plate issued for a truck or truck tractor that has a manufacturer's rated carrying capacity of more than one ton and is used or intended to be used in combination with a semitrailer that has a gross weight of more than 6,000 pounds.

(12) Commercial vehicle--Any vehicle (other than a motorcycle or passenger car) designed or used primarily for the transportation of property, including any passenger car that has been reconstructed so as to be used, and that is being used, primarily for delivery purposes, with the exception of passenger cars used in the delivery of the United States mail.

(13) Conventional vehicle--A regular truck or regular trailer that is eligible only for regular registration and that is primarily designed to transport divisible loads, regardless of the vehicle's present use. Vehicles that have been altered or reconstructed, or on which machinery has been mounted or attached, permanently or otherwise, retain their conventional status.

(14) Cotton vehicle--A vehicle that is used only to transport chili pepper modules, seed cotton, cotton, cotton burrs, or equipment used in transporting or processing chili peppers or cotton that is not more than 10 feet in width.

(15) County or city civil defense agency--An agency authorized by a commissioner's court order or by a city ordinance to provide protective measures and emergency relief activities in the event of hostile attack, sabotage, or natural disaster.

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

(17) Director--The director of the Vehicle Titles and Registration Division, Texas Department of Motor Vehicles.

(18) Disabled person--A person who has mobility problems that substantially impair the person's ability to ambulate or who is legally blind.

(19) Electric bicycle--A device that has two tandem wheels and is designed to be propelled by an electric motor. An electric bicycle cannot attain a speed of more than 20 miles per hour without the application of human power and weighs 100 pounds or less.

(20) Escrow account--A deposit of a specific amount of money held by the department for security.

(21) Evidence of financial responsibility--The original document or photocopy of any one of the following items:

(A) a liability insurance policy or liability self-insurance or pool coverage document issued in at least the minimum amount required by law;

(B) a personal automobile insurance policy used as evidence of financial responsibility, written for at least the term required by the Insurance Code, §1952.054;

(C) a standard proof of liability form issued by a liability insurer;

(D) an insurance binder that confirms that the owner is in compliance with the law;

(E) a certificate issued by the Texas Department of Public Safety that shows the vehicle is covered by self-insurance;

(F) a certificate issued by the state treasurer that shows that the owner has money or securities in an amount not less than $55,000 on deposit with the state treasurer;

(G) a certificate issued by the Texas Department of Public Safety that shows that the vehicle has a bond on file with that department, that the bond is in the form and amount required by law, and that the bond is guaranteed by at least two individual sureties each owning real estate within this state;

(H) a certificate issued by the county judge in the county where the owner resides showing that the owner has cash or a cashier's check in an amount not less than $55,000 on deposit with the county judge.

(22) Executive administrator--The director of a federal agency, the director of a Texas state agency, the sheriff of a Texas county, or the chief of police of a Texas city that by law possesses the authority to conduct covert criminal investigations.

(23) Exempt agency--A governmental body exempted by statute from paying registration fees when registering motor vehicles.

(24) Exempt license plates--Specially designated license plates issued to certain vehicles owned or controlled by exempt agencies.

(25) Exhibition vehicle--

(A) An assembled complete passenger car, truck, or motorcycle that:

(i) is a collector's item;

(ii) is used exclusively for exhibitions, club activities, parades, and other functions of public interest;

(iii) does not carry advertising; and

(iv) has a frame, body, and motor that is at least 25 years old; or

(B) A former military vehicle as defined in Transportation Code, §504.502.

(26) Fire fighting equipment--Equipment mounted on fire fighting vehicles used in the process of fighting fires, including, but not limited to, ladders and hoses.

(27) Foreign commercial motor vehicle--A commercial motor vehicle, as defined by 49 C.F.R. §390.5, that is owned by a person or entity that is domiciled in or a citizen of a country other than the United States.

(28) Gross weight--The sum of the empty weight of a commercial vehicle (or vehicles, if operated in combination), combined with its maximum carrying capacity, rounded up to the next 100 pounds.

(29) Highway construction project--That section of the highway between the warning signs giving notice of a construction area.

(30) International symbol of access--The symbol adopted by Rehabilitation International in 1969 at its Eleventh World Congress of Rehabilitation of the Disabled.

(31) Legally blind--Having not more than 20/200 visual acuity in the better eye with correcting lenses, or visual acuity greater than 20/200 but with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(32) Light truck--As defined in Transportation Code, §541.201, any truck with a manufacturer's rated carrying capacity not to exceed two thousand pounds, including those trucks commonly known as pickup trucks, panel delivery trucks, and carryall trucks.

(33) Make--The trade name of the vehicle manufacturer.

(34) Motor bus--A motor-propelled vehicle used to transport persons on public highways for compensation, other than a street or suburban bus.

(35) Motorized mobility device--A device designed for transportation of persons with physical disabilities that:

(A) has three or more wheels;

(B) is propelled by a battery-powered motor;

(C) has not more than one forward gear; and

(D) is not capable of speeds exceeding eight miles per hour.

(36) Net carrying capacity--150 pounds multiplied by the seating capacity as determined by the manufacturer's rated seating capacity, exclusive of the driver's or operator's seat, or in the case of a vehicle that is not rated by the manufacturer, as determined by an allowance of one passenger for each sixteen inches, exclusive of the driver's or operator's seat.

(37) Nonprofit organization--An unincorporated association or society or a corporation that is incorporated or holds a certificate of authority under the Business Organizations Code.

(38) Owner--A person who holds the legal title to a vehicle, has the legal right to possess a vehicle, or has the legal right to control a vehicle.

(39) Passenger car--In accordance with Transportation Code, §502.001, any motor vehicle other than a motorcycle, golf cart, or a bus, designed or used primarily for the transportation of persons.

(40) Political subdivision--A county, municipality, local board, or other body of this state having authority to provide a public service.

(41) Registration period--A designated period during which registration is valid. A registration period always begins on the first day of a calendar month and ends on the last day of a calendar month.

(42) Rental fleet--A fleet of five or more vehicles that are owned by the same owner, offered for rent or rented without drivers, and designated by the owner in the manner prescribed by the department as a rental fleet.

(43) Rental trailer--A utility trailer that has a gross weight of 4,000 pounds or less and is part of a rental fleet.

(44) Road tractor--A vehicle designed for the purpose of mowing the right of way of a public highway or a motor vehicle designed or used for drawing another vehicle or a load and not constructed to carry:

(A) an independent load; or

(B) a part of the weight of the vehicle and load to be drawn.

(45) Service agreement--A contractual agreement that allows individuals or businesses to access the department's vehicle registration records.

(46) Specialty license plate--A special design license plate issued by the department under statutory authority.

(47) Specialty license plate fee--Statutorily or department required fee payable on submission of an application for a specialty license plate, symbol, tab, or other device, and collected in addition to statutory motor vehicle registration fees.

(48) Sponsoring entity--An institution, college, university, sports team, or any other non-profit individual or group that desires to support a particular specialty license plate by coordinating the collection and submission of the prescribed applications and associated license plate fees or deposits for that particular license plate.

(49) Street or suburban bus--A vehicle, other than a passenger car, used to transport persons for compensation exclusively within the limits of a municipality or a suburban addition to a municipality.

(50) Tandem axle group--Two or more axles spaced 40 inches or more apart from center to center having at least one common point of weight suspension.

(51) Token trailer--

(A) A semitrailer that has a gross weight of more than 6,000 pounds and is operated in combination with a truck; or

(B) a truck tractor that has been issued an apportioned license plate, a combination license plate, or a forestry vehicle license plate.

(52) Tow truck--A motor vehicle equipped with a mechanical device adapted or used to tow, winch, or otherwise move another motor vehicle.

(53) Travel trailer--A house trailer-type vehicle or a camper trailer that is less than eight feet in width or 40 feet in length, exclusive of any hitch installed on the vehicle, and is designed primarily for use as temporary living quarters in connection with recreational, camping, travel, or seasonal use and not as a permanent dwelling.

(54) Unconventional vehicle--A vehicle built entirely as machinery from the ground up, that is permanently designed to perform a specific function, and is not designed to transport property.

(55) Vehicle--A device in or by which a person or property is or may be transported or drawn on a public highway, other than a device used exclusively on stationary rails or tracks.

(56) Vehicle classification--The grouping of vehicles in categories for the purpose of registration, based on design, carrying capacity, or use.

(57) Vehicle description--Information regarding a specific vehicle, including, but not limited to, the vehicle make, model year, body style, and vehicle identification number.

(58) Vehicle identification number--A number assigned by the manufacturer of a motor vehicle or the department that describes the motor vehicle for purposes of identification.

(59) Vehicle inspection sticker--A sticker issued by the Texas Department of Public Safety signifying that a vehicle has passed all applicable safety and emissions tests.

(60) Vehicle registration insignia--A license plate, symbol, tab, or other device issued by the department evidencing that all applicable fees have been paid for the current registration period and allowing the vehicle to be operated on the public highways.

(61) Vehicle registration record--Information contained in the department's files that reflects, but is not limited to, the make, vehicle identification number, model year, body style, license number, and the name of the registered owner.

(62) Volunteer fire department--An association that is organized for the purpose of answering fire alarms, extinguishing fires, and providing emergency medical services.

§217.22. Motor Vehicle Registration.

(a) Registration. Unless otherwise exempted by law or this chapter, a vehicle to be used on the public highways of this state must be registered in accordance with Transportation Code, Chapter 502 and the provisions of this section. Transportation Code, Chapter 501, Subchapter E and Subchapter D of this chapter (relating to Non-repairable and Salvage Motor Vehicles) prohibit registration of a vehicle whose owner has been issued a salvage or non-repairable vehicle title. These vehicles may not be operated on a public roadway.

(b) Initial application for vehicle registration.

(1) An applicant for initial vehicle registration must file an application on a form prescribed by the department. The form will at a minimum require:

(A) the signature of the owner;

(B) the motor vehicle description, including, but not limited to, the motor vehicle's year, make, model, vehicle identification number, body style, manufacturer's rated carrying capacity in tons for commercial motor vehicles, and empty weight;

(C) the license plate number;

(D) the odometer reading, or the word "exempt" if the motor vehicle is exempt from federal and state odometer disclosure requirements;

(E) the name and complete address of the applicant; and

(F) the name, mailing address, and date of any liens.

(2) The application must be accompanied by the following documents:

(A) evidence of vehicle ownership as specified in Transportation Code, §501.030, unless the vehicle has been issued a non-repairable or salvage vehicle title in accordance with Transportation Code, Chapter 501, Subchapter E;

(B) registration fees prescribed by law;

(C) any local fees or other fees prescribed by law and collected in conjunction with registering a vehicle;

(D) evidence of financial responsibility required by Transportation Code, §502.153, unless otherwise exempted by law; and

(E) any other documents or fees required by law.

(3) An initial application for registration must be filed with the tax assessor-collector of the county in which the owner resides, except that an application for registration as a prerequisite to filing an application for certificate of title may also be filed with the county tax assessor-collector in the county in which the motor vehicle is purchased or encumbered.

(4) The recorded owner of a vehicle that was last registered or titled in another jurisdiction and is subject to registration in this state may apply for registration if the owner cannot or does not wish to relinquish the negotiable out-of-state evidence of ownership to obtain a Texas certificate of title. On receipt of a form prescribed by the department and payment of the statutory fee for a title application and any other applicable fees, the department will issue a registration receipt to the applicant.

(A) Registration receipt. The receipt issued at the time of application may serve as proof of registration and evidences title to a motor vehicle for registration purposes only, but may not be used to transfer any interest or ownership in a motor vehicle or to establish a lien.

(B) Information to be included on the form. The form will include the:

(i) out-of-state title number, if applicable;

(ii) out-of-state license plate number, if applicable;

(iii) state or country that issued the out-of-state title or license plate;

(iv) lienholder name and address as shown on the out-of-state evidence, if applicable;

(v) statement that negotiable evidence of ownership is not being surrendered; and

(vi) signature of the applicant or authorized agent of the applicant.

(C) Accompanying documentation. An application for registration under this paragraph must be supported, at a minimum, by:

(i) a completed application for registration, as specified in paragraph (1) of this subsection;

(ii) presentation, but not surrender of, evidence from another jurisdiction demonstrating that legal evidence of ownership has been issued to the applicant as the motor vehicle's owner, such as a validated title or registration verification from the other jurisdiction, a registration receipt, a non-negotiable title, or written verification from the other jurisdiction; and

(iii) any other documents or fees required by law.

(D) Assignment. In instances in which the title or registration receipt is assigned to the applicant, an application for registration purposes only will not be processed. The applicant must apply for a certificate of title under Transportation Code, Chapter 501.

(c) Vehicle registration insignia.

(1) On receipt of a complete initial application for registration with the accompanying documents and fees, the department will issue vehicle registration insignia to be displayed on the vehicle for which the registration was issued for the current registration period.

(A) If the vehicle has a windshield, the symbol, tab, or other device prescribed by and issued by the department shall be attached to the inside lower left corner of the vehicle's front windshield within six inches of the vehicle inspection sticker in a manner that will not obstruct the vision of the driver.

(B) If the vehicle has no windshield, the symbol, tab, or other device prescribed by and issued by the department shall be attached to the rear license plate.

(C) If the vehicle is registered as a former military vehicle as prescribed by Transportation Code, §504.502, the vehicle's registration number shall be displayed instead of displaying a symbol, tab, or license plate.

(i) Former military vehicle registration numbers shall be displayed on a prominent location on the vehicle in numbers and letters of at least two inches in height.

(ii) To the extent possible, the location and design of the former military vehicle registration number must conform to the vehicle's original military registration number.

(2) Unless otherwise prescribed by law, each vehicle registered under this subchapter must display two license plates, one at the front and one at the rear of the vehicle.

(3) In accordance with Transportation Code, §502.052 and §502.180(e), the department will cancel or not issue any license plate containing an alpha-numeric sequence that meets one or more of the following criteria.

(A) The alpha-numeric sequence conflicts with the department's current or proposed regular license plate numbering system.

(B) The executive director finds that the alpha-numeric pattern may be considered objectionable or misleading, including that the pattern may be viewed as, directly or indirectly:

(i) indecent (defined as a sex act or excretory material);

(ii) a vulgarity (defined as curse words);

(iii) derogatory (defined as an expression of hate directed toward people or groups that is demeaning to people or groups, or associated with an organization that advocates such expressions);

(iv) a reference to illegal activities or substances; or

(v) a misrepresentation of a law enforcement or other governmental entity.

(C) The alpha-numeric sequence is currently issued to another owner.

(4) The provisions of paragraph (1) of this subsection do not apply to vehicles registered with annual license plates issued by the department.

(d) Vehicle registration renewal.

(1) To renew vehicle registration, a vehicle owner must apply, prior to the expiration of the vehicle's registration, to the tax assessor-collector of the county in which the owner resides.

(2) The department will mail a license plate renewal notice, indicating the proper registration fee and the month and year the registration expires, to each vehicle owner approximately six to eight weeks prior to the expiration of the vehicle's registration.

(3) The license plate renewal notice should be returned by the vehicle owner to the appropriate county tax assessor-collector or to the tax assessor-collector's deputy, either in person or by mail. The registration renewal notice may be used in connection with the renewal of registration at selected county tax assessor-collector offices via the Internet. The renewal notice must be accompanied by the following documents and fees:

(A) registration renewal fees prescribed by law;

(B) any local fees or other fees prescribed by law and collected in conjunction with registration renewal; and

(C) evidence of financial responsibility required by Transportation Code, §502.153, unless otherwise exempted by law.

(4) If a renewal notice is lost, destroyed, or not received by the vehicle owner, the vehicle may be registered if the owner presents personal identification acceptable to the tax assessor-collector. Failure to receive the notice does not relieve the owner of the responsibility to renew the vehicle's registration.

(5) Renewal of expired vehicle registrations.

(A) In accordance with Transportation Code, §502.407, a vehicle with an expired registration may not be operated on the highways of the state after the fifth working day after the date a vehicle registration expires.

(B) A 20 percent delinquency penalty is due when registration is renewed if the owner has been arrested or cited for operating the vehicle without valid registration.

(C) If the county tax assessor-collector determines that a registrant has a valid reason for being delinquent in registration, the vehicle owner will be required to pay for twelve months' registration. Renewal will establish a new registration expiration month that will end on the last day of the eleventh month following the month of registration renewal.

(D) If the county tax assessor-collector determines that a registrant does not have a valid reason for being delinquent in registration, the full annual fee will be collected and the vehicle registration expiration month will remain the same.

(E) If a vehicle is registered in accordance with Transportation Code, §§502.164, 502.167, 502.188, 502.203, 504.315, 504.401, 504.405, 504.411, or 504.505, and if the vehicle's registration is renewed more than one month after expiration of the previous registration, the registration fee will be prorated.

(F) Any delinquent registration submitted directly to the department for processing will be evaluated to verify the reason for delinquency. If the department determines that a registrant has a valid reason for being delinquent in registration, the vehicle owner will be required to pay for 12 months' registration. Renewal will establish a new registration expiration month that will end on the last day of the 11th month following the month of registration. If the department determines that a registrant does not have a valid reason for being delinquent in registration, the full annual fee will be collected and the vehicle registration expiration month will remain the same. Valid reasons for delinquency include those reasons set forth in Transportation Code, §502.176(e).

(6) Refusal to renew registration for delinquent child support.

(A) Placement of denial flag. On receipt of a final order issued under Family Code, Chapter 232 for the suspension or nonrenewal of a motor vehicle registration, the department will place a registration denial flag on the motor vehicle record of the child support obligor as reported by the final order.

(B) Refusal to renew registration. While a motor vehicle record is flagged, the county tax-assessor collector shall refuse to renew the registration of the associated motor vehicle.

(C) Removal of denial flag. On receipt of an order issued under Family Code, Chapter 232 vacating or staying an order for the suspension or nonrenewal of a motor vehicle registration, the department will remove the registration denial flag from the motor vehicle record.

(7) License plate reissuance program. The county tax assessor-collectors shall issue new multi-year license plates at no additional charge at the time of registration renewal provided the current plates are over seven years old from the date of issuance.

(e) Replacement of license plates, symbols, tabs, and other devices.

(1) When a license plate, symbol, tab, or other registration device is lost, stolen, or mutilated, a replacement may be obtained from any county tax assessor-collector upon:

(A) the payment of the statutory replacement fee prescribed by Transportation Code, §502.184; and

(B) the provision of a signed statement, on a form prescribed by the department, that states:

(i) the license plate, symbol, tab, or other registration device furnished for the described vehicle has been lost, stolen, or mutilated, and if recovered, will not be used on any other vehicle; and

(ii) the replaced license plate, symbol, tab, or other device will only be used on the vehicle to which it was issued.

(2) If the owner remains in possession of any part of the lost, stolen, or mutilated license plate, symbol, tab, or other registration device, that remaining part must be removed and surrendered to the department on issuance of the replacement and request by the county tax assessor-collector.

(f) Out-of-state vehicles. A vehicle brought to Texas from out-of-state must be registered within 30 days of the date on which the owner establishes residence or secures gainful employment, except as provided by Transportation Code, §502.0025. Accompanying a completed application, an applicant must provide:

(1) an application for certificate of title as required by Transportation Code, Chapter 501, if the vehicle to be registered has not been previously titled in this state; and

(2) any other documents or fees required by law.

(g) The owner of an electric personal assistive mobility device, as defined by Transportation Code, §551.201, is not required to register it. The device may only be operated on a residential street, roadway, or public highway in accordance with Transportation Code, §551.202.

(h) A neighborhood electric vehicle, as defined in §217.3(a)(3) of this chapter (relating to Motor Vehicle Certificates of Title):

(1) is required to be titled in accordance with Transportation Code, §502.152 in order to be registered for operation on public roads;

(2) may be operated on a residential street, roadway, or public highway in accordance with Transportation Code, §551.303;

(3) must comply with the evidence of financial responsibility requirements established in Transportation Code, §502.153;

(4) must meet the definition of a "slow-moving vehicle" and must display a slow-moving-vehicle emblem as described in Transportation Code, §547.001; and

(5) is subject to all traffic and other laws applicable to motor vehicles.

(i) Enforcement of traffic warrant. A municipality may enter into a contract with the department under Government Code, Chapter 791 to indicate in the state's motor vehicle records that the owner of the vehicle is a person for whom a warrant of arrest is outstanding for failure to appear or who has failed to pay a fine on a complaint involving a violation of a traffic law. In accordance with Transportation Code, §702.003, a county tax assessor-collector may refuse to register a motor vehicle if such a failure is indicated in the motor vehicle record for that motor vehicle. A municipality is responsible for obtaining the agreement of the county in which the municipality is located to refuse to register motor vehicles for failure to pay civil penalties imposed by the municipality.

(j) Refusal to register due to traffic signal violation. A local authority, as defined in Transportation Code, §541.002, that operates a traffic signal enforcement program authorized under Transportation Code, Chapter 707 may enter into a contract with the department under Government Code, Chapter 791 to indicate in the state's motor vehicle records that the owner of a motor vehicle has failed to pay the civil penalty for a violation of the local authority's traffic signal enforcement system involving that motor vehicle. In accordance with Transportation Code, §707.017, a county tax assessor-collector may refuse to register a motor vehicle if such a failure is indicated in the motor vehicle record for that motor vehicle. The local authority is responsible for obtaining the agreement of the county in which the local authority is located to refuse to register motor vehicles for failure to pay civil penalties imposed by the local authority.

(k) Refusal to register vehicle in certain counties. A county may enter into a contract with the department under Government Code, Chapter 791 to indicate in the state's motor vehicle records that the owner of the vehicle has failed to pay a fine, fee, or tax that is past due. In accordance with Transportation Code, §502.185, a county tax assessor-collector may refuse to register a motor vehicle if such a failure is indicated in the motor vehicle record for that motor vehicle.

(l) Record notation. A contract between the department and a county, municipality, or local authority entered into under Transportation Code, §502.185, Transportation Code, §702.003, or Transportation Code, §707.017 will contain the terms set out in this subsection.

(1) To place or remove a registration denial flag on a vehicle record, the contracting entity must submit a magnetic tape or other acceptable submission medium as determined by the department in a format prescribed by the department.

(2) The information submitted by the contracting entity will include, at a minimum, the vehicle identification number and the license plate number of the affected vehicle.

(3) If the contracting entity data submission contains bad or corrupted data, the submission medium will be returned to the contracting entity with no further action by the department.

(4) The magnetic tape or other submission medium must be submitted to the department from a single source within the contracting entity.

(5) The submission of a magnetic tape or other submission medium to the department by a contracting entity constitutes a certification by that entity that it has complied with all applicable laws.

§217.23. Temporary Registration Permits.

(a) Purpose and scope. Transportation Code, Chapter 502, Subchapter G, charges the department with the responsibility of issuing temporary registration permits which shall be recognized as legal registration for the movement of motor vehicles not authorized to travel on Texas public highways for lack of registration or for lack of reciprocity with the state or country in which the vehicles are registered. For the department to efficiently and effectively perform these duties, this section prescribes the policies and procedures for the application and the issuance of temporary registration permits.

(b) Permit categories. The department will issue the following categories of temporary registration permits.

(1) Additional weight permits. The owner of a truck, truck tractor, trailer, or semitrailer may purchase temporary additional weight permits for the purpose of transporting the owner's own seasonal agricultural products to market or other points for sale or processing in accordance with Transportation Code, §502.351. In addition, such vehicles may be used for the transportation without charge of seasonal laborers from their place of residence, and materials, tools, equipment, and supplies from the place of purchase or storage, to a farm or ranch exclusively for use on such farm or ranch.

(A) Additional weight permits are valid for a limited period of less than one year.

(B) An additional weight permit will not be issued for a period of less than one month or extended beyond the expiration of a license plate issued under Transportation Code, Chapter 502.

(C) The statutory fee for an additional weight permit is based on a percentage of the difference between the owner's regular annual registration fee and the annual fee for the desired tonnage computed as follows:

(i) one-month (or 30 consecutive days)--10 percent;

(ii) one-quarter (three consecutive months)--30 percent;

(iii) two-quarters (six consecutive months)--60 percent; or

(iv) three-quarters (nine consecutive months)--90 percent.

(D) Additional weight permits are issued for calendar quarters with the first quarter to begin on April 1st of each year.

(E) A permit will not be issued unless the registration fee for hauling the larger tonnage has been paid prior to the actual hauling.

(F) Additional weight permits may not be issued to farm licensed trailers or semitrailers.

(2) Annual permits.

(A) Transportation Code, §502.353, authorizes the department to issue annual permits to provide for the movement of foreign commercial vehicles that are not authorized to travel on Texas highways for lack of registration or for lack of reciprocity with the state or country in which the vehicles are registered. The department will issue annual permits:

(i) for a 12-month period designated by the department which begins on the first day of a calendar month and expires on the last day of the last calendar month in that annual registration period; and

(ii) to each vehicle or combination of vehicles for the registration fee prescribed by weight classification in Transportation Code, §502.162 and §502.167.

(B) The department will not issue annual permits for the importation of citrus fruit into Texas from a foreign country except for foreign export or processing for foreign export.

(C) The following exemptions apply to vehicles displaying annual permits.

(i) Registered foreign semitrailers having gross weights in excess of 6,000 pounds used or to be used in combination with truck tractors or commercial motor vehicles with manufacturer's rated carrying capacities in excess of one ton are exempted from the requirement to pay the token fee and display the associated distinguishing license plate provided for in Transportation Code, §502.167. An annual permit is required for the power unit only.

(ii) Vehicles registered with annual permits are not subject to the optional county registration fee under Transportation Code, §502.172, the optional county fee for transportation projects under Transportation Code, §502.1725, or the optional registration fee for child safety under Transportation Code, §502.173.

(3) 72-hour permits and 144-hour permits.

(A) In accordance with Transportation Code, §502.352 the department will issue a permit valid for 72 hours or 144 hours for the movement of commercial motor vehicles, trailers, semitrailers, and motor buses owned by residents of the United States, Mexico, or Canada.

(B) A 72-hour permit or a 144-hour permit is valid for the period of time stated on the permit beginning with the effective day and time as shown on the permit registration receipt.

(C) Vehicles displaying 72-hour permits or 144-hour permits are subject to vehicle safety inspection in accordance with Transportation Code, §548.051, except for:

(i) vehicles currently registered in another state of the United States, Mexico, or Canada; and

(ii) mobile drilling and servicing equipment used in the production of gas, crude petroleum, or oil, including, but not limited to, mobile cranes and hoisting equipment, mobile lift equipment, forklifts, and tugs.

(D) The department will not issue a 72-hour permit or a 144-hour permit to a commercial motor vehicle, trailer, semitrailer, or motor bus apprehended for violation of Texas registration laws. Apprehended vehicles must be registered under Transportation Code, Chapter 502.

(4) Temporary agricultural permits.

(A) Transportation Code, §502.355 authorizes the department to issue a 30-day temporary nonresident registration permit to a nonresident for any truck, truck tractor, trailer, or semitrailer to be used in the movement of all agriculture products produced in Texas:

(i) from the place of production to market, storage, or railhead not more than 75 miles distant from the place of production; or

(ii) to be used in the movement of machinery used to harvest Texas-produced agricultural products.

(B) The department will issue a 30-day temporary nonresident registration permit to a nonresident for any truck, truck tractor, trailer, or semitrailer used to move or harvest farm products, produced outside of Texas, but:

(i) marketed or processed in Texas; or

(ii) moved to points in Texas for shipment from the point of entry into Texas to market, storage, processing plant, railhead or seaport not more than 80 miles distant from such point of entry into Texas.

(C) The statutory fee for temporary agricultural permits is one-twelfth of the annual Texas registration fee prescribed for the vehicle for which the permit is issued.

(D) The department will issue a temporary agricultural permit only when the vehicle is legally registered in the nonresident's home state or country for the current registration year.

(E) The number of temporary agricultural permits is limited to three permits per nonresident owner during any one vehicle registration year.

(F) Temporary agricultural permits may not be issued to farm licensed trailers or semi-trailers.

(5) One-trip permits. Transportation Code, §502.354 authorizes the department to temporarily register any unladen vehicle upon application to provide for the movement of the vehicle for one trip, when the vehicle is subject to Texas registration and not authorized to travel on the public roadways for lack of registration or lack of registration reciprocity.

(A) Upon receipt of the $5.00 fee, registration will be valid for one trip only between the points of origin and destination and intermediate points as may be set forth in the application and registration receipt.

(B) The department will issue a one-trip permit to a bus which is not covered by a reciprocity agreement with the state or country in which it is registered to allow for the transit of the vehicle only. The vehicle should not be used for the transportation of any passenger or property, for compensation or otherwise, unless such bus is operating under charter from another state or country.

(C) A one-trip permit is valid for a period up to 15 days from the effective date of registration.

(D) A one-trip permit may not be issued for a trip which both originates and terminates outside Texas.

(E) A laden motor vehicle or a laden commercial vehicle cannot display a one-trip permit. If the vehicle is unregistered, it must operate with a 72-hour or 144-hour permit.

(6) 30-day temporary registration permits. Transportation Code, §502.354 authorizes the department to issue a temporary registration permit valid for 30 days for a $25 fee. A vehicle operated on a 30-day temporary permit is not restricted to a specific route. The permit is available for:

(A) passenger vehicles;

(B) motorcycles;

(C) private buses;

(D) trailers and semitrailers with a gross weight not exceeding 10,000 pounds;

(E) light commercial vehicles not exceeding a manufacturer's rated carrying capacity of one ton; and

(F) a commercial vehicle exceeding one ton, provided the vehicle is operated unladen.

(c) Application process.

(1) Procedure. An owner who wishes to apply for a temporary registration permit for a vehicle which is otherwise required to be registered in accordance with §217.22 of this subchapter (relating to Motor Vehicle Registration), must do so on a form prescribed by the director.

(2) Form requirements. The application form will at a minimum require:

(A) the signature of the owner;

(B) the name and complete address of the applicant; and

(C) the vehicle description.

(3) Fees and documentation. The application must be accompanied by:

(A) statutorily prescribed fees;

(B) evidence of financial responsibility:

(i) as required by Transportation Code, Chapter 502, Subchapter G, provided that all policies written for the operation of motor vehicles must be issued by an insurance company or surety company authorized to write motor vehicle liability insurance in Texas; or

(ii) if the applicant is a motor carrier as defined by §218.2 of this title (relating to Definitions), indicating that the vehicle is registered in compliance with Chapter 218, Subchapter B of this title (relating to Motor Carrier Registration); and

(C) any other documents or fees required by law.

(4) Place of application.

(A) All applications for annual permits must be submitted directly to the department for processing and issuance.

(B) Additional weight permits and temporary agricultural permits may be obtained by making application with the department through the county tax assessor-collectors' offices.

(C) 72-hour and 144-hour permits, one-trip permits, and 30-day temporary registration permits may be obtained by making application either with the department or the county tax assessor-collectors' offices.

(d) Display of registration insignia. The department will issue a specially designed tag or windshield validation sticker, upon receipt of a complete application for a permit.

(1) Tags shall be displayed in a manner that is clearly visible and legible when viewed from outside of the vehicle. The tag shall be attached to or displayed in the vehicle to allow ready inspection.

(2) Windshield validation stickers shall be displayed on the inside of the front windshield in the lower left corner.

(3) A receipt will be issued for each registration insignia as evidence of registration to be carried in the vehicle during the time the permit is valid. If the receipt is lost or destroyed, the owner must obtain a duplicate from the department or from the county office who issued the original receipt. The fee for the duplicate receipt is the same as the fee required by Transportation Code, §502.179.

(e) Transfer of temporary registration permits.

(1) Temporary registration permits are non-transferable between vehicles and/or owners.

(2) If the owner of a vehicle displaying a temporary registration permit disposes of the vehicle during the time the permit is valid, the permit must be returned to the department immediately.

(f) Replacement permits. Vehicle owners displaying annual permits may obtain replacement permits if an annual permit is lost, stolen, or mutilated.

(1) The fee for a replacement annual permit is the same as for a replacement number plate, symbol, tab, or other device as provided by Transportation Code, §502.184.

(2) The owner shall apply directly to the department in writing for the issuance of a replacement annual permit. Such request should include a copy of the registration receipt and replacement fee.

(g) Agreements with other jurisdictions. In accordance with Transportation Code, §502.054 and Chapter 648, the executive director of the department may enter into a written agreement with an authorized officer of a state, province, territory, or possession of a foreign country to provide for the exemption from payment of registration fees by nonresidents if residents of this state are granted reciprocal exemptions. The executive director may enter into such agreement only upon:

(1) the approval of the governor; and

(2) making a determination that the economic benefits to the state outweigh all other factors considered.

(h) Border commercial zones.

(1) Texas registration required. A vehicle located in a border commercial zone must display a valid Texas registration if the vehicle is owned by a person who:

(A) owns a leasing facility or a leasing terminal located in Texas; and

(B) leases the vehicle to a foreign motor carrier.

(2) Exemption for trips of short duration. Except as provided by paragraph (1) of this subsection, a foreign commercial vehicle operating in accordance with Transportation Code, Chapter 648 is exempt from the display of a temporary registration permit if:

(A) the vehicle is engaged solely in the transportation of cargo across the border into or from a border commercial zone;

(B) for each load of cargo transported the vehicle remains in this state for:

(i) not more than 24 hours; or

(ii) not more than 48 hours, if:

(I) the vehicle is unable to leave this state within 24 hours because of circumstances beyond the control of the motor carrier operating the vehicle; and

(II) all financial responsibility requirements applying to this vehicle are satisfied;

(C) the vehicle is registered and licensed as required by the country in which the person that owns the vehicle is domiciled or is a citizen as evidenced by a valid metal license plate attached to the front or rear exterior of the vehicle; and

(D) the country in which the person who owns the vehicle is domiciled or is a citizen provides a reciprocal exemption for commercial motor vehicles owned by residents of Texas.

(3) Exemption due to reciprocity agreement. Except as provided by paragraph (1) of this subsection, a foreign commercial motor vehicle in a border commercial zone in this state is exempt from the requirement of obtaining a Texas registration if the vehicle is currently registered in another state of the United States or a province of Canada with which this state has a reciprocity agreement that exempts a vehicle that is owned by a resident of this state and that is currently registered in this state from registration in the other state or province.

§217.24. Disabled Person License Plates and Identification Placards.

(a) Purpose. Transportation Code, Chapters 504 and 681, charge the department with the responsibility for issuing specially designed license plates and identification placards for disabled persons. For the department to perform these duties efficiently and effectively, this section prescribes the policies and procedures for the application, issuance, and renewal of disabled person license plates and placards.

(b) Issuance.

(1) Disabled person license plates.

(A) Eligibility. In accordance with Transportation Code, §504.201 the department will issue specially designed license plates displaying the international symbol of access to permanently disabled persons or their transporters instead of regular motor vehicle license plates.

(B) Specialty license plates. The department will issue disabled person insignia on those specialty license plates that can accommodate the identifying insignia and that are issued in accordance with §217.28 of this subchapter (relating to Specialty License Plates, Symbols, Tabs, and Other Devices).

(C) License plate number. Disabled person license plates will bear a license plate number assigned by the department or will bear a personalized license plate number issued in accordance with §217.28 of this subchapter.

(2) Windshield identification placards. The department will issue removable windshield identification placards to temporarily or permanently disabled persons and to the transporters of permanently disabled persons. A person who has been issued a windshield identification placard shall hang the placard from a vehicle's rearview mirror when the vehicle is parked in a disabled person parking space or shall display the placard on the center portion of the dashboard if the vehicle does not have a rearview mirror.

(A) A placard issued to a person with a permanent disability will be white on a blue shield in color.

(B) A placard issued to a person with a temporary disability will be white on a red shield in color.

(c) Initial application.

(1) Place of application. The following persons may file an application for disabled person license plates or identification placards with the county tax assessor-collector in the county in which the applicant resides:

(A) the owner of a registered vehicle that is regularly operated by or for the transportation of a disabled person; and

(B) a disabled person who is not a vehicle owner.

(2) Application form. The application must be made on a form prescribed by the director and must, at a minimum, include the name, address, and signature of the disabled person, and:

(A) the first four digits of the applicant's driver's license number or the number of a personal identification card issued to the applicant under Transportation Code, Chapter 521; or

(B) an out-of-state current driver's license number issued to a non-resident individual serving in the United States military at a military installation in this state.

(3) Accompanying documentation.

(A) In accordance with Transportation Code, §504.201 and §681.003, and unless otherwise exempted by law or this section, an initial application for disabled person license plates and an identification placard must be accompanied by evidence that the operator or regularly transported person is disabled.

(B) The evidence must take one of the two following forms.

(i) The evidence may be in the form of a disability statement, as it appears on the application for disabled person license plates or identification placards, which has been correctly completed and signed in the presence of a notary.

(ii) The evidence may also be in the form of a written prescription that includes the disabled person's name, a statement that the disability is either temporary or permanent, a statement whether the person's disability is mobility related as described by Transportation Code, §681.001(5)(B) or (C), and the signature of a physician. The prescription must be written on a prescription form or on the physician's letterhead. In the case of a mobility problem caused by a disorder of the foot, the evidence may be signed by a podiatrist on the podiatrist's letterhead.

(C) An initial application for disabled person license plates or identification placards must be signed by a physician:

(i) licensed to practice medicine in Texas, Arkansas, Louisiana, New Mexico, or Oklahoma;

(ii) authorized by law to practice medicine in a health facility of the Department of Veterans Affairs; or

(iii) practicing medicine in the United States Military on a military installation.

(D) If the initial application for disabled license plates or identification placards is based on a mobility problem caused by a disorder of the foot, it may be signed by a podiatrist licensed to practice podiatry in Texas, Arkansas, Louisiana, New Mexico, or Oklahoma.

(E) If the initial application for disabled license plates or identification placards is based on vision impairment, it may be signed by an optometrist licensed to practice optometry or therapeutic optometry in Texas, Arkansas, Louisiana, New Mexico, or Oklahoma.

(F) If the initial application for disabled license plates or identification placards, and the person resides in a county with a population of 125,000 or less, it may be issued by:

(i) a licensed registered nurse or physician assistant acting under the delegation and supervision of a licensed physician in conformance with Occupations Code, Chapter 157, Subchapter B; or

(ii) a physician's assistant licensed to practice in this state acting as the agent of a licensed physician under Occupations Code, §204.202(e).

(4) Exemption from accompanying documentation. The department will issue disabled person identification placards to an organization that regularly transports disabled persons in vehicles it owns or controls if the organization is prohibited by law from disclosing the identities of its clients. The application may be made in the name of the organization. In addition, accompanying documentation described in paragraph (3) of this subsection will not be required. The organization must present an "Exempt" Texas Vehicle Registration Receipt issued in accordance with §217.43 of this subchapter (relating to Exempt and Alias Vehicle Registration) for each disabled person identification placard requested.

(5) Issuance of disabled person license plates and identification placards to certain institutions.

(A) In accordance with Transportation Code, §504.203 and §681.0032, the department will issue disabled person license plates or a blue permanently disabled person identification placard for display on a van or bus operated by an institution, facility, or residential retirement community that is licensed under Health and Safety Code, Chapter 242, 246, or 247.

(B) The van or bus must be used for the transport of residents of the institution, facility, or residential retirement community.

(C) A qualified institution, facility, or residential retirement community must meet the following requirements to obtain disabled parking insignia.

(i) An application for disabled person license plates or an identification placard must be presented. Accompanying documentation described in paragraph (3) of this subsection is not required.

(ii) A Texas Vehicle Registration Receipt issued in accordance with §217.22 of this subchapter (relating to Motor Vehicle Registration) must be presented for each van or bus for which disabled person insignia is requested.

(D) If the Vehicle Registration Receipt indicates that the van or bus is not owned by the eligible institution, facility, or residential retirement community that is requesting disabled person identification insignia, then the institution, facility, or residential retirement community must submit a written statement that the van or bus is in the possession and control of the eligible institution, facility, or residential retirement community and is operated by the institution, facility, or residential retirement community for the transportation of its disabled residents.

(d) Renewal.

(1) License plates. Disabled person license plates are valid for a period of 12 months from the date of issuance, and are renewable as specified in §217.22 of this subchapter.

(2) Identification placards.

(A) Place of renewal application. Prior to the expiration of a disabled person identification placard, an applicant must apply for renewal to the tax assessor-collector of the county in which the owner resides.

(B) Accompanying documentation. To renew a permanently disabled person identification placard, an applicant must present the placard that is expiring, a receipt showing that a disabled person placard was previously issued to the applicant, or a copy of the previous identification placard application. If a previous application, placard, or receipt is not available, the applicant must reapply as described in subsection (c) of this section.

(3) Temporarily disabled person identification placards. Temporarily disabled person identification placards are valid for six months from the month of issuance or until the termination of the applicant's disability, whichever occurs first.

(A) Termination of disability. If a person's disability ends prior to the expiration of the identification placard, the placard shall be destroyed.

(B) Renewal. If a person's temporary disability extends for more than the six-month period for which the placard was issued, the person must reapply for a new identification placard as described in subsection (c) of this section.

(e) Replacement.

(1) License plates. If disabled person license plates are lost, stolen, or mutilated, the owner may obtain replacement license plates by applying with a county tax assessor-collector.

(A) Accompanying documentation. To replace permanently disabled person license plates, the owner must present the current year's registration receipt and personal identification acceptable to the tax assessor-collector.

(B) Absence of accompanying documentation. If the current year's registration receipt is not available and the county cannot verify that the disabled person license plates were issued to the owner, the owner must reapply in accordance with subsection (c) of this section.

(2) Disabled person identification placards. If a disabled person identification placard becomes lost, stolen, or mutilated, the owner may obtain a new identification placard in accordance with subsection (c) of this section.

(f) Transfer of disabled person license plates and identification placards.

(1) License plates.

(A) Transfer between persons. Disabled person license plates may not be transferred between persons. An owner who sells or trades a vehicle to which disabled person license plates have been

issued shall remove the disabled person license plates from the vehicle. The owner shall return the license plates to the department and shall obtain appropriate replacement license plates to place on the vehicle prior to any transfer of ownership.

(B) Transfer between vehicles. Disabled person license plates may not be transferred between vehicles.

(2) Identification placards.

(A) Transfer between vehicles. Disabled person identification placards may be displayed in any vehicle driven by the disabled person or in which the disabled person is a passenger.

(B) Transfer between persons. Disabled person identification placards may not be transferred between persons.

(g) Seizure and revocation of placard.

(1) After a law enforcement officer seizes a placard under Transportation Code, §681.012, the officer shall promptly provide the department with the following items:

(A) the original seized placard;

(B) a copy of the citation issued under Transportation Code, §681.011(a) or (d); and

(C) a brief summary of the events giving rise to the citation.

(2) The person to whom the seized placard was issued may petition for a hearing under Chapter 206, Subchapter D of this title (relating to Procedures in Contested Cases).

(A) If the department has not received the items specified in paragraph (1) of this subsection, the department will return the original seized placard or issue a replacement placard to the petitioner.

(B) If the department determines from written evidence that the citation was dismissed or withdrawn, the department will return the original seized placard or issue a replacement placard to the petitioner.

(C) If the department has received the items specified in paragraph (1) of this subsection and if the citation has not been dismissed or withdrawn, the department may negotiate a settlement providing for return of the seized placard or issuance of a replacement placard, including an agreement by the petitioner to abide by all laws regarding placards. If a settlement is not reached, the department will refer the matter to the State Office of Administrative Hearings for a hearing.

(i) If it is determined after a hearing that no offense was committed under Transportation Code, §681.011(a) or (d), the department will return the original seized placard or issue a replacement placard to the petitioner.

(ii) If it is determined after a hearing that an offense was committed under Transportation Code, §681.011(a) or (d), the revocation will continue and the petitioner shall not obtain a new placard for one year from the date of the offense.

(iii) At any time after the matter has been referred to the State Office of Administrative Hearings, the attorney for the department may dismiss the case for insufficient evidence or negotiate a settlement providing for return of the seized placard or issuance of a replacement placard.

§217.25. Construction Machinery Criteria.

Construction machinery must meet the following criteria in order to qualify for the $5.00 machinery license plate: it must be an unconventional machine, such as those built from the ground up, designed and fabricated to perform a job relating to that type of construction. It is a vehicle that is not designed or used to tow or transport property or persons, other than those persons who may be required to operate such machinery in the function of its design and purpose. Machinery vehicles are vehicles which are actually designed for special construction purposes.

§217.26. Golf Carts.

(a) The department may not register a golf cart for operation on a public highway.

(b) The department may issue license plates for a golf cart, for a fee of $10, if the owner resides on real property that is:

(1) owned or controlled by the United States Army Corps of Engineers; and

(2) in a county that borders another state and has a population of more than 110,000 but less than 111,000.

§217.27. Privately Owned Buses.

(a) Privately owned buses not operated for compensation or hire and thus not classified and registered as "city buses" or "motor buses" shall be registered with private bus license plates. The "private bus" registration classification includes every motor vehicle not operated for compensation or hire, which is designed for carrying more than 10 passengers (excluding the driver or operator) and used for the transportation of persons.

(b) The registration fee for a privately owned bus shall be prorated monthly and based upon the empty weight of the vehicle.

(c) The same schedule of registration fees used for city buses shall also be used for privately owned buses, since the fees for both classifications are computed at the same rate.

§217.28. Specialty License Plates, Symbols, Tabs, and Other Devices.

(a) Purpose and Scope. Transportation Code, Chapter 504 charges the department with the responsibility of issuing a plate or plates, symbols, tabs, or other devices that, when attached to a vehicle as prescribed by the department, act as the legal registration insignia for the period issued. In addition, Transportation Code, Chapter 504 charges the department with providing specialty license plates, symbols, tabs, and other devices. For the department to perform these duties efficiently and effectively, this section prescribes the policies and procedures for the application, issuance, and renewal of specialty license plates, symbols, tabs, and other devices, through the county tax assessor-collectors, and establishes application fees, expiration dates, and registration periods for certain specialty license plates.

(b) Initial application for specialty license plates, symbols, tabs, or other devices.

(1) Application Process.

(A) Procedure. An owner of a vehicle registered as specified in §217.22 of this subchapter (relating to Motor Vehicle Registration) who wishes to apply for a specialty license plate, symbol, tab, or other device must do so on a form prescribed by the director.

(B) Form requirements. The application form shall at a minimum require the name and complete address of the applicant.

(2) Fees and Documentation.

(A) The application must be accompanied by the prescribed registration fee, unless exempted by statute.

(B) The application must be accompanied by the statutorily prescribed specialty license plate fee. In accordance with Acts

of the 80th Legislature, Regular Session, 2007, Chapter 1166, Section 14, the fees for Legion of Merit license plates issued under Transportation Code, §504.316 are determined under Transportation Code, §504.3015(a). If a registration period is greater than 12 months, the expiration date of a specialty license plate, symbol, tab, or other device will be aligned with the registration period and the specialty plate fee will be adjusted to yield the appropriate fee. If the statutory annual fee for a specialty license plate is $5.00 or less, it will not be prorated.

(C) Specialty license plate fees will not be refunded after an application is submitted and the department has approved issuance of the license plate.

(D) The application must be accompanied by prescribed local fees or other fees that are collected in conjunction with registering a vehicle, with the exception of vehicles bearing license plates that are exempt by statute from these fees.

(E) The application must include evidence of eligibility for any specialty license plates. The evidence of eligibility may include, but is not limited to:

(i) an official document issued by a governmental entity;

(ii) a letter issued by a governmental entity on that agency's letterhead;

(iii) discharge papers; or

(iv) a death certificate.

(F) Initial applications for license plates for display on Exhibition Vehicles must include a photograph of the completed vehicle.

(3) Place of application. Applications for specialty license plates may be made directly to the county tax assessor-collector, except that applications for the following license plates must be made directly to the department:

(A) Congressional Medal of Honor;

(B) County Judge;

(C) Federal Administrative Law Judge;

(D) State Judge;

(E) State Official;

(F) U.S. Congress--House;

(G) U.S. Congress--Senate;

(H) U.S. Judge; and

(I) Legion of Valor.

(4) Gift plates.

(A) A person may purchase general distribution specialty license plates as a gift for another person if the purchaser submits an application for the specialty license plates that provides:

(i) the name and address of the person who will receive the plates; and

(ii) the vehicle identification number of the vehicle on which the plates will be displayed.

(B) To be valid for use on a motor vehicle, the recipient of the plates must file an application with the county tax assessor-collector and pay the statutorily required registration fees in the amount as provided by Transportation Code, Chapter 502 and this subchapter.

(c) Initial issuance of specialty license plates, symbols, tabs, or other devices.

(1) Issuance. On receipt of a completed initial application for registration, accompanied by the prescribed documentation and fees, the department will issue specialty license plates, symbols, tabs, or other devices to be displayed on the vehicle for which the license plates, symbols, tabs, or other devices were issued for the current registration period. If the vehicle for which the specialty license plates, symbols, tabs, or other devices are issued is currently registered, the owner must surrender the license plates currently displayed on the vehicle, along with the corresponding license receipt, before the specialty license plates may be issued.

(2) Exhibition Vehicle, Classic Motor Vehicle, and Classic Travel Trailer.

(A) License plates. Texas license plates that were issued the same year as the model year of an Exhibition Vehicle, Classic Motor Vehicle, or Classic Travel Trailer, may be displayed on that vehicle under Transportation Code, §§504.501, 504.5011, and 504.502, unless:

(i) the license plate's original use was restricted by statute to another vehicle type; or

(ii) the license plate is a qualifying plate type that originally required the owner to meet one or more eligibility requirements.

(B) Validation stickers and tabs. The department will issue validation stickers and tabs for display on license plates that are displayed as provided by subparagraph (A) of this paragraph.

(3) Number of plates issued.

(A) Two plates. Unless otherwise listed in subparagraph (B) of this paragraph, two specialty license plates, each bearing the same license plate number, will be issued per vehicle.

(B) One plate. One license plate will be issued per vehicle for all motorcycles and for the following specialty license plates:

(i) Antique Vehicle;

(ii) Classic Travel Trailer;

(iii) Cotton Vehicle;

(iv) Disaster Relief;

(v) Forestry Vehicle;

(vi) Golf Cart;

(vii) Log Loader;

(viii) Military Vehicle; and

(ix) Parade.

(C) Registration number. The identification number assigned by the military may be approved as the registration number instead of displaying Military Vehicle license plates on a former military vehicle.

(4) Assignment of plates.

(A) Title holder. Unless otherwise exempted by law or this section, the vehicle on which specialty license plates, symbols, tabs, or other devices is to be displayed shall be titled in the name of the person to whom the specialty license plates, symbols, tabs, or other devices is assigned, or a certificate of title application shall be filed in that person's name at the time the specialty license plates, symbols, tabs, or other devices are issued.

(B) Non-owner vehicle. If the vehicle is titled in a name other than that of the applicant, the applicant must provide evidence of having the legal right of possession and control of the vehicle.

(C) Leased vehicle. In the case of a leased vehicle, the applicant must provide a copy of the lease agreement verifying that the applicant currently leases the vehicle.

(5) Classification of neighborhood electric vehicles. The registration classification of a neighborhood electric vehicle, as defined by §217.3(a)(3) of this chapter (relating to Motor Vehicle Certificates of Title) will be determined by whether it is designed as a 4-wheeled truck or a 4-wheeled passenger vehicle.

(6) Number of vehicles. An owner may obtain specialty license plates, symbols, tabs, or other devices for an unlimited number of vehicles, unless the statute limits the number of vehicles for which the specialty license plate may be issued.

(7) Other classes of vehicle. A specialty license plate design may be varied to accommodate its use on motor vehicles other than passenger cars and light trucks. The department will determine whether a specialty license plate will be made available for one or more classes of vehicles in addition to passenger cars and light trucks and, if so, to which class or classes. In making this determination, the department will consider the cost of redesigning a specialty license plate to accommodate another class of vehicle, the potential demand for that specialty license plate on that class of vehicle, and other factors bearing on the potential cost or benefit to the public of expanding the availability of a specialty license plate.

(8) Personalized plate numbers.

(A) Issuance. The director will issue a personalized license plate number subject to the exceptions set forth in this paragraph.

(B) Character limit. A personalized license plate number may contain no more than six alpha or numeric characters or a combination of characters. Depending upon the specialty license plate design and vehicle class, the number of characters may vary. Spaces, hyphens, periods, the International Symbol of Access, or silhouettes of the state of Texas may be used in conjunction with the license plate number.

(C) Personalized plates not approved. A personalized license plate number will not be approved by the director if the alpha-numeric sequence:

(i) conflicts with the department's current or proposed regular license plate numbering system;

(ii) would violate §217.22(c)(3) of this subchapter, as determined by the executive director; or

(iii) is currently issued to another owner.

(D) Classifications of vehicles eligible for personalized plates. Unless otherwise listed in subparagraph (E) of this paragraph, personalized plates are available for all classifications of vehicles.

(E) Categories of plates for which personalized plates are not available. Personalized license plate numbers are not available for display on the following specialty license plates:

(i) Amateur Radio (other than the official call letters of the vehicle owner);

(ii) Antique Motorcycle;

(iii) Antique Vehicle;

(iv) Apportioned;

(v) Congressional Medal of Honor;

(vi) Cotton Vehicle;

(vii) Disabled Veteran;

(viii) Disaster Relief;

(ix) Farm Trailer (except Go Texan II);

(x) Farm Truck (except Go Texan II);

(xi) Farm Truck Tractor (except Go Texan II);

(xii) Fertilizer;

(xiii) Forestry Vehicle;

(xiv) Log Loader;

(xv) Machinery;

(xvi) Parade;

(xvii) Permit;

(xviii) Rental Trailer;

(xix) Soil Conservation; and

(xx) Texas Guard.

(F) Fee. The statutorily prescribed personalized license plate fee will be charged in addition to any prescribed specialty license plate fee.

(G) Priority. Once a personalized license plate number has been assigned to an applicant, the owner shall have priority to that number for succeeding years if a timely renewal application is submitted to the county tax assessor-collector each year in accordance with subsection (d) of this section.

(d) Specialty license plate renewal.

(1) Renewal deadline. If a personalized license plate is not renewed within 60 days after its expiration date, a subsequent renewal application will be treated as an application for new personalized license plates.

(2) Length of validation. With the following exceptions, all specialty license plates, symbols, tabs, or other devices shall be valid for 12 months from the month of issuance or for a prorated period of at least 12 months coinciding with the expiration of registration.

(A) Five year period. The following license plates and registration numbers are issued for a five-year period:

(i) Antique Vehicle and Antique Motorcycle license plates and Antique tabs;

(ii) Military Vehicle license plates and registration numbers;

(iii) Parade license plates; and

(iv) Foreign Organization license plates.

(B) March expiration dates. The following license plates expire each March 31:

(i) Congressional Medal of Honor;

(ii) Cotton Vehicle;

(iii) Disaster Relief.

(C) June expiration dates. Honorary Consul license plates expire each June 30.

(D) September expiration dates. Log Loader license plates expire each September 30.

(E) December expiration dates. The following license plates expire each December 31:

(i) County Judge;

(ii) Federal Administrative Law Judge;

(iii) State Judge;

(iv) State Official;

(v) U.S. Congress--House;

(vi) U.S. Congress--Senate; and

(vii) U.S. Judge.

(F) Except as otherwise provided in this paragraph, if a vehicle's registration period is other than 12 months, the expiration date of the specialty license plate, symbol, tab, or other device will be set to align it with the expiration of registration.

(3) Renewal.

(A) Renewal notice. Approximately 60 days before the expiration date of a specialty license plate, symbol, tab, or other device, the department will send each owner a renewal notice that includes the amount of the specialty plate fee and the registration fee.

(B) Return of notice. The owner must return the fee and any prescribed documentation to the tax assessor-collector of the county in which the owner resides, except that the owner of a vehicle with one of the following license plates must return the documentation and specialty license plate fee directly to the department and submit the registration fee to the county tax assessor-collector:

(i) County Judge;

(ii) Federal Administrative Law Judge;

(iii) State Judge;

(iv) State Official;

(v) U.S. Congress--House;

(vi) U.S. Congress--Senate; and

(vii) U.S. Judge.

(C) Return of documents. The owner of a vehicle with Congressional Medal of Honor license plates must return the documentation and specialty license plate fee, if any, directly to the department.

(D) Expired plate numbers. The department will retain a specialty license plate number for 60 days after the expiration date of the plates if the plates are not renewed on or before their expiration date. After 60 days the number may be reissued to a new applicant. All specialty license plate renewals received after the expiration of the 60 days will be treated as new applications.

(E) Issuance of validation insignia. On receipt of a completed license plate renewal application and prescribed documentation, the department will issue registration validation insignia as specified in §217.22 of this subchapter, except for those plates listed in clause (i) or (ii) of this subparagraph or unless this section or other law requires the issuance of new license plates to the owner.

(i) New license plates will be issued when the following specialty license plates are renewed:

(I) Antique Motorcycle;

(II) Antique Vehicle;

(III) Congressional Medal of Honor;

(IV) County Judge;

(V) Disaster Relief;

(VI) Federal Administrative Law Judge;

(VII) Military Vehicle;

(VIII) Parade;

(IX) State Judge;

(X) State Official;

(XI) U.S. Congress-House;

(XII) U.S. Congress-Senate; and

(XIII) U.S. Judge.

(ii) New license plates shall be issued at no extra cost every seven years from the date of issuance for specialty license plates and renewed personalized license plates, in accordance with the provisions of §217.22 of this subchapter.

(F) Lost or destroyed renewal notices. If a renewal notice is lost, destroyed, or not received by the vehicle owner, the specialty license plates, symbol, tab, or other device may be renewed if the owner provides acceptable personal identification along with the appropriate fees and documentation. Failure to receive the notice does not relieve the owner of the responsibility to renew the vehicle's registration.

(e) Transfer of specialty license plates.

(1) Transfer between vehicles.

(A) Transferable between vehicles. The owner of a vehicle with specialty license plates, symbols, tabs, or other devices may transfer the specialty plates between vehicles by filing an application through the county tax assessor-collector if the vehicle to which the plates are transferred:

(i) is titled or leased in the owner's name; and

(ii) meets the vehicle classification requirements for that particular specialty license plate, symbol, tab, or other device.

(B) Non-transferable between vehicles. The following specialty license plates, symbols, tabs, or other devices are non-transferable between vehicles:

(i) Antique Vehicle license plates, Antique Motorcycle license plates, and Antique tabs;

(ii) Military Vehicle license plates and registration numbers;

(iii) Classic Auto, Classic Truck, Classic Motorcycle, and Classic Travel Trailer license plates;

(iv) Parade license plates;

(v) Forestry Vehicle license plates; and

(vi) Log Loader license plates.

(C) New specialty license plates. If the department creates a new specialty license plate under Transportation Code, §504.801, the department will specify at the time of creation whether the license plate may be transferred between vehicles.

(2) Transfer between owners.

(A) Non-transferable between owners. Specialty license plates, symbols, tabs, or other devices issued under Transporta-

tion Code, Chapter 504, Subchapters B and G, may not be transferred between persons. Specialty license plates, symbols, tabs, or other devices issued under Transportation Code, Chapter 504, Subchapters C, D, E, and F are not transferable from one person to another except as specifically permitted by statute.

(B) New specialty license plates. If the department creates a new specialty license plate under Transportation Code, §504.801, the department will specify at the time of creation whether the license plate may be transferred between owners.

(3) Simultaneous transfer between owners and vehicles. Specialty license plates, symbols, tabs, or other devices are transferable between owners and vehicles simultaneously only if the owners and vehicles meet all the requirements in both paragraphs (1) and (2) of this subsection.

(f) Replacement.

(1) Application. When specialty license plates, symbols, tabs, or other devices are lost, stolen, or mutilated, the owner shall apply directly to the county tax assessor-collector for the issuance of replacements, except that Log Loader license plates must be reapplied for and accompanied by the prescribed fees and documentation.

(2) Interim replacement tags. If the specialty license plate, symbol, tab, or other device is lost, destroyed, or mutilated to such an extent that it is unusable, and if issuance of a replacement license plate would require that it be remanufactured, the owner must pay the statutory replacement fee, and the department will issue a temporary tag for interim use. The owner's new specialty license plate number will be shown on the temporary tag unless it is a personalized license plate, in which case the same personalized license plate number will be shown.

(3) Stolen specialty license plates. The county tax assessor-collector will not approve the issuance of replacement license plates with the same personalized license plate number when the department's records indicate that the vehicle displaying the personalized license plates, symbols, tabs, or other devices or the license plates, symbols, tabs, or other devices themselves were reported as stolen. On expiration or recovery of the stolen vehicle or license plates, symbols, tabs, or other devices, the department will issue, at the owner's request, replacement license plates, symbols, tabs, or other devices bearing the same personalized number as those that were stolen.

(g) License plates created after January 1, 1999. In accordance with Transportation Code, §504.702, the department will begin to issue specialty license plates authorized by a law enacted after January 1, 1999, only if the sponsoring entity for that license plate submits the following items before the fifth anniversary of the effective date of the law.

(1) The sponsoring entity must submit a written application. The application must be on a form approved by the director and include, at a minimum:

(A) the name of the license plate;

(B) the name and address of the sponsoring entity;

(C) the name and telephone number of a person authorized to act for the sponsoring entity; and

(D) the deposit or license plate fees set forth in paragraph (2) of this subsection.

(2) The written request must be accompanied by:

(A) a deposit in the amount of $8,000 in the form of a single payment, made payable to the Texas Department of Motor Vehicles; or

(B) if the license plates are presold, the prescribed number of properly executed applications for that license plate accompanied by a single payment, made payable to the Texas Department of Motor Vehicles, in an amount equal to the prescribed fees for issuance of those license plates; or

(C) if the sponsoring entity submits less than the prescribed number of properly executed applications for that license plate accompanied by a single payment, a deposit made payable to the Texas Department of Motor Vehicles, that consists of:

(i) the prescribed license plate fees for those applications submitted; and

(ii) a deposit equal to $8,000 less the prescribed portion of those license plate fees to be retained by the department, and deposited to the State Highway Fund, for issuance of the license plates for which applications are submitted.

(3) The deposit submitted to the department under paragraph (2)(A) or (C) of this subsection will be returned to the sponsoring entity only if the prescribed number of sets of the applicable license are issued or presold.

(4) A sponsoring entity is not an agent of the department and does not act for the department in any matter, and the department does not assume any responsibility for fees or applications collected by a sponsoring entity.

(h) Assignment procedures for state, federal, and county officials.

(1) State Officials. State Official license plates contain the prefix "SO" and are assigned in the following order:

(A) Governor;

(B) Lieutenant Governor;

(C) Speaker of the House;

(D) Attorney General;

(E) Comptroller;

(F) Land Commissioner;

(G) Agriculture Commissioner;

(H) Secretary of State;

(I) Railroad Commission Presiding Officer followed by the remaining members based on their seniority;

(J) Supreme Court Chief Justice followed by the remaining justices based on their seniority;

(K) Criminal Court of Appeals Presiding Judge followed by the remaining judges based on their seniority;

(L) Members of the State Legislature, with Senators assigned in order of district number followed by Representatives assigned in order of district number, except that in the event of redistricting, license plates will be reassigned; and

(M) Board of Education Presiding Officer followed by the remaining members assigned in district number order, except that in the event of redistricting, license plates will be reassigned.

(2) Members of the U.S. Congress.

(A) U.S. Senate license plates contain the prefix "Senate" and are assigned by seniority; and

(B) U.S. House license plates contain the prefix "House" and are assigned in order of district number, except that in the event of redistricting, license plates will be reassigned.

(3) Federal Judge.

(A) Federal Judge license plates contain the prefix "USA" and are assigned on a seniority basis within each court in the following order:

(i) Judges of the Fifth Circuit Court of Appeals;

(ii) Judges of the United States District Courts;

(iii) United States Bankruptcy Judges; and

(iv) United States Magistrates.

(B) Federal Administrative Law Judge plates contain the prefix "US" and are assigned in the order in which applications are received.

(C) A federal judge who retired on or before August 31, 2003, and who held license plates expiring in March 2004 may continue to receive federal judge plates. A federal judge who retired after August 31, 2003, is not eligible for U.S. Judge license plates.

(4) State Judge.

(A) State Judge license plates contain the prefix "TX" and are assigned sequentially in the following order:

(i) Appellate District Courts;

(ii) Presiding Judges of Administrative Regions;

(iii) Judicial District Courts;

(iv) Criminal District Courts; and

(v) Family District Courts and County Statutory Courts.

(B) A particular alpha-numeric combination will always be assigned to a judge of the same court to which it was originally assigned.

(C) A state judge who retired on or before August 31, 2003, and who held license plates expiring in March 2004 may continue to receive state judge plates. A state judge who retired after August 31, 2003, is not eligible for State Judge license plates.

(5) County Judge license plates contain the prefix "CJ" and are assigned by county number.

(6) In the event of redistricting or other plate reallocation, the department may allow a state official to retain that official's plate number if the official has had the number for five or more consecutive years.

(i) Development of new specialty license plates.

(1) Procedure. The following procedure governs the process of authorizing new specialty license plates under Transportation Code, §504.801 whether the new license plate originated as a result of an application or as a department initiative.

(2) Specialty license plate committee. The executive director will appoint no fewer than three employees of the department to the specialty license plate committee. The committee shall meet as necessary to review completed specialty license plate applications.

(3) Applications for the creation of new specialty license plates. An applicant for the creation of a new specialty license plate, other than a vendor specialty plate under §217.40 of this subchapter (relating to Marketing of Specialty License Plates through a Private Vendor), must submit a written application on a form approved by the director. The application must include:

(A) the applicant's name, address, telephone number, and other identifying information as directed on the form;

(B) certification on Internal Revenue Service letterhead stating that the applicant is a not-for-profit entity, and that the applicant's non-profit status is current at the time of application;

(C) a draft design of the specialty license plate;

(D) projected sales of the plate, including an explanation of how the projected figure was established;

(E) a marketing plan for the plate, including a description of the target market;

(F) a licensing agreement from the appropriate third party for any intellectual property design or design element;

(G) a letter from the executive director of the sponsoring state agency stating that the agency agrees to receive and distribute revenue from the sale of the specialty license plate and that the use of the funds will not violate a statute or constitutional provision; and

(H) other information necessary for the committee to reach a decision regarding approval of the requested specialty plate.

(4) Committee review process. The committee:

(A) will not consider incomplete applications;

(B) may request additional information from an applicant if necessary for a decision; and

(C) will consider specialty license plate applications that are restricted by law to certain individuals or groups of individuals (qualifying plates) using the same procedures as applications submitted for plates that are available to everyone (non-qualifying plates), including using the limited number of potential purchasers as a factor in the approval decision.

(5) Request for additional information. If the committee determines that additional information is needed, the applicant must return the requested information not later than the requested due date. If the additional information is not received by that date, the committee will return the application as incomplete unless the committee:

(A) determines that the additional requested information is not critical for committee consideration and approval of the application; and

(B) approves the application, pending receipt of the additional information by a specified due date.

(6) Committee recommendation. The recommendation of the committee will be based on:

(A) compliance with Transportation Code, §504.801;

(B) the proposed license plate design, including:

(i) whether the design appears to meet the legibility and reflectivity standards established by the department;

(ii) whether the design meets the standards established by the department for uniqueness; and

(iii) other information provided during the application process; and

(C) the applicant's ability to comply with Transportation Code, §504.702 relating to the required deposit or application that must be provided before the manufacture of a new specialty license plate.

(7) Public comment on proposed design. If the committee recommends the issuance of the proposed specialty license plate design, notice of the license plate design will be posted on the department's Internet website to receive public comment. Simultaneously, the department will notify all other specialty plate organizations and the sponsoring agencies who administer specialty license plates issued in accordance with Transportation Code, Chapter 504, Subchapter G, of the posting. A comment on the proposed design must be submitted in writing through the mechanism provided on the department's Internet website for submission of official comments, and must be received by the department within 10 days after the date that the notice is posted on the department's website.

(8) Final approval.

(A) Approval. The executive director of the department, or the executive director's designee, not below the level of division director, will approve or disapprove the specialty license plate application based on the committee's recommendation and on comments received during the comment period, including whether negative comments suggest that the plate would fall under the criteria of §217.22(c)(3)(B)(i) of this subchapter.

(B) Application not approved. If the application is not approved under subparagraph (A) of this paragraph, the applicant may submit a new application and supporting documentation for the design to be considered again by the committee.

(9) Issuance of specialty plates.

(A) If the specialty license plate is approved, the applicant must comply with Transportation Code, §504.702 before any further processing of the license plate.

(B) Approval of the plate does not guarantee that the submitted draft plate design will be used. The department has final approval authority of all specialty license plate designs and may adjust or reconfigure the submitted draft design to comply with the format or license plate specifications.

(C) If the department, in consultation with the applicant, adjusts or reconfigures the design, the adjusted or reconfigured design will not be posted on the department's website for additional comments.

(10) Redesign of specialty license plate.

(A) Upon receipt of a written request from the applicant, the department will allow redesign of a specialty license plate.

(B) A request for a redesign must meet all application requirements and proceed through the approval process of a new specialty plate as required by this subsection.

(C) An approved license plate redesign does not require the deposit required by Transportation Code, §504.702, but the applicant must pay a redesign cost to cover administrative expenses.

§217.29. Vehicle Registration Renewal via the Internet.

(a) Internet registration renewal program. The department will maintain a uniform Internet registration renewal process. This process will provide for the renewal of vehicle registrations via the Internet and will be in addition to vehicle registration procedures provided for in §217.22(d) of this subchapter (relating to Motor Vehicle Registration). The Internet registration renewal program will be facilitated by a third-party vendor.

(b) County participation in program. County participation is optional and requires approval from the commissioner's court of a county. A county tax assessor-collector must submit an agreement to the director indicating intent to participate in the program.

(c) Eligibility of individuals for participation. To be eligible to renew a vehicle's registration via the Internet, a vehicle owner must meet the following criteria.

(1) The vehicle owner must meet all criteria for registration renewal outlined in this section, in §217.22 of this subchapter, and in Transportation Code, Chapter 502.

(2) The vehicle owner must be a resident of a participating county.

(3) The vehicle must have registration at the time the application for registration renewal is submitted. In calculating the expiration date of the registration, the 5-working-day grace period established by Transportation Code, §502.407 will not be considered. The county shall register the vehicle for a 12-month period without changing the initial month of registration.

(d) Fees. A vehicle owner who renews registration via the Internet must pay:

(1) registration fees prescribed by law;

(2) any local fees or other fees prescribed by law and collected in conjunction with registering a vehicle;

(3) a fee of $1.00 for the processing of a registration renewal by mail in accordance with Transportation Code, §502.101(a); and

(4) a convenience fee of $2.00 for the processing of an electronic registration renewal paid by a credit card payment in accordance with Transportation Code, §201.208.

(e) Information to be submitted by vehicle owner. A vehicle owner who renews registration via the Internet must submit or verify the following information:

(1) registrant information, including the vehicle owner's name and county of residence;

(2) vehicle information, including the license plate number of the vehicle to be registered;

(3) insurance information, including the name of the insurance company, the name of the insurance company's agent (if applicable), the telephone number of the insurance company or agent (local or toll free number serviced Monday through Friday 8:00 a.m. to 5:00 p.m.), the insurance policy number, and representation that the policy meets all applicable legal standards;

(4) credit card information, including the type of credit card, the name appearing on the credit card, the credit card number, and the expiration date; and

(5) other information prescribed by rule or statute.

(f) Duties of participating counties. A participating county tax assessor-collector shall:

(1) accept electronic payment for vehicle registration renewal via the Internet;

(2) execute an agreement with the department as provided by the director;

(3) process qualified Internet registration renewal transactions as submitted by the third-party vendor;

(4) communicate with the third-party vendor and applicants via email, regular mail, or other means, as specified by the director;

(5) promptly mail renewal registration validation stickers and license plates to applicants;

(6) ensure that all requirements for registration renewal are met, including all requirements set forth in this section, in §217.22 of this subchapter, and in Transportation Code, Chapter 502; and

(7) reject applications that do not meet all requirements set forth in this section, in §217.22 of this subchapter, and in Transportation Code, Chapter 502.

§217.30. Commercial Vehicle Registration.

(a) Eligibility. A motor vehicle, other than a motorcycle, designed or used primarily for the transportation of property, including any passenger car that has been reconstructed to be used, and is being used, primarily for delivery purposes, with the exception of a passenger car used in the delivery of the United States mails, must be registered as a commercial vehicle.

(b) Commercial vehicle registration classifications.

(1) Apportioned license plates. Apportioned license plates are issued in lieu of Combination or Truck license plates to Texas carriers who proportionally register their fleets in other states, in conformity with §217.44 of this subchapter (relating to Registration Reciprocity Agreements).

(2) City bus license plates. A street or suburban bus shall be registered with license plates bearing the legend "City Bus."

(3) Combination license plates.

(A) Specifications. A truck or truck tractor with a manufacturer's rated carrying capacity in excess of one ton used or to be used in combination with a semitrailer having a gross weight in excess of 6,000 pounds, shall be registered with combination license plates. Such vehicles must be registered for a gross weight equal to the combined gross weight of all the vehicles in the combination. Only one combination license plate is required and must be displayed on the front of the truck or truck tractor. When displaying a combination license plate, a truck or truck tractor is not restricted to pulling a semitrailer licensed with a Token Trailer license plate and may legally pull semitrailers and full trailers displaying other types of Texas license plates or license plates issued out of state. The following vehicles are not required to be registered in combination:

(i) trucks or truck tractors having a manufacturer's rated carrying capacity of one ton or less, or trucks or truck tractors to be used exclusively in combination with semitrailers having gross weights not exceeding 6,000 pounds;

(ii) semitrailers with gross weights of 6,000 pounds or less, or semitrailers that are to be operated exclusively with trucks or truck tractors having manufacturer's rated carrying capacities of one ton or less;

(iii) trucks or truck tractors used exclusively in combination with semitrailer-type vehicles displaying Machinery, Permit, or Farm Trailer license plates;

(iv) trucks or truck tractors used exclusively in combination with travel trailers and manufactured housing;

(v) trucks or truck tractors to be registered with Farm Truck or Farm Truck Tractor license plates;

(vi) trucks or truck tractors and semitrailers to be registered with disaster relief license plates;

(vii) trucks or truck tractors and semitrailers to be registered with Soil Conservation license plates;

(viii) trucks or truck tractors and semitrailers to be registered with U.S. Government license plates or Exempt license plates issued by the State of Texas; and

(ix) vehicles that are to be issued temporary permits, such as 72-Hour Permits, 144-Hour Permits, One Trip Permits, or 30-Day Permits in accordance with Transportation Code, §502.352 and §502.354.

(B) Converted semitrailers. Semitrailers that are converted to full trailers by means of auxiliary axle assemblies will retain their semitrailer status, and such semitrailers are subject to the combination and token trailer registration requirements.

(C) Axle assemblies. Various types of axle assemblies that are specially designed for use in conjunction with other vehicles or combinations of vehicles may be used to increase the load capabilities of such vehicles or combinations.

(i) Auxiliary axle assemblies such as trailer axle converters, jeep axles, and drag axles, which are used in conjunction with truck tractor and semitrailer combinations, are not required to be registered; however, the additional weight that is acquired by the use of such axle assemblies must be included in the combined gross weight of the combination.

(ii) Ready-mix concrete trucks that have an auxiliary axle assembly installed for the purpose of increasing a load capacity of such vehicles must be registered for a weight that includes the axle assembly.

(D) Exchange of Combination license plates. Combination license plates shall not be exchanged for another type of registration during the registration year, except that:

(i) if a major permanent reconstruction change occurs, Combination license plates may be exchanged for Truck license plates, provided that a corrected title is applied for;

(ii) if the department initially issues Combination license plates in error, the plates will be exchanged for license plates of the proper classification;

(iii) if the department initially issues Truck or Trailer license plates in error to vehicles that should have been registered in combination, such plates will be exchanged for Combination and Token Trailer license plates; or

(iv) if a Texas apportioned carrier acquires a combination license power unit, the Combination license plates will be exchanged for Apportioned license plates.

(4) Cotton Vehicle license plates. The department will issue Cotton Vehicle license plates in accordance with Transportation Code, §504.505 and §217.28 of this subchapter (relating to Specialty License Plates, Symbols, Tabs, and Other Devices).

(5) Forestry Vehicle license plates. The department will issue Forestry Vehicle license plates in accordance with Transportation Code, §504.507 and §217.28 of this subchapter.

(6) In Transit license plates. The department may issue an In Transit license plate annually to any person, firm, or corporation engaged in the primary business of transporting and delivering by means of the full mount, saddle mount, tow bar, or any other combination, new vehicles and other vehicles from the manufacturer or any other point of origin to any point of destination within the State. Each new vehicle being transported, delivered, or moved under its own power in

accordance with this paragraph must display an In Transit license plate in accordance with Transportation Code, §503.035.

(7) Motor Bus license plates. A motor bus as well as a taxi and other vehicles that transport passengers for compensation or hire, must display Motor Bus license plates when operated outside the limits of a city or town, or adjacent suburb, in which its company is franchised to do business.

(8) Token Trailer license plates.

(A) Qualification. The department will issue Token Trailer license plates for semitrailers that are required to be registered in combination.

(B) Validity. A Token Trailer license plate is valid only when it is displayed on a semitrailer that is being pulled by a truck or a truck tractor that has been properly registered with Forestry Vehicle (in accordance with Transportation Code, §504.507), Combination (in accordance with Transportation Code, §502.167), or Apportioned (in accordance with Transportation Code, §502.054) license plates for combined gross weights that include the weight of the semitrailer, unless exempted by Transportation Code, §502.352 and §623.011.

(C) License receipt. The operator shall carry a copy of the Token Trailer license plate receipt in the vehicle at all times when operating the vehicle on the public highways.

(D) House-moving dollies. House-moving dollies are to be registered with Token Trailer license plates and titled as semitrailers; however, only one such dolly in a combination is required to be registered and titled. The remaining dolly (or dollies) is permitted to operate unregistered, since by the nature of its construction, it is dependent upon another such vehicle in order to function. The pulling unit must display a Combination or Apportioned license plate.

(E) Full trailers. The department will not issue a Token Trailer license plate for a full trailer.

(9) Tow Truck license plates. A Tow Truck license plate must be obtained for all tow trucks operating and registered in this state. The department will not issue a Tow Truck license plate to tow trucks that are not registered in compliance with Transportation Code, Chapter 643.

(c) Application for commercial vehicle registration.

(1) Application form. An applicant shall apply for commercial license plates through the appropriate county tax assessor-collector upon forms prescribed by the director and shall require, at a minimum, the following information:

(A) owner name and complete address;

(B) complete description of vehicle, including empty weight; and

(C) motor number or serial number.

(2) Empty weight determination.

(A) The weight of a Motor Bus shall be the empty weight plus carrying capacity, in accordance with Transportation Code, §502.168.

(B) The weight of a vehicle cannot be lowered below the weight indicated on a Manufacturer's Certificate of Origin unless a corrected Manufacturer's Certificate of Origin is obtained.

(C) In all cases where the department questions the empty weight of a particular vehicle, the applicant should present a weight certificate from a public weight scale or the Department of Public Safety.

(3) Gross weight.

(A) Determination of Weight. The combined gross weight of vehicles registering for combination license plates shall be determined by the empty weight of the truck or truck tractor combined with the empty weight of the heaviest semitrailer or semitrailers used or to be used in combination therewith, plus the heaviest net load to be carried on such combination during the motor vehicle registration year, provided that in no case may the combined gross weight be less than 18,000 pounds.

(B) Restrictions. The following restrictions apply to combined gross weights.

(i) After a truck or truck tractor is registered for a combined gross weight, such weight cannot be lowered at any subsequent date during the registration year. The owner may, however, lower the gross weight when registering the vehicle for the following registration year, provided that the registered combined gross weight is sufficient to cover the heaviest load to be transported during the year and provided that the combined gross weight is not less than 18,000 pounds.

(ii) A combination of vehicles is restricted to a total gross weight not to exceed 80,000 pounds; however, all combinations may not qualify for 80,000 pounds unless such weight can be properly distributed in accordance with axle load limitations, tire size, and distance between axles, in accordance with Transportation Code, §623.011.

(4) Motor number or serial number. Ownership must be established by a court order if no motor or serial number can be identified. Once ownership has been established, the department will assign a number upon payment of the fee.

(5) Accompanying documentation. Unless otherwise exempted by law, completed applications for commercial license plates shall be accompanied by:

(A) prescribed registration fees;

(B) prescribed local fees or other fees that are collected in conjunction with registering a vehicle;

(C) evidence of financial responsibility as required by Transportation Code, §502.153 (if the applicant is a motor carrier as defined by §218.2 of this title (relating to Definitions), proof of financial responsibility may be in the form of a registration listing or an international stamp indicating that the vehicle is registered in compliance with Chapter 218, Subchapter B of this title (relating to Motor Carrier Registration);

(D) an application for Texas Certificate of Title in accordance with §217.3 of this chapter (relating to Motor Vehicle Certificates of Title), or other proof of ownership;

(E) proof of payment of the Federal Heavy Vehicle Use Tax, if applicable;

(F) an original or certified copy of the Certificate of Registration issued in accordance with Transportation Code, Chapter 643, if application is being made for Tow Truck license plates; and

(G) other documents or fees required by law.

(6) Proof of payment required. Proof of payment of the Federal Heavy Vehicle Use Tax is required for vehicles with a gross registration weight of 55,000 pounds or more, or in cases where the vehicle's gross weight is voluntarily increased to 55,000 pounds or more. Proof of payment shall consist of an original or photocopy of the Schedule 1 portion of Form 2290 receipted by the Internal Revenue Service

(IRS), or a copy of the Form 2290 with Schedule 1 attached as filed with the IRS, along with a photocopy of the front and back of the canceled check covering the payment to the IRS.

(7) Proof of payment not required. Proof of payment of the Federal Heavy Vehicle Use Tax is not required:

(A) for new vehicles when an application for title and registration is supported by a Manufacturer's Certificate of Origin;

(B) on used vehicles when an application for title and registration is filed within 60 days from the date of transfer to the applicant as reflected on the assigned title, except that proof of payment will be required when an application for Texas title and registration is accompanied by an out-of-state title that is recorded in the name of the applicant;

(C) when a vehicle was previously wrecked, in storage, or otherwise out of service and, therefore, not registered or operated during the current registration year or during the current tax year, provided that a non-use affidavit is signed by the operator; and

(D) as a prerequisite to registration of vehicles apprehended for operating without registration or reciprocity or when an owner or operator purchases temporary operating permits or additional weight.

(d) Renewal of commercial license plates.

(1) Registration period. The department will establish the registration period for commercial vehicles, unless specified by statute. Commercial license plates are issued for established annual registration periods as follows.

(A) March expiration. The following license plates are issued for the established annual registration period of April 1st through March 31st of the following year:

(i) City Bus license plates;

(ii) Combination license plates;

(iii) In Transit license plates;

(iv) Motor Bus license plates; and

(v) Token Trailer license plates.

(B) Five year registration with March 31st expiration. The following license plates are available with a five-year registration period. Registration fees for the license plates listed below may be paid on an annual basis, or may be paid up front for the entire five-year period:

(i) Five-year Rental Trailer license plates issued for rental trailers that are part of a rental fleet; and

(ii) Five-year Token Trailer license plates, available to owners of semitrailers to be used in combination with truck-tractors displaying Apportioned or Combination license plates.

(2) License Plate Renewal Notice. The department will mail a License Plate Renewal Notice, indicating the proper registration fee and the month and year the registration expires, to each vehicle owner approximately six to eight weeks prior to the expiration of the vehicle's registration.

(3) Return of License Plate Renewal Notices. License Plate Renewal Notices should be returned by the vehicle owner to the department or the appropriate county tax assessor-collector, as indicated on the License Plate Renewal Notice. Unless otherwise exempted by law, License Plate Renewal Notices may be returned either in person or by mail, and shall be accompanied by:

(A) statutorily prescribed registration renewal fees;

(B) prescribed local fees or other fees that are collected in conjunction with registration renewal;

(C) evidence of financial responsibility as required by Transportation Code, §502.153; and

(D) other prescribed documents or fees.

(4) Lost or destroyed License Plate Renewal Notice. If a License Plate Renewal Notice is lost, destroyed, or not received by the vehicle owner, the vehicle may be registered if the owner presents personal identification acceptable to the tax assessor-collector. Failure to receive the notice does not relieve the owner of the responsibility to renew the vehicle's registration.

(e) Transfer of commercial vehicle license plates.

(1) Transfer between persons. With the exceptions noted in paragraph (3) of this subsection, when ownership of a vehicle displaying commercial vehicle license plates is transferred, application for transfer of such license plates shall be made with the county tax assessor-collector in the county in which the purchaser resides. If the purchaser does not intend to use the vehicle in a manner that would qualify it for the license plates issued to that vehicle, such plates must be exchanged for the appropriate license plates.

(2) Transfer between vehicles. Commercial vehicle license plates are non-transferable between vehicles.

(3) Transfer of Apportioned and Tow Truck license plates. Apportioned and Tow Truck license plates are non-transferable between persons or vehicles, and become void if the vehicle to which the license plates were issued is sold.

(f) Replacement of lost, stolen, or mutilated commercial vehicle license plates.

(1) In Transit license plates. Replacement In Transit license plates will not be issued. Additional In Transit license plates may be obtained at any time during the registration year by submitting a new application in accordance with subsection (d) of this section.

(2) Other license plates. Except for In Transit license plates identified in paragraph (1) of this subsection, an owner of lost, stolen, or mutilated commercial vehicle license plates may obtain replacement license plates by filing an Application for Replacement Plates and remitting the prescribed fee to the county tax assessor-collector of the county in which the owner resides.

§217.31. Vehicle Emissions Enforcement System.

(a) Purpose. Transportation Code, §502.009 requires the department to implement a system requiring verification that a vehicle complies with vehicle emissions inspection and maintenance programs as required by the Health and Safety Code, §382.037 and §382.0372, and Transportation Code, Chapter 548, Subchapter F. Transportation Code, §501.0276 and §502.1535, requires a vehicle subject to Transportation Code, §548.3011 to pass an emissions test on resale in an affected or early action compact county before it is titled or registered. This section prescribes the department's policies and procedures if a vehicle does not comply with the emissions standards set by federal and state laws and the provisions of the Texas air quality State Implementation Plan.

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

(1) Affected County--A county with a motor vehicle emissions inspection and maintenance program established under Transportation Code, §548.301.

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

(3) DPS--The Texas Department of Public Safety.

(4) Early action compact county--A participating county under Health and Safety Code, Chapter 382, Subchapter H.

(5) TCEQ--The Texas Commission on Environmental Quality.

(6) Vehicle--A self-propelled vehicle required to be registered in the state, except those vehicles exempted by TCEQ.

(7) Vehicle inspection report--A vehicle inspection form prescribed by DPS that is printed by the vehicle exhaust gas analyzer immediately following an emissions test.

(8) Vehicle emissions I/M program--A vehicle emissions inspection and maintenance program meeting all the requirements of the Environmental Protection Agency.

(9) Waiver--A form and certificate that allows a vehicle to be considered in compliance with the vehicle emissions I/M program for a specified period of time after a vehicle fails an emissions test.

(c) Notice from DPS or TCEQ.

(1) DPS, after notice to the vehicle owner, will notify the department if a motor vehicle owner fails to comply with the requirements of Transportation Code, Chapter 548, Subchapter F.

(2) TCEQ, after notice to the vehicle owner, will notify the department if a motor vehicle fails to comply with the requirements of Health and Safety Code, §382.037 and §382.0372, and Transportation Code, Chapter 548, Subchapter F.

(3) The notice will include the vehicle identification number and the license plate number of the affected vehicle.

(4) If the department receives a notice of emissions noncompliance from DPS or TCEQ, the department will place a notation on the motor vehicle record that the motor vehicle has failed to comply with the vehicle emissions I/M program.

(5) If the department receives a notice of emissions compliance from DPS or TCEQ, the department will remove the non-compliance notation from the motor vehicle record.

(6) If a vehicle record contains a notation of failure to comply with the vehicle emissions I/M program, the tax assessor-collector will deny registration unless provided with:

(A) proof of compliance with the vehicle emissions I/M program with a "passing" vehicle inspection report; or

(B) proof of a waiver issued by DPS that includes the vehicle identification number and the license plate number.

(7) DPS and TCEQ will provide the department with the notifications in a format approved by the department.

(8) DPS and TCEQ will enter into an agreement with the department regarding the remittance to the department for costs associated with implementation of the emissions program.

(d) Vehicles moved into affected or early action compact counties. If a vehicle was last titled in an unaffected county and is to be titled or registered in an affected or early action compact county, it is not eligible for a title receipt, a certificate of title, or registration after a retail sale unless proof is presented to the county tax assessor-collector that the vehicle has passed the emissions test. This subsection does not apply to a vehicle that will be used in the affected or early action compact county for fewer than 60 days during the registration period for which registration is sought or to a vehicle that is a 1996 or newer model and has less than 50,000 miles.

§217.32. Registration Fee Credit: Application.

An application for registration fee credit must be accompanied by:

(1) the current license plate(s) and license receipt issued for the destroyed vehicle;

(2) the negotiable certificate of title covering the destroyed vehicle; and

(3) evidence that the vehicle has been destroyed to such an extent that it cannot thereafter be operated on the highways.

§217.33. Registration Fee Credit: Nontransferable.

A registration fee credit voucher will be issued only to the person whose name appears as the owner of the vehicle on the registration and title records of the Vehicle Titles and Registration Division at the time the vehicle is destroyed. Registration fee credit vouchers are nontransferable and are not redeemable for cash under any circumstances.

§217.34. Registration Fee Credit: Title Reinstatement.

In no instance may a vehicle be retitled to which a fee credit voucher has been issued. Provided, however, the title may be reinstated if the recorded titleholder requests reinstatement of the title and returns the registration fee credit voucher to the department for cancellation. If the voucher has already been used, the title may be reinstated if the owner repays the registration fees which were used. In such instances where the title is reinstated and the surrendered license plates for such vehicle are unexpired, a set of replacement license plates may be purchased for the remaining portion of that registration year.

§217.35. Machinery.

Conventional vehicles with cranes, draglines, or other similar machinery mounted thereon, must be registered with regular registration.

§217.36. Water Well Drilling Equipment.

Prior to the approval of a machinery license plate for any piece of mechanically qualified water well drilling equipment, the owner must first present proof of a current license from the Texas Department of Licensing and Regulation.

§217.37. Equipment and Vehicles Within Road Construction Projects.

Road construction equipment (machinery type vehicles) operating laden or unladen within the limits of a project are not required to display the $5.30 machinery license plate, regardless of the intermingling of regular vehicular traffic; however, conventional commercial vehicles operating within the limits of a project shall be required to be registered with regular commercial plates whenever traffic is allowed to intermingle. A highway construction project is that section of the highway between the warning signs giving notice of a construction area.

§217.38. Change of Classification: Trucks and Truck-Tractors.

When a truck is converted into a truck-tractor and the registration classification is changed from "truck" to "combination," an exchange of

license plates is required; however, if a truck-tractor is converted into a truck and the registration classification is changed from "combination" to "truck" the license plates shall not be exchanged, unless the change involves a major permanent reconstruction change, such as when the frame of a truck-tractor is altered to accommodate the installation of a different type bed or body. In this instance, the owner must exchange license plates and file an application for corrected title. Under no circumstances will a refund in registration fees be authorized when a combination plate is exchanged for truck plates as the result of a reconstruction change.

§217.39. Water Well Drilling Vehicles.

Every truck or trailer, whether conventional or unconventional, which has mounted thereon machinery used exclusively for drilling water wells may qualify for a $5.30 machinery license plate.

§217.40. Marketing of Specialty License Plates through a Private Vendor.

(a) Purpose and scope. The department will enter into a contract with a private vendor to market department-approved specialty license plates in accordance with Transportation Code, §§504.851 - 504.852. This section sets out the procedure for approval of the design, purchase, and replacement of vendor specialty license plates. In this section, the license plates marketed by the vendor are referred to as vendor specialty license plates.

(b) Application for approval of vendor specialty license plate designs.

(1) Approval required. The vendor shall obtain the approval of the department for each license plate design the vendor proposes to market in accordance with this section and the contract entered into between the vendor and the department.

(2) Application. The vendor must submit a written application on a form approved by the director to the department for approval of each license plate design the vendor proposes to market. The application must include:

(A) a draft design of the specialty license plate;

(B) projected sales of the plate, including an explanation of how the projected figure was determined;

(C) a marketing plan for the plate including a description of the target market;

(D) a licensing agreement from the appropriate third party for any design or design element that is intellectual property; and

(E) other information necessary for the specialty license plate committee to reach a decision regarding approval of the requested vendor specialty plate.

(c) Review and approval process. The specialty license plate committee established under §217.28(i) of this subchapter (relating to Specialty License Plates, Symbols, Tabs, and Other Devices) will review vendor specialty license plate applications.

(1) Committee review. The committee:

(A) will not consider incomplete applications; and

(B) may request additional information from the vendor to reach a decision.

(2) Postponement of decision for additional information.

(A) If the committee reviews an application and determines that additional information is needed, it will postpone the decision on the application until its next meeting.

(B) If the additional requested information is not received before the next committee meeting, the committee will not consider the application and will return it to the vendor as incomplete.

(d) Committee recommendation and public comment.

(1) Recommendation. The recommendation of the committee will be based on:

(A) projected sales of the license plate as demonstrated in the marketing plan and by the listing of target purchasers;

(B) compliance with Transportation Code, §504.851 and §504.852;

(C) the proposed license plate design, including:

(i) whether the design meets the legibility and reflectivity standards established by the department;

(ii) whether the design meets the standards established by the department for uniqueness to ensure that the proposed plate complies with Transportation Code, §504.852(c);

(iii) whether the license plate design can accommodate the International Symbol of Access (ISA) as required by Transportation Code, §504.201(h); and

(iv) other information provided during the application process.

(2) Public comment on proposed design. If the committee recommends the issuance of the proposed vendor specialty license plate design, notice of the proposed design will be posted on the department's website for public comment. The department simultaneously will notify all specialty plate organizations and the sponsoring agencies who administer specialty license plates issued in accordance with Transportation Code, Chapter 504, Subchapter G, of the posting. A comment on the proposed design must be submitted in writing and must be received within 10 days after the date that the notice is first posted on the department's website.

(e) Final approval and specialty license plate issuance.

(1) Approval. The executive director of the department, or the executive director's designee, not below the level of division director, will make the final decision on the vendor's specialty license plate application based on the committee's recommendation and on all comments received during the period prescribed by subsection (d)(2) of this section, including whether negative comments suggest that the plate would fall under the criteria of §217.22(c)(3)(B)(i) of this subchapter (relating to Motor Vehicle Registration).

(2) Application not approved. If the vendor's application is not approved by the executive director, or the executive director's designee, the vendor must submit a new application and supporting documentation for the design to be considered again by the committee.

(3) Issuance of approved specialty plates.

(A) If the vendor's specialty license plate is approved, the vendor must submit the non-refundable start-up fee before any further design and processing of the license plate.

(B) Approval of the plate does not guarantee that the submitted draft plate design will be used. The department has final approval of all specialty license plate designs and will provide guidance on the submitted draft design to ensure compliance with the format and license plate specifications.

(f) Redesign of vendor specialty license plates.

(1) On receipt of a written request from the vendor, the department will allow a redesign of a vendor specialty license plate.

(2) The vendor must pay the redesign administrative costs as provided in the contract between the vendor and the department.

(g) Multi-year vendor specialty license plates. Purchasers will have the option of purchasing vendor specialty license plates for a one-year, five-year, or ten-year period.

(h) License plate categories and associated fees. The categories and the associated fees for vendor specialty plates are set out in this subsection.

(1) Custom license plates. The fees for issuance of custom license plates are $85 for one year, $225 for five years, and $325 for ten years. Custom license plates include:

(A) license plates with a variety of pre-approved background and character color combinations that may be personalized with either three alpha and two or three numeric characters or two or three numeric and three alpha characters; and

(B) generic license plates on standard white sheeting with the word "Texas" that may be personalized with up to six alphanumeric characters.

(2) T-Plates (Premium) license plates. T-Plates (Premium) license plates may be personalized with up to seven alphanumeric characters on colored backgrounds or designs approved by the department. T-Plates (Premium) license plates will be made available to coincide with extraordinary events of public interest to Texas registrants. The fees for issuance of T-Plates (Premium) license plates are $95 for one year, $395 for five years, and $495 for ten years.

(3) Luxury license plates. Luxury license plates may be personalized with up to six alphanumeric characters on colored backgrounds or designs approved by the department. The department cannot consider a plate that qualifies under paragraph (1)(B) of this subsection as a luxury license plate. The fees for issuance of luxury license plates are $195 for one year, $495 for five years, and $595 for ten years.

(4) Freedom license plates. Freedom license plates include license plates with a variety of pre-approved background and character color combinations that may be personalized with up to seven alphanumeric characters. The fees for issuance of freedom license plates are $395 for one year, $695 for five years, and $795 for ten years.

(5) Background only license plates. Background only license plates include non-personalized license plates with a variety of pre-approved background and character color combinations. The fees for issuance of background only license plates are $55 for one year, $195 for five years, and $295 for ten years.

(6) Vendor souvenir license plates. Vendor souvenir license plates are replicas of vendor specialty license plate designs that may be personalized with up to twenty-four alphanumeric characters. Vendor souvenir license plates are not street legal or legitimate insignias of vehicle registration. The fee for issuance of souvenir license plates is $40.

(7) Auctioned plates transfer fee. In addition to the fee paid to the department after the auction, the transferee will pay the department a fee of $25 when the transfer right of ownership is exercised.

(8) Personalization of license plates.

(A) The fee for the personalization of license plates applied for prior to November 19, 2009 is $40 if the plates are renewed annually.

(B) The personalization fee for plates applied for after November 19, 2009 is $40 if the plates are issued pursuant to Transportation Code, Subchapters G and I.

(C) The personalization fee for plates not subject to subparagraphs (A) and (B) of this paragraph is as provided in this subsection.

(i) Payment of fees.

(1) Payment of specialty license plate fees. The fees for issuance of vendor specialty license plates will be paid directly to the vendor for the license plate category and period selected by the purchaser. A person who purchases a multi-year vendor specialty license plate must pay upon purchase the full fee which includes the renewal fees.

(2) Payment of statutory registration fees. To be valid for use on a motor vehicle, the license plate owner is required to pay, in addition to the vendor specialty license plate fees, any statutorily required registration fees in the amount as provided by Transportation Code, Chapter 502, and this subchapter.

(j) Refunds. Fees for vendor specialty license plate fees will not be refunded after an application is submitted to the vendor and the department has approved issuance of the license plate.

(k) Replacement.

(1) Application. An owner must apply directly to the county tax assessor-collector for the issuance of replacement vendor specialty license plates and must pay the fee described in paragraph (2), (3), or (4) of this subsection, whichever applies.

(2) Lost or mutilated vendor specialty license plates. To replace vendor specialty license plates that are lost or mutilated, the owner must pay the statutory replacement fee provided in Transportation Code, §502.184.

(3) No-charge replacement. The owner of vendor specialty license plates will receive at no charge replacement license plates as follows:

(A) one set of replacement license plates on or after the seventh anniversary after the date of initial issuance; and

(B) one set of replacement license plates seven years after the date the set of license plates were issued in accordance with subparagraph (A) of this paragraph.

(4) Optional replacements. An owner of a vendor specialty license plate may replace vendor specialty license plates before the seventh anniversary after the date of issuance by submitting a request to the county tax assessor-collector accompanied by the payment of a $30 fee.

(5) Interim replacement tags. If the vendor specialty license plates are lost or mutilated to such an extent that they are unusable, replacement license plates will need to be remanufactured. The county tax assessor-collector will issue interim replacement tags for use until the replacements are available. The owner's vendor specialty license plate number will be shown on the interim replacement tags.

(6) Stolen vendor specialty license plates. The county tax assessor-collector will not approve the issuance of replacement vendor specialty license plates with the same license plate number if the department's records indicate that the vehicle displaying that license plate number was reported stolen or the license plates themselves were reported stolen.

(l) Transfer of vendor specialty license plates.

(1) Transfer between vehicles. The owner of a vehicle with vendor specialty license plates may transfer the license plates between vehicles by filing an application through the county tax assessor-collector if the vehicle to which the plates are transferred:

(A) is titled or leased in the owner's name; and

(B) meets the vehicle classification requirements for that particular specialty license plate.

(2) Transfer between owners. Vendor specialty license plates may not be transferred between persons.

(m) Gift plates.

(1) A person may purchase plates as a gift for another person if the purchaser submits a statement that provides:

(A) the purchaser's name and address;

(B) the name and address of the person who will receive the plates; and

(C) the vehicle identification number of the vehicle on which the plates will be displayed or a statement that the plates will not be displayed on a vehicle.

(2) To be valid for use on a motor vehicle, the recipient of the plates must file an application with the county tax assessor-collector and pay the statutorily required registration fees in the amount as provided by Transportation Code, Chapter 502, and this subchapter.

(n) Restyled vendor specialty license plates. A person who has purchased a multi-year vendor specialty license plate may request a restyled license plate at any time during the term of the plate.

(1) For the purposes of this subsection, "restyled license plate" is a vendor specialty license plate that has a different style from the originally purchased vendor specialty license plate but:

(A) is within the same price category; and

(B) has the same alpha-numeric characters and expiration date as the previously issued multi-year license plates.

(2) The fee for each restyled license plate is $55.

§217.41. Removal of License Plates and Registration Insignia upon Sale of Motor Vehicle.

(a) Purpose. Transportation Code, Chapter 502, Subchapter I, provides for the removal of the license plates and registration insignia when a motor vehicle is sold or transferred. Motor vehicles eligible for this process are limited to a passenger car or a light truck, as those terms are defined in Transportation Code, §502.001.

(b) Disposition of removed license plates. License plates removed from a motor vehicle by a licensed motor vehicle dealer, as provided in Transportation Code, §502.451(a), or by a motor vehicle owner in a private transaction as provided in Transportation Code, §502.451(a-1), may be:

(1) transferred to another vehicle:

(A) that is titled or will be titled in the same owner name as the vehicle from which the license plates were removed;

(B) that is of the same vehicle classification (passenger car or light truck) as the vehicle from which the license plates were removed;

(C) if the age of the removed license plate is not greater than provided in §217.22(d)(7) of this subchapter (relating to Motor Vehicle Registration) which would require a new license plate to be issued; and

(D) upon:

(i) acceptance of a request to transfer the license plate by the county tax assessor-collector in which the application is filed as provided by Transportation Code, §501.023 or §502.002(b), whichever applies; and

(ii) payment of the transfer fee provided in Transportation Code, §502.453;

(2) disposed of in a manner that renders the license plates unusable or that ensures the license plates will not be available for fraudulent use on a motor vehicle; or

(3) retained by the owner of the motor vehicle from which the license plates were removed.

(c) Vehicle transit permit.

(1) Obtaining a vehicle transit permit. A person who obtains a motor vehicle in a private transaction may obtain one vehicle transit permit (temporary single-trip permit), through the department's website at www.txdmv.gov if the seller or transferor has removed the license plates and registration insignia.

(2) Restrictions. The permit, which is valid only for the period shown on the permit, may be used for operation of the motor vehicle only as provided in Transportation Code, §502.454, and must be carried in the vehicle at all times.

§217.42. Registration of Fleet Vehicles.

(a) Scope. A registrant may consolidate the registration of multiple motor vehicles in a fleet instead of registering each vehicle separately. This section prescribes the policies and procedures for fleet registration.

(b) Eligibility. A fleet must meet the following requirements to be eligible for fleet registration.

(1) No fewer than twenty-five vehicles will be registered as a fleet;

(2) Vehicles may be registered in annual increments for up to eight years;

(3) All vehicles in a fleet must be owned by or leased to the same business entity;

(4) All vehicles must be vehicles that are not registered under the International Registration Plan; and

(5) Each vehicle must currently be titled in Texas or be issued a registration receipt, or the registrant must submit an application for a certificate of title or registration for each vehicle.

(c) Application.

(1) Application for fleet registration must be in a form prescribed by the department. At a minimum the form will require:

(A) the full name and complete address of the registrant;

(B) a description of each vehicle in the fleet, which may include the motor vehicle's model year, make, model, vehicle identification number, document number, body style, gross weight, empty weight, and for a commercial vehicle, manufacturer's rated carrying capacity in tons;

(C) the existing license plate number, if any, assigned to each vehicle; and

(D) any other information that the department may require.

(2) The application must be accompanied by the following items:

(A) in the case of a leased vehicle, a certification that the vehicle is currently leased to the person to whom the fleet registration will be issued;

(B) registration fees prescribed by law for the entire registration period selected by the registrant;

(C) local fees or other fees prescribed by law and collected in conjunction with registering a vehicle for the entire registration period selected by the registrant;

(D) evidence of financial responsibility for each vehicle as required by Transportation Code, §502.153, unless otherwise exempted by law;

(E) annual proof of payment of Heavy Vehicle Use Tax; and

(F) any other documents or fees required by law.

(d) Registration period.

(1) The fleet owner will designate a single registration period for a fleet so the registration period for each vehicle will expire on the same date.

(2) The fleet registration period will begin on the first day of a calendar month and end on the last day of a calendar month.

(e) Insignia.

(1) As evidence of registration, the department will issue distinguishing insignia for each vehicle in a fleet.

(2) The insignia shall be included on the license plate and affixed to the vehicle.

(3) The insignia shall be attached to the rear license plate if the vehicle has no windshield.

(4) The registration receipt for each vehicle shall at all times be carried in that vehicle and be available to law enforcement personnel.

(5) Insignia may not be transferred between vehicles, owners, or registrants.

(f) Fleet composition.

(1) A registrant may add a vehicle to a fleet at any time during the registration period. An added vehicle will be given the same registration period as the fleet and will be issued fleet registration insignia.

(2) A registrant may remove a vehicle from a fleet at any time during the registration period. The fleet registrant shall return the fleet registration insignia for that vehicle to the department at the time the vehicle is removed from the fleet.

(3) If the number of vehicles in a fleet falls below twenty-five during the registration period, fleet registration will remain in effect. If the number of vehicles in a fleet is below twenty-five at the end of the registration period, fleet registration will be canceled. In the event of cancellation, each vehicle shall be registered separately. The registrant shall immediately return all fleet registration insignia to the department.

(g) Fees.

(1) When a fleet is first established, the department will charge a registration fee for each vehicle for the entire registration period selected. A currently registered vehicle, however, will be given credit for any remaining time on its separate registration.

(2) When a vehicle is added to an existing fleet, the department will charge a registration fee that is prorated based on the number of months of fleet registration remaining. If the vehicle is currently registered, this fee will be adjusted to provide credit for the number of months of separate registration remaining.

(3) When a vehicle is removed from fleet registration, it will be considered to be registered separately. The vehicle's separate registration will expire on the date that the fleet registration would have expired. The registrant must pay the statutory replacement fee to obtain regular registration insignia before the vehicle may be operated on a public highway.

(h) Payment. Payment will be made in the manner prescribed by the department.

(i) Cancellation. The department will cancel registration for non-payment and lack of proof of annual payment of the Heavy Vehicle Use Tax.

§217.43. Exempt and Alias Vehicle Registration.

(a) Exempt plate registration.

(1) Issuance. Pursuant to Transportation Code, §502.202, a vehicle owned by and used exclusively in the service of a governmental agency, used exclusively for public school transportation services, used for fire fighting or by a volunteer fire department, or used in volunteer county marine law enforcement is exempt from payment of a registration fee and is eligible for exempt plates.

(2) Application for exempt registration.

(A) Application. An application for exempt plates shall be made to the county tax assessor-collector, shall be made on a form prescribed by the department, and shall contain the following information:

(i) vehicle description;

(ii) name of the exempt agency;

(iii) an affidavit executed by an authorized person stating that the vehicle is owned or under the control of and will be operated by the exempt agency; and

(iv) a certification that each vehicle listed on the application has the name of the exempt agency printed on each side of the vehicle in letters that are at least two inches high or in an emblem that is at least 100 square inches in size and of a color sufficiently different from the body of the vehicle as to be clearly legible from a distance of 100 feet.

(B) Emergency medical service vehicle.

(i) Exempt registration may be issued for a vehicle that is owned or leased by a non-profit emergency medical service provider; a municipality or county; or a non-profit emergency medical service provider chief or supervisor in accordance with Transportation Code, §502.204.

(ii) The application for exempt registration must contain the vehicle description, the name of the emergency medical service provider, and a statement signed by an officer of the emergency medical service provider stating that the vehicle is used exclusively as an emergency response vehicle and qualifies for registration under Transportation Code, §502.204.

(iii) A copy of an emergency medical service provider license issued by the Texas Board of Health must accompany the application.

(C) Fire fighting vehicle. The application for exempt registration of a fire fighting vehicle owned privately or by a volunteer fire department must contain the vehicle description. The affidavit must be executed by the person who has the proper authority and shall state that:

(i) the vehicle is privately owned and is designed and used exclusively for fire fighting; or

(ii) the vehicle is owned by a volunteer fire department and is used exclusively in the conduct of its business.

(3) Exception. A vehicle may be exempt from payment of a registration fee, but display license plates other than exempt plates if the vehicle is not registered under subsection (b) of this section.

(A) If the applicant is a law enforcement office, the applicant must present a certification that each vehicle listed on the application will be dedicated to law enforcement activities.

(B) If the applicant is exempt from the inscription requirements under Transportation Code, §721.003, the applicant must present a certification that each vehicle listed on the application is exempt from inscription requirements under Transportation Code, §721.003. The applicant must also provide a citation to the section that exempts the vehicle.

(C) If the applicant is exempt from the inscription requirements under Transportation Code, §721.005 the applicant must present a certification that each vehicle listed on the application is exempt from inscription requirements under Transportation Code, §721.005. The applicant must also provide a copy of the order or ordinance that exempts the vehicle.

(D) If the applicant is exempt from the inscription requirements under Education Code, §51.932, the applicant must present a certification that each vehicle listed on the application is exempt from the inscription requirements under Education Code, §51.932. Exempt plates will be marked with the replacement year.

(b) Affidavit for issuance of exempt registration under an alias.

(1) On receipt of an affidavit for alias exempt registration, properly executed by the executive administrator of an exempt law enforcement agency, the department will issue alias exempt registration annually for a vehicle used in covert criminal investigations.

(2) The affidavit for alias exempt registration must be in a form prescribed by the director and must include the vehicle description, a sworn statement that the vehicle will be used in covert criminal investigations, and the signature of the executive administrator or the executive administrator's designee as provided in paragraph (3) of this subsection. The vehicle registration insignia of any vehicles no longer used in covert criminal investigations shall be surrendered immediately to the department.

(3) The executive administrator, by annually filing an authorization with the director, may appoint a staff designee to execute the affidavit. A new authorization must be filed when a new executive administrator takes office.

(4) The letter of authorization must contain a sworn statement delegating the authority to sign the affidavit to a designee, the name of the designee, and the name and the signature of the executive administrator.

(5) The affidavit for alias exempt registration must be accompanied by a certificate of title application under §217.7 of this chapter (relating to Restitution Liens). The application must contain the information required by the department to create the alias record of vehicle registration and title.

(c) Replacement of exempt registration.

(1) If an exempt plate is lost, stolen, or mutilated, a properly executed application for exempt plates must be submitted to the county tax assessor-collector.

(2) An application for replacement exempt plates must contain the vehicle description, original license number, and the sworn statement that the license plates furnished for the vehicle have been lost, stolen, or mutilated and will not be used on any other vehicle.

(d) Title requirements. Unless exempted by statute, a vehicle must be titled at the time the exempt registration is issued.

§217.44. Registration Reciprocity Agreements.

(a) Purpose. To promote and encourage the fullest possible use of the highway system and contribute to the economic development and growth of the State of Texas and its residents, the department is authorized by Transportation Code, §502.054 to enter into agreements with duly authorized officials of other jurisdictions, including any state of the United States, the District of Columbia, a foreign country, a state or province of a foreign country, or a territory or possession of either the United States or of a foreign country, and to provide for the registration of vehicles by Texas residents and nonresidents on an allocation or distance apportionment basis, and to grant exemptions from the payment of registration fees by nonresidents if the grants are reciprocal to Texas residents.

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

(1) Cab card--The apportioned vehicle registration receipt that contains, but is not limited to, the vehicle description and the registered weight at which the vehicle may operate in each jurisdiction.

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

(3) Director--The director of the Vehicle Titles and Registration Division, Texas Department of Motor Vehicles.

(4) Distance--The distance an apportioned motor vehicle is:

(A) expected to travel in a member jurisdiction during a registration year as reported by an applicant; or

(B) actually operated in a member jurisdiction during a reporting period.

(5) Executive director--The chief executive officer of the department.

(6) Temporary cab card--A temporary registration permit authorized by the department that allows the operation of a vehicle for 30 days subject to all rights and privileges afforded to a vehicle displaying apportioned registration.

(c) Multilateral agreements.

(1) Authority. The executive director may on behalf of the department enter a multilateral agreement with the duly authorized officials of two or more other jurisdictions to carry out the purpose of this section.

(2) International Registration Plan.

(A) Applicability. The International Registration Plan is a registration reciprocity agreement among states of the United States and other jurisdictions providing for payment of registration fees on the basis of fleet distance operated in various jurisdictions. Its purpose is to promote and encourage the fullest possible use of the highway system by authorizing apportioned registration for commercial motor vehicles and payment of appropriate vehicle registration fees and thus contributing to the economic development and growth of the member jurisdictions.

(B) Adoption. The department adopts by reference the most currently adopted edition of the International Registration Plan (IRP). This document will be periodically amended by its members. Copies of the document are available for review in the Vehicle Titles and Registration Division, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin. Copies are also available on request. The following words and terms, when used in the IRP or in this subparagraph, shall have the following meanings, unless the context clearly indicates otherwise.

(i) Apportionable vehicle--Any vehicle, except recreational vehicles, vehicles displaying restricted plates, city pickup and delivery vehicles, buses used in transportation of chartered parties, and government-owned vehicles, used or intended for use in two or more member jurisdictions that allocate or proportionally register vehicles and used either for the transportation of persons for hire or designed, used, or maintained primarily for the transportation of property and:

(I) is a power unit having two axles and a gross vehicle weight or registered gross vehicle weight in excess of 26,000 pounds or 11,793.401 kilograms;

(II) is a power unit having three or more axles, regardless of weight;

(III) is used in combination, when the weight of such combination exceeds 26,000 pounds or 11,793.401 kilograms gross vehicle weight; or

(IV) at the option of the registrant, trucks and truck tractors, and combinations of vehicles having a gross vehicle weight of 26,000 pounds or 11,793.401 kilograms or less and buses used in transportation of chartered parties.

(ii) Commercial vehicle--A vehicle or combination designed and used for the transportation of persons or property in furtherance of any commercial enterprise, for hire or not for hire.

(iii) Erroneous issuance--Apportioned registration issued based on erroneous information provided to the department.

(iv) Established place of business--A physical structure owned or leased within the state of Texas by the applicant or fleet registrant and maintained in accordance with the provisions of the International Registration Plan.

(v) Fleet distance--All distance operated by an apportionable vehicle or vehicles used to calculate registration fees for the various jurisdictions.

(C) Application.

(i) An applicant must submit an application to the department on a form prescribed by the director together with additional documentation as required by the director.

(ii) Upon approval of the application, the department will compute the appropriate registration fees and notify the registrant.

(D) Fees. Upon receipt of the applicable fees in the form of a check, cashier's check, money order, or electronic funds transfer through an automated clearinghouse (ACH) made payable in United States funds, the department will issue one license plate and cab card for each vehicle registered.

(E) Display.

(i) The license plate issued to a power unit shall be installed on the front of the vehicle, and the license plate issued for a trailer shall be installed on the rear of the vehicle.

(ii) The cab card shall be carried at all times in the vehicle in accordance with Transportation Code, §621.002.

(F) Audit. An audit of the registrant's vehicle operational records may be conducted by the department according to the IRP provisions. Upon request, the registrant shall provide the operational records of each vehicle for audit in unit number order, in sequence by date, and including, but not limited to, a summary of distance traveled by each individual truck on a monthly, quarterly, and annual basis with distance totaled separately for each jurisdiction in which the vehicle traveled.

(G) Assessment. The department may assess additional registration fees of up to 100 percent of the Texas registration fees, if an audit conducted under subparagraph (F) of this paragraph reveals that:

(i) the operational records indicate that the vehicle did not generate interstate distance in two or more member jurisdictions for the distance reporting period supporting the application being audited, plus the six-month period immediately following that distance reporting period;

(ii) the registrant failed to provide complete operational records; or

(iii) the distance must be adjusted, and the adjustment results in a shortage of registration fees due Texas or any other IRP jurisdiction.

(H) Refunds. If an audit conducted under subparagraph (F) of this paragraph reveals an overpayment of fees to Texas or any other IRP jurisdiction, the department will refund the overpayment of registration fees in accordance with Transportation Code, §502.183 and IRP guidelines. Any registration fees refunded to a carrier for another jurisdiction will be deducted from registration fees collected and transmitted to that jurisdiction.

(I) Cancellation. The director or the director's designee may cancel a registrant's apportioned registration and all privileges provided by the IRP if the registrant:

(i) submits payment in the form of a check that is dishonored;

(ii) files or provides erroneous information to the department; or

(iii) fails to:

(I) remit appropriate fees due each jurisdiction in which the registrant is authorized to operate;

(II) meet the requirements of the IRP concerning established place of business;

(III) provide operational records in accordance with subparagraph (F) of this paragraph;

(IV) provide an acceptable source document as specified in the IRP; or

(V) pay an assessment pursuant to subparagraph (G) of this paragraph.

(J) Enforcement of cancelled registration.

(i) Notice. If a registrant is assessed additional registration fees, as provided in subparagraph (G) of this paragraph, and the additional fees are not paid by the due date provided in the notice or it is determined that a registrant's apportioned license plates and privileges should be canceled, as provided in subparagraph (I) of this paragraph, the director or the director's designee will mail a notice by certified mail to the last known address of the registrant. The notice will state the facts underlying the assessment or cancellation, the effective date of the assessment or cancellation, and the right of the registrant to request a conference as provided in clause (ii) of this subparagraph.

(ii) Conference. A registrant may request a conference upon receipt of a notice issued as provided by clause (i) of this subparagraph. The request must be made in writing to the director or the director's designee within 30 days of the date of the notice. If timely requested, the conference will be scheduled and conducted by the director or the director's designee at division headquarters in Austin and will serve to abate the assessment or cancellation unless and until that assessment or cancellation is affirmed or disaffirmed by the director or the director's designee. In the event matters are resolved in the registrant's favor, the director or the director's designee will mail the registrant a notice of withdrawal, notifying the registrant that the assessment or cancellation is withdrawn, and stating the basis for that action. In the event matters are not resolved in the registrant's favor, the director or the director's designee will issue a ruling reaffirming the department's assessment of additional registration fees or cancellation of apportioned plates and privileges. The registrant has the right to appeal in accordance with clause (iii) of this subparagraph.

(iii) Appeal. If a conference held in accordance with clause (ii) of this subparagraph fails to resolve matters in the registrant's favor, the registrant may request an administrative hearing. The request must be in writing and must be received by the director no later than the 20th day following the date of the ruling issued under clause (ii) of this subparagraph. If requested within the designated period, the hearing will be initiated by the department and will be conducted in accordance with Chapter 206, Subchapter D of this title (relating to Procedures in Contested Cases). Assessment or cancellation is abated unless and until affirmed or disaffirmed by order of the Board of Motor Vehicles.

(K) Reinstatement.

(i) The director or the director's designee will reinstate apportioned registration to a previously canceled registrant if all applicable fees and assessments due on the previously canceled apportioned account have been paid and the applicant provides proof of an acceptable recordkeeping system for a period of no less than 60 days.

(ii) The application for the following registration year will be processed in accordance with the provisions of the IRP.

(L) Denial of apportioned registration for safety reasons. The department will comply with the requirements of the Performance and Registration Information Systems Management program (PRISM) administered by the Federal Motor Carrier Safety Administration (FMCSA).

(i) Denial or suspension of apportioned registration. Upon notification from the FMCSA that a carrier has been placed out of service for safety violations, the department will:

(I) deny initial issuance of apportioned registration;

(II) deny authorization for a temporary cab card, as provided for in subparagraph (M) of this paragraph;

(III) deny renewal of apportioned registration; or

(IV) suspend current apportioned registration.

(ii) Issuance after denial of registration or reinstatement of suspended registration. The director or the director's designee will reinstate or accept an initial or renewal application for apportioned registration from a registrant who was suspended or denied registration under clause (i) of this subparagraph upon presentation of a Certificate of Compliance from FMCSA, in addition to all other required documentation and payment of fees.

(M) Temporary cab card.

(i) Application. The department may authorize issuance of a temporary cab card to a motor carrier with an established Texas apportioned account for a vehicle upon proper submission of all required documentation, a completed application, and all fees for either:

(I) Texas Certificate of Title as prescribed by Transportation Code, Chapter 501 and §217.3 of this chapter (relating to Motor Vehicle Certificates of Title); or

(II) Registration Purposes Only as provided for in Transportation Code, §501.029 and §217.22(b)(4) of this subchapter (relating to Motor Vehicle Registration).

(ii) Title application. A registrant who is applying for a certificate of title as provided for in subparagraph (L)(i)(I) of this paragraph and is requesting authorization for a temporary cab card, must submit a photocopy of the title application receipt issued by the county tax assessor-collectors office to a Vehicle Titles and Registration Division Regional Office by email, fax, overnight mail, or in person.

(iii) Registration Purposes Only. A registrant who is applying for Registration Purposes Only under clause (i)(II) of this subparagraph and is requesting authorization for a temporary cab card, must submit an application and all additional original documents or copies of original documents required by the director to a Vehicle Titles and Registration Division Regional Office by email, fax, or overnight mail or in person.

(iv) Department approval. On department approval of the submitted documents, the department will send notice to the registrant to finalize the transaction and make payment of applicable registration fees.

(v) Finalization and payment of fees. To finalize the transaction and print the temporary cab card, the registrant may compute the registration fees through the department's apportioned registration software application, TxIRP system, and

(I) make payment of the applicable registration fees in the form of a check, cashier's check, money order, or electronic funds transfer through an automated clearinghouse (ACH) payable to the department in United States funds; and

(II) afterwards, mail or deliver payment of the certificate of title application fee in the form of a check, certified cashier's check, or money order payable to the county tax assessor collector in the registrant's county of residency and originals of all copied documents previously submitted.

(vi) Deadline. The original documents and payment must be received by the Vehicle Titles and Registration Division Regional Office within 72-hours after the time that the office notified the

registrant of the approval to print a temporary cab card as provided in clause (iv) of this subparagraph.

(vii) Failure to meet deadline. If the registrant fails to submit the original documents and required payment within the time prescribed by clause (vi) of this subparagraph, the registrant's privilege to use this expedited process to obtain a temporary cab card will be denied by the department for a period of six months from the date of approval to print the temporary cab card.

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 December 4, 2009.

TRD-200905590
Jennifer Soldano
Legal Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: January 17, 2010
For further information, please call: (512) 463-8683

♦ ♦ ♦

SUBCHAPTER C. REGISTRATION AND TITLE SYSTEM

43 TAC §§217.53 - 217.55

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, §§502.0023, 501.022, 503.038, 503.062, 503.0625, 503.0626, 503.063, 503.0631, 503.065, 503.067, 503.068, 503.069, 504.510, 504.802, 504.854, 551.402, 601.002, 681.003, and 1003.2; and Tax Code, §152.069.

§217.53. Automated Vehicle Registration and Certificate of Title System.

(a) Purpose.

(1) Transportation Code, Chapters 501 and 502, charge the department with the responsibility for issuing certificates of title and registering vehicles operating on the roads, streets, and highways of the state.

(2) To provide a more efficient, cost-effective system for registering and titling vehicles, maintaining records, improving inventory control of accountable items, and collecting and reporting of applicable fees consistent with those statutes, the department has designed an automated system known as the registration and title system. This system expedites registration and titling processes, provides a superior level of customer service to the owners and operators of vehicles, and facilitates availability of the department's motor vehicle records for official law enforcement needs. Automated equipment compatible with the registration and title system is indispensable to the operational integrity of the system. This subchapter prescribes the policies and procedures under which the department may make that equipment available to a county tax assessor-collector as designated agent of the state for processing certificate of title and vehicle registration documents.

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

(1) Automated equipment--Equipment associated with the operation of the registration and titling system, including, but not limited to, microcomputers, printers, software, and cables.

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

(3) Executive director--The executive director of the Texas Department of Motor Vehicles.

(4) Fair share allocation--The amount of automated equipment determined by the department to be effective at providing a reasonable level of service to the public. This amount will be determined on the basis of comparisons with similarly sized counties, transaction volumes, number of county substations, transaction types, and other factors relating to a particular county's need.

(5) RTS--The department's registration and title system.

§217.54. Automated Equipment.

(a) Initial allocation of automated equipment. When requested by resolution of the commissioners court of a county, and subject to the terms and conditions specified in subsection (d) of this section, the department will:

(1) make a fair share allocation of automated equipment available to that county to be used by its tax assessor-collector in implementing and operating RTS;

(2) provide the tax assessor-collector with computer programs and personnel training; and

(3) furnish official automated forms and, for the initial start-up of the system, automated equipment supplies.

(b) Additional automated equipment. At the request of the tax assessor-collector of a county, subject to the terms and conditions specified in subsection (d) of this section, and for an amount of consideration that will cover the department's costs, the department will enter into an agreement with the commissioners court of that county under which the department will lease automated equipment to that county in addition to the fair share allocation for that county. Leased equipment will remain the property of the department and will be used primarily for RTS.

(c) Enhancements to RTS.

(1) The department will collect an additional fee of $1 for each registration in counties with 50,000 or more annual motor vehicle registrations for the purpose of enhancing the RTS, providing for automated on-site production of registration insignia, or providing for automated self-serve registration.

(2) The department will determine which counties meet the criteria for collecting the $1 additional fee, on an annual basis.

(d) Conditions of availability.

(1) A county must:

(A) meet electrical power supply criteria specified by the department prior to installation of the automated equipment;

(B) bear all costs incurred for 24-hour per day electrical power consumption for operation of the equipment;

(C) provide for the physical security and protection of the equipment and shall indemnify the department for any loss or damages to the equipment while in the custody and control of the county;

(D) provide the department's maintenance personnel access to the equipment during business hours of the involved county office; and

(E) notify the department not less than 30 working days prior to relocating or adding automation equipment, or of the closing or remodeling of an office, that may affect automated equipment operations.

(2) At the election of a county tax assessor-collector, automated equipment may be located at sites other than those of the tax assessor-collector, including privately owned, for-profit enterprises performing registration and title functions for the county tax office. With regard to equipment located at sites other than those of the tax assessor-collector, the department's responsibility will be limited to ensuring that the equipment remains operational. The county will be responsible for all training, user support, forms, supplies, user policy and procedures, and other support associated with this equipment.

(3) Automated equipment made available to a county pursuant to this section shall remain the property of the department and must be used by the county tax assessor-collector for operation of RTS; provided, however, that while not in RTS usage, the equipment may be utilized for another statutory duty or function of that office.

§217.55. Agreement.

(a) Prior to receiving automated equipment pursuant to §217.54 of this subchapter (relating to Automated Equipment), a county must enter a written agreement with the department.

(b) The agreement shall:

(1) be in a form prescribed by the department;

(2) include at a minimum each of the terms and conditions specified in §217.54 of this subchapter;

(3) be executed on behalf of the department by the executive director or the director's designee not below the level of Director of the Vehicle Titles and Registration Division; and

(4) be approved by resolution or order of the commissioners court and executed on behalf of the county by the county judge and the tax assessor-collector.

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 December 4, 2009.

TRD-200905591
Jennifer Soldano
Legal Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: January 17, 2010
For further information, please call: (512) 463-8683

♦ ♦ ♦

SUBCHAPTER D. NON-REPAIRABLE AND SALVAGE MOTOR VEHICLES

43 TAC §§217.60 - 217.68

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, §§502.0023, 501.022, 503.038, 503.062, 503.0625, 503.0626, 503.063, 503.0631, 503.065, 503.067, 503.068, 503.069, 504.510, 504.802, 504.854, 551.402, 601.002, 681.003, and 1003.2; and Tax Code, §152.069.

§217.60. Purpose and Scope.

Transportation Code, Chapter 501, Subchapter E, charges the department with the responsibility of issuing non-repairable and salvage vehicle titles and certificates of title for rebuilt salvage vehicles. For the department to efficiently and effectively issue the vehicle titles and certificates of title, maintain records, collect the applicable fees, and ensure the proper application by motor vehicle owners, this subchapter prescribes the policies and procedures for the application for and issuance of vehicle titles for non-repairable and salvage motor vehicles, and certificates of title for rebuilt salvage motor vehicles.

§217.61. Definitions.

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

(1) Casual sale--The sale by a salvage vehicle dealer, insurance company at auction, or salvage pool operator at auction of not more than five non-repairable or salvage motor vehicles to the same person during a calendar year. The term does not include a sale at auction to a salvage vehicle dealer or the sale of an export-only motor vehicle to a person who is not a resident of the United States.

(2) Certificate of title--A written instrument that may be issued solely by and under the authority of the department and that reflects the transferor, transferee, vehicle description, license plate and lien information, and rights of survivorship agreement as specified in Subchapter A of this chapter (relating to Motor Vehicle Certificates of Title) or as required by the department.

(3) Certificate of title application--A form prescribed by the director of the department's Vehicle Titles and Registration Division that reflects the information required by the department to create a motor vehicle title record.

(4) Damage--Sudden damage to a motor vehicle caused by the motor vehicle being wrecked, burned, flooded, or stripped of major component parts. The term does not include gradual damage from any cause, sudden damage caused by hail, or any damage caused only to the exterior paint of the motor vehicle.

(5) Date of sale--The date of the transfer of possession of a specific vehicle from a seller to a purchaser.

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

(7) Export-only sale--The sale of a non-repairable or salvage motor vehicle, by a salvage vehicle dealer, including a salvage pool operator acting as agent for an insurance company, or a governmental entity, to a person who resides outside the United States.

(8) Flood damage--A title remark that is initially indicated on a non-repairable or salvage vehicle title to denote that the damage to the vehicle was caused exclusively by flood and that is carried forward on subsequent title issuance.

(9) Insurance company--A person authorized to write automobile insurance in this state or an out-of-state insurance company that pays a loss claim for a motor vehicle in this state.

(10) Manufacturer's certificate of origin--A form prescribed by the department showing the original transfer of a new motor vehicle from the manufacturer to the original purchaser, whether importer, distributor, dealer, or owner, and when presented with an application for certificate of title, showing, on appropriate forms prescribed by the department, each subsequent transfer between distributor and dealer, dealer and dealer, and dealer and owner.

(11) Metal recycler--A person who:

(A) is predominately engaged in the business of obtaining ferrous or nonferrous metal that has served its original economic purpose to convert the metal, or sell the metal for conversion, into raw material products consisting of prepared grades and having an existing or potential economic value;

(B) has a facility to convert ferrous or nonferrous metal into raw material products consisting of prepared grades and having an existing or potential economic value, by a method other than the exclusive use of hand tools, including the processing, sorting, cutting, classifying, cleaning, baling, wrapping, shredding, shearing, or changing the physical form or chemical content of the metal; and

(C) sells or purchases the ferrous or nonferrous metal solely for use as raw material in the production of new products.

(12) Motor vehicle--A vehicle described by Transportation Code, §501.002(14).

(13) Non-repairable motor vehicle--A motor vehicle, regardless of the year model, that is wrecked, damaged, or burned to the extent that the only residual value of the motor vehicle is as a source of parts or scrap metal, or that comes into this state under a title or other ownership document that indicates that the motor vehicle is non-repairable, junked, or for parts or dismantling only.

(14) Non-repairable vehicle title--A document that evidences ownership of a non-repairable motor vehicle.

(15) Out-of-state buyer--A person licensed in an automotive business by another state or jurisdiction if the department has listed the holders of such a license as permitted purchasers of salvage motor vehicles or non-repairable motor vehicles based on substantially similar licensing requirements and on whether salvage vehicle dealers licensed in Texas are permitted to purchase salvage motor vehicles or non-repairable motor vehicles in the other state or jurisdiction.

(16) Out-of-state ownership document--A negotiable document issued by another jurisdiction that the department considers sufficient to prove ownership of a non-repairable or salvage motor vehicle and to support issuance of a comparable Texas certificate of title for the motor vehicle. The term does not include a title issued by the department, including a:

(A) regular certificate of title;

(B) non-repairable vehicle title;

(C) salvage vehicle title;

(D) salvage certificate;

(E) Certificate of Authority to Demolish a Motor Vehicle; or

(F) any other ownership document issued by the department.

(17) Person--An individual, partnership, corporation, trust, association, or other private legal entity.

(18) Rebuilt salvage certificate of title--A regular certificate of title evidencing ownership of a non-repairable motor vehicle that was issued a non-repairable vehicle title prior to September 1, 2003, or salvage motor vehicle that has been rebuilt.

(19) Salvage motor vehicle--A motor vehicle, regardless of the year model:

(A) that is:

(i) damaged or is missing a major component part to the extent that the cost of repairs exceeds the actual cash value of the motor vehicle immediately before the damage; or

(ii) damaged and comes into this state under an out-of-state ownership document that states on its face "accident damage," "flood damage," "inoperable," "rebuildable," "salvageable," or similar notation, and is not an out-of-state ownership document with a "rebuilt," "prior salvage," or similar notation, or a non-repairable motor vehicle; and

(B) does not include:

(i) a motor vehicle for which an insurance company has paid a claim for repairing hail damage, or theft, unless the motor vehicle was damaged during the theft and before recovery to the extent that the cost of repair exceeds the actual cash value of the motor vehicle immediately before the damage;

(ii) the cost of materials or labor for repainting the motor vehicle; or

(iii) sales tax on the total cost of repairs.

(20) Salvage vehicle dealer--A person engaged in this state in the business of acquiring, selling, dismantling, repairing, rebuilding, reconstructing, or otherwise dealing in non-repairable motor vehicles or salvage motor vehicles or used parts, including a person who is in the business of a salvage vehicle dealer, regardless of whether the person holds a license issued by the department to engage in the business. The term does not include a person who casually repairs, rebuilds, or reconstructs fewer than three salvage motor vehicles in the same calendar year.

(21) Salvage vehicle title--A document issued by the department that evidences ownership of a salvage motor vehicle.

§217.62. Requirement for Non-repairable or Salvage Vehicle Title.

(a) Determination of condition of vehicle.

(1) Salvage motor vehicle. When a vehicle is damaged, the actual cash value of the motor vehicle immediately before the damage and the cost of repairs shall be used to determine whether the damage is sufficient to classify the motor vehicle as a salvage motor vehicle.

(2) Non-repairable motor vehicle. When a vehicle is damaged, the actual cash value of the motor vehicle immediately before the damage and the cost of repairs, or alternate method commonly used by the insurance industry, shall be used to determine whether the damage is sufficient to classify the motor vehicle as a non-repairable motor vehicle.

(3) The actual cash value of the motor vehicle is the market value of a motor vehicle as determined:

(A) from publications commonly used by the automotive and insurance industries to establish the values of motor vehicles; or

(B) if the entity determining the value is an insurance company, by any other procedure recognized by the insurance industry, including market surveys, that is applied in a uniform manner.

(4) The cost of repairs, including parts and labor, shall be determined by:

(A) using a manual of repair costs or other instrument that is generally recognized and used in the motor vehicle industry to determine those costs; or

(B) an estimate of the actual cost of the repair parts and the estimated labor costs computed by using hourly rate and time allocations that are reasonable and commonly assessed in the repair industry in the community in which the repairs are performed.

(5) The cost of repairs does not include:

(A) the cost of:

(i) repairs related to gradual damage to a motor vehicle;

(ii) repairs related to hail damage; or

(iii) materials and labor for repainting or when the damage is solely to the exterior paint of the motor vehicle; or

(B) sales tax on the total cost of repairs.

(b) Who must apply.

(1) An insurance company licensed to do business in this state that acquires ownership or possession of a non-repairable or salvage motor vehicle that is covered by a certificate of title issued by this state or a manufacturer's certificate of origin shall obtain a non-repairable or salvage vehicle title, as provided by §217.63 of this subchapter (relating to Application for Non-repairable or Salvage Vehicle Title), before selling or otherwise transferring the non-repairable or salvage motor vehicle, except as provided by subsection (c) of this section.

(2) A salvage vehicle dealer shall obtain a Non-repairable or Salvage Vehicle Title, or comparable out-of-state ownership document, before selling or otherwise transferring the motor vehicle, except as provided by §217.67(b) of this subchapter (relating to Sale, Transfer, or Release of Ownership of a Non-repairable or Salvage Motor Vehicle).

(3) A person, other than an insurance company or salvage vehicle dealer, who acquires ownership of a non-repairable or salvage motor vehicle that has not been issued a non-repairable vehicle title, a salvage vehicle title, or a comparable out-of-state ownership document, shall obtain a non-repairable or salvage vehicle title, as provided by §217.63 of this subchapter, before selling or otherwise transferring the motor vehicle, unless the motor vehicle will be dismantled, scrapped, or destroyed.

(c) Owner retained vehicles.

(1) When an insurance company pays a claim on a non-repairable or salvage motor vehicle and does not acquire ownership of the motor vehicle, the company shall submit to the department before the 31st day after the date of the payment of the claim, on a form prescribed by the department, a report stating that:

(A) the insurance company has paid a claim on the non-repairable or salvage motor vehicle; and

(B) the insurance company has not acquired ownership of the non-repairable or salvage motor vehicle.

(2) Upon receipt of the report described in paragraph (1) of this subsection, the department will place an appropriate notation on the motor vehicle record to prevent registration and transfer of ownership prior to the issuance of a salvage or non-repairable vehicle title.

(3) The owner who retained the non-repairable or salvage motor vehicle to which this subsection applies shall obtain a non-repairable or salvage vehicle title, as provided by §217.63 of this subchapter, before selling or otherwise transferring the non-repairable or salvage motor vehicle.

(4) Until a non-repairable or salvage vehicle title, or a comparable out-of-state ownership document, has been issued for an owner-retained non-repairable or salvage vehicle, the owner of the motor vehicle may not sell or otherwise transfer ownership of the vehicle.

(5) The owner of an owner retained non-repairable or salvage motor vehicle may not operate or permit operation of the motor vehicle on a public highway, until the motor vehicle is rebuilt, titled as a rebuilt salvage motor vehicle or rebuilt non-repairable motor vehicle, if applicable, and is registered in accordance with Subchapter B of this chapter (relating to Motor Vehicle Registration).

(d) Self-insured vehicles. The owner of a non-repairable or salvage motor vehicle that is self-insured and that has been removed from normal operation by the owner shall apply to the department for a non-repairable or salvage vehicle title, as provided by §217.63 of this subchapter, before the 31st day after the damage occurred, and before selling or otherwise transferring ownership of the non-repairable or salvage motor vehicle.

(e) Casual sales. A salvage vehicle dealer, salvage pool operator, or insurance company that acquires a non-repairable or salvage motor vehicle shall apply to the department for a non-repairable or salvage vehicle title, in accordance with §217.63 of this subchapter, prior to offering the motor vehicle for sale in a casual sale.

(f) Export-only vehicles. A salvage vehicle dealer, including a salvage pool operator acting as agent for an insurance company, or governmental entity that acquires a non-repairable or salvage motor vehicle and offers it for sale to a non-United States resident shall apply to the department for a non-repairable or salvage vehicle title, as provided by §217.63 of this subchapter, before selling or otherwise transferring the non-repairable or salvage motor vehicle and before delivery of the non-repairable or salvage motor vehicle to the buyer. A salvage vehicle dealer or governmental entity shall maintain records of all export-only non-repairable or salvage motor vehicle sales as provided by §217.67(g) of this subchapter.

(g) Voluntary application. A person who owns or acquires a motor vehicle that is not a non-repairable or salvage motor vehicle may voluntarily, and on proper application, as provided by §217.63 of this subchapter, apply for a non-repairable or salvage vehicle title.

§217.63. Application for Non-repairable or Salvage Vehicle Title.

(a) Place of application. The owner of a non-repairable or salvage motor vehicle who is required to obtain or voluntarily chooses to obtain a non-repairable or salvage vehicle title, as provided by §217.62 of this subchapter (relating to Requirement for Non-repairable or Salvage Vehicle Title), shall apply for a non-repairable or salvage vehicle title by submitting an application, the required accompanying documentation, and the statutory fee to the department.

(b) Information on application. An applicant for a non-repairable or salvage vehicle title shall submit an application on a form prescribed by the department. A completed form, in addition to any other information required by the department, must include:

(1) the name and current address of the owner;

(2) a description of the motor vehicle, including the motor vehicle's model year, make, model, identification number, body style, manufacturer's rated carrying capacity in tons for commercial vehicles, and empty weight;

(3) a statement describing whether the motor vehicle is a non-repairable or salvage motor vehicle; and

(A) was the subject of a total loss claim paid by an insurance company under Transportation Code, §501.092 or §501.093;

(B) is a self-insured motor vehicle under Transportation Code, §501.094;

(C) is an export-only motor vehicle under Transportation Code, §501.099;

(D) was sold, transferred, or released to the owner or former owner of the motor vehicle; or

(E) was sold, transferred, or released to a buyer at casual sale by a salvage vehicle dealer, insurance company at auction, or salvage pool operator at auction;

(4) whether the damage was caused exclusively by flood;

(5) a description of the damage to the motor vehicle;

(6) the odometer reading and brand, or the word "exempt" if the motor vehicle is exempt from federal and state odometer disclosure requirements, if the motor vehicle is a salvage motor vehicle;

(7) the name, address, and city and state of residence of the previous owner;

(8) the name and mailing address of any lienholder and the date of lien, as provided by subsection (e) of this section; and

(9) the signature of the applicant or the applicant's authorized agent and the date the certificate of title application was signed.

(c) Accompanying documentation. A non-repairable or salvage vehicle title application must be supported, at a minimum, by:

(1) evidence of ownership, as described by subsection (d)(1) or (3) of this section, if the applicant is an insurance company that is unable to locate one or more of the owners;

(2) an odometer disclosure statement properly executed by the seller of the motor vehicle and acknowledged by the purchaser, if the motor vehicle is less than 10 model years old and the motor vehicle is a salvage motor vehicle; and

(3) a release of any liens.

(d) Evidence of non-repairable or salvage motor vehicle ownership.

(1) Evidence of non-repairable or salvage motor vehicle ownership properly assigned to the applicant must accompany the application for a non-repairable or salvage vehicle title, except as provided by paragraph (2) of this subsection. Evidence must include documentation sufficient to show ownership to the non-repairable or salvage motor vehicle, such as:

(A) a Texas Certificate of Title;

(B) a certified copy of a Texas Certificate of Title;

(C) a manufacturer's certificate of origin;

(D) a Texas Salvage Certificate;

(E) a non-repairable vehicle title;

(F) a salvage vehicle title;

(G) a comparable ownership document issued by another jurisdiction, except that if the applicant is an insurance company, evidence must be provided indicating that the insurance company is:

(i) licensed to do business in Texas; or

(ii) not licensed to do business in Texas, but has paid a loss claim for the motor vehicle in this state; or

(H) a photocopy of the inventory receipt or a title and registration verification evidencing surrender to the department of the negotiable evidence of ownership for a motor vehicle as provided by §217.65 of this subchapter (relating to Dismantling, Scrapping, or Destruction of Motor Vehicles), and if the evidence of ownership surrendered was from another jurisdiction, a photocopy of the front and back of the surrendered evidence of ownership.

(2) An insurance company that acquires ownership or possession of a non-repairable or salvage motor vehicle through payment of a claim may apply for a non-repairable or salvage vehicle title without obtaining the proper assignment of the owner on the salvage motor vehicle ownership document if:

(A) the motor vehicle is covered by a certificate of title issued by this state or a manufacturer's certificate of origin;

(B) the insurance company is unable to locate one or more owners of the motor vehicle;

(C) at least 46 days have elapsed since payment of the claim;

(D) the insurance company has obtained the release of all liens on the motor vehicle; and

(E) the insurance company has provided notice to each owner who has not been located, at the last known address in the department's record, by certified mail, return receipt requested, and, if the notice is returned as unclaimed, undeliverable, or with no forwarding address, has made notice by publication in a newspaper of general circulation in the area where the unclaimed notice was sent.

(3) An insurance company to which paragraph (2) of this subsection applies shall submit the following documentation, in lieu of the properly assigned evidence of ownership:

(A) evidence of ownership, as provided by paragraph (1) of this subsection, without proper assignment;

(B) proof of notification (original or a copy if the insurance company maintains mail records electronically) made by certified mail to each recorded owner that includes:

(i) the United States Post Office validated receipts for certified mail and return receipt, together with any unopened certified letters returned by the post office as unclaimed, undeliverable, or with no forwarding address; and

(ii) if the certified letters were returned as unclaimed, undeliverable, or with no forwarding address by the post office, a legible photocopy of the notice made by newspaper publication, as required by paragraph (2)(E) of this subsection, that includes the name of the publication and the date of publication.

(e) Recordation of lien on non-repairable and salvage vehicle titles. If the motor vehicle is a salvage motor vehicle, a new lien or a currently recorded lien may be recorded on the salvage vehicle title. If the motor vehicle is a non-repairable motor vehicle, only a currently recorded lien may be recorded on the non-repairable vehicle title.

(f) Issuance. Upon receipt of a completed non-repairable or salvage vehicle title application, accompanied by the statutory application fee and the required documentation, the department will, before the sixth business day after the date of receipt, issue a non-repairable or salvage vehicle title, as appropriate.

(1) If the condition of salvage is caused exclusively by flood, a "Flood Damage" notation will be reflected on the face of the document and will be carried forward upon subsequent title issuance.

(2) If a lien is recorded on a non-repairable or salvage vehicle title, the vehicle title will be mailed to the lienholder. For proof of ownership purposes, the owner will be mailed a receipt or printout of the newly established motor vehicle record, indicating a lien has been recorded.

(3) A non-repairable vehicle title will state on its face that the motor vehicle may:

(A) not be repaired, rebuilt, or reconstructed;

(B) not be issued a regular certificate of title or registered in this state;

(C) not be operated on a public highway; and

(D) may only be used as a source for used parts or scrap metal.

§217.64. Replacement of Non-repairable or Salvage Motor Vehicle Ownership Documents.

(a) Location. Applications for certified copies of ownership documents for non-repairable or salvage motor vehicles will only be processed at the department's Austin headquarters office.

(b) Notation. The certified copy will contain the words "Certified Copy" and the date issued, and the motor vehicle record will be noted accordingly until ownership of the non-repairable or salvage motor vehicle is transferred. Then the notation will be eliminated from the new certificate of title and from the motor vehicle record.

(c) Replacement of non-repairable or salvage vehicle titles. If a non-repairable or salvage vehicle title is lost or destroyed, the department will issue a certified copy of the ownership document type originally issued, except as provided by subsection (d)(2) of this section, to the motor vehicle owner, lienholder, or verifiable agent on submission of verifiable proof and payment of the appropriate fee as provided in §217.3(e) of this chapter (relating to Motor Vehicle Certificates of Title).

(d) Replacement of non-repairable or salvage ownership documents issued prior to September 1, 2003.

(1) If a salvage certificate of title issued by this state prior to September 1, 2003, is lost or destroyed, the department will issue a certified copy of a salvage vehicle title, to the motor vehicle owner, lienholder, or verifiable agent on proper application, submission of verifiable proof, and payment of the appropriate fee as provided in §217.3(e) of this chapter.

(2) If a non-repairable certificate of title or salvage certificate issued by this state prior to September 1, 2003, is lost or destroyed, the department will issue a salvage vehicle title to the motor vehicle owner, lienholder, or verifiable agent on proper application, submission of verifiable proof, and payment of the appropriate fee as provided in §217.3(e) of this chapter.

§217.65. Dismantling, Scrapping, or Destruction of Motor Vehicles.

(a) A person who acquires ownership of a non-repairable or salvage motor vehicle for the purpose of dismantling, scrapping, or destruction shall, not later than the 30th day after the motor vehicle was acquired:

(1) submit to the department a report, on a form prescribed by the department:

(A) stating that the motor vehicle will be dismantled, scrapped, or destroyed; and

(B) certifying that all unexpired license plates and registration validation stickers have been removed from the motor vehicle, in accordance with Occupations Code, §2302.252; and

(2) surrender to the department the properly assigned ownership document.

(b) The person shall:

(1) maintain records of each motor vehicle that will be dismantled, scrapped, or destroyed, as provided by §217.80(d) of this chapter (relating to Record of Purchases, Sales, and Inventory); and

(2) store all unexpired license plates and registration validation stickers removed from those vehicles in a secure location.

(c) The department will issue the person a receipt with surrender of the report and ownership documents.

(d) License plates and registration validation stickers removed from vehicles reported under subsection (a)(1) of this section may be destroyed upon receipt of the acknowledged report from the department.

(e) The department will place an appropriate notation on motor vehicle records for which ownership documents have been surrendered to the department.

(f) Not later than 60 days after the motor vehicle is dismantled, scrapped, or destroyed, the person shall report to the department and provide evidence that the motor vehicle has been dismantled, scrapped, or destroyed.

§217.66. Rights of Holder of Non-repairable or Salvage Motor Vehicle Documents.

(a) The owner of a motor vehicle for which a salvage certificate or a non-repairable or salvage certificate of title was issued prior to September 1, 2003, or a salvage vehicle title issued on or after September 1, 2003:

(1) may:

(A) possess, transport, dismantle, scrap, or destroy, the motor vehicle;

(B) sell, transfer, or release ownership of the motor vehicle or used part from the motor vehicle as provided by §217.67 of this subchapter (relating to Sale, Transfer, or Release of Ownership of a Non-repairable or Salvage Motor Vehicle); or

(C) repair, rebuild, or reconstruct the motor vehicle; and

(2) may not operate or permit operation of the motor vehicle on the public highways until a rebuilt salvage certificate of title is issued.

(b) The owner of a motor vehicle for which a non-repairable vehicle title was issued on or after September 1, 2003:

(1) may:

(A) possess, transport, dismantle, scrap, or destroy, the motor vehicle; or

(B) sell, transfer, or release ownership of the motor vehicle or used part from the motor vehicle as provided by §217.67 of this subchapter; and

(2) may not:

(A) repair, rebuild, or reconstruct the motor vehicle;

(B) retitle or register the motor vehicle; and

(C) operate or permit operation of the motor vehicle on the public highways.

§217.67. Sale, Transfer, or Release of Ownership of a Non-repairable or Salvage Motor Vehicle.

(a) With a non-repairable or salvage motor vehicle title. The ownership of a motor vehicle for which a non-repairable or salvage vehicle title has been issued, including a motor vehicle that has a "Flood Damage" notation on the title, may be sold, transferred, or released to anyone, except that an insurance company may sell, transfer, or release ownership of a motor vehicle for which a non-repairable or salvage vehicle title has been issued, only to:

(1) a salvage vehicle dealer;

(2) an out-of-state buyer;

(3) a buyer in a casual sale at auction; or

(4) a metal recycler.

(b) Without a non-repairable or salvage motor vehicle title. If a non-repairable or salvage vehicle title or comparable out-of-state ownership document has not been issued for a non-repairable or salvage motor vehicle, only a salvage vehicle dealer, metal recycler, or governmental entity may sell, transfer, or otherwise release ownership of the motor vehicle. A salvage vehicle dealer, metal recycler, or governmental entity may only sell, transfer, or otherwise transfer ownership of a motor vehicle to which this subsection applies to:

(1) a salvage vehicle dealer;

(2) a metal recycler;

(3) a governmental entity;

(4) an insurance company; or

(5) an out-of-state buyer.

(c) Sale of self-insured non-repairable or salvage motor vehicle. The owner of a self-insured non-repairable or salvage motor vehicle that has been damaged and removed from normal operation shall obtain a non-repairable or salvage vehicle title before selling or otherwise transferring ownership of the motor vehicle.

(d) Casual sales. A salvage vehicle dealer, salvage pool operator, or insurance company may sell up to five non-repairable or salvage motor vehicles, for which non-repairable or salvage vehicle titles have been issued, to a person in a casual sale during a calendar year.

(e) Records of casual sales.

(1) A salvage vehicle dealer, salvage pool operator, or insurance company must maintain records of each casual sale made during the previous 36 months, in accordance with Transportation Code, §501.105, that at a minimum contain:

(A) the date of sale;

(B) the sales price;

(C) the name and address of the purchaser;

(D) a legible photocopy of the purchaser's government-issued photo identification;

(E) the form of identification provided, the identification document number, and the name of the jurisdiction that issued the identification document;

(F) the description of the motor vehicle, including the vehicle identification number, model year, make, body style, and model;

(G) a photocopy of the front and back of the properly assigned ownership document provided to the purchaser; and

(H) the purchaser's certification, on a form provided by the department, that the purchase of motor vehicles in a casual sale is not intended to circumvent the provisions of Transportation Code, Chapter 501 (relating to Certificates of Title) and Occupations Code, Chapter 2302 (relating to Salvage Vehicle Dealers).

(2) Records may be maintained on a form provided by the department or in an electronic format.

(3) Records must be maintained on the business premises of the seller, and shall be made available for inspection upon request.

(f) Export-only sales.

(1) In accordance with Transportation Code, §501.099, only a licensed salvage vehicle dealer, including a salvage pool operator acting as agent for an insurance company, or governmental entity may sell a non-repairable or salvage motor vehicle to a person who resides outside the United States, and only:

(A) when a non-repairable or salvage vehicle title has been issued for the motor vehicle prior to offering it for export-only sale; and

(B) prior to the sale, the seller obtains a legible photocopy of a government-issued photo identification of the purchaser that can be verified by law enforcement, issued by the jurisdiction in which the purchaser resides that may consist of:

(i) a passport;

(ii) a driver's license;

(iii) consular identity document;

(iv) national identification certificate or identity document; or

(v) other government-issued identification that includes the name of the jurisdiction issuing the document, the purchaser's full name, foreign address, date of birth, photograph, and signature.

(2) The seller must obtain the purchaser's certification, on a form prescribed by the department, that the purchaser will remove the motor vehicle from the United States and will not return the motor vehicle to any state of the United States as a motor vehicle titled or registered under its manufacturer's vehicle identification number.

(3) The seller must provide the buyer with a properly assigned non-repairable or salvage vehicle title.

(4) The seller must stamp FOR EXPORT ONLY and the seller's salvage vehicle dealer license number or the governmental entity's name, whichever applies, on the face of the title and on any unused reassignments on the back of the title.

(g) Records of export-only sales.

(1) A salvage vehicle dealer or governmental entity that sells a non-repairable or salvage motor vehicle for export-only must maintain records of all export-only sales.

(2) Records of each sale must include:

(A) a legible copy of the stamped and properly assigned non-repairable or salvage vehicle title;

(B) the buyer's certified statement required by subsection (f)(3) of this section;

(C) a legible copy of the buyer's photo identification document;

(D) a legible copy of any other documents related to the sale of the motor vehicle; and

(E) a listing of each motor vehicle sold for export- only that states the:

(i) date of sale;

(ii) name and address of the seller;

(iii) name and address of the purchaser;

(iv) purchaser's identification document number;

(v) name of the country that issued the identification document;

(vi) the form of identification provided by the purchaser; and

(vii) description of the motor vehicle that includes the year, make, model, and vehicle identification number of the motor vehicle.

(3) The listing required by paragraph (2)(E) of this subsection must be maintained either on a form provided by the department or in an electronic format approved by the department.

(4) The salvage vehicle dealer or governmental entity shall submit the listing prescribed by paragraph (2)(E) of this subsection to the department within 30 days from the date of sale.

(5) Upon receipt of the listing prescribed by paragraph (2)(E) of this subsection, the department will place an appropriate notation on the motor vehicle record to identify it as a motor vehicle sold for export-only that may not be operated, retitled, or registered in this state.

§217.68. Rebuilt Salvage Motor Vehicles.

(a) Filing for title. When a salvage motor vehicle or a non-repairable motor vehicle for which a non-repairable vehicle title was issued prior to September 1, 2003, has been rebuilt, the owner shall file a certificate of title application, as described in §217.3 of this chapter (relating to Motor Vehicle Certificates of Title), for a rebuilt salvage certificate of title.

(b) Place of application. An application for a rebuilt salvage certificate of title shall be filed with the county tax assessor-collector in the county in which the applicant resides or in the county in which the motor vehicle was purchased or is encumbered.

(c) Fee for rebuilt salvage certificate of title. In addition to the statutory fee for a title application and any other applicable fees, a $65 rebuilt salvage fee must accompany the application, unless the applicant provides the evidence described in subsection (d)(3)(B) of this section.

(d) Accompanying documentation. The application for a certificate of title for a rebuilt non-repairable or salvage motor vehicle must be supported, at a minimum, by the following documents:

(1) evidence of ownership, properly assigned to the applicant, as described in subsection (e) of this section;

(2) a rebuilt statement, on a form prescribed by the department that includes:

(A) a description of the motor vehicle, which includes the motor vehicle's model year, make, model, identification number, and body style;

(B) an explanation of the repairs or alterations made to the motor vehicle;

(C) a description of each major component part used to repair the motor vehicle and showing the identification number required by federal law to be affixed to or inscribed on the part;

(D) the name and address of the owner;

(E) a statement by the owner that the owner is the legal and rightful owner of the vehicle, the vehicle is rebuilt, repaired, reconstructed, or assembled and that the vehicle identification number disclosed on the rebuilt affidavit is the same as the vehicle identification number affixed to the vehicle;

(F) the signature of the owner, or the owner's authorized agent; and

(G) a statement by the rebuilder that the vehicle has been rebuilt, repaired, or reconstructed by the rebuilder and that all component parts used were obtained in a legal and lawful manner;

(3) evidence of inspection submitted by the person who repairs, rebuilds, or reconstructs a non-repairable or salvage motor vehicle in the form of:

(A) disclosure on the rebuilt statement of the vehicle inspection sticker number, and date of expiration, issued by an authorized state safety inspection station after the motor vehicle was rebuilt, if the motor vehicle will be registered at the time of application; or

(B) a written statement, executed by a specially trained commissioned officer of the Department of Public Safety prior to September 1, 2003, certifying that the rebuilt non-repairable or salvage motor vehicle's parts and identification numbers have been inspected and that the vehicle complies with state safety standards;

(4) an odometer disclosure statement properly executed by the seller of the motor vehicle and acknowledged by the purchaser, if applicable;

(5) proof of financial responsibility in the title applicant's name, as required by Transportation Code, §502.153, unless otherwise exempted by law;

(6) the identification certificate required by Transportation Code, §548.256, and Transportation Code, §501.030, if the motor vehicle was last titled and registered in another state or country, unless otherwise exempted by law; and

(7) a release of any liens, unless there is no transfer of ownership and the same lienholder is being recorded as is recorded on the surrendered evidence of ownership.

(e) Evidence of ownership of a rebuilt salvage motor vehicle:

(1) may include:

(A) a Texas Salvage Vehicle Title;

(B) a Texas Non-repairable Certificate of Title issued prior to September 1, 2003;

(C) a Texas Salvage Certificate; or

(D) a comparable salvage certificate or salvage certificate of title issued by another jurisdiction, except that this ownership document will not be accepted if it indicates that the motor vehicle may not be rebuilt in the jurisdiction that issued the ownership document; but

(2) may not include:

(A) a Texas non-repairable vehicle title issued on or after September 1, 2003;

(B) an out-of-state ownership document that indicates that the motor vehicle is non-repairable, junked, for parts or dismantling only, or the motor vehicle may not be rebuilt in the jurisdiction that issued the ownership document; or

(C) a certificate of authority to dispose of a motor vehicle issued in accordance with Transportation Code, Chapter 683.

(f) Rebuilt salvage certificate of title issuance. Upon receiving a completed certificate of title application for a rebuilt salvage motor vehicle, along with the applicable fees and required documentation, the transaction will be processed and a rebuilt salvage certificate of title will be issued. The certificate of title will include a "Rebuilt Salvage" notation and a description or disclosure of the motor vehicle's former condition on its face.

(g) Issuance of rebuilt salvage certificate of title to a motor vehicle from another jurisdiction. On proper application, as prescribed by §217.3 of this chapter, by the owner of a motor vehicle that is brought into this state from another jurisdiction and for which a certificate of title issued by the other jurisdiction contains a "Rebuilt," "Salvage," or analogous title remark, the department will issue the applicant a certificate of title or other appropriate document for the motor vehicle. A certificate of title or other appropriate document issued under this subsection will show on its face:

(1) the date of issuance;

(2) the name and address of the owner;

(3) any registration number assigned to the motor vehicle;

(4) a description of the motor vehicle as determined by the department; and

(5) any title remark the department considers necessary or appropriate.

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 December 4, 2009.

TRD-200905592
Jennifer Soldano
Legal Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: January 17, 2010
For further information, please call: (512) 463-8683

♦ ♦ ♦

SUBCHAPTER E. SALVAGE VEHICLE DEALERS

43 TAC §§217.70 - 217.81

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, §§502.0023, 501.022, 503.038, 503.062, 503.0625, 503.0626, 503.063, 503.0631, 503.065, 503.067, 503.068, 503.069, 504.510, 504.802, 504.854, 551.402, 601.002, 681.003, and 1003.2; and Tax Code, §152.069.

§217.70. Purpose and Scope.

Occupations Code, Chapter 2302, provides that a person may not act as salvage vehicle agent, salvage vehicle dealer, or salvage vehicle rebuilder, including storing or displaying vehicles as an agent or escrow agent of an insurance company, unless the department issues that person a salvage vehicle dealer license or agent license. This subchapter describes procedures by which a person may obtain a license to act as a salvage vehicle dealer or salvage vehicle agent, conditions under which a licensee must operate the facility, and the procedures by which the department will administer this subchapter.

§217.71. Definitions.

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

(1) Casual sale--The sale by a salvage vehicle dealer, insurance company at auction, or salvage pool operator at auction of not more than five non-repairable or salvage motor vehicles to the same person during a calendar year. The term does not include a sale at auction to a salvage vehicle dealer or the sale of an export-only motor vehicle to a person who is not a resident of the United States.

(2) Component part--A major component part defined by paragraph (4) of this section or a minor component part defined by paragraph (6) of this section.

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

(4) Director--The director of the department's Vehicle Titles and Registration Division.

(5) Major component part--A motor vehicle part that means one of the following parts of a motor vehicle:

(A) the engine;

(B) the transmission;

(C) the frame;

(D) a fender;

(E) the hood;

(F) a door allowing entrance to or egress from the passenger compartment of the motor vehicle;

(G) a bumper;

(H) a quarter panel;

(I) a deck lid, tailgate, or hatchback;

(J) the cargo box of a one-ton or smaller truck, including a pickup truck;

(K) the cab of a truck;

(L) the body of a passenger motor vehicle;

(M) the roof or floor pan of a passenger motor vehicle, if separate from the body of the motor vehicle.

(6) Metal recycler--A person who:

(A) is predominately engaged in the business of obtaining ferrous or nonferrous metal that has served its original economic purpose to convert the metal, or sell the metal for conversion, into raw material products consisting of prepared grades and having an existing or potential economic value;

(B) has a facility to convert ferrous or nonferrous metal into raw material products consisting of prepared grades and having an existing or potential economic value, by method other than the exclusive use of hand tools, including the processing, sorting, cutting, classifying, cleaning, baling, wrapping, shredding, shearing, or changing the physical form or chemical content of the metal; and

(C) sells or purchases the ferrous or nonferrous metal solely for use as raw material in the production of new products.

(7) Minor component part--A motor vehicle part that includes:

(A) an interior component part that includes a seat or radio of a motor vehicle;

(B) a special accessory part that includes a tire, wheel, tailgate, or removable glass top of a motor vehicle; or

(C) a motor vehicle part that displays or should display one or more of the following:

(i) a federal safety certificate, as described by Occupations Code, §2302.001(4);

(ii) a motor number;

(iii) a serial number or a derivative; or

(iv) a manufacturer's permanent vehicle identification number or a derivative.

(8) Motor vehicle--A vehicle described by Transportation Code, §501.002(14).

(9) Non-repairable motor vehicle--A motor vehicle, regardless of the year model, that is wrecked, damaged, or burned to the extent that the only residual value of the motor vehicle is as a source of parts or scrap metal, or that comes into this state under a title or other ownership document that indicates that the motor vehicle is non-repairable, junked, or for parts or dismantling only.

(10) Non-repairable vehicle title--A document that evidences ownership of a non-repairable motor vehicle.

(11) Out-of-state buyer--A person who is licensed by another state or jurisdiction in an automotive business if the department has listed the holders of that license as permitted purchasers of salvage motor vehicles or non-repairable motor vehicles based on substantially similar licensing requirements and on whether salvage vehicle dealers licensed in Texas are permitted to purchase salvage motor vehicles or non-repairable motor vehicles in the other state or jurisdiction.

(12) Out-of-state ownership document--A negotiable document issued by another jurisdiction that the department considers sufficient to prove ownership of a non-repairable or salvage motor vehicle and to support issuance of a comparable Texas certificate of title for the motor vehicle. The term does not include a title issued by the department, including:

(A) a regular certificate of title;

(B) a non-repairable vehicle title;

(C) a salvage vehicle title;

(D) a Texas salvage certificate;

(E) a Certificate of Authority to Demolish a Motor Vehicle; or

(F) any other ownership document issued by the department.

(13) Person--An individual, partnership, corporation, trust, association, or other private legal entity.

(14) Rebuilder--A person who acquires and repairs, rebuilds, or reconstructs for operation on a public highway three or more salvage motor vehicles in a calendar year.

(15) Salvage motor vehicle--A motor vehicle, regardless of the year model:

(A) that is:

(i) damaged to the extent that the cost of repairs exceeds the actual cash value of the motor vehicle immediately before the damage; or

(ii) damaged and comes into this state under an out-of-state ownership document that states on its face "accident damage," "flood damage," "inoperable," "rebuildable," "salvageable," or similar notation, and is not an out-of-state ownership document with a "rebuilt," "prior salvage," or similar notation, or a non-repairable motor vehicle; and

(B) does not include a motor vehicle for which an insurance company has paid a claim for:

(i) repairing hail damage; or

(ii) theft, unless the motor vehicle was damaged during the theft and before recovery to the extent that the cost of repair exceeds the actual cash value of the motor vehicle immediately before the damage.

(16) Salvage vehicle agent--A person who acquires, sells, or otherwise deals in non-repairable or salvage motor vehicles or used parts in this state as directed by the salvage vehicle dealer under whose license the person operates, but does not include:

(A) a licensed salvage vehicle dealer;

(B) a partner, owner, or officer of a business entity that holds a salvage vehicle dealer license;

(C) an employee of a licensed salvage vehicle dealer; or

(D) a person that only transports salvage motor vehicles for a licensed salvage vehicle dealer.

(17) Salvage vehicle dealer--A person engaged in this state in the business of acquiring, selling, dismantling, repairing, rebuilding, reconstructing, or otherwise dealing in non-repairable motor vehicles or salvage motor vehicles or used parts, and includes a person who is in the business of a salvage vehicle dealer, regardless of whether the person holds a license issued by the department to engage in the business. The term does not include a person who casually repairs, rebuilds, or reconstructs fewer than three salvage motor vehicles in the same calendar year.

(18) Salvage vehicle title--A document issued by the department that evidences ownership of a salvage motor vehicle.

(19) Used part--A part that is salvaged, dismantled, or removed from a motor vehicle for resale as is or as repaired. The term includes a major component part, but does not include a rebuildable or rebuilt core, including an engine, block, crankshaft, transmission, or other core part that is acquired, possessed, or transferred in the ordinary course of business.

§217.72. Classifications of Salvage Vehicle Dealer Licenses.

(a) Applicability. A person who acts as a salvage vehicle dealer or salvage vehicle rebuilder, including a person who stores or displays motor vehicles as an agent or escrow agent of an insurance company, must obtain a salvage vehicle dealer license in accordance with Occupations Code, Chapter 2302, and the provisions of this subchapter.

(b) Classification of licenses. The department will classify salvage vehicle dealers according to the type of activity performed by the dealer. A salvage vehicle dealer may not engage in activities of a par-

ticular classification as indicated in this subsection unless the salvage vehicle dealer holds a license authorizing business under that classification. An applicant shall apply for a salvage vehicle dealer license in one or more of the following classifications:

(1) new automobile dealer, defined as a person whose primary business is selling new motor vehicles, but who may also buy non-repairable and salvage motor vehicles to repair and sell;

(2) used automobile dealer, defined as a person whose primary business is selling used motor vehicles, but who may also buy salvage and non-repairable motor vehicles to repair and sell;

(3) used vehicle parts dealer, defined as a person who is engaged in the business of acquiring, possessing, or transferring used parts in the ordinary course of business;

(4) salvage pool operator, defined as a person who is engaged in the business of selling non-repairable motor vehicles or salvage motor vehicles at auction, including wholesale auction;

(5) salvage vehicle broker, defined as a person who buys, sells, or exchanges salvage and non-repairable motor vehicles with other licensed salvage vehicle dealers; or

(6) salvage vehicle rebuilder, defined as a person who acquires and repairs, rebuilds, or reconstructs for operation on a public highway three or more salvage motor vehicles in a calendar year.

(c) Exemptions. The provisions of this subchapter do not apply to:

(1) a person who purchases not more than five non-repairable or salvage motor vehicles at casual sale in a calendar year from:

(A) a salvage vehicle dealer;

(B) a salvage pool operator at auction; or

(C) an insurance company at auction;

(2) a metal recycler, as described by §217.71(6) of this subchapter (relating to Definitions) unless a motor vehicle is sold, transferred, released, or delivered to the metal recycler for the purpose of reuse or resale as a motor vehicle or as a source of used parts, and is used for that purpose;

(3) a person who casually repairs, rebuilds, or reconstructs fewer than three salvage motor vehicles in the same calendar year;

(4) a person who is a non-United States resident who purchases non-repairable or salvage motor vehicles for export only;

(5) an agency of the United States, an agency of this state, or a local government;

(6) a financial institution or other secured party that holds a security interest in a motor vehicle and is selling that motor vehicle in the manner provided by law for the forced sale of a motor vehicle;

(7) a receiver, trustee, administrator, executor, guardian, or other person appointed by or acting pursuant to the order of a court;

(8) 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; and

(9) a licensed auctioneer who, as a bid caller, sells or offers to sell property to the highest bidder at a bona fide auction under the following conditions:

(A) neither legal nor equitable title passes to the auctioneer;

(B) the auction is not held for the purpose of avoiding a provision of Occupations Code, Chapter 2302, or this subchapter; and

(C) an auction is conducted of motor vehicles owned, legally or equitably, by a person who holds a salvage vehicle dealer's license and the auction is conducted at a location for which a salvage vehicle dealer's license has been issued to that person or at a location approved by the department under §217.76(a) of this subchapter (relating to Place of Business).

§217.73. Salvage Vehicle Dealer License.

(a) Assumed name. An applicant who will operate as a salvage vehicle dealer under a name other than the name of that applicant must use the name under which that applicant is authorized to do business, as filed with the secretary of state or county clerk, and the assumed name of that legal entity must be recorded on the application form using the letters "DBA." If an assumed name will be used, the applicant must submit a copy of an assumed name certificate on file with the secretary of state or county clerk at the time the application form is submitted.

(b) Initial application. An applicant for a salvage vehicle dealer license must apply on a form prescribed by the department.

(1) Form of application for salvage vehicle dealer license. The application form must be signed by the applicant, be accompanied by the application fee, and include:

(A) the legal name, each business address, and each business telephone number of the applicant;

(B) the name under which the applicant will do business;

(C) the location, by number, street, and municipality, of each office from which the applicant will conduct business;

(D) a statement indicating whether the applicant has previously applied for a salvage vehicle dealer license under this section, the result of the previous application, and whether the applicant has ever been the holder of a salvage vehicle dealer license that was revoked or suspended;

(E) an affidavit containing a statement that the applicant has never been convicted of a felony or that it has been at least three years since the termination of the applicant's sentence, parole, mandatory supervision, or probation for a felony conviction;

(F) three business association references;

(G) the applicant's date of birth;

(H) the applicant's federal tax identification number, if any;

(I) the applicant's state sales tax number;

(J) the applicant's social security number if the applicant is an individual;

(K) each classification of license for which the form is being submitted; and

(L) a legible copy of the applicant's driver license.

(2) Corporate salvage vehicle dealer license. If a salvage vehicle dealer license applicant intends to engage in business through a corporation, the applicant must apply on a form prescribed by the department.

(A) Form of application. The form must indicate the name of the corporation, as it appears on file with the secretary of state,

be signed by the applicant, be accompanied by the application fee, and include:

(i) the name, each business address, and each business telephone number of the corporation;

(ii) the name under which the corporation will do business;

(iii) the location, by number, street, and municipality, of each office from which the corporation will conduct business;

(iv) the state of incorporation;

(v) a statement indicating whether any employee, officer, or director has previously applied for a salvage vehicle dealer license under this section, the result of the previous application, and whether an employee, officer, or director has ever been the holder of a salvage vehicle dealer license that was revoked or suspended;

(vi) an affidavit containing a statement that no officer or director has ever been convicted of a felony or that it has been at least three years since the termination of any officer or director's sentence, parole, mandatory supervision, or probation for a felony conviction;

(vii) three business association references;

(viii) the applicant's federal tax identification number, if any;

(ix) the applicant's state sales tax number;

(x) the legal name, address, date of birth, and social security number of each of the principal officers and directors of the corporation;

(xi) a legible copy of the driver's license of each principal officer and director of the corporation; and

(xii) each classification of license for which the form is being submitted.

(B) Verification of corporate franchise taxes. At the time the application is submitted, the corporation must also provide verification that all corporate franchise taxes have been paid.

(3) Partnership salvage vehicle dealer license. If a salvage vehicle dealer license applicant intends to engage in business through a partnership, the applicant must apply on a form prescribed by the department. The form must be signed by the applicant, be accompanied by the application fee, and include:

(A) the name, each business address, and each business telephone number of the partnership;

(B) the name under which the partnership will do business;

(C) the location, by number, street, and municipality, of each office from which the partnership will conduct business;

(D) a statement indicating whether an owner, partner, or employee has previously applied for a salvage vehicle dealer license under this section, the result of the previous application, and whether an owner, partner, or employee has ever been the holder of a salvage vehicle dealer license that was revoked or suspended;

(E) an affidavit containing a statement that no owner or partner has ever been convicted of a felony or it has been at least three years since the termination of any owner or partner's sentence, parole, mandatory supervision, or probation for a felony conviction of each owner or partner;

(F) three business association references;

(G) the partnership's federal tax identification number, if any;

(H) the partnership's state sales tax number;

(I) the legal name, address, date of birth, and social security number of each owner and partner;

(J) a legible copy of the driver's license of each owner or partner; and

(K) each classification of license for which the form is being submitted.

(c) Fee. The fee for each salvage vehicle dealer license is $95.

§217.74. Salvage Vehicle Agent License.

A person who acts as a salvage vehicle agent, including a person who stores or displays motor vehicles as an agent or escrow agent of an insurance company, must obtain an agent license in accordance with Occupations Code, Chapter 2302, and the provisions of this subchapter. A person may obtain a salvage vehicle agent license by applying to the department and paying the required fee.

(1) Authorization of agents. The holder of a salvage vehicle dealer license may authorize not more than five persons to operate as salvage vehicle agents under the dealer's license. An agent may acquire, sell, or otherwise deal in non-repairable or salvage motor vehicles or used parts in this state as directed by the dealer under whose license the person operates.

(2) Initial application. An applicant who is authorized to operate as an agent for a salvage vehicle dealer must apply on a form prescribed by the department. The application form must be signed by the applicant, be accompanied by the application fee, and include:

(A) the name of the applicant;

(B) the name, business address, and business telephone number of the salvage vehicle dealer authorizing the applicant as a salvage vehicle agent;

(C) the name under which the salvage vehicle dealer will do business;

(D) the location, by number, street, and municipality, of each office from which the applicant will conduct business;

(E) a statement indicating whether the applicant has previously applied for a salvage vehicle dealer or agent license under this section, the result of the previous application, and whether the applicant has ever been the holder of a salvage vehicle dealer or agent license that was revoked or suspended;

(F) an affidavit containing a statement that the applicant has never been convicted of a felony or that it has been at least three years since the termination of the applicant's sentence, parole, mandatory supervision, or probation for a felony conviction;

(G) three business association references;

(H) the applicant's federal tax identification number, if any;

(I) the applicant's state sales tax number; and

(J) the applicant's social security number.

(3) Fee. The fee for each salvage vehicle agent license is $95.

§217.75. Investigation, Report by the Department, and Issuance of License.

(a) Investigation. The department will not grant a salvage vehicle dealer or an agent a license until the department completes an investigation of the applicant's qualifications and references in accordance with Occupations Code, §2302.105. The investigation will be conducted not later than the 15th day after the date the application is received by the department, and may include a criminal background check.

(b) Report by the department. On completion of the investigation, the department will provide each applicant with a written notification of the results of the investigation in the form of issuance of a license to a qualified applicant or a letter advising of denial of the application. If the application is denied the applicant may appeal the decision as specified in §217.81 of this subchapter (relating to Denial, Suspension, or Revocation).

(c) License issuance. The department will issue a license to an applicant who meets all the license qualifications of §217.73 of this subchapter (relating to Salvage Vehicle Dealer License) or §217.74 of this subchapter (relating to Salvage Vehicle Agent License), as applicable, and pays the required fees.

(1) The license will be issued for a 12-month period.

(2) A license will not be issued in a fictitious name that may be confused with or is similar to that of a governmental entity or that is otherwise deceptive or misleading to the public.

(3) A person whose license has been revoked in accordance with §217.81 of this subchapter will not be issued a new license before the first anniversary of the date of the revocation.

§217.76. Place of Business.

(a) Registration of business locations.

(1) A license applicant who intends to operate as a salvage vehicle dealer at more than one location within a county must:

(A) list each location in the application;

(B) notify the department when acquiring additional locations within that specific county; and

(C) not authorize more than five salvage dealer agents per salvage vehicle dealer license.

(2) A licensed applicant who intends to operate as a salvage vehicle dealer with additional locations in another county will be required to obtain a separate license.

(3) A licensed applicant with additional locations that are operated under a different name will be required to obtain a separate license for each location.

(4) Before moving a place of business or opening an additional place of business, a salvage vehicle dealer must register the new location with the department within 10 days prior to the opening or relocation of the business establishment.

(b) Off-site sales. A salvage vehicle dealer or agent is not permitted to sell or offer for sale salvage or non-repairable vehicles or used parts from any location other than a licensed salvage vehicle dealer's business location that has been approved by the department.

§217.77. Change of Licensee's Status.

(a) Licensee name change. A licensed salvage vehicle dealer shall notify the department in writing within 10 days if there is a licensee name change. Upon notification of a name change, the department shall indicate the change on the dealer's file. The dealer shall retain the same salvage vehicle dealer license number.

(b) Change of ownership. A salvage vehicle dealer shall notify the department in writing within 10 days if there is any change of ownership. Upon notification of a complete change of ownership, the department will cancel the existing salvage vehicle dealer license. The new owner must qualify for a new salvage vehicle dealer license by submission to the department of a completed application for the new Texas salvage vehicle dealer, and any agents operating under the new salvage vehicle dealer's license.

(c) Change of operating status. A salvage vehicle dealer shall notify the department in writing within 10 days of the closing of any dealer location.

(d) Termination of agent. A salvage vehicle dealer shall notify the department in writing within 10 days of the termination of an agent who was authorized to operate under the salvage vehicle dealer's license.

§217.78. License Renewal.

(a) License expiration. A salvage vehicle dealer license or agent license expires on the first anniversary of the date of issuance. The license may be renewed annually on or before the expiration date with payment of the required renewal fee of $85.

(b) Renewal application. The department will notify a salvage vehicle dealer or agent at least 30 days before expiration of a license. The notice will be in writing and sent to the person's last known address according to the records of the department.

(c) Non-renewal. If the license is not renewed before the expiration date, a salvage vehicle dealer or agent may not engage in the activities that require the license until the license has been renewed.

(d) Renewal of expired license. An expired license may be renewed under the following conditions.

(1) A license holder may renew a license by paying a renewal fee of $127.50 if 90 days or fewer have elapsed since the license expired.

(2) A license holder may renew a license by paying a renewal fee of $170 if more than 90 days have elapsed since the license expired.

(3) A license holder may renew a license by paying a renewal fee of $170 if the license holder:

(A) resides in another state and has been doing business as a salvage vehicle dealer in that state for at least two years;

(B) provides a certificate or other official document issued by that state that demonstrates the license holder is doing business as a salvage vehicle dealer in that state; and

(C) furnishes the expired Texas license number.

(4) If a license has been expired for a period of one year or longer, the license holder must apply for a new license in the same manner as an applicant for an initial license, except as provided in paragraph (3) of this subsection.

§217.79. Licensee Duties.

(a) Evidence of ownership.

(1) A salvage vehicle dealer must receive a properly assigned certificate of title when acquiring ownership of a non-repairable or salvage motor vehicle.

(2) A salvage vehicle dealer licensed as a used vehicle parts dealer may not receive a motor vehicle unless the dealer first obtains a certificate of authority, sales receipt, or transfer document in accordance with Transportation Code, Chapter 683, or a certificate of title

showing that there are no liens on the motor vehicle or that all recorded liens have been released.

(b) Dismantled, scrapped, or destroyed motor vehicle.

(1) A salvage vehicle dealer that acquires ownership of a non-repairable or salvage motor vehicle for the purpose of dismantling, scrapping, or destroying the motor vehicle, shall, not later than the 30th day after the motor vehicle is acquired, submit to the department:

(A) a report, on a form prescribed by the department:

(i) stating that the motor vehicle will be dismantled, scrapped, or destroyed; and

(ii) certifying that all unexpired license plates and registration validation stickers have been removed from the motor vehicle, in accordance with Occupations Code, §2302.252; and

(B) surrender to the department the properly assigned ownership document.

(2) Not later than 60 days after the motor vehicle is dismantled, scrapped, or destroyed, the salvage vehicle dealer shall report to the department and provide evidence that the motor vehicle has been dismantled, scrapped, or destroyed.

(3) The salvage vehicle dealer shall:

(A) maintain records of each motor vehicle that is dismantled, scrapped or destroyed, as provided by §217.80(d) of this subchapter (relating to Record of Purchases, Sales, and Inventory); and

(B) store all unexpired license plates and registration validation stickers removed from those vehicles in a secure location.

(4) The salvage vehicle dealer may destroy the license plates and registration validation stickers to the vehicles reported under paragraph (1)(A) of this subsection upon receipt of the acknowledged report from the department.

(c) Unique inventory number.

(1) A salvage vehicle dealer shall assign a unique inventory number to each transaction in which the dealer purchases or takes delivery of one or more component parts. The unique inventory number shall incorporate:

(A) the salvage vehicle dealer's license number;

(B) the day, month, and year of the purchase or delivery; and

(C) a sequential log number.

(2) The salvage vehicle dealer shall attach a unique inventory number to the motor vehicle. If a component part is removed, the salvage vehicle dealer shall also attach to that part the unique inventory number of the motor vehicle from which the part was removed. The unique inventory number may not be removed from the component part while the part remains in the inventory of the salvage vehicle dealer.

(3) The salvage vehicle dealer who originally purchases a component part shall retain that part in its original condition on the dealer's business premises. The component part shall be retained for at least three calendar days, excluding Sundays.

(4) The provisions of paragraphs (1) and (2) of this subsection do not apply to a nonoperational engine, transmission, or rear axle assembly purchased by one salvage vehicle dealer from another salvage vehicle dealer or from an automotive-related business.

(5) The provisions of this subsection do not apply to:

(A) interior used component parts or special accessory parts on a motor vehicle more than 10 years of age; or

(B) used component parts delivered by commercial freight lines or commercial carriers.

(d) Sale restrictions.

(1) Water-damaged motor vehicles. A motor vehicle that is classified as a non-repairable motor vehicle or salvage motor vehicle based solely on flood damage may be sold or transferred only as provided by this subsection.

(2) Sale, transfer, or release of non-repairable or salvage motor vehicle. A salvage vehicle dealer or agent may sell, transfer, or release a non-repairable motor vehicle or salvage motor vehicle if a non-repairable or salvage vehicle title or a comparable out-of-state ownership document:

(A) has been issued for the motor vehicle to anyone; or

(B) has not been issued for the motor vehicle, but only to:

(i) an insurance company;

(ii) a governmental entity;

(iii) a licensed salvage vehicle dealer;

(iv) an out-of-state buyer; or

(v) a metal recycler.

(3) Casual sales. A salvage vehicle dealer, including a salvage pool operator who sells motor vehicles at auction, may sell up to five non-repairable or salvage motor vehicles in a casual sale to a person in a calendar year and shall maintain records of each casual sale as provided by §217.80(e) of this subchapter.

(4) Export-only sales. A salvage vehicle dealer, including a salvage pool operator acting as agent for an insurance company, may sell a non-repairable or salvage motor vehicle to a person who resides in a jurisdiction outside the United States only as provided by §217.67(f) of this chapter (relating to Sale, Transfer, or Release of Ownership of a Non-repairable or Salvage Motor Vehicle) and shall maintain records of each export-only sale as provided by §217.80(f) of this subchapter.

§217.80. Record of Purchases, Sales, and Inventory.

(a) Maintenance of records. A salvage vehicle dealer shall maintain a record of each motor vehicle and each used part purchased or sold by the dealer or held in inventory in accordance with Occupations Code, §§2302.202, 2302.252, 2302.254 and 2302.256, Transportation Code, §501.099 and §501.105, and the provisions of this section.

(b) Form of records. Records shall be maintained in a bound book or electronically. If records are maintained electronically, the salvage vehicle dealer shall print paper copies and keep those copies in a secure file. Records shall be maintained for a five-year period. Records shall include:

(1) the date of purchase for the motor vehicle or part;

(2) the name and address of the person selling the motor vehicle or part to the dealer;

(3) a description of the motor vehicle or part, including the model, year, make, and vehicle identification number or part number, if applicable;

(4) the motor vehicle's ownership document number and state of issuance, if applicable;

(5) a copy of the front and back of the ownership document for the motor vehicle or part unless the model year is more than 10 model years older than the current model year;

(6) the date the ownership document was surrendered to the department;

(7) any evidence indicating that the motor vehicle was dismantled, scrapped, or destroyed;

(8) the date of sale; and

(9) the name and address of the person purchasing the motor vehicle or part from the dealer.

(c) Used vehicle parts dealers. A salvage vehicle dealer licensed as a used vehicle parts dealer shall keep, in addition to records required to be kept under subsection (b) of this section, an accurate and legible inventory of each used component part purchased by or delivered to the dealer.

(1) The parts inventory shall include:

(A) the date of purchase or delivery for the part;

(B) the name, age, address, sex, and driver's license number of the seller and a legible photocopy of the seller's driver's license;

(C) the license number of the motor vehicle used to deliver the used component part;

(D) a complete description of the item purchased, including the type of material and, if applicable, the make, model, color, and size of the item; and

(E) the vehicle identification number of the motor vehicle from which the used component part was removed.

(2) Instead of the information required in paragraph (1) of this subsection, a salvage vehicle dealer may record:

(A) the name of the person from which the motor vehicle or part is purchased and the Texas certificate of inventory number or federal taxpayer identification number of the person; or

(B) a record of the motor vehicle from which the part was obtained.

(3) A salvage vehicle dealer is not required to keep records under this subsection for:

(A) interior component parts or special accessory parts on a motor vehicle more than 10 years of age; or

(B) used component parts delivered by commercial freight lines or commercial carriers.

(4) A record of a used component part shall be kept on a form prescribed by the department. A salvage vehicle dealer shall maintain two copies of each record. The copies shall be maintained for one year after the date on which the dealer sells or disposes of the item.

(d) Records of vehicles dismantled, scrapped, or destroyed. A salvage vehicle dealer shall keep, on the dealer's business premises, a record of each vehicle that is dismantled, scrapped or destroyed, and a photocopy of front and back of any out-of-state evidence of ownership surrendered to the department, until the third anniversary of the date the report was filed with the department in accordance with §217.79(b) of this subchapter (relating to Licensee Duties).

(e) Records of casual sales.

(1) A salvage vehicle dealer must maintain records of each casual sale made during the previous 36 months, as provided by §217.67(e) of this chapter (relating to Sale, Transfer, or Release of Ownership of a Non-repairable or Salvage Motor Vehicle).

(2) The records must be maintained on the business premises of the salvage vehicle dealer, and the salvage vehicle dealer must make those records available for inspection upon request.

(f) Records of export-only sales.

(1) A salvage vehicle dealer who sells a motor vehicle for export-only shall maintain records of each export-only sale, as provided by §217.67(g) of this chapter, for three years from the date of sale.

(2) The records must be maintained on the business premises of the salvage vehicle dealer, and the salvage vehicle dealer must make those records available for inspection upon request.

§217.81. Denial, Suspension, or Revocation.

(a) Denial of salvage vehicle dealer or agent license. The department shall deny issuance of a salvage vehicle dealer, including officers and directors if a corporate license, or agent license if:

(1) all the information required on the application is not complete;

(2) the applicant made a false statement or material misrepresentation on the application;

(3) the affidavit and business references required by §217.73 of this subchapter (relating to Salvage Vehicle Dealer License) are inadequate due to incomplete information being provided or misrepresentation of applicant's reputation or character;

(4) the applicant has been convicted of a felony for which less than three years have elapsed since the termination of the sentence, parole, mandatory supervision, or probation;

(5) the applicant's previous salvage vehicle dealer or agent license was revoked and the first anniversary of the date of revocation has not occurred; or

(6) the applicant is an immediate family member, such as a spouse, child, parent, grandparent, niece, nephew, uncle, or aunt, of a previously licensed salvage vehicle dealer whose license has been revoked, and the business location is the same as the location of the revoked salvage vehicle dealer.

(b) Suspension or revocation. The department may suspend or revoke a salvage vehicle dealer or agent license if the dealer, including officers and directors if a corporate license, or agent:

(1) fails to maintain purchase, sales, and inventory records as provided in §217.80 of this subchapter (relating to Record of Purchases, Sales, and Inventory);

(2) refuses to permit or fails to comply with a request by a representative of the department or a peace officer to examine, during normal working hours, or while the premises are occupied, the purchase, sales, and inventory records and ownership documents for non-repairable or salvage motor vehicles or used parts owned by that dealer or under that dealer's control;

(3) holds one or more classifications of salvage vehicle dealer or agent licenses and is found to be dealing in another classification for which a license has not been issued to the dealer or agent;

(4) fails to notify the department of a change of address within 10 days after such change;

(5) fails to notify the department of a dealer's name or ownership change within 10 days after such change;

(6) fails to notify the department of the termination of an agent who was authorized to operate under the salvage vehicle dealer's license within 10 days after such termination;

(7) fails to follow the restriction of the sale, transfer, or release of a non-repairable or salvage motor vehicle as provided in §217.79(d) of this subchapter (relating to Licensee Duties);

(8) fails to meet the timeframes and requirements provided in §217.76 of this subchapter (relating to Place of Business);

(9) fails to remain regularly and actively engaged in the business for which the salvage vehicle dealer or agent license is issued;

(10) sells more than five non-repairable or salvage motor vehicles to the same person in a casual sale during a calendar year;

(11) uses or allows use of the dealer's or agent's license or location for the purpose of avoiding the provisions of the salvage vehicle dealer law;

(12) sells or offers for sale non-repairable or salvage motor vehicles or used parts from any location other than a licensed salvage vehicle dealer's business location that has been approved by the department;

(13) is convicted of a felony after initial issuance or renewal of the salvage vehicle dealer or agent license or less than three years have elapsed since the termination of the sentence, parole, mandatory supervision, or probation for a felony conviction of the applicant;

(14) makes a false statement or material misrepresentation in any application or other information filed with the department;

(15) fails to remit payment for civil penalties assessed by the department under Chapter 206, Subchapter D of this title (relating to Procedures in Contested Cases); or

(16) violates any of the provisions of Transportation Code, Chapter 501, Occupations Code, Chapter 2302, or any provisions of this subchapter.

(c) Suspension or refusal to renew due to failure to pay court ordered child support.

(1) On receipt of a final order suspending a license, issued under Family Code, §232.008, the department will suspend or refuse to renew a dealer's or agent's license issued under this subchapter.

(2) The department will charge an administrative fee of $10 to a dealer or agent who is the subject of an order suspending license.

(d) Proceedings relating to the denial, suspension, or revocation of a salvage dealer's or agent's license.

(1) Upon determination that a dealer or agent license should be denied, suspended, or revoked, the director will mail a notice of the denial, suspension, or revocation to the last known address of the dealer or agent by certified mail.

(A) The notice shall clearly state:

(i) the reason for the denial, suspension, or revocation;

(ii) the effective date of the denial, suspension, or revocation;

(iii) the right of the dealer or agent to request an administrative hearing on the question of denial, suspension, or revocation; and

(iv) that the notice of suspension or revocation shall also apply to licensed salvage vehicle dealer agents authorized by the dealer.

(B) A request for an administrative hearing under this section must be made in writing to the director within 10 days of the receipt of notice of denial, suspension, or revocation.

(2) If timely requested, an administrative hearing will be conducted in accordance with Chapter 206, Subchapter D of this title.

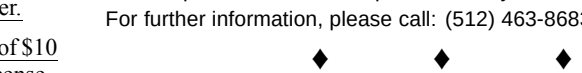
(e) Re-application after revocation of license. A person whose license is revoked may not apply for a new license before the first anniversary of the date of the revocation.

(f) Refund of fees. The department will not refund fees paid by a salvage vehicle dealer or agent if the license is revoked or suspended.

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 December 4, 2009.

TRD-200905593
Jennifer Soldano
Legal Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: January 17, 2010
For further information, please call: (512) 463-8683



ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 12. SWORN COMPLAINTS
SUBCHAPTER B. FILING AND INITIAL PROCESSING OF A COMPLAINT

1 TAC §12.57

The Texas Ethics Commission (the commission) adopts the repeal of §12.57, relating to the contents of a sworn complaint. The repeal is adopted without changes to the proposed text as published in the August 28, 2009, issue of the *Texas Register* (34 TexReg 5849) and will not be republished.

The repeal of §12.57 would repeal the rule relating to the contents of a sworn complaint. Subsection (a) is no longer necessary because it was codified in §571.122 of the Government Code by H.B. 3218, 81st Legislature, R. S., which became effective on June 19, 2009. The repeal of subsection (b) would require a complaint to include the position or title of a respondent, as required by the statute.

No written comments were received regarding the proposed repeal of the rule during the comment period.

The repeal of §12.57 is adopted under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

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 December 3, 2009.

TRD-200905563
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Effective date: December 23, 2009
Proposal publication date: August 28, 2009
For further information, please call: (512) 463-5800

♦ ♦ ♦

CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES
SUBCHAPTER B. GENERAL REPORTING RULES

1 TAC §20.61

The Texas Ethics Commission (the commission) adopts an amendment to §20.61, relating to the purpose of an expenditure made with political funds. The amendment is adopted with changes to the proposed text as published in the October 30, 2009, issue of the *Texas Register* (34 TexReg 7443). The changes are not substantive and the section will be republished.

Section 20.61 would clarify the law that requires a person filing a campaign finance report to disclose the "purpose" of an expenditure made with political funds. The amendment will require the purpose of an expenditure to include both a description of the category of goods, services, or thing of value received in exchange for the expenditure and a brief statement or description of the candidate, officeholder, or political committee activity that is conducted by making the expenditure. The amendment includes a list of acceptable categories. Subsection (d) was not adopted.

The commission received the following written comments:

One commenter stated that the commission should expand the category of gift expense to include awards, memorials, and mementos. The commenter also stated that the category of meal expense should include food and beverage. The commenter further stated that there should be separate categories for travel in-district and out-of-district.

The commission considers comments from all parties and made the suggested changes to the rule.

Another commenter stated that another example should be added in the comments section regarding legal services. The commenter further stated that an additional example should be added to meal expense.

The commission considers comments from all parties, however, the comments section of the rule was not adopted.

The amendment to §20.61 is adopted under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

§20.61. Purpose of Expenditure.

(a) For reporting required under §254.031 of the Election Code, the purpose of an expenditure means:

(1) A description of the category of goods, services, or other thing of value for which an expenditure is made. Examples of acceptable categories include:

(A) advertising expense;

(B) accounting/banking;

(C) consulting expense;

(D) contributions/donations made by candidate/officeholder/political committee;

(E) event expense;

(F) fees;

(G) food/beverage expense;

(H) gifts/awards/memorials expense;

(I) legal services;

(J) loan repayment/reimbursement;

(K) office overhead/rental expense;

(L) polling expense;

(M) printing expense;

(N) salaries/wages/contract labor;

(O) solicitation/fundraising expense;

(P) transportation equipment and related expense;

(Q) travel in district;

(R) travel out of district;

(S) other political expenditures; and

(2) A brief statement or description of the candidate, officeholder, or political committee activity that is conducted by making the expenditure. The brief statement or description must include the item or service purchased and must be sufficiently specific, when considered within the context of the description of the category, to make the reason for the expenditure clear. Merely disclosing the category of goods, services, or other thing of value for which the expenditure is made does not adequately describe the purpose of an expenditure.

(b) The description of a political expenditure for travel outside of the state of Texas must provide the following:

(1) The name of the person or persons traveling on whose behalf the expenditure was made;

(2) The means of transportation;

(3) The name of the departure city or the name of each departure location;

(4) The name of the destination city or the name of each destination location;

(5) The dates on which the travel occurred; and

(6) The campaign or officeholder purpose of the travel, including the name of a conference, seminar, or other event.

(c) This rule applies to expenditures made on or after July 1, 2010.

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 December 3, 2009.

TRD-200905562

Natalia Luna Ashley

General Counsel

Texas Ethics Commission

Effective date: December 23, 2009

Proposal publication date: October 30, 2009

For further information, please call: (512) 463-5800

♦ ♦ ♦

CHAPTER 34. REGULATION OF LOBBYISTS

The Texas Ethics Commission (the commission) adopts amendments to §34.1 and §34.5 and new §§34.46, 34.73, and 34.75, relating to the regulation of lobbyists under Chapter 305 of the Government Code. The amendments to §34.1 and §34.5 and the new rules §34.73 and §34.75 are adopted without changes. New §34.46 is adopted with changes to the proposed text as published in the August 21, 2009, issue of the *Texas Register* (34 TexReg 5627). Section 34.46 will be republished.

Section 34.1(5) defines the term "independent contractor" to clarify to whom the new reporting requirements and restrictions created by H.B. 3445, 81st Leg., R.S., apply.

Section 34.5, which contains exceptions from the requirement to register as a lobbyist, is amended by repealing paragraphs (5) and (11) to reflect the change in H.B. 3445, 81st Leg., R.S.

Section 34.46 clarifies to whom the new reporting requirements and the new $50 lobby registration fee created by H.B. 3445, 81st Leg., R.S., apply.

Section 34.73 sets out information that is required to be reported under §305.022 of the Government Code, as amended by H.B. 3445, 81st Leg., R.S., by an independent contractor who is required to register as a lobbyist.

Section 34.75 sets out information that is required to be reported under §305.022 of the Government Code, as amended by H.B. 3445, 81st Leg., R.S., by a registered lobbyist who is paid a sales commission or such fee by a state agency.

No written comments were received regarding the proposed rules during the comment period.

SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §34.1, §34.5

The amendments to §34.1 and §34.5 are adopted under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

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 December 3, 2009.

TRD-200905560

Natalia Luna Ashley

General Counsel

Texas Ethics Commission

Effective date: December 23, 2009

Proposal publication date: August 21, 2009

For further information, please call: (512) 463-5800

♦ ♦ ♦

SUBCHAPTER B. REGISTRATION REQUIRED

1 TAC §34.46

The new §34.46 is adopted under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

§34.46. Registration under §305.0041 of the Government Code.

(a) For purposes of the $50 registration fee set by §305.005(c)(2) of the Government Code, a person is required to register under §305.0041 of the Government Code if:

(1) the person is an independent contractor;

(2) the person's only direct communication as a registrant is with a member of the executive branch to influence administrative action as an independent contractor;

(3) the compensation for the communication is totally or partially contingent on the outcome of a purchasing decision or negotiations regarding such decisions and the amount of the purchasing decision does not exceed $10 million; and

(4) the person is also required to register under the compensation or reimbursement threshold in §305.003(a)(2) of the Government Code but does not exceed the expenditure threshold set by §305.003(a)(1) of the Government Code.

(b) A person required to register under §305.0041 of the Government Code is considered a registrant for purposes of this chapter and Chapter 305 of the Government Code.

(c) An independent contractor who is required to register as a lobbyist under Chapter 305 of the Government Code but who does not meet all the criteria in subsection (a) of this section is subject to the $500 registration fee set by §305.005(c)(3) of the Government Code.

(d) An independent contractor who qualifies for the $50 registration fee under subsection (a) of this section, but that before the end of the calendar year ceases to meet the criteria under subsection (a) of this section, becomes subject to the $500 registration fee set by §305.005(c)(3) of the Government Code.

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 December 3, 2009.

TRD-200905559
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Effective date: December 23, 2009
Proposal publication date: August 21, 2009
For further information, please call: (512) 463-5800

♦ ♦ ♦

SUBCHAPTER C. COMPLETING THE REGISTRATION FORM

1 TAC §34.73, §34.75

The new §34.73, and §34.75 are adopted under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

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 December 3, 2009.

TRD-200905561
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Effective date: December 23, 2009
Proposal publication date: August 21, 2009
For further information, please call: (512) 463-5800

♦ ♦ ♦

SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §34.21

The Texas Ethics Commission (the commission) adopts the repeal of §34.21, relating to contingent fees for influencing purchasing decisions. The repeal is adopted without changes to the proposed text as published in the October 30, 2009, issue of the *Texas Register* (34 TexReg 7445) and will not be republished.

The repeal of §34.21 would repeal the rule relating to the contingent fees for influencing purchasing decisions. This rule is no longer necessary in light of H.B. 3445, 81st Legislature.

No written comments were received regarding the proposed repeal during the comment period.

The repeal of §34.21 is adopted under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

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 December 3, 2009.

TRD-200905564
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Effective date: December 23, 2009
Proposal publication date: October 30, 2009
For further information, please call: (512) 463-5800

♦ ♦ ♦

PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 79. BUSINESS ENTITY FILINGS

The Office of the Secretary of State adopts revisions to Chapter 79, concerning business entity filings with the Corporations Section. The revisions consist of amendments to §§79.2 - 79.4, 79.9, 79.10, 79.12, 79.21 - 79.24, 79.26 - 79.28, 79.30, 79.31, 79.36, 79.42, 79.46 - 79.48, 79.71 - 79.73, and 79.82; new §79.34 and §79.81; and the repeals of §§79.8, 79.11, 79.25, 79.34, 79.51, 79.52, and 79.81. The repeals, amendments, and new rules are adopted without changes to the proposed text as published in the October 23, 2009, issue of the *Texas Register* (34 TexReg 7255) and will not be republished.

The rule changes are adopted in anticipation of the January 1, 2010 mandatory effective date of the Texas Business Organizations Code. In anticipation of the mandatory effective date, references to outdated statutes are deleted and references to the Texas Business Organizations Code are inserted. The amendments also clarify the language of the rules and provide an internet site address for access to secretary of state forms for business entity filings.

Section 79.2 generally requires that business with the Corporations Section be transacted in writing. The adopted amendment clarifies this requirement by using the mandatory "shall."

Section 79.3 addresses the receipt of letters and documents in the Corporations Section. The second sentence of subsection (a), relating to receipt of documents by the Corporations Section outside of normal business hours, is deleted because it is inconsistent with Corporations Section practice. Subsection (b) is amended to include the rule formerly encompassed in §79.8 that dates generated on letters, documents, or envelopes by persons other than secretary of state employees cannot be considered as the date of receipt. Other amendments to subsections (a) and (b) clarify the language. Subsection (c) is amended and text is deleted to express the rule regarding date of receipt for faxed documents, rather than referring to Chapter 71.

Section 79.4 requires documents to be clear and legible. The adopted amendment updates the rule to require clarity for purposes of electronic imaging, rather than microfilm copies.

Section 79.8, regarding date of receipt, is repealed. The section is redundant of amended §79.3.

Section 79.9 addresses date of filing. Subsection (a) is amended to reflect the practice of file stamping by the Corporations Section. The amendment also incorporates the rules from former §79.11 regarding delayed effective dates and time of transmission. Subsection (b) contains the text of former §79.9 and amends the text to refer to the exception contained in §79.10.

Section 79.10, regarding requested date of filing, is amended to reflect the Corporations Section practice of honoring date of filing requests on or within three days after receipt of the document by the Corporations Section. Further amendments clarify the language of the rule.

Section 79.11, regarding hour of filing, is repealed. The section is redundant of amended §79.9.

Section 79.12, regarding forms provided, is amended to provide the internet addresses of the secretary of state business filings forms.

Section 79.21 addresses administrative review of documents submitted for filing. The adopted amendments update the rule to refer to and use the language of the Texas Business Organizations Code.

Section 79.22, regarding prioritization of processing, is amended to use language and capitalization consistent with the rest of Chapter 79.

Section 79.23 addresses fraudulent filings. Outdated statutory references are deleted and the amendments refer to the Texas Business Organizations Code.

Section 79.24 addresses correction of filed documents. Outdated terminology is deleted and the amendments use the language of the Texas Business Organizations Code.

Section 79.25, regarding identification of applicant for name reservations and name registrations for purposes of fee calculations, is repealed. The rule is not necessary or accurate under the Texas Business Organizations Code, which provides in §4.151(2) that all such fees are $40.

Section 79.26 addresses the designation of a contact address upon filing a certificate of withdrawal. The former rule expressly refers to only corporations and limited liability companies, and the adopted rule expressly refers to all foreign filing entities and foreign limited liability partnerships and therefore accurately reflects the provisions of the Texas Business Organizations Code. Outdated statutory references are deleted and the amendments refer to the Texas Business Organizations Code. The permissive option of subsequently changing the address provided is deleted because §9.011 of the Texas Business Organizations Code requires amendment to the certificate of withdrawal if the address provided changes.

Section 79.27 addresses nonprofit corporation periodic reports. Amendments update the rule to use the terminology found in the Texas Business Organizations Code. The amendments also replace outdated statutory references with corresponding Texas Business Organizations Code references. The provision in subsection (c) prohibiting a nonprofit corporation in forfeited rights status from amending its formation or registration documents is deleted because the provision is neither consistent with the Texas Business Organizations Code nor secretary of state practice.

Section 79.28, relating to registered office addresses, is amended to expressly state the longstanding rule in Texas that an entity may not serve as its own registered agent. Specific references to corporations and limited liability companies are deleted because the rule applies to other entities as well.

Section 79.30, relating to applicability of secretary of state entity name availability rules, is amended to replace outdated statutory references and terminology with corresponding Texas Business Organizations Code references and terminology. The statement that the entity name availability rules apply to determinations for corporations, limited partnerships, and limited liability companies is deleted as not necessary under the Texas Business Organizations Code.

Section 79.31 identifies characters of print acceptable in entity names. The amendments and deletions update the rule to reflect the expanded capabilities of the Corporations Section database and clarify the language.

Section 79.34, regarding words of incorporation or organization, is repealed and replaced by new §79.34, regarding words of organization, and using the terminology of the Texas Business Organizations Code. Rather than setting forth acceptable words of organization, as in former subsection (a), new subsection (a) refers to the acceptable words of organization provided by the Texas Business Organizations Code. New subsection (b) iden-

tifies words that do not satisfy the statutory requirements, rather than scattering such words throughout the rule, as in repealed §79.34. New subsection (c) replaces former subsection (e), providing that words of organization are insufficient to distinguish deceptively similar or same names.

Section 79.36 defines entity names that are the same or identical. The amendment clarifies that "same," as used in the rules, and "identical," as used in §5.053 of the Texas Business Organizations Code, are interchangeable terms for purposes of entity name availability.

Section 79.42, regarding form of consent, deletes the statement that consent by telegraph cannot be accepted. The deletion reflects that an electronic transmission is a writing under the Texas Business Organizations Code.

Section 79.46 provides exceptions to entity name availability rules for churches and ministries. The amendment clarifies the rule by including a reference to ministries in the text of the rule as well as the title.

Section 79.47 addresses the use of foreign words in entity names. The amendment clarifies the language of the title.

Section 79.48 identifies matters not considered in entity name availability determinations. The amendment replaces outdated terminology and inserts terminology consistent with the Texas Business Organizations Code.

Section 79.51, regarding name availability determinations for limited partnerships, is repealed. The section is redundant of amended §79.30.

Section 79.52, regarding name availability determinations for limited liability companies, is repealed. The section is redundant of amended §79.30.

Section 79.71 addresses the calculation of the 90th day after filing for purposes of documents filed with delayed effective dates. The amendments replace outdated statutory references with corresponding Texas Business Organizations Code references and correct an incorrect citation to Chapter 71 of the Texas Administrative Code.

Section 79.72 addresses the statement required for filing a document upon the occurrence of a delayed effective condition. The amendments replace outdated statutory references with corresponding Texas Business Organizations Code references.

Section 79.73 contains rules regarding action taken by the Corporations Section for documents with delayed effective dates. The amendment replaces outdated terminology and inserts terminology consistent with the Texas Business Organizations Code.

Section 79.81, regarding conversion filings, is repealed and replaced by new §79.81, regarding conversion filings. New §79.81 follows the Texas Business Organizations Code and organizes the information presented into two topical subsections, rather than four. The new rule eliminates the statement in former subsection (b) that the filing of a conversion document does not terminate the certificate of authority (now referred to as the registration) of a foreign entity. This deletion is consistent with the Texas Business Organizations Code §9.012, which provides for automatic termination of registration.

Section 79.82 addresses abandoned documents. The amendments replace outdated terminology and insert terminology consistent with the Texas Business Organizations Code.

No comments were received regarding adoption of the repeals, amendments, and new rules.

SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §§79.2 - 79.4, 79.9, 79.10, 79.12

STATUTORY AUTHORITY

Amendments to §§79.2 - 79.4, 79.9, 79.10, and 79.12 are adopted under the authority of §12.001 of the Texas Business Organizations Code (Code), which authorizes the secretary of state to adopt procedural rules for the filing of instruments authorized to be filed with the secretary of state under the Code and gives the secretary of state the power and authority reasonably necessary to enable the secretary of state to perform the duties therein imposed upon the secretary of state.

Chapter 4 of the Code is affected by the amendments.

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 December 3, 2009.

TRD-200905565
Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Effective date: January 1, 2010
Proposal publication date: October 23, 2009
For further information, please call: (512) 463-5562

♦ ♦ ♦

1 TAC §79.8, §79.11

STATUTORY AUTHORITY

The repeal of §79.8 and §79.11 is adopted under the authority of §12.001 of the Texas Business Organizations Code (Code), which authorizes the secretary of state to adopt procedural rules for the filing of instruments authorized to be filed with the secretary of state under the Code and gives the secretary of state the power and authority reasonably necessary to enable the secretary of state to perform the duties therein imposed upon the secretary of state.

Chapter 4 of the Code is affected by the repeals.

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 December 3, 2009.

TRD-200905566
Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Effective date: January 1, 2010
Proposal publication date: October 23, 2009
For further information, please call: (512) 463-5562

♦ ♦ ♦

SUBCHAPTER B. DOCUMENT REVIEW

1 TAC §§79.21 - 79.24, 79.26 - 79.28

STATUTORY AUTHORITY

Amendments to §§79.21 - 79.24 and §§79.26 - 79.28 are adopted under the authority of §12.001 of the Texas Business Organizations Code (Code), which authorizes the secretary of state to adopt procedural rules for the filing of instruments authorized to be filed with the secretary of state under the Code and gives the secretary of state the power and authority reasonably necessary to enable the secretary of state to perform the duties therein imposed upon the secretary of state.

Chapters 3, 4, 9, and 22 of the Code are affected by the amendments.

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 December 3, 2009.

TRD-200905567
Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Effective date: January 1, 2010
Proposal publication date: October 23, 2009
For further information, please call: (512) 463-5562

♦ ♦ ♦

1 TAC §79.25

STATUTORY AUTHORITY

The repeal of §79.25 is adopted under the authority of §12.001 of the Texas Business Organizations Code (Code), which authorizes the secretary of state to adopt procedural rules for the filing of instruments authorized to be filed with the secretary of state under the Code and gives the secretary of state the power and authority reasonably necessary to enable the secretary of state to perform the duties therein imposed upon the secretary of state.

Chapters 4 and 5 of the Code are affected by the repeal.

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 December 3, 2009.

TRD-200905568
Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Effective date: January 1, 2010
Proposal publication date: October 23, 2009
For further information, please call: (512) 463-5562

♦ ♦ ♦

SUBCHAPTER C. ENTITY NAMES

1 TAC §§79.30, 79.31, 79.34, 79.36, 79.42, 79.46 - 79.48

STATUTORY AUTHORITY

Amendments to §§79.30, 79.31, 79.36, 79.42, and 79.46 - 79.48 and new §79.34 are adopted under the authority of §12.001 of the Texas Business Organizations Code (Code), which authorizes the secretary of state to adopt procedural rules for the filing of instruments authorized to be filed with the secretary of state under the Code and gives the secretary of state the power and authority reasonably necessary to enable the secretary of state to perform the duties therein imposed upon the secretary of state.

Chapter 5 of the Code is affected by the amendments and new 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 December 3, 2009.

TRD-200905569
Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Effective date: January 1, 2010
Proposal publication date: October 23, 2009
For further information, please call: (512) 463-5562

♦ ♦ ♦

1 TAC §§79.34, 79.51, 79.52

STATUTORY AUTHORITY

The repeal of §§79.34, 79.51, and 79.52 is adopted under the authority of §12.001 of the Texas Business Organizations Code (Code), which authorizes the secretary of state to adopt procedural rules for the filing of instruments authorized to be filed with the secretary of state under the Code and gives the secretary of state the power and authority reasonably necessary to enable the secretary of state to perform the duties therein imposed upon the secretary of state.

Chapter 5 of the Code is affected by the repeal.

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 December 3, 2009.

TRD-200905570
Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Effective date: January 1, 2010
Proposal publication date: October 23, 2009
For further information, please call: (512) 463-5562

♦ ♦ ♦

SUBCHAPTER E. DELAYED EFFECTIVE DATES

1 TAC §§79.71 - 79.73

STATUTORY AUTHORITY

Amendments to §§79.71 - 79.73 are adopted under the authority of §12.001 of the Texas Business Organizations Code (Code), which authorizes the secretary of state to adopt procedural rules for the filing of instruments authorized to be filed with the secretary of state under the Code and gives the secretary of state the power and authority reasonably necessary to enable the secretary of state to perform the duties therein imposed upon the secretary of state.

Chapter 4 of the Code is affected by the amendments.

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 December 3, 2009.

TRD-200905571
Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Effective date: January 1, 2010
Proposal publication date: October 23, 2009
For further information, please call: (512) 463-5562

♦ ♦ ♦

SUBCHAPTER F. EFFECT OF FILINGS

1 TAC §79.81

STATUTORY AUTHORITY

The repeal of §79.81 is adopted under the authority of §12.001 of the Texas Business Organizations Code (Code), which authorizes the secretary of state to adopt procedural rules for the filing of instruments authorized to be filed with the secretary of state under the Code and gives the secretary of state the power and authority reasonably necessary to enable the secretary of state to perform the duties therein imposed upon the secretary of state.

Chapters 4 and 10 of the Code are affected by the repeal.

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 December 3, 2009.

TRD-200905572
Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Effective date: January 1, 2010
Proposal publication date: October 23, 2009
For further information, please call: (512) 463-5562

♦ ♦ ♦

1 TAC §79.81, §79.82

STATUTORY AUTHORITY

New §79.81 and amendments to §79.82 are adopted under the authority of §12.001 of the Texas Business Organizations Code (Code), which authorizes the secretary of state to adopt procedural rules for the filing of instruments authorized to be filed with the secretary of state under the Code and gives the secretary of state the power and authority reasonably necessary to enable the secretary of state to perform the duties therein imposed upon the secretary of state.

Chapters 4 and 10 of the Code are affected by the amendments and new 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 December 3, 2009.

TRD-200905573
Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Effective date: January 1, 2010
Proposal publication date: October 23, 2009
For further information, please call: (512) 463-5562

♦ ♦ ♦

CHAPTER 80. UNINCORPORATED BUSINESS ENTITIES

The Office of the Secretary of State adopts revisions to Chapter 80, concerning unincorporated business entities. The revisions consist of amendments to §§80.1 - 80.4, 80.7, and 80.21 - 80.26 and the repeal of §§80.5, 80.6, and 80.27 - 80.29. The amendments and repeals are adopted without changes to the text as proposed in the October 23, 2009, issue of the *Texas Register* (34 TexReg 7263) and will not be republished.

The amendments and repeals are adopted in anticipation of the January 1, 2010 mandatory effective date of the Texas Business Organizations Code. In anticipation of the mandatory effective date, references to outdated statutes are deleted and references to the Texas Business Organizations Code are inserted. The amendments also clarify the language of the rules, correct capitalization, and provide an internet site address for access to secretary of state forms for business entity filings.

Section 80.1 addresses application and naming requirements for Texas limited liability partnerships. The amendments update the rule to use the terminology found in the Texas Business Organizations Code and replace outdated statutory references with corresponding Texas Business Organizations Code references. Amended subsection (a) includes a reference to the form number and internet address for the secretary of state application form. The amendments clarify the naming requirements and the caveat regarding name availability review in subsection (b).

Section 80.2 addresses application and naming requirements for foreign limited liability partnerships. The amendments update the rule to use the terminology found in the Texas Business Organizations Code and replace outdated statutory references with corresponding Texas Business Organizations Code references. Amended subsection (a) includes a reference to the form number and internet address for the secretary of state application form. Subsection (a) also expressly recognizes the Texas Busi-

ness Organizations Code requirement that foreign limited liability partnership applications include the date the limited liability partnership began or will begin to transact business in Texas. The amendments clarify the naming requirements and the caveat regarding name availability review in subsection (b). Subsection (d) is deleted because it is redundant of concurrently amended 1 TAC §79.28. Consistent with the deletion, subsections (e) and (f) are renumbered as (d) and (e).

Section 80.3 addresses administrative review of limited liability partnership filings by the secretary of state. Subsections (a) and (c) are deleted because they are addressed in 1 TAC §79.21 and redundant of 1 TAC §79.9(b), as adopted elsewhere in this issue. Amendments update the rule to use the terminology found in the Texas Business Organizations Code and replace outdated statutory references with corresponding Texas Business Organizations Code references.

Section 80.4 addresses amendment, change, or correction to limited liability partnership filings. Amendments update the rule to use the terminology found in the Texas Business Organizations Code. Amended §80.4 includes a reference to the form numbers and internet address for the secretary of state amendment forms. Subsection (b) is deleted because it is obsolete; the Texas Business Organizations Code addresses the issue. Subsection (c) is deleted because it is redundant of 1 TAC §79.24(b).

Section 80.5, regarding termination of registration, is repealed. Termination of limited liability partnership registration is addressed by §§9.011 - 9.012 of the Texas Business Organizations Code.

Section 80.6, regarding revocation of documents, is repealed. The section is obsolete due to an amendment to §405.033 of the Texas Government Code, which used to provide the secretary of state authority to revoke a filing on behalf of only a corporation, but now covers other types of entities as well.

Section 80.7 addresses foreign limited liability limited partnerships. Amendments update the rule to use the terminology found in the Texas Business Organizations Code and replace outdated statutory references with corresponding Texas Business Organizations Code references. Amendments also provide notice that §9.054 and §152.910 of the Texas Business Organizations Code permit the assessment of late filing penalties against both the limited liability partnership registration and the limited partnership registration.

Section 80.21, regarding statements appointing an agent for service of process, is amended to use capitalization consistent with other secretary of state rules. Amended subsection (a) also includes a reference to the form number and internet address for the secretary of state form for appointing an agent for service of process. Subsection (d) is deleted because it is redundant of 1 TAC §79.3.

Section 80.22, regarding amendments to statements appointing an agent for service of process, is amended to use capitalization consistent with other secretary of state rules. Amended subsection (a) also includes a reference to the form number and internet address for the secretary of state form for amending a statement appointing an agent for service of process. Subsection (d) is deleted because it is redundant of 1 TAC §79.3.

Section 80.23, regarding cancellation of a statement appointing an agent for service of process, is amended to use capitalization consistent with other secretary of state rules. Amended subsection (a) also includes a reference to the form number and internet address for the secretary of state form for cancelling a statement appointing an agent for service of process.

Section 80.24, regarding resignation of a person appointed as agent for service of process, is amended to use capitalization consistent with other secretary of state rules. Amended subsection (a) also includes a reference to the form number and internet address for the secretary of state form for resignation of a person appointed as agent for service of process. Subsection (d) is deleted because it is redundant of 1 TAC §79.3.

Section 80.25, regarding authorized agents, is amended to use capitalization consistent with other secretary of state rules.

Section 80.26, regarding nonprofit association names, is amended to use capitalization consistent with other secretary of state rules. Amendments also correct outdated references to the Texas Business and Commerce Code and delete an incorrect parenthetical reference to the topic of other secretary of state rules.

Section 80.27, regarding the address of an appointed agent, is repealed. The section is redundant of 1 TAC §79.28.

Section 80.28, regarding the date of filing of documents, is repealed. The section is redundant of 1 TAC §79.9(b), as adopted elsewhere in this issue.

Section 80.29, regarding revocation of statement of appointment, amendment, or cancellation, is repealed. The section is obsolete due to an amendment to §405.033 of the Texas Government Code, which used to provide the secretary of state authority to revoke a filing on behalf of only a corporation, but now covers other types of entities as well.

No comments were received regarding adoption of the amendments and repeals.

SUBCHAPTER A. LIMITED LIABILITY PARTNERSHIPS

1 TAC §§80.1 - 80.4, 80.7

STATUTORY AUTHORITY

The amendments to §§80.1 - 80.4 and 80.7 are adopted under the authority of §12.001 of the Texas Business Organizations Code (Code), which authorizes the secretary of state to adopt procedural rules for the filing of instruments authorized to be filed with the secretary of state under the Code and gives the secretary of state the power and authority reasonably necessary to enable the secretary of state to perform the duties therein imposed upon the secretary of state.

Chapters 4, 5, 9, 152, and 153 of the Code are affected by the amendments.

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 December 4, 2009.

TRD-200905595

Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Effective date: January 1, 2010
Proposal publication date: October 23, 2009
For further information, please call: (512) 463-5562

♦ ♦ ♦

1 TAC §80.5, §80.6

STATUTORY AUTHORITY

The repeal of §80.5 and §80.6 is adopted under the authority of §12.001 of the Texas Business Organizations Code (Code), which authorizes the secretary of state to adopt procedural rules for the filing of instruments authorized to be filed with the secretary of state under the Code and gives the secretary of state the power and authority reasonably necessary to enable the secretary of state to perform the duties therein imposed upon the secretary of state.

Chapters 4 and 9 are affected by the repeal.

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 December 4, 2009.

TRD-200905596
Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Effective date: January 1, 2010
Proposal publication date: October 23, 2009
For further information, please call: (512) 463-5562

♦ ♦ ♦

SUBCHAPTER B. UNINCORPORATED NONPROFIT ASSOCIATIONS

1 TAC §§80.21 - 80.26

STATUTORY AUTHORITY

The amendments to §§80.21 - 80.26 are adopted under the authority of §12.001 of the Texas Business Organizations Code (Code), which authorizes the secretary of state to adopt procedural rules for the filing of instruments authorized to be filed with the secretary of state under the Code and gives the secretary of state the power and authority reasonably necessary to enable the secretary of state to perform the duties therein imposed upon the secretary of state.

Chapters 4 and 252 of the Code are affected by the amendments.

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 December 4, 2009.

TRD-200905597
Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Effective date: January 1, 2010
Proposal publication date: October 23, 2009
For further information, please call: (512) 463-5562

♦ ♦ ♦

1 TAC §§80.27 - 80.29

STATUTORY AUTHORITY

The repeal of §§80.27 - 80.29 is adopted under the authority of §12.001 of the Texas Business Organizations Code (Code), which authorizes the secretary of state to adopt procedural rules for the filing of instruments authorized to be filed with the secretary of state under the Code and gives the secretary of state the power and authority reasonably necessary to enable the secretary of state to perform the duties therein imposed upon the secretary of state.

Chapters 4 and 252 of the Code are affected by the repeal.

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 December 4, 2009.

TRD-200905598
Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Effective date: January 1, 2010
Proposal publication date: October 23, 2009
For further information, please call: (512) 463-5562

♦ ♦ ♦

CHAPTER 83. LIMITED PARTNERSHIPS

The Office of the Secretary of State adopts revisions to Chapter 83, concerning limited partnerships. The revisions consist of amendments to §§83.1, 83.3, and 83.21 - 83.24 and the repeal of §§83.2, 83.4, and 83.5. The amendments and repeals are adopted without changes to the text as proposed in the October 23, 2009, issue of the *Texas Register* (34 TexReg 7268) and will not be republished.

The amendments and repeals are adopted in anticipation of the January 1, 2010 mandatory effective date of the Texas Business Organizations Code. In anticipation of the mandatory effective date, references to outdated statutes are deleted and references to the Texas Business Organizations Code are inserted. The amendments also clarify the language of the rules and provide an internet site address for access to secretary of state forms for business entity filings.

Section 83.1 addresses the filing of partnership agreements. Amendments update the rule to use the terminology found in the Texas Business Organizations Code and replace outdated statutory references with corresponding Texas Business Organizations Code references.

Section 83.2, regarding registered agent and registered office, is repealed. Registered agents and registered offices are addressed by 1 TAC §79.28.

Section 83.3 addresses administrative review of limited partnership filings by the secretary of state. Subsection (a) is deleted because it is addressed in 1 TAC §79.21 and redundant of 1 TAC §79.9(b), as amended elsehwere in this issue. Amendments update the rule to use the terminology found in the Texas Business Organizations Code.

Section 83.4, regarding late registration fees, is repealed. Subsections (a) and (b) of the section are governed by Chapter 9 of the Texas Business Organizations Code, and subsection (c) is redundant of 1 TAC §79.24(b).

Section 83.5, regarding revocation of documents, is repealed. The section is obsolete due to an amendment to §405.033 of the Texas Government Code, which used to provide the secretary of state authority to revoke a filing on behalf of only a corporation, but now covers other types of entities as well.

Section 83.21 addresses the content of a limited partnership periodic report. Amendments update the rule to use the terminology found in the Texas Business Organizations Code and replace outdated statutory references with corresponding Texas Business Organizations Code references.

Section 83.22 addresses notices relating to the filing of a limited partnership periodic report. Amendments replace outdated statutory references with corresponding Texas Business Organizations Code references.

Section 83.23 addresses the forfeiture of a limited partnership's right to transact business due to failure to file a requested periodic report. Amendments replace outdated statutory references with corresponding Texas Business Organizations Code references. The provision prohibiting a limited partnership in forfeited rights status from amending its formation or registration documents is deleted because the provision is consistent with neither the Texas Business Organizations Code nor secretary of state practice.

Section 83.24 addresses the voluntary submission of a periodic report by a limited partnership. Amendments replace outdated statutory references with corresponding Texas Business Organizations Code references.

No comments were received regarding adoption of the amendments and repeals.

SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §83.1, §83.3

STATUTORY AUTHORITY

Amendments to §83.1 and §83.3 are adopted under the authority of §12.001 of the Texas Business Organizations Code (Code), which authorizes the secretary of state to adopt procedural rules for the filing of instruments authorized to be filed with the secretary of state under the Code and gives the secretary of state the power and authority reasonably necessary to enable the secretary of state to perform the duties therein imposed upon the secretary of state.

Chapters 3, 4, 9, and 153 of the Code are affected by the amendments.

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 December 4, 2009.

TRD-200905599
Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Effective date: January 1, 2010
Proposal publication date: October 23, 2009
For further information, please call: (512) 463-5562

♦ ♦ ♦

1 TAC §§83.2, 83.4, 83.5

STATUTORY AUTHORITY

The repeal of §§83.2, 83.4, and 83.5 is adopted under the authority of §12.001 of the Texas Business Organizations Code (Code), which authorizes the secretary of state to adopt procedural rules for the filing of instruments authorized to be filed with the secretary of state under the Code and gives the secretary of state the power and authority reasonably necessary to enable the secretary of state to perform the duties therein imposed upon the secretary of state.

Chapters 3 and 9 of the Code are affected by the repeals.

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 December 4, 2009.

TRD-200905600
Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Effective date: January 1, 2010
Proposal publication date: October 23, 2009
For further information, please call: (512) 463-5562

♦ ♦ ♦

SUBCHAPTER B. PERIODIC REPORTS

1 TAC §§83.21 - 83.24

STATUTORY AUTHORITY

Amendments to §§83.21 - 83.24 are adopted under the authority of §12.001 of the Texas Business Organizations Code (Code), which authorizes the secretary of state to adopt procedural rules for the filing of instruments authorized to be filed with the secretary of state under the Code and gives the secretary of state the power and authority reasonably necessary to enable the secretary of state to perform the duties therein imposed upon the secretary of state.

Chapter 153 of the Code are affected by the amendments.

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 December 4, 2009.

TRD-200905601
Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Effective date: January 1, 2010
Proposal publication date: October 23, 2009
For further information, please call: (512) 463-5562

♦ ♦ ♦

CHAPTER 105. SOLICITATIONS

The Office of the Secretary of State adopts revisions to Chapter 105, concerning solicitations. The revisions consist of the repeal of §§105.1, 105.4, 105.7, 105.31, 105.34, 105.37, 105.101, 105.106, 105.109, 105.131, 105.135, and 105.140 and the concurrent adoption of new 1 TAC §§105.1, 105.4, 105.7, 105.101, 105.106, and 105.109 and amendments to §§105.201, 105.204 - 105.207, and 105.209. The proposed repeals, new rules and amendments were published in the October 30, 2009, issue of the *Texas Register* (34 TexReg 7445). Amended §105.204 is adopted with a non-substantive change to correct the name of the Texas Workforce Commission and will be republished. The repeal of §§105.1, 105.4, 105.7, 105.31, 105.34, 105.37, 105.101, 105.106, 105.109, 105.131, 105.135, and 105.140, new §§105.1, 105.4, 105.7, 105.101, 105.106, and 105.109, and amendments to §§105.201, 105.205 - 105.207, and 105.209 are adopted without changes and will not be republished.

The revisions clarify the rules, update the mailing address for the Office of the Secretary of State, provide an internet site address for access to secretary of state forms for solicitations filings, and replace references to specific forms by name with references to secretary of state form numbers.

The reorganization combines the rules for public safety organizations, public safety publications, independent promoters and their solicitors, rather than repeating the rules in two separate divisions. Similarly, the reorganization combines the rules for veterans organizations and veterans organization solicitors, rather than repeating the rules in two separate divisions. The division designations are eliminated in the adoption.

Additionally, new §105.4, regarding updates, correctly states the rule that an update is required after a change of mailing address.

Amendments §105.201 and §105.205, regarding registration and forms for telephone solicitations and the requirement for valid security, respectively, update outdated statutory references.

No comments were received regarding adoption of the repeals, new rules and amendments.

SUBCHAPTER A. PUBLIC SAFETY SOLICITATIONS

DIVISION 1. PUBLIC SAFETY ORGANIZATIONS, PUBLIC SAFETY PUBLICATIONS, AND CERTAIN INDEPENDENT PROMOTERS

1 TAC §§105.1, 105.4, 105.7

STATUTORY AUTHORITY

The repeal of §§105.1, 105.4, and 105.7 is adopted under the authority of §2001.004(1) of the Texas Government Code, which requires state agencies to adopt procedural rules of practice, and §302.102, Texas Business and Commerce Code, which requires the secretary of state to prescribe a form for a telephone solicitation seller's registration statement.

Chapters 1803 and 1804, Texas Occupations Code, and Chapter 302, Texas Business and Commerce Code, are affected by the repeal.

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 December 4, 2009.

TRD-200905611
Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Effective date: January 1, 2010
Proposal publication date: October 30, 2009
For further information, please call: (512) 463-5562

♦ ♦ ♦

DIVISION 2. SOLICITORS FOR PUBLIC SAFETY ORGANIZATIONS, PUBLIC SAFETY PUBLICATIONS, AND CERTAIN INDEPENDENT PROMOTERS

1 TAC §§105.31, 105.34, 105.37

STATUTORY AUTHORITY

The repeal of §§105.31, 105.34, and 105.37 is adopted under the authority of §2001.004(1) of the Texas Government Code, which requires state agencies to adopt procedural rules of practice, and §302.102, Texas Business and Commerce Code, which requires the secretary of state to prescribe a form for a telephone solicitation seller's registration statement.

Chapters 1803 and 1804, Texas Occupations Code, and Chapter 302, Texas Business and Commerce Code, are affected by the repeal.

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 December 4, 2009.

TRD-200905612
Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Effective date: January 1, 2010
Proposal publication date: October 30, 2009
For further information, please call: (512) 463-5562

♦ ♦ ♦

SUBCHAPTER B. VETERANS SOLICITATIONS

DIVISION 1. VETERANS ORGANIZATIONS

1 TAC §§105.101, 105.106, 105.109

STATUTORY AUTHORITY

The repeal of §§105.101, 105.106, and 105.109 is adopted under the authority of §2001.004(1) of the Texas Government Code, which requires state agencies to adopt procedural rules of practice, and §302.102, Texas Business and Commerce Code, which requires the secretary of state to prescribe a form for a telephone solicitation seller's registration statement.

Chapters 1803 and 1804, Texas Occupations Code, and Chapter 302, Texas Business and Commerce Code, are affected by the repeal.

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 December 4, 2009.

TRD-200905613
Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Effective date: January 1, 2010
Proposal publication date: October 30, 2009
For further information, please call: (512) 463-5562

♦ ♦ ♦

DIVISION 2. SOLICITORS FOR VETERANS ORGANIZATIONS

1 TAC §§105.131, 105.135, 105.140

STATUTORY AUTHORITY

The repeal of §§105.131, 105.135, and 105.140 is adopted under the authority of §2001.004(1) of the Texas Government Code, which requires state agencies to adopt procedural rules of practice, and §302.102, Texas Business and Commerce Code, which requires the secretary of state to prescribe a form for a telephone solicitation seller's registration statement.

Chapters 1803 and 1804, Texas Occupations Code, and Chapter 302, Texas Business and Commerce Code, are affected by the repeal.

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 December 4, 2009.

TRD-200905614
Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Effective date: January 1, 2010
Proposal publication date: October 30, 2009
For further information, please call: (512) 463-5562

♦ ♦ ♦

SUBCHAPTER A. PUBLIC SAFETY SOLICITATIONS

1 TAC §§105.1, 105.4, 105.7

STATUTORY AUTHORITY

New §§105.1, 105.4, and 105.7 are adopted under the authority of §2001.004(1) of the Texas Government Code, which requires state agencies to adopt procedural rules of practice, and §302.102, Texas Business and Commerce Code, which requires the secretary of state to prescribe a form for a telephone solicitation seller's registration statement.

Chapters 1803 and 1804, Texas Occupations Code, and Chapter 302, Texas Business and Commerce Code, are affected by the new 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 December 4, 2009.

TRD-200905615
Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Effective date: January 1, 2010
Proposal publication date: October 30, 2009
For further information, please call: (512) 463-5562

♦ ♦ ♦

SUBCHAPTER B. VETERANS SOLICITATIONS

1 TAC §§105.101, 105.106, 105.109

STATUTORY AUTHORITY

New §§105.101, 105.106, and 105.109 are adopted under the authority of §2001.004(1) of the Texas Government Code, which requires state agencies to adopt procedural rules of practice, and §302.102, Texas Business and Commerce Code, which requires the secretary of state to prescribe a form for a telephone solicitation seller's registration statement.

Chapters 1803 and 1804, Texas Occupations Code, and Chapter 302, Texas Business and Commerce Code, are affected by the new 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 December 4, 2009.

TRD-200905616
Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Effective date: January 1, 2010
Proposal publication date: October 30, 2009
For further information, please call: (512) 463-5562

♦ ♦ ♦

SUBCHAPTER C. TELEPHONE SOLICITATIONS

1 TAC §§105.201, 105.204 - 105.207, 105.209

STATUTORY AUTHORITY

The amendments to §§105.201, 105.204 - 105.207, and 105.209 are adopted under the authority of §2001.004(1) of the Texas Government Code, which requires state agencies to adopt procedural rules of practice, and §302.102, Texas Business and Commerce Code, which requires the secretary of state to prescribe a form for a telephone solicitation seller's registration statement.

Chapters 1803 and 1804, Texas Occupations Code, and Chapter 302, Texas Business and Commerce Code, are affected by the amendments.

§105.204. Updates.

(a) A registered telephone solicitation seller shall file an update addendum at quarterly intervals, computed from the effective date of registration. The addendum must provide all required registration information for all salespersons who are currently soliciting or have solicited on behalf of the seller at any time during the period between the filing of the registration statement or the last addendum and the current addendum.

(b) The update described in subsection (a) of this section may be filed by providing a copy of the Employer's Quarterly Report for employee wages prepared for filing with the Texas Workforce Commission.

(c) In addition to the quarterly updates, if a material change in a registration statement, other than the information delineated in subsection (a) of this section, occurs before the date for renewal, a seller shall submit that information by filing an update addendum.

(d) If an update is not filed before the 60th day after it is required to have been filed, the file will be closed and the registration fee forfeited.

(e) If an update is not completed before the 45th day after it is received incomplete, the file will be closed and the update fee and registration fee forfeited.

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 December 4, 2009.

TRD-200905617
Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Effective date: January 1, 2010
Proposal publication date: October 30, 2009
For further information, please call: (512) 463-5562

♦ ♦ ♦

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 1. GENERAL PROCEDURES

SUBCHAPTER E. ADVISORY COMMITTEES

4 TAC §1.212

The Texas Department of Agriculture (the department) adopts new §1.212, regarding the Texas Bioenergy Policy Council (Council) and Texas Bioenergy Research Committee (Committee), authorized with the enactment of Senate Bill 1016 (SB 1016), 81st Legislature, 2009, without changes to the proposal published in the October 9, 2009, issue of the *Texas Register* (34 TexReg 6936). New §1.212 adds the Council and Committee to the list of the department's advisory committees, states the Council and Committee's purpose and duties and specifies how they will report to the department.

No comments were received on the proposal.

New §1.212 is adopted under the Texas Government Code, Chapter 2110, which requires that an agency that establishes an advisory committee adopt rules to state the purpose and tasks of the committee and manner in which the committee shall report to the agency, Texas Agriculture Code, §12.016 which provides the department with the authority to adopt rules to administer its duties under the Code, and Texas Agriculture Code, Chapter 50D, as established by SB 1016, which provides that the department shall provide administrative support for the Council and Committee.

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 December 3, 2009.

TRD-200905580
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: December 23, 2009
Proposal publication date: October 9, 2009
For further information, please call: (512) 463-4075

♦ ♦ ♦

TITLE 10. COMMUNITY DEVELOPMENT

PART 6. TEXAS DEPARTMENT OF RURAL AFFAIRS

CHAPTER 255. TEXAS COMMUNITY DEVELOPMENT PROGRAM
SUBCHAPTER A. ALLOCATION OF PROGRAM FUNDS

10 TAC §§255.1, 255.2, 255.4, 255.11

The Texas Department of Rural Affairs (TDRA) adopts amendments to §§255.1, 255.2, 255.4, and 255.11, concerning the TxCDBG Program with changes to the proposed text as published in the October 23, 2009, issue of the *Texas Register* (34 TexReg 7271).

The amendments eliminate all references to the State Review Committee, change all references from ORCA to TDRA and make some minor edits.

The amendments are adopted in accordance with House Bill (HB) 1079 (81st Legislature, Regular Session, 2009) which abolished the State Review Committee and HB 1988 (81st Legislature, Regular Session, 2009) which changed the name of the Office of Rural Community Affairs to the Texas Department of Rural Affairs.

No comments were received regarding adoption of the amendments.

The amendments are adopted under §487.052 of the Government Code, which provides the Board with the authority to adopt rules concerning the implementation of the Department's responsibilities.

§255.1. General Provisions.

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

(1) Applicant--A unit of general local government which is preparing to submit or has submitted an application for Texas Community Development funds to the Department or to the Texas Department of Agriculture (TDA).

(2) Application--A written request for Texas Community Development Block Grant Program (TxCDBG) funds in the format required by the Department or by the TDA for Texas Capital Fund (TCF) applications.

(3) Community Development Block Grant nonentitlement area funds--The funds awarded to the State of Texas pursuant to the Housing and Community Development Act of l974, Title I, as amended (42 United States Code §§5301 et seq.), and the regulations promulgated thereunder in 24 Code of Federal Regulations Part 570.

(4) Community--A unit of general local government.

(5) Contract--A written agreement, including all amendments thereto, executed by the Department, or by the TDA, and contractor which is funded with community development block grant nonentitlement area funds.

(6) Contractor--A unit of general local government with which the Department or the TDA has executed a contract.

(7) Department--Texas Department of Rural Affairs.

(8) Local government--A unit of general local government.

(9) Low-and moderate-income person--A member of a family which earns less than 80% of the area median family income, as defined under the United States Department of Housing and Urban Development §8 Assisted Housing Program.

(10) Nonentitlement area--An area which is not a metropolitan city or part of an urban county as defined in 42 United States Code, §5302.

(11) Poverty--The current official poverty line established by the Director of the Federal Office of Management and Budget.

(12) Primary beneficiary--A low or moderate income person.

(13) Regional review committee--A regional community development review committee, one of which is established in each of the 24 state planning regions established by the governor pursuant to Texas Local Government Code, §391.003.

(14) Slum or blighted area--An area which has been designated a state enterprise zone, or an area within a municipality or county that is detrimental to the public health, safety, morals, and welfare of the municipality or county because the area:

(A) has a predominance of buildings or other improvements that are dilapidated, deteriorated, or obsolete due to age or other reasons;

(B) is prone to high population densities and overcrowding due to inadequate provision for open space;

(C) is composed of open land that, because of its location within municipal or county limits, is necessary for sound community growth through replatting, planning, and development for predominantly residential uses; or

(D) has conditions that exist due to any of the causes enumerated in subparagraphs (A) - (C) of this paragraph or any combination of those causes that:

(i) endanger life or property by fire or other causes; or

(ii) are conducive to:

(I) the ill health of the residents;

(II) disease transmission;

(III) abnormally high rates of infant mortality;

(IV) abnormally high rates of juvenile delinquency and crime; or

(V) disorderly development because of inadequate or improper platting for adequate residential development of lots, streets, and public utilities.

(15) Slum or blight, spot basis--A building which has been declared as a slum or blight and has multiple and unattended building code violations, and qualifies as slum or blighted on a spot basis under local law.

(16) Unemployed person--A person between the ages of 16 and 64, inclusive, who is not presently working but is seeking employment.

(17) Unit of general local government--An entity defined as a unit of general local government in 42 United States Code §5302(a)(1), as amended.

(b) Overview--Community Development Block Grant nonentitlement area funds are distributed by the TxCDBG to eligible units of general local government in the following program areas:

(1) community development fund;

(2) Texas Capital fund. The Texas Capital Fund (TCF) is administered by the TDA under an interagency agreement with the Department. Applications for the TCF shall be submitted to the TDA.

(3) planning/capacity building fund;

(4) disaster relief fund;

(5) urgent need fund;

(6) colonia fund;

(7) small towns environment program fund;

(8) renewable energy demonstration pilot program.

(c) Types of applications.

(1) Single jurisdiction applications. An applicant may submit one application per TxCDBG fund, as outlined in subsection (b) of this section, on its own behalf, or as a participant in a multi-jurisdictional application, per funding cycle (except as specified for the TCF, community development fund, housing fund, colonia fund, and small towns environment program fund).

(A) A city may submit a single jurisdiction application that includes beneficiaries located within the extraterritorial jurisdiction of the city. However, the applicant must document that each activity benefiting persons located in its extraterritorial jurisdiction is meeting its community and housing development needs, including the needs of low and moderate income persons. A city cannot submit a single jurisdiction application that includes beneficiaries located inside the corporate city limits and outside of the city's extraterritorial jurisdiction. In this instance, the city and county in which the beneficiaries outside of the city's extraterritorial jurisdiction are located must submit the project as a multi-jurisdiction application.

(B) A county may submit an application on behalf of an incorporated city when the proposed application activities provide improvements to a public facility or service that is not owned or operated by the incorporated city and the persons benefiting from the application activities are located within the city's corporate city limits or the city's extraterritorial jurisdiction. If a county submits an application on behalf of an incorporated city, then the county and that city cannot submit another single jurisdiction application or be a participating jurisdiction in a multi-jurisdiction application submitted under the same TxCDBG fund category.

(C) An application from an eligible city or county for a project that would primarily benefit another city or county that was not meeting the TxCDBG application threshold requirements would be considered ineligible.

(2) Multi jurisdiction applications. Subject to each participating community satisfying the application requirements of the TxCDBG fund under which the application is submitted and this paragraph, an application will be accepted from two or more units of general local government if the application clearly demonstrates that the proposed activities will mutually benefit the residents of the communities applying for funds. A multi-jurisdiction application solely for administrative convenience will not be accepted. Any community participating in a multi-jurisdiction application may not submit a single jurisdiction application under the project fund for which the multi-jurisdiction application was submitted. One of the participating communities must be primarily accountable to the Department and the TDA, in instances where the TCF is accessed, for financial compliance and program performance; however, all entities participating in the multi-jurisdiction application will be accountable for application threshold compliance. Only one unit of general local government may be the official applicant and this applicant must enter into a legally binding cooperation agreement with each participant that incorporates TxCDBG requirements. A proposed project which is located in more than one jurisdiction or in which beneficiaries from more than one jurisdiction will be counted must be submitted as a multi-jurisdiction application (except as specified for the TCF and single jurisdiction applications described in paragraph (1)(A) - (C) of this subsection).

(d) Eligible location. Only projects or activities which are located in the nonentitlement areas of the state are eligible for funding under the TxCDBG. An exception to this requirement is Hidalgo County, an entitlement county, which is eligible for the colonia fund. Another exception to this requirement is that entitlement areas located in disaster recovery initiative eligible counties are eligible locations for disaster recovery initiative funds.

(e) Ineligible activities. Any type of activity not described or referred to in the Federal Housing and Community Development Act of 1974, §5305(a) (42 United States Code §§5301 et seq.) is ineligible for funding under the TxCDBG.

(1) Specific ineligible activities include, but are not limited to: construction of buildings and facilities used for the general conduct of government (e.g., city halls and courthouses); new housing construction, except as described as eligible under the current TxCDBG application guides; the financing of political activities; purchases of construction equipment (except in limited circumstances under the small towns environment program); income payments, such as housing allowances; most operation and maintenance expenses (including smoke testing televising/video taping line work, or any other investigative method to determine the overall scope and location of the project work activities); pre-contract costs, except for costs incurred prior to submittal of an application and paid with local government or other funds for administrative consultant and engineering/architectural services and pre-agreement costs described in a TxCDBG contract; prisons/detention centers; government supported facilities; and racetracks.

(2) The following activities and/or uses are specifically ineligible under the TCF: monies may not be used for speculation, investment or excess improvements over the minimum improvements needed for the business. TCF funds may not be utilized for refinancing or to repay the applicant, a local related economic development entity, the benefiting business or its owners and related parties for expenditures. Educational institutions, including but not limited to colleges and/or universities, and governmental entities may not qualify as the benefiting business. Ineligible infrastructure activities/improvements include, but are not limited to: landfills, incinerators, recycling facilities, machinery and equipment. Real estate improvements designed and/or built for a single, special or limited use or purpose are an ineligible use of funds. Real estate improvements do not include machinery and equipment used in the production and/or services marketed by the business.

(f) Citizen Participation.

(1) Public hearing requirements. For each public hearing scheduled and conducted by an applicant or contractor, the following public hearing requirements shall be followed.

(A) Notice of each hearing must be published in a newspaper having general circulation in the city or county at least 72 hours prior to each scheduled hearing. The published notice must include the date, time, and location of each hearing and the topics to be considered at each hearing. The published notice must be printed in both English and Spanish, if appropriate. Articles published in such newspapers which satisfy the content and timing requirements of this subparagraph will be accepted by the Department and, in the case of TCF hearings, by the TDA, in lieu of publication of notices. Notices should also be

prominently posted in public buildings and distributed to local Public Housing Authorities and other interested community groups.

(B) Each public hearing shall be held at a time and location convenient to potential or actual beneficiaries, with accommodation for persons with disabilities. Persons with disabilities must be able to attend the hearings and an applicant must make arrangements for individuals who require auxiliary aids or services if contacted at least two days prior to each hearing.

(C) When a significant number of non-English speaking residents can reasonably be expected to participate in a public hearing, an applicant or contractor shall provide an interpreter to accommodate the needs of the non-English speaking residents.

(2) Application requirements. Prior to submitting a formal application, an applicant for TxCDBG funding shall satisfy the following requirements.

(A) At least one public hearing shall be held prior to the preparation of its application and a public notice shall be published in a newspaper having general circulation in the city or county notifying the public of the availability of the application for public review prior to submitting its completed application to the Department and, in the case of TCF applications, to the TDA. The requirements described in this subparagraph are not applicable to applications submitted under the housing infrastructure fund.

(B) For an application submitted for housing infrastructure fund assistance, an applicant must hold two public hearings. At least one public hearing shall be held prior to the preparation of the application and a second public hearing shall be held prior to submission of the application.

(C) An applicant shall retain documentation of the hearing notices, a list of attendees at each hearing, minutes of the hearings, and any other records concerning the proposed use of funds for a period of three years or until the project, if funded, is closed out. Such records must be made available to the public in accordance with Texas Government Code, Chapter 552.

(D) The public hearing must include a discussion with citizens on the development of housing and community development needs, the amount of funding available, all eligible activities under the TxCDBG, the plans of the applicant to minimize displacement of persons and to assist persons actually displaced as a result of activities assisted with TxCDBG funds, and the use of past TxCDBG contract funds, if applicable. Citizens, with particular emphasis on persons of low and moderate income who are residents of slum and blight areas, shall be encouraged to submit their views and proposals regarding community development and housing needs. Local organizations that provide services or housing for low to moderate income persons, including but not limited to, the local or area Public Housing Authority, the local or area Health and Human Services office, and the local or area Mental Health and Mental Retardation office, must receive written notification concerning the date, time, location, and topics to be covered at the first public hearing. Citizens shall be made aware of the location where they may submit their views and proposals should they be unable to attend the public hearing. For submission of a housing infrastructure fund application, these requirements must be followed for the first public hearing.

(E) The notice announcing the availability of the application for public review must be published five days prior to the submission of the application and the published notice must include the fund category for which the application is submitted, the amount of funds requested, a description of the application activities, the location or locations of the application activities, and the location and hours when the application is available for review.

(F) Any public hearing held prior to submission of the application must be held after 5:00 p.m. on a weekday or at a convenient time on a Saturday or Sunday.

(3) Contractor requirements.

(A) A contractor must hold a public hearing concerning any substantial change, as determined by the Department and, in the case of TCF program changes, by the TDA, proposed to be made in the use of TxCDBG funds from one eligible activity to another.

(B) Upon completion of its contract, the contractor shall hold a public hearing to review its program performance, including the actual use of the funds provided under the contract.

(C) A contractor shall retain documentation of the hearing notices, a list of attendees at each hearing, minutes of the hearings, and any other records concerning the actual use of funds for a period of three years after the contract is closed out. Such records must be made available to the public in accordance with Texas Government Code, Chapter 552.

(D) The public hearings must be held after 5:00 p.m. on a weekday or at a convenient time on a Saturday or Sunday.

(4) Complaint procedures. Applicants and contractors must maintain written citizen complaint procedures that provide a timely written response to complaints and grievances. Citizens must be made aware of the location and hours at which they may obtain a copy of the written procedures.

(5) Technical assistance. An applicant shall provide technical assistance to groups representative of persons of low-and moderate-income that request such assistance in developing proposals for the use of TxCDBG funds. The level and type of assistance shall be determined by the applicant based upon the specific needs of its residents.

(g) Appeals. An applicant for funding under the TxCDBG, except for the Texas Capital Fund, may appeal the disposition of its application in accordance with this subsection.

(1) The appeal may only be based on one or more of the following grounds.

(A) Misplacement of an application. All or a portion of an application is lost, misfiled, or otherwise misplaced by Department staff resulting in unequal consideration of the applicant's proposal.

(B) Mathematical error. In rating the application, the score on any selection criteria is incorrectly computed by the Department due to human or computer error.

(C) Other procedural error. The application is not processed by the Department in accordance with the application and selection procedures set forth in this subchapter. Procedural errors alleged to have been committed by a regional review committee may only be appealed in accordance with the provisions of §255.8 of this title (relating to Regional Review Committees).

(2) The appeal must be submitted in writing to the TxCDBG of the Department no later than 30 days after the date the announcement of contract awards is published on the Department's website. The Department staff will evaluate the appeal and may either concur with the appeal and make an appropriate adjustment to the applicant's scores, or disagree with the appeal and prepare an appeal file for consideration by the Executive Director. The Executive Director then considers the appeal within 30 days and makes a decision.

(3) In the event the appeal is sustained and the corrected scores would have resulted in project funding, the application is approved and funded. If the appeal concerning an application is rejected, the office notifies the applicant of its decision, including the basis for rejection.

(4) Appeal of Executive Director's Decision to the Board.

(A) If the appealing party is not satisfied with the Executive Director's response to the appeal, it may appeal in writing directly to the Board within seven days after the date of the Executive Director's response. In order to be placed on the next agenda of the Board, the appeal must be received by the Department at least fourteen days prior to the next scheduled Board meeting. Appeals received after the fourteenth calendar day prior to the Board meeting will be scheduled for the next Board meeting. The Executive Director shall prepare an appeal file for the Board's review based on the information provided. If the appealing party receives additional information after the Executive Director has denied the appeal, but prior to the posting of the appeal, for Board consideration, the new information must be provided to the Executive Director for further consideration or the Board will not consider any information submitted by the applicant after the written appeal. New information will cause the deadlines in this subparagraph to begin again. The Board will review the appeal de novo and may consider any information properly considered by the Department in making its prior decision(s).

(B) Public comment. The Board hears public comment on the appeal under its usual procedures. Persons making public comment are not parties to the appeal and no rights accrue to them under this section or any other appeal process. Nothing in this section provides a right to appeal any decision made on an application if the appealing party does not have direct grounds to appeal.

(C) Possible actions regarding applications. In instances in which the appeal if sustained by the Board could have resulted in an award to the applicant, the application shall be approved by the Board contingent on the availability of funds. If the appeal is denied, the Department shall notify the applicant of the decision.

(h) Threshold requirements. An applicant must satisfy each of the following requirements in order to be eligible to apply for or to receive funding under the TxCDBG:

(1) Demonstrate the ability to manage and administer the proposed project, including meeting all proposed benefits outlined in its application. The applicant can meet this threshold by:

(A) Providing the roles and responsibilities of local staff designated to administer or work on the proposed project and a plan for project implementation;

(B) Indicating the intention to use a third-party administrator, if applicable; or

(C) If local staff along with a third-party administrator, will jointly administer the proposed project, by providing the roles and responsibilities of the designated local staff.

(2) Demonstrate the financial management capacity to operate and maintain any improvement made in conjunction with the proposed project. The applicant can meet this threshold by:

(A) Providing the name of the financial person on the applicant's staff, or evidence that the applicant intends to contract services for financial oversight; and

(B) Providing a statement certifying that financial records for the proposed project will be kept at an officially designated city/county site, accessible by the public, and will be adequately managed on a timely basis using generally accepted accounting principles.

(3) Levy a local property tax or local sales tax option.

(4) Demonstrate satisfactory performance on previously awarded TxCDBG contracts. The applicant can meet this threshold by:

(A) Showing past responses, if applicable, to audit and monitoring issues (over the most recent 48 months before the application due date) within prescribed times as indicated in the Department's resolution letter(s);

(B) The presence of documentation related to past contracts (over the most recent 48 months before the application due date), through close-out monitoring and reporting, that the activity or service was made available to all intended beneficiaries, that low and moderate income persons were provided access to the service, or there has been adequate resolution of issues regarding beneficiaries served;

(C) The non-presence of any outstanding delinquent response to a written request from the Department regarding a request for repayment of funds to TxCDBG; or

(D) By not having at least one outstanding delinquent response to a written request from the Department regarding compliance issues such as a request for closeout documents or any other required information.

(5) Resolve all outstanding compliance and audit findings related to previously awarded TxCDBG contracts and any other Department contracts. The applicant can meet this threshold if the applicant is actively participating in the resolution of any outstanding audit and/or monitoring issues by responding with substantial progress on outstanding issues within the time specified in the resolution process.

(6) Submit any past due audit to the Department.

(A) A community with one year's delinquent audit may be eligible to submit an application for funding by the established application deadline, but may not receive a contract award if the audit continues to be delinquent on the date the Department approves funding recommendations. Applications for the colonia self-help center fund and the disaster relief/urgent need fund are exempt from this threshold.

(B) A community with two years of delinquent audits may not apply for additional funding and may not receive a funding recommendation. This applies to all funding categories under the Texas Community Development Block Grant Program. The colonia self-help centers fund may be exempt from this threshold, since funds for the self-help centers fund is included in the program's state budget appropriation. Failure to meet the threshold will be reported to the Texas Department of Housing and Community Affairs for review and recommendation. The disaster relief fund may be exempt from this threshold, but failure to meet this threshold will be forwarded to the Board for review and consideration.

(7) TxCDBG funds cannot be expended in any county that is designated as eligible for the Texas Water Development Board Economically Distressed Areas Program unless the county has adopted and is enforcing the Model Subdivision Rules established pursuant to §16.343 of the Texas Water Code. An incorporated city that is located in a Texas Water Development Board Economically Distressed Areas Program eligible county that has not adopted, or is not enforcing, the Model Subdivision Rules, may submit an application for TxCDBG funds. However, in lieu of county adoption of the Model Subdivision Rules, the incorporated city must adopt the Model Subdivision Rules prior to the expenditure of any TxCDBG funds by the incorporated city.

(8) Based on a pattern of unsatisfactory performance on previous TxCDBG contracts, unsatisfactory management and administration of previous TxCDBG contracts, or the presence of evidence that an applicant lacks financial management capacity based on a review of official financial records and audits related to previous TxCDBG contracts, the Department, or TDA in the case of Texas Capital Fund applications, may determine that an applicant is ineligible to apply for TxCDBG funding even though at the application deadline date it meets the threshold and past performance requirements. The Department, or TDA in the case of Texas Capital Fund applications, will consider an applicant's performance during the most recent 48 months before an application due date to make the eligibility determination. An applicant would still remain eligible for funding under the disaster relief fund.

(i) Unmet benefits. Actions that may be taken against a contractor by the Department where the Department finds that the contractor did not provide the level of benefits specified in its contract include, but are not limited to:

(1) holding the contractor ineligible to apply for TxCDBG funds for a period of two program years or until any issue of restitution is resolved, whichever is longer;

(2) requiring the contractor to reimburse the Department for the difference between the amount of funds provided for the level of benefits specified in the contract and the amount of funds actually expended in providing such level of benefits; and

(3) rescoring the contractor's application, and if the level of benefits actually provided by the contractor would have changed the funding recommendation, terminating the local government's contract.

(j) False information. If an applicant provides false information in any application which has the effect of increasing the applicant's competitive advantage, the number of beneficiaries, or the percentage of low to moderate income beneficiaries, the TxCDBG staff shall make a recommendation for action to the Executive Director of the Department. Actions that the Executive Director may take include, but are not limited to:

(1) Disqualification of the application and holding the locality ineligible to apply for TxCDBG funding for a period of at least one year not to exceed two program years;

(2) holding the applicant or contractor ineligible to apply for TxCDBG funds for a period of two program years or until any issue of restitution is resolved, whichever is longer; and

(3) terminating the local government's contract if the correct information would have changed the scores and resulted in a change in the rankings for purposes of funding. If the applicant provides false information in a TCF application, TDA staff shall make a recommendation for action to the appropriate TDA official. Actions that the TDA official may take, in consultation with TxCDBG, include, but are not limited to:

(A) Disqualification of the application and holding the locality ineligible to apply for TCF funding for a period of at least one year not to exceed two program years;

(B) holding the applicant or contractor ineligible to apply for TCF funds for a period of two program years or until any issue of restitution is resolved, whichever is longer; and

(C) terminating the local government's contract if the correct information would have changed the scores and resulted in a change in the rankings for purposes of funding.

(k) Substitution of standardized data. Any applicant that chooses to substitute locally generated data for standardized information available to all applicants must use the survey instrument provided by the Department and must follow the procedures prescribed in the instructions to the survey instrument. This option does not apply to applications submitted to the TCF.

(1) Only door-to-door surveys are allowed, unless an alternate method is approved in writing by the Department.

(2) Surveys, including signed tabulation sheets, signed surveys location sheets, all responses, and all non-responses must be submitted to the Department by the application deadline, for verification and spot-checking.

(3) A survey instrument that lacks information prescribed in the instructions to the survey instrument or which includes conflicting information may be considered as a non-response for that family.

(4) The applicant must demonstrate a 100% effort in contacting households to be surveyed and obtain at least an 80% response rate for surveys.

(5) A survey that was completed on or after January 1, 2004 for a previous TxCDBG application may be accepted by the Department for a new application to the extent specified in the most recent application guide for the proposed project.

(l) Unobligated and recaptured funds. Deobligated funds, unobligated funds and program income generated by TCF projects shall be retained for expenditure in accordance with the Consolidated Plan. Program income derived from TCF projects will be used by the Department for eligible TxCDBG activities in accordance with the Consolidated Plan. Any deobligated funds, unobligated funds, program income, and unused funds from the current year's allocation or from previous years' allocations derived from any TxCDBG Fund, including program income recovered from TCF local revolving loan funds, and any reallocated funds which HUD has recaptured from Small Cities may be redistributed among the established current program year fund categories, for otherwise eligible projects. The selection of eligible projects to receive such funds is approved by the Department Executive Director, or when applicable, approved by the Board or by the TDA on a priority needs basis with eligible disaster relief and urgent need projects as the highest priority; followed by, any awards necessary to resolve appeals under fund categories requiring publication of contract awards in the *Texas Register,* TCF projects, special needs projects, projects in colonias, housing activities, and other projects as determined by the Department Executive Director. Other purposes or initiatives may be established as a priority use of such funds within existing fund categories by the Board. Should the TxCDBG be required to make payments to HUD to cover any loan payments not made by any recipient of a TxCDBG Section 108 loan guarantee, it would first use any available deobligated funds.

(m) Waivers. The Department may waive any provision of this subchapter upon its own motion, or upon an applicant's or contractor's written request for such a waiver if the Department finds that compelling circumstances exist outside the control of the applicant or contractor which justifies the approval of such a waiver. The Department shall not waive any provision hereof concerning the TCF program unless written request to do so is received from the Executive Director of the TDA. The provisions of the foregoing sentence shall not apply to contracts other than those awarded and/or administered by the TDA for the Department. Issues related to audit requirements will be handled by the appropriate agency.

(n) Performance threshold requirements. In addition to the requirements of subsection (h) of this section, an applicant must satisfy the following performance requirements in order to be eligible to apply

for program funds. A contract is considered executed for the purposes of this subsection on the date stated in section 2 of such contract.

(1) Obligate at least 50% of the total TxCDBG funds awarded under an open TxCDBG contract within 12 months from the start date of the contract or prior to the application deadlines and have received all applicable environmental approvals from TxCDBG covering this obligation. This threshold is applicable to TxCDBG contracts with an original 24-month contract period. To meet this threshold, 50% of the TxCDBG funds must be obligated through executed contracts for administrative services, engineering services, acquisition, construction, materials purchase, etc. The TxCDBG contract activities do not have to be 50% completed, nor do 50% of the TxCDBG contract funds have to be expended to meet this threshold. This threshold is applicable to previously awarded TxCDBG contracts under the community development fund, community development supplemental fund, the colonia construction fund, the colonia planning fund, the non-border colonia fund the planning and capacity building fund, and the disaster relief/urgent need fund. This threshold is not applicable to previously awarded TxCDBG contracts under the TCF, the housing infrastructure fund, the housing rehabilitation fund, the colonia self-help centers fund, the colonia economically distressed area program fund, the Young v. Martinez fund, the disaster recovery initiative program, microenterprise loan fund, small business loan fund, Section 108 loan guarantee pilot program, and the small towns environment program fund. This paragraph does not apply to a city or county that meets the eligibility criteria for current assistance from the TxCDBG disaster relief fund.

(2) Submit to the Department the certificate of expenditures (COE) report showing the expended TxCDBG funds and a final drawdown for any remaining TxCDBG funds as required by the most recent edition of the TxCDBG Project Implementation Manual. Any reserved funds on the COE must be approved in writing by TxCDBG staff. To meet this threshold "expended" means that the construction and services covered by the TxCDBG funds are complete and a drawdown for the TxCDBG funds has been submitted prior to the application deadlines. This threshold will apply to an open TxCDBG contract with an original 24-month contract period and to TxCDBG contractors that have reached the end of the 24-month period prior to the application deadlines. This threshold is applicable to previously awarded TxCDBG contracts under the community development fund, community development supplemental fund, the colonia construction fund, the colonia planning fund, the non-border colonia fund, the planning and capacity building fund, and the disaster relief/urgent need fund. This threshold is not applicable to previously awarded TxCDBG contracts under the TCF, the housing infrastructure fund, the housing rehabilitation fund, the colonia self-help centers fund, the colonia economically distressed area program fund, the Young v. Martinez fund, the disaster recovery initiative program, microenterprise loan fund, small business loan fund, Section 108 loan guarantee pilot program, and the small towns environment program fund (original 24-month contract extended to 36-months). This paragraph does not apply to a city or county that meets the eligibility criteria for current assistance from the TxCDBG disaster relief fund.

(3) TCF applicants may not have an existing contract with an award date in excess of 48 months prior to the application deadline date, regardless of extensions granted. If an existing contract requires an extension beyond the initial term, TDA must be in receipt of the request for extension no less than 30 days prior to contract expiration date. If an existing contract expires prior to or on the new application deadline date, without an approved extension, TDA must be in receipt of complete closeout documentation for the existing contract, no less than 30 days prior to the new application deadline date (complete closeout documentation is defined in the most recent version of the TCF Implementation Manual).

(4) Submit to the Department the certificate of expenditures (COE) report showing the expended TxCDBG funds and a final drawdown for any remaining TxCDBG funds as required by the most recent edition of the TxCDBG Project Implementation Manual. Any reserved funds on the COE must be approved in writing by TxCDBG staff. To meet this threshold "expended" means that the construction and services covered by the TxCDBG funds are complete and a drawdown for the TxCDBG funds has been submitted prior to the application deadlines. This threshold will apply to an open TxCDBG contract with an original 36-month contract period or a small towns environment program 24-month contract, extended to 36 months, and to TxCDBG contractors that have reached the end of the 36-month period prior to the application deadlines. This threshold is applicable to previously awarded TxCDBG contracts under the housing infrastructure fund (when the applicant is applying for the housing infrastructure fund competition) and the small towns environment program fund original 36-month contract or original 24-month contract, extended to 36 months. This threshold is not applicable to previously awarded TxCDBG contracts under the TCF, the housing rehabilitation fund, the colonia self-help centers fund, the colonia economically distressed area program fund, the Young v. Martinez fund, the disaster recovery initiative program the microenterprise loan fund, the small business loan fund, and the section 108 loan guarantee pilot program. This paragraph does not apply to a city or county that meets the eligibility criteria for current assistance from the TxCDBG disaster relief fund.

(o) Minority hiring/participation. It is the policy of the Department to encourage minority employment and participation among all applicants under the TxCDBG. All applicants to the TxCDBG are required to submit information documenting the level of minority participation as part of the application for funding.

(p) Revolving loan funds. A Revolving Loan Fund established through program income recovered from a TxCDBG contract must meet the requirements for Revolving Loan Funds described in the TxCDBG Final Statement, Consolidated Plan or Action Plan for the program year in which the original contract was awarded. Revolving Loan Funds are also subject to appropriate state and federal requirements, TxCDBG contract provisions, and the appropriate Revolving Loan Fund guidelines issued by the Department. The requirement in this section applies to all local Revolving Loan Funds (RLF) established from program income from Texas Capital Fund projects, housing projects and the Small Business Loan Fund. Funds retained in the local RLF must be committed within three years of the original TxCDBG contract programmatic close date. Every award from the RLF must be used to fund the same type of activity, for the same business, from which such income is derived. A local Revolving Loan Fund may retain a cash balance not greater than 33 percent of its total cash and outstanding loan balance. If the local government does not comply with the local RLF requirements, all program income retained in the local RLF and any future program income received from the proceeds of the RLF must be returned to the State.

(q) Withdrawal of award.

(1) Should the applicant fail to substantiate or maintain the claims and statements made in the application upon which the award is based, including failure to maintain compliance with application thresholds in subsection (h)(1) - (4) of this section, within a period ending 90 days after the date of the TxCDBG's award letter to the applicant, the award will be immediately withdrawn by the TxCDBG (excluding the colonia self-help center awards).

(2) Should the applicant fail to execute the Department's award contract (excluding Texas Capital Fund and colonia self-help center contracts) within 60 days from the date of the letter transmitting the award contract to the applicant, the award will be withdrawn by the Department.

(r) Funds recaptured from withdrawn awards. For an award that is withdrawn from an application, the Department follows different procedures for the use of those recaptured funds depending on the fund category where the award is withdrawn.

(1) Funds recaptured under the community development fund from the withdrawal of an award made from the first year of the biennial funding are offered to the next highest ranked applicant from that region that was not recommended to receive an award from the first year regional allocation. Funds recaptured under the community development fund from the withdrawal of an award made from the second year of the biennial funding are offered to the next highest ranked applicant from that region that was not recommended to receive full funding (the applicant recommended to receive marginal funding) from the second year regional allocation. Any funds remaining from the second year regional allocation after full funding is accepted by the second year marginal applicant are offered to the next highest ranked applicant from the region as long as the amount of funds still available exceeds the minimum community development fund grant amount. Any funds remaining from the second year regional allocation that are not accepted by an applicant from the region or that are not offered to an applicant from the region may be used for other TxCDBG fund categories and, if unallocated to another fund, are then subject to the procedures described in subsection (l) of this section.

(2) Funds recaptured under the planning and capacity building fund from the withdrawal of an award made from the first year of the biennial funding are offered to the next highest ranked applicant from that statewide competition that was not recommended to receive an award from the first year allocation. Funds recaptured under the planning and capacity building fund from the withdrawal of an award made from the second year of the biennial funding are offered to the next highest ranked applicant from that statewide competition that was not recommended to receive full funding (the applicant recommended to receive marginal funding) from the second year allocation. Any funds remaining from the second year allocation after full funding is accepted by the second year marginal applicant are offered to the next highest ranked applicant from the statewide competition. Any funds remaining from the second year allocation that are not accepted by an applicant from the statewide competition or that are not offered to an applicant from the statewide competition may be used for other TxCDBG fund categories and, if unallocated to another fund, are then subject to the procedures described in subsection (l) of this section.

(3) Funds recaptured under the colonia construction fund from the withdrawal of an award remain available to potential colonia program fund applicants during that program year to meet the 10 percent colonia set-aside requirement and, if unallocated within the colonia fund, may be used for other TxCDBG fund categories. Remaining unallocated funds are then subject to the procedures in subsection (l) of this section.

(4) Funds recaptured under the colonia planning fund from the withdrawal of an award remain available to potential colonia program fund applicants during that program year to meet the 10 percent colonia set-aside requirement and, if unallocated within the colonia fund, may be used for other TxCDBG fund categories. Remaining unallocated funds are then subject to the procedures in subsection (l) of this section.

(5) Funds recaptured under the program year allocation for the colonia economically distressed areas program fund from the withdrawal of an award remain available to potential colonia economically distressed areas program fund applicants during that program year. Any funds remaining from the program year allocation that are not used to fund colonia economically distressed areas program fund applications within twelve months after the Department receives the federal letter of credit would remain available to potential colonia program fund applicants during that program year to meet the 10 percent colonia set-aside requirement and, if unallocated within the colonia fund, may be used for other TxCDBG fund categories. Remaining unallocated funds are then subject to the procedures in subsection (l) of this section.

(6) Funds recaptured under the program year allocation for the disaster relief/urgent need fund from the withdrawal of an award are subject to the procedures described in subsection (l) of this section.

(7) Funds recaptured under the small towns environment program fund (STEP) from the withdrawal of an award will be made available in the next round of STEP competition following the withdraw date in the same program year. If the withdrawn award had been made in the last of the two competitions in a program year, the funds would go to the next highest scoring applicant in the same STEP competition. If there are no unfunded STEP applicants, then the recaptured funds would be available for other TxCDBG fund categories. Any unallocated STEP funds are subject to the procedures described in subsection (l) of this section.

(8) Funds recaptured under the Texas Capital Fund from the withdrawal of an award are subject to the procedures described in subsection (l) of this section.

(9) For both the community development fund, if there are no remaining unfunded eligible applications in the region from the same biennial application period to receive the withdrawn funding, then the withdrawn funds are considered as deobligated funds, subject to the procedures described in subsection (l) of this section.

(s) Readiness to proceed requirements: In order to determine that the project is ready to proceed, the applicant must provide in its application information that:

(1) Identifies the source of matching funds and provides evidence that the applicant has applied for any non-local matching funds, and for local matching funds, evidence that local matching funds would be available.

(2) Provides written evidence of a ratified, legally binding agreement, contingent upon award, between the applicant and the utility that will operate the project for the continual operation of the utility system as proposed in the application. For utility projects that require the applicant or service provider to obtain a certificate of convenience and necessity for the target area proposed in the application, provides written evidence that the Texas Commission on Environmental Quality has received the applicant or service provider's application.

(3) Where applicable, provide a written commitment from service providers, such as the local water or sewer utility, stating that they will provide the intended services to the project area if the project is constructed.

(t) Performance measures. Each applicant for TxCDBG funds and each city or county receiving a contract award shall provide applicable information requested in application guides, the grant contract, or the most recent edition of the TxCDBG project implementation manual that is required by the Department to report on Community Development Block Grant program performance measures promulgated by the

Board, the Texas Legislature, and the U.S. Department of Housing and Urban Development.

(u) Street paving activities. Area benefit can be used to qualify street paving activities. However, for street paving activities with multiple and non-contiguous target areas, each target area must separately meet the principally benefit low and moderate income national program objective. At least 51% of the residents located in each non-contiguous target area must be low and moderate income persons. A target area that does not meet this requirement cannot be included in an application for TxCDBG funds. The only exception to this requirement is street paving eligible under the disaster relief fund.

(v) For any award made on or after September 1, 2005, any political subdivision that receives community development block grant program money targeted toward street improvement projects in eligible colonia areas must allocate not less than five percent but not more than 15 percent of the total amount of street improvement money to providing financial assistance to colonias within the political subdivision to enable the installation of adequate street lighting in those colonias if street lighting is absent or needed.

(w) The TxCDBG is under no obligation to approve any changes in a performance statement of a TxCDBG contract that would result in a program year score lower than originally used to make the award if the lower score would have initially caused that project to be denied funding. This does not apply to colonia self-help centers or the Texas Capital Fund.

(x) Any applicant's cash match included in the TxCDBG contract budget may not be obtained from any person or entity that provides contracted professional or construction-related services (other than utility providers) to the applicant to accomplish the purpose described in the TxCDBG contract, in accordance with 24 CFR Part 570.

(y) If an audit becomes due after the award date, the Department may withhold the issuance of a contract until it receives a satisfactory audit. If a satisfactory audit is not received by the Department within four months of the audit due date, the Department may withdraw the award and re-allocate the funds in accordance with subsection (r) of this section (excludes the colonia self-help center awards and Texas Capital Fund awards).

(z) If the Regional Review Committee for a particular region fails to approve, to the satisfaction of the Department, an objective scoring methodology for the 2009 Community Development Fund competition, the Department will award 2008 Program Year funds in that region for the Community Development Fund and Community Development Supplemental Fund based the state's existing scores under section IV (C)(1)(a-e) of the approved 2007 Texas CDBG Action Plan.

§255.2. Community Development Fund.

(a) General provisions. This fund covers housing, public facilities, and public service projects. Eligible units of general local government may apply for funding of a single purpose project such as housing assistance, sewer improvements, water improvements, drainage, roads, or community centers, or for a multi-purpose project which consists of any combination of such eligible activities. An application submitted for the community development fund can receive a grant from the community development fund regional allocation and/or from the community development supplemental fund regional allocation.

(1) An applicant may not submit a single jurisdiction application or be a participant in a multi-jurisdiction application under this fund and also submit a single jurisdiction application or be a participant in a multi-jurisdiction application submitted under any other TxCDBG fund category at the same time if the proposed activity under each application is the same or substantially similar.

(2) In addition to the threshold requirements of §255.1(h) and (n) of this title, in order to be eligible to apply for community development funds, an applicant must document that at least 51% of the persons who would directly benefit from the implementation of each activity proposed in the application are of low to moderate income.

(3) Applicants must demonstrate they are adequately addressing water supply and water conservation issues (in particular contingency plans to address drought-related water supply issues), as described in the application guidance. Applications requesting funds for projects other than water and sewer must include a description of how the applicant's water and sewer needs would be met and the source of funding that would be used to meet these needs.

(b) Funding cycle. This fund is allocated to eligible units of general local government on a biennial basis for the 2009 and 2010 program years pursuant to regional competitions held for the 2009 program year applicants. Applications for funding must be received by the TxCDBG by the dates and times specified in the most recent application guide for this fund.

(c) Allocation Plan.

(1) This fund is allocated among the 24 state planning regions established pursuant to Texas Local Government Code, §391.003, by a formula based on the following factors and weights:

(A) number of persons living in poverty--25%

(B) percentage of persons living in poverty--25%

(C) population--30%

(D) number of unemployed persons--10%

(E) unemployment rate--10%

(2) Each state planning region is provided with a 2009 program year community development fund target allocation and a 2010 program year community development fund target allocation for applications in the region that are ranked through the 2009 program year regional competitions in accordance with a shared scoring system involving the Department and the regional review committees.

(A) The community development fund regional allocations for the first and second years of the biennial process are awarded first in each region based on the community development fund selection criteria that includes each regional review committee and the Department (10% of maximum possible score for each RRC) scoring criteria. Where the remainder of the 2009 program year community development fund target allocation is insufficient to completely fund the next highest ranked applicant, the applicant receives complete funding of the original grant request through either 2009 and 2010 program year funds. The remaining funds from all the target allocations are pooled to fund projects from among the highest ranked, unfunded applications from each of the 24 state planning regions. Selection criteria for such applications will consist of the selection criteria scored by the Department under this fund. Marginal applicants' community distress scores are recomputed based on the applicants competing in the marginal pool competition only.

(B) Due to the two-year funding cycle proposed for program years 2009 and 2010, a Community Development Fund pooled marginal competition will not be conducted for program year 2009. A pooled marginal competition may be conducted for program year 2010 using available funds if the State's 2010 allocation is not decreased significantly from the State's estimated 2010 Community Development allocation. All applicants whose marginal amount available is under $75,000 will automatically be considered under this competition. When the marginal amount left in a regional allocation is equal to or

above the TxCDBG grant minimum of $75,000, the marginal applicant may scale down the scope of the original project design, and accept the marginal amount, if the reduced project is still feasible. Alternatively, such marginal applicants may choose to compete under the pooled marginal fund competition for the possibility of full project funding. This fund consists of all regional marginal amounts of less than $75,000, any funds remaining from regional allocations where the number of fully funded eligible applicants does not utilize a region's entire allocation and the contribution of marginal amounts larger than $75,000 from those applicants opting to compete for full funding rather than accept their marginal amount. The scoring factors used in this competition are the TxCDBG Community Development Fund factors scored by TxCDBG staff with the following adjustments:

(i) Past Selection (10 points)--Ten (10) points are awarded to each applicant that did not receive a 2007 or 2008 Community Development Fund or Community Development Supplemental Fund contract award;

(ii) Past Performance (25 points)--Up to 25 points;

(iii) Community Distress (55 points)--55 Points Maximum (Percentage of persons living in poverty 25 points; Per Capita Income 20 points; Unemployment Rate 10 points).

(3) Each Regional Review Committee is encouraged to allocate a percentage or amount of its Community Development Fund allocation to housing projects and, for RRCs in eligible areas, non-border colonia projects proposed in and for that region. Under a set-aside, the highest ranked applications for a housing or non-border colonia activity, regardless of the position in the overall ranking, would be selected to the extent permitted by the housing or non-border colonia set-aside level. If the region allocates a percentage of its funds to housing and/or non-border colonia activities and applications conforming to the maximum and minimum amounts are not received to use the entire set-asides, the remaining funds may be used for other eligible activities. (Under a housing and/or non-border colonia set-aside process, a community would not be able to receive an award for both a housing or non-border colonia activity and an award for another Community Development activity during the biennial process. Housing projects/activities must conform to eligibility requirements in 42 U.S.C. Section 5305 and applicable HUD regulations.)

(d) Selection procedures.

(1) Prior to the submission deadline specified in the most recent application guide for this fund, each eligible unit of general local government may submit one application to the Department for funding under the community development fund regional allocations. Two copies of the application must be submitted to the Department.

(2) Upon receipt of an application, the Department staff performs an initial review to determine whether the application is complete and whether all proposed activities are eligible for funding, if ranked. The results of this initial review are provided to the applicant. If not subject to disqualification, the applicant may correct any deficiencies identified within 10 calendar days of the date of the staff's notification.

(3) Each Regional Review Committee is responsible for determining local project priorities and objective factors for all its scoring components based on public input. The RRC shall establish the numerical value of the points assigned to each scoring factor and determine the total combined points for all RRC scoring factors. The RRCs are responsible for convening public hearings to discuss and select the objective scoring factors that will be used to score applications at the regional level. The public must be given an opportunity to comment on the priorities and the scoring criteria considered. The final selection of the scoring factors is the responsibility of each RRC. Each RRC shall develop a Regional Review Committee Guidebook, in the format provided by TxCDBG staff, to notify eligible applicants of the objective scoring factors and other RRC procedures for the region. The RRC must clearly indicate how responses would be scored under each factor and use data sources that are verifiable to the public. After the RRC's adoption of its scoring factors, the score awarded to a particular application under any RRC scoring factor may not be dependent upon an individual RRC member's judgment or discretion. (This does not preclude collective RRC action that the state TxCDBG has approved under any appeals process.)

(4) The RRC shall select one of the following entities to develop the RRC Guidebook, calculate the RRC scores, and provide other administrative RRC support: Regional Council of Governments (COG), or TxCDBG staff or TxCDBG designee, or A combination of COG and TxCDBG staff or TxCDBG designee.

(5) The RRC Guidebook should be adopted by the RRC and approved by TxCDBG staff at least 90 days prior to the application deadline. The selection of the entity responsible for calculating the RRC scores must be identified in the RRC Guidebook and must define the role of each entity selected. The Department shall be responsible for reviewing all scores for accuracy and for determining the final ranking of applicants once the RRC and TxCDBG scores are summed. The RRC is responsible for providing to the public the RRC scores, while the TxCDBG is responsible for publishing the final ranking of the applications.

(6) Following a final technical review, the Department staff presents the funding recommendations for the 2009 and 2010 community development fund regional allocations. Department staff makes a site visit to each of the applicants recommended for funding prior to the completion of contract agreements.

(7) Upon announcement of the 2009 and 2010 program year contract awards, the TxCDBG staff works with recipients to execute the contract agreements. While the award must be based on the information provided in the application, the TxCDBG may negotiate any element of the contract with the recipient as long as the contract amount is not increased and the level of benefits described in the application is not decreased. The level of benefits may be negotiated only when the project is partially funded with the remainder of the target allocation within a region.

(e) Selection criteria. The following is an outline of the selection criteria used by the Department and the regional review committees for scoring applications under the community development fund.

(1) Regional Review Committee (RRC) Objective Scoring-Each Regional Review Committee is responsible for determining local project priorities and objective factors for all its scoring components based on public input.

(A) Maximum RRC Points Possible: The RRC shall establish the numerical value of the points assigned to each scoring factor and determine the total combined points for all RRC scoring factors.

(B) RRC Selection of the Scoring Factors: The RRCs are responsible for convening public hearings to discuss and select the objective scoring factors that will be used to score applications at the regional level. The public must be given an opportunity to comment on the priorities and the scoring criteria considered. The final selection of the scoring factors is the responsibility of each RRC.

(i) Each RRC shall develop a Regional Review Committee Guidebook, in the format provided by TxCDBG staff, to notify eligible applicants of the objective scoring factors and other RRC procedures for the region.

(ii) The RRC must clearly indicate how responses would be scored under each factor and use data sources that are verifiable to the public. After the RRC's adoption of its scoring factors, the score awarded to a particular application under any RRC scoring factor may not be dependent upon an individual RRC member's judgment or discretion. (This does not preclude collective RRC action that the state TxCDBG has approved under any appeals process.)

(2) State Scoring (TxCDBG Staff Scoring)--Other Considerations--Maximum Points--10% of Maximum Possible Score for Each RRC.

(A) Past Selection--Maximum Points--2% of Maximum Possible RRC Score for each region--are awarded to each applicant that did not receive a 2007 or 2008 Community Development Fund or Community Development Supplemental Fund contract award.

(B) Past Performance--Maximum Points--4% of Maximum Possible RRC Score for each region. An applicant can receive points based on the applicant's past performance on previously awarded TxCDBG contracts. The applicant's score will be primarily based on our assessment of the applicant's performance on the applicant's most recent TxCDBG contract that has reached the end of the original contract period stipulated in the contract within the past 4 years (for CD/CDS contracts only the 2003/2004 and 2005/2006 cycle awards will be considered). The TxCDBG will also assess the applicant's performance on existing TxCDBG contracts that have not reached the end of the original contract period. Applicants that have never received a TxCDBG grant award will automatically receive these points. The TxCDBG will assess the applicant's performance on TxCDBG contracts up to the application deadline date. The applicant's performance after the application deadline date will not be evaluated in this assessment. (Adjustments may be made for contracts that are engaged in appropriately pursuing due diligence such as bonding remedies or litigation to ensure adequate performance under the TxCDBG contract.) The evaluation of an applicant's past performance will include the following:

(i) The applicant's completion of the previous contract activities within the original contract period.

(ii) The applicant's submission of all contract reporting requirements such as Quarterly Progress Reports.

(iii) The applicant's submission of the required close-out documents within the period prescribed for such submission.

(iv) The applicant's timely response to monitoring findings on previous TxCDBG contracts especially any instances when the monitoring findings included disallowed costs.

(v) The applicant's timely response to audit findings on previous TxCDBG contracts.

(vi) The expenditure timeframes on the applicable TxCDBG contracts.

(C) Benefit To Low/Moderate-Income (LMI) Persons--Applications that meet the Low and Moderate Income National Objective for each activity (51 percent low/moderate-income benefit for each activity within the application) will receive 2% of the Maximum Possible RRC Score for each region.

(D) Cost per Household (CPH)--The total amount of TxCDBG funds requested by the applicant is divided by the total number of households benefiting from the application activities to determine the TxCDBG cost per household. (Use pro rata allocation for multiple activities.)--Up to 2% of the Maximum RRC Score for each region.

(i) Cost per household is equal to or less than $8,750--2%.

(ii) Cost per household is greater than $8,750 but equal to or less than $17,500--1.75%.

(iii) Cost per household is greater than $17,500 but equal to or less than $26,500--1.25%.

(iv) Cost per household is greater than $26,500 but equal to or less than $35,000--0.5%.

(v) Cost per household is greater than $35,000--0%.

(E) When necessary, a weighted average is used to score to applications that include multiple activities with different beneficiaries. Using as a base figure the TxCDBG funds requested minus the TxCDBG funds requested for administration, a percentage of the total TxCDBG construction and engineering dollars for each activity is calculated. Administration dollars requested is applied pro-rata to these amounts. The percentage of the total TxCDBG dollars for each activity is then multiplied by the appropriate score and the sum of the calculations determines the score. Related acquisition costs are applied to the associated activity.

(F) Maximum State points--the calculated maximum score is rounded to a whole integer, with Past Selection, Past Performance, and LMI being rounded to a whole integer and CPH points being the difference.

(G) The RRC may not adopt scoring factors that directly negate or offset these state factors.

(f) If the Regional Review Committee for a region fails to adopt an Objective Methodology for the Program Year 2009 and 2010 Community Development Fund the following scoring criteria will apply: The RRC's Project Priorities taken from the TxCDBG-approved RRC Scoring Guidelines for the region for the 2007-2008 CD/CDS cycle.

(1) Regional Review Committee Project Priorities (100 points) The RRC's Project Priorities taken from the TxCDBG-approved RRC Scoring Guidelines for the region for the 2007-2008 CD/CDS cycle. (Adjusted if necessary for an objective methodology as described in the PY 2009 TxCDBG Action Plan.)

(2) Community distress (total--55 points). All community distress factor scores are based on the population of the applicant. An applicant that has 125% or more of the average of all applicants in its region of the rate on any community distress factor, except per capita income, receives the maximum number of points available for that factor. An applicant with less than 125% of the average of all applicants in its region on a factor will receive a proportionate share of the maximum points available for that factor. An applicant that has 75% or less of the average of all applicants in its region on the per capita income factor will receive the maximum number of points available for that factor:

(A) percentage of persons living in poverty--25

(B) per capita income--20

(C) unemployment rate--10

(3) Benefit to low- and moderate-income persons (total--20 points). Applications that meet the Low and Moderate Income National Objective for each activity (51 percent low/moderate-income benefit for each activity within the application) will receive 20 points.

(4) Project impact (total--175 points).

(A) Information submitted in the application or presented to the Regional Review Committees is used by a committee composed of TxCDBG staff to generate scores on the Project Impact factor. Multi-activity projects which include activities in different scoring ranges receive a combination score within the possible range. Each application is scored by a committee composed of TxCDBG staff. Each committee member separately evaluates an application and assigns a score within a predetermined scoring range based on the application activities. The separate scores are then totaled and the application is assigned the average score. The scoring ranges used for Project Impact scoring are:

(i) water activities, sewer activities, and housing activities (145 to 175 points);

(ii) eligible public facilities in a defense economic readjustment zone (145 to 175 points);

(iii) street paving, drainage, flood control and handicapped accessibility activities (130 to 160 points);

(iv) fire protection, health clinic activities, and facilities providing shelter for persons with special needs (125 to 145 points);

(v) community center, senior citizens center, social services center, demolition/clearance, and code enforcement activities (115 to 135 points);

(vi) gas facilities, electrical facilities, and solid waste disposal activities (110 to 130 points);

(vii) access to basic telecommunications, jail facilities and detention facilities (105 to 125 points);

(viii) all other eligible activities (85 to 115 points).

(B) Other factors that will be evaluated by Department staff in the assignment of project impact scores within the point ranges for activities include, but are not limited to, the following:

(i) each application is scored based on how the proposed project will resolve the identified need and the severity of the need within the applying jurisdiction;

(ii) projects that address basic human needs such as water, sewer, and housing generally are scored higher than projects addressing other eligible activities;

(iii) projects that provide a first-time public facility or service generally receive a higher score than projects providing an expansion or replacement of existing public facilities or services;

(iv) public water and sewer projects that provide a first-time public facility or service generally receive a higher score than other eligible first-time public facility or service projects;

(v) projects designed to bring existing services up to at least the state minimum standards as set by the applicable regulatory agency are given additional consideration;

(vi) for water and sewer projects addressing state regulatory compliance issues, the extent to which the issue was unforeseen;

(vii) projects designed to address drought-related water supply problems are generally given additional consideration;

(viii) water and sewer projects that provide first-time water or sewer service through a privately-owned for-profit utility or an expansion/improvement of the existing water or sewer service provided through a privately-owned for-profit utility may, on a case-by-case basis, receive less consideration than the consideration given to projects providing these services through a public nonprofit organization;

(ix) projects designed to conserve water usage may be given additional consideration;

(x) water and sewer projects from applicants that demonstrate a long term commitment to reinvestment in the system and sound management of the system may be given additional consideration (including those that have remained in compliance with health and Texas Commission on Environmental Quality (TCEQ) system requirements);

(xi) consideration will be given to those water and sewer systems that have agreed to undertake improvements to their systems that TCEQ's recommendation but are not under an enforcement order because of this agreement;

(xii) projects that consider the Department's Community Viability Index in establishing the issues to be addressed;

(xiii) projects that use renewable energy technology for not less than 10% of the total energy requirements (excluding the purchase of energy from the electric grid that was produced with renewable energy).

(5) Matching Funds (total--60 points). An applicant's matching share may consist of one or more of the following contributions: cash; in-kind services or equipment use; materials or supplies; or land. An applicant's match is considered only if the contributions are used in the same target areas for activities directly related to the activities proposed in its application; if the applicant demonstrates that its matching share has been specifically designated for use in the activities proposed in its application; and if the applicant has used an acceptable and reasonable method of valuation. The population category under which county applications are scored depends on the project type and the beneficiary population served. If the project benefits residents of the entire county, the total population of the county is used. If the project is for activities in the unincorporated area of the county with a target area of beneficiaries, the population category is based on the residents of the entire unincorporated area of the county. For county applications addressing water and sewer improvements in unincorporated areas, the population category is based on the actual number of beneficiaries to be served by the project activities. The population category under which multi-jurisdiction applications are scored is based on the combined populations of the participating applicants according to the 2000 census. Applications for housing rehabilitation and for affordable new permanent housing for low- and moderate-income persons receive the 60 points without including any matching funds. This exception is for housing activities only. Sewer or water service line/connections are not counted as housing rehabilitation. Demolition/clearance and code enforcement, when done in the same target area are counted as part of the housing rehabilitation activity. When demolition/clearance and code enforcement are proposed without housing rehabilitation activities, then the match score is still based on actual matching funds committed by the applicant. Applications which include additional activities, other than related housing activities, are scored based on the percentage of match provided for the additional activities. Program funds cannot be used to install street/road improvements in areas that are not currently receiving water or sewer service from a public or private service provider unless the applicant provides matching funds equal to at least 50% of the total construction cost budgeted for the street/road improvements. This requirement will not apply when the applicant provides assurance that the street/road improvements proposed in the application will not be impacted by the possible installation of water or sewer lines in the future because sufficient easements and rights-of-way are available

for the installation of such water or sewer lines. The terms used in this paragraph are further defined in the current application guide for this fund.

(A) Applicants with populations equal to or less than 1,500 according to the 2000 census:

(i) match equal to or greater than 5.0% of grant request--60 points;

(ii) match at least 4.0% but less than 5.0% of grant request--40 points;

(iii) match at least 3.0% but less than 4.0% of grant request--20 points;

(iv) match at least 2.0% but less than 3.0% of grant request--10 points;

(v) match less than 2.0% of grant request--0 points.

(B) Applicants with populations equal to or less than 3,000 but over 1,500 according to the 2000 census:

(i) match equal to or greater than 10% of grant request--60 points;

(ii) match at least 7.5% but less than 10% of grant request--40 points;

(iii) match at least 5.0% but less than 7.5% of grant request--20 points;

(iv) match at least 2.5% but less than 5.0% of grant request--10 points;

(v) match less than 2.5% of grant request--0 points.

(C) Applicants with populations equal to or less than 5,000 but over 3,000 according to the 2000 census:

(i) match equal to or greater than 15% of grant request--60 points;

(ii) match at least 11.5% but less than 15% of grant request--40 points;

(iii) match at least 7.5% but less than 11.5% of grant request--20 points;

(iv) match at least 3.5% but less than 7.5% of grant request--10 points;

(v) match less than 3.5% of grant request--0 points.

(D) Applicants with populations over 5,000 according to the 2000 census:

(i) match equal to or greater than 20% of grant request--60 points;

(ii) match at least 15% but less than 20% of grant request--40 points;

(iii) match at least 10% but less than 15% of grant request--20 points;

(iv) match at least 5.0% but less than 10% of grant request--10 points;

(v) match less than 5.0% of grant request--0 points.

(6) Other considerations (total--40 points). An applicant receives up to 40 points on the following three factors.

(A) Past Selection (10 points)--10 points are awarded to each applicant that did not receive a 2007 or 2008 Community Development Fund or Community Development Supplemental Fund contract award.

(B) Past Performance (total--20 points). An applicant can receive from thirty (30) to zero (0) points based on the applicant's past performance on previously awarded TxCDBG contracts. The applicant's score will be primarily based on our assessment of the applicant's performance on the applicant's most recent TxCDBG contract that has reached the end of the original contract period stipulated in the contract within the past 4 years. The TxCDBG will also assess the applicant's performance on existing TxCDBG contracts that have not reached the end of the original contract period. Applicants that have never received a TxCDBG grant award will automatically receive these points. The TxCDBG will assess the applicant's performance on TxCDBG contracts up to the application deadline date. The applicant's performance after the application deadline date will not be evaluated in this assessment. The evaluation of an applicant's past performance will include the following:

(i) The applicant's completion of the previous contract activities within the original contract period.

(ii) The applicant's submission of all contract reporting requirements such as Quarterly Progress Reports.

(iii) The applicant's submission of the required close-out documents within the period prescribed for such submission.

(iv) The applicant's timely response to monitoring findings on previous TxCDBG contracts especially any instances when the monitoring findings included disallowed costs.

(v) The applicant's timely response to audit findings on previous TxCDBG contracts.

(vi) The expenditure timeframes on the applicable TxCDBG contracts.

(C) Cost per Household (total--10 points). The total amount of TxCDBG funds requested by the applicant is divided by the total number of households benefiting from the application activities to determine the TxCDBG cost per beneficiary. (Use pro rata allocation for multiple activities.) When necessary, a weighted average is used to score to applications that include multiple activities with different beneficiaries. Using as a base figure the TxCDBG funds requested minus the TxCDBG funds requested for administration, a percentage of the total TxCDBG construction and engineering dollars for each activity is calculated. Administration dollars requested is applied pro-rata to these amounts. The percentage of the total TxCDBG dollars for each activity is then multiplied by the appropriate score and the sum of the calculations determines the score. Related acquisition costs are applied to the associated activity.

(i) Cost per beneficiary is equal to or less than $8,750--10 points.

(ii) Cost per beneficiary is greater than $8,750 but equal to or less than $17,500--8 points.

(iii) Cost per beneficiary is greater than $26,500 but equal to or less than $26,500--5 points.

(iv) Cost per beneficiary is greater than $26,500 but equal to or less than $35,000--2 points.

(v) Cost per beneficiary is greater than $35,000--0 points.

§255.4. Planning/Capacity Building Fund.

(a) General provisions. This fund is intended to provide an opportunity for units of general local government to prepare comprehensive community development plans, develop strategies, assess needs, and build or improve local capacity to undertake future community development projects or to prepare other needed planning elements (including telecommunications and broadband needs). All planning projects awarded under this fund must include a section in the final planning document that addresses drought-related water supply contingency plans and water conservations plans. Eligible units of general local government are to be the direct recipients of planning contracts. Units of general local government may submit one application for planning funds annually if all previous planning/capacity building contracts with the Department have been totally reimbursed by the Department.

(1) A cash match equal to or greater than 20% of the total TxCDBG funds requested is required of all applicants having a population over 5,000, a cash match equal to or greater than 15% of the total TxCDBG funds requested is required of all applicants having a population over 3,000 but equal to or less than 5,000, a cash match equal to or greater than 10% of the total TxCDBG funds requested is required of all applicants having a population over 1,500 but equal to or less than 3,000, and a cash match equal to or greater than 5% of the total TxCDBG funds requested is required of all applicants having a population of less than 1,501. The population of an applicant is based on the 2000 census unless an applicant submits a survey conducted in accordance with §255.1(k) of this title (relating to General Provisions). In lieu of providing the cash match specified in this paragraph, and as further described in the most recent application guide for this fund, an applicant may agree to pay out of its own resources for other eligible planning activities described on the matrix included in such application guide.

(2) In addition to the threshold requirements of §255.1(h) and (n) of this title, in order to be eligible to apply for planning/capacity building funding, an applicant under this section must document that at least 51% of the persons in the area who would benefit from the implementation of the proposed planning activity are of low and moderate income.

(b) Funding cycle. This fund is allocated to eligible units of general local government on a biennial basis for the 2009 and 2010 program years pursuant to a statewide competition held during the 2009 program year. Applications for funding from the 2009 and 2010 program year allocations must be received by the TxCDBG by the dates and times specified in the most recent application guide for this fund.

(c) Selection procedures. Scoring and the recommended ranking of projects are done by Department staff with input from the regional review committees. The application and selection procedures consist of the following steps.

(1) Prior to the application deadline, each eligible jurisdiction may submit one application for funding under the planning/capacity building fund. An applicant may not submit an application under this fund and also under the colonia fund if the proposed activity under each application is the same or substantially similar. One copy of the application should be provided to the applicant's regional review committee and two copies must be submitted to the Department.

(2) Upon receipt of an application, the Department staff performs an initial review to determine whether the application is complete and whether the activities proposed are eligible for funding. Results of this initial staff review are provided to the applicant. If not subject to disqualification, the applicant may correct any deficiencies identified within 10 calendar days of the date of the staff's notification.

(3) Each regional review committee may, at its option, review and comment on a planning/capacity building proposal from a jurisdiction within its state planning region. These comments become part of the application file, provided such comments are received by the Department prior to scoring of the applications.

(4) The Department staff generate scores on factors related to planning strategy and products. Each application is scored on how the proposed planning activities resolve the identified community development needs of the local government. This information, as well as any comments made by the regional review committee, are used by the Department staff to generate scores on the planning strategy and products factors.

(5) The Department generates scores on selection criteria relating to community distress, project design, and planning strategy and products. Scores on the factors in these categories are derived from standardized data from the Census Bureau, Texas Workforce Commission, or from information provided by the applicant.

(6) Scores on all factors are totaled to obtain project rankings.

(7) Upon the announcement of the 2009 and 2010 program year contract awards, the Department staff works with recipients to execute the contract agreements. The award is based on the information provided in the application and on the amount of funding proposed for each contract activity based on the matrix included in the most recent application guide for this fund.

(d) Selection criteria. The following is an outline of the selection criteria used by the Department for selection of the projects under the planning/capacity building fund. Four hundred thirty points are available.

(1) Community distress (total--55 points). All community distress factor scores are based on the total population of the applicant.

(A) Percentage of persons living in poverty--up to 25 points

(B) Per capita income--up to 20 points

(C) Unemployment rate--up to 10 points

(2) Benefit to Low/Moderate Income Persons (total--0 Points). Applicants are required to meet the 51% low/moderate income benefit as a threshold requirement, but no score is awarded on this factor.

(3) Project Design--375 Points (Maximum).

(A) Program Priority (up to 50 points)--Applicant chooses its own priorities here with 10 points awarded per priority as provided in clauses (i) - (iii) of this subparagraph.

(i) Base studies (base mapping, housing, land use, population components) are recommended as one selected priority for applicants lacking updated studies unless they have been previously funded by TxCDBG or have been completed using other resources.

(ii) An applicant requesting TxCDBG funds for fewer than five priorities may receive point credit under this factor for planning studies completed within the last 10 years that do not need to be updated. An applicant requesting TxCDBG funds for a planning study priority that was completed within the past 10 years using TxCDBG funds would not receive scoring credit under this factor.

(iii) Applicants should not request funds to complete a water or sewer study if funds have been awarded within the last two years for these activities or funds are being requested under other TxCDBG fund categories.

(B) Base Match (total--0 Points). The population will be based on available information in the latest national decennial census.

(i) Five percent match required from applicants with population equal to or less than 1,500.

(ii) Ten percent match required from applicants with population over 1,500 but equal to or less than 3,000.

(iii) Fifteen percent match required from applicants with population over 3,000 but equal to or less than 5,000.

(iv) Twenty percent match required from applicants with population over 5,000.

(4) Areawide Proposals (total--50 points). Applicants with jurisdiction-wide proposals because the entire jurisdiction is at least 51 percent low/moderate-income qualify for these points. County applicants with identifiable, unincorporated communities may also qualify for these points provided that incorporation activities are underway. Proof of efforts to incorporate is required. County applicants with identifiable water supply corporations may apply to study water needs only and receive these points.

(5) Planning strategy and products (total 275 points).

(A) Planning Strategy and Products (50, 30 or 20 points possible, if previous plan implementation shown.):

(i) An applicant which has not previously received a planning/capacity building contract or an applicant which has received a planning/capacity building fund contract prior to the 2000 program year and has not received any subsequent planning/capacity building fund contracts--50 points.

(ii) An applicant which has received previous planning/capacity building funding and demonstrates that at least three previous planning recommendations have been implemented, i.e., funds from any source have been spent to implement recommendations included in the plans--30 points.

(iii) An applicant which has participated in the program established under this section and demonstrates implementation of two of the planning recommendations, regardless of the source of funding, or an applicant which has received previous planning/capacity building funding but demonstrates that conditions have changed to warrant new planning for the same activities--20 points.

(iv) Previous recipients of Planning and Capacity Building Funds since program year 2000 scored under clauses (ii) and (iii) of this subparagraph that have not implemented the previously funded activities, and there are no special or extenuating circumstances prohibiting implementation, will not receive points under the "previous planning" category. Implementation must be completely documented in the original submission of the application and its questionnaire. Further documentation will not be requested.

(B) Proposed Planning Effort (up to 225 points) based on an evaluation of the following:

(i) Community Needs Assessment (Must have both items to get 10 points). Needs identified by priority (7 points); Documentation included of citizen input by three or more non-elected citizens involvement (3 points).

(ii) Good hearings' notices, timeliness (up to 25 points). Hearing notices and publication happened as described in the application guide and all documentation submitted in original application.

(iii) Anticipated Actions (Must have both items):

(I) Applicant has included its anticipated actions to each listed need (10 points);

(II) If only one hearing to determine needs and no other means of needs assessment, is the #1 need in the locality's CD application's Needs Assessment the same as the #1 need in the locality's PCB application's Needs Assessment? If no, subtract 20 points.

(iv) Community is organized as evidenced by a citizens advisory committee, or documents Texas Historical Commission Main Street designation, or previous successful PCB contract closeout since 2000 (with no more than a two-year contract period for PCB performance since PY 2000), thereby indicating for purposes here that it would ensure a planning process or plan implementation (up to 15 points).

(v) Applicant's resolution specifically names activities on Table 2 for which it is applying (up to 5 points).

(vi) According to the application, applicant is applying for planning only; no construction activities proposed for 2009-2010 TxCDBG (up to 23 points).

(vii) Table 1, Description of Planning Activity (up to 5 points, One (1) point apiece)

(I) Originally submitted TABLE 1 requests eligible activities;

(II) Originally submitted TABLE 1 proposes an inventory, analysis and plan;

(III) Originally submitted TABLE 1 addresses identified needs;

(IV) Originally submitted TABLE 1 activities match Table 2 planning elements;

(V) Originally submitted TABLE 1 describes or indicates an implementable strategy.

(viii) Table 2, Benefit to Low/Mod Income Persons (Must have all items, if applicable, to get 5 points):

(I) Amount requested in original submission is less than or equal to matrix prescribed amount;

(II) If special activity funding is requested, the amount was negotiated, as per the matrix;

(III) All proposed activities in original application relate to described needs and resolution.

(ix) Community Base Questionnaire: Original was complete; entire questionnaire included with the original application (up to 3 points). Subtract one (1) point for each blank or non-response where an answer space is provided and an answer is needed to provide a score anywhere on this form up to a maximum of -3.

(x) Staff Capacity: Applicant has demonstrated staff capacity, by having either a Full-time city manager or city administrator; or Full-time planner or documented planner on retainer (up to 2 points).

(xi) Organization for planning: One of the following exists within the applicant's jurisdiction: Planning & Zoning Commission; Planning Commission; Zoning Commission; Zoning Board of Adjustment; Citizens Advisory Committee; or Other local group involved (up to 1 point).

(xii) Applicant has one organization for planning that met seven (7) or more times per calendar year. May require documentation (up to 5 points).

(xiii) Applicant has at least three of the following codes or ordinances passed (or updated) since January 1, 1990, according to the original application: Zoning, Building, Subdivision, Gas Natural, Electrical, Fire, or Plumbing (up to 3 points).

(xiv) Applicant has zoning and no land use and future land use maps (subtract 3).

(xv) Zoning was passed before land use plan was passed. In this instance, the zoning/zoning district map will not be considered as the land use plan (subtract 3).

(xvi) Applicant has at least two of the following codes or ordinances passed or updated since January 1, 1990, according to the original application: Mobile Home, Minimum Standards Housing, Flood Plain, Dangerous Structures, or Fair Housing (up to 3 points).

(xvii) Applicant has at least three (3) of the following elements not funded through TxCDBG less than 10 years old (completed since September 30, 1998), according to the application; or, will have in place the following element(s) prior to awards: Land Use, Water System, Housing, Wastewater, Street Plan, Drainage, ED Plan, Solid Waste, CBD Plan, or CIP (2 points maximum; but no points, if reapplying for TxCDBG funding for same elements that were completed within the last ten years using TxCDBG funds).

(xviii) Applicant has both: property tax and sales tax (up to 10 points).

(xix) According to the application, applicant has been successful in collecting an average of 95% or more of its property taxes for the two years of 2006 and 2007 (up to 3 points).

(xx) Applicant reports it has a code enforcement officer (1 point).

(xxi) According to applicant, population change from 2000 to present is (up to 10 points):

(I) Greater than 5% but less than or equal to 10% (2 points);

(II) Greater than 10% but less than or equal to 15% (4 points);

(III) Greater than 15% but less than or equal to 20% (6 points);

(IV) Greater than 20% but less than or equal to 25% (8 points);

(V) Greater than 25% (10 points).

(xxii) Applicant reports it has passed a one-half cent sales tax to fund economic development activities (2 points).

(xxiii) Applicant has performed any two activities to attract or retain business and industry (2 points).

(xxiv) Applicant has applied for federal or state funds (other than TxCDBG) in the last three years (since January 1, 2005) or is currently applying (2 points).

(xxv) Applicant is specifically requesting funding under this application for a Capital Improvement Program or has indicated in the application that a capital improvement programming process is routinely accomplished (1 point).

(xxvi) Applicant reports it has bonded debt as of June 30, 2008 indicating local commitment and an attempt to control problems and implement improvements (4 points).

(xxvii) Applicant reports its per capita bonded debt as less than $500 as of June 30, 2008 generally indicating some additional debt capacity; and, perhaps, indicating the proposed activities will result in the development of a viable and implementable strategy and be an efficient use of grant funds (10 points).

(xxviii) Applicant reports its total debt as less than 10 percent of total market value as of June 30, 2008 (7 points).

(xxix) Applicant reports its annual debt service as less than 20 percent of annual revenues as of June 30, 2008 (6 points).

(xxx) Applicant is in a COG region which had no recipients of TxCDBG Planning and Capacity Building Funds in the previous application cycle--BVCOG, CAPCOG, CTCOG, CVCOG, DETCOG, LRGVDC, PRPC, SETRPC (5 points).

(xxxi) Applicant is requesting fewer than five (5) priority activities and is requesting no more than the dollar amount prescribed in the matrix and no Special Activities requested (6 points).

(xxxii) Applicant is requesting planning funds strictly according to the matrix after competing unsuccessfully last competition or applicant has a population shown on Table 2 of at least 200 but less than or equal to 600 (5 points).

(xxxiii) Commitment, as exhibited by match, based on 2000 Census (up to 5 points). Applicant is contributing the following percentage more than required over the base match amount for its population level:

(I) less than 5% (0 points);

(II) 5% but less than 10% more than required (2 points);

(III) 10% but less than 15% more than required (3 points);

(IV) 15% but less than 20 more than required (4 points); or

(V) At least 20% more than required (5 points);

(xxxiv) Application was received in a complete state; that is, a review letter did not have to request any missing application components, information requested in the application's forms or documentation that must be attached as instructed in the application. Mathematical tabulations and beneficiary data derived from census data must be correct upon receipt. Beneficiary information derived from a survey is an exception. Survey data corrected or changed by Department when the applicant is qualifying using only survey data or in combination with census data may be changed in the application without penalty. Applicant will not qualify to compete, if the effect of any change is to drop the low/mod rate below 51 percent (15 points).

(xxxv) Applicant has listed at least three indications of the locality's likelihood to stay directly involved in the planning process and to implement the proposed planning (1 point).

(xxxvi) Special Impact. Whether the list referenced above indicates in the top three reasons that some significant event will occur or has occurred in the region that may impact ability to provide services, such as, a factory locating in the area that will increase jobs, the announced closure of an employer that will reduce jobs; declared natural disaster, or, for example, the announcement of construction of a major interstate highway in the area, etc. (1 point).

(xxxvii) Applicant has no overdue Audit Certifications Forms or Single Audits or audit resolutions as of September 30, 2008 according to Compliance Unit (2 points).

(xxxviii) Applicant has never received a TxCDBG grant and the application indicates the applicant has currently a property tax and a sales tax (10 points).

§255.11. Small Towns Environment Program Fund.

(a) General provisions. This fund is available to eligible units of general local government to provide financial assistance to cities and communities that are willing to address water and sewer needs through self-help methods that are encouraged and supported by the Small Towns Environment Program (STEP). The self-help method for addressing water and sewer needs is best utilized by cities and communities recognizing that conventional water and sewer financing and construction methods cannot provide an affordable response to the water or sewer needs. By utilizing a city's or community's own resources (human, material, and financial), the costs for the water or sewer improvements can be reduced significantly from the retail costs of the improvements through conventional construction methods. Participants in the small town environment program fund should attain at least a forty percent reduction in the costs of the water or sewer project by using self-help in lieu of conventional financing and construction methods.

(1) Small towns environment program funds can be used to cover material costs, certain engineering costs, administrative costs, and other necessary project costs that are approved by program staff.

(2) In addition to the threshold requirements of §255.1(h) and (n) of this title (relating to General Provisions), in order to be eligible to apply for small towns environment program funds, an applicant must document that at least 51% of the persons who would directly benefit from the implementation of each activity proposed in the application are of low to moderate income.

(3) Cities and counties receiving 2007 and 2008 Community Development Fund/Community Development Supplemental Fund grant awards for applications that do not include water, sewer, or housing activities are not eligible to receive a 2008 grant award from this fund. However, the Department may consider a city's or county's request to transfer funds that are not financing water, sewer, or housing activities under a 2007 or 2008 Community Development Fund/Community Development Supplemental Fund grant award to finance water and sewer activities that will be addressed through self-help methods.

(b) Eligible activities. For the small towns environment program fund eligible activities are limited to the following:

(1) The installation of facilities to provide first-time water or sewer service.

(2) The installation of water or sewer system improvements.

(3) Ancillary repairs related to the installation of water and sewer systems or improvements.

(4) The acquisition of real property related to the installation of water and sewer systems or improvements (easements, rights of way, etc.).

(5) Sewer or water taps and water meters.

(6) Water or sewer yard service lines (for low and moderate income persons).

(7) Water or sewer house service connections (for low and moderate income persons).

(8) Plumbing improvements associated with providing water or sewer service to a housing unit.

(9) Water or sewer connection fees (for low and moderate income persons).

(10) Rental of equipment for installation of water or sewer.

(11) Reasonable associated administrative costs.

(12) Reasonable associated engineering services costs.

(c) Ineligible activities. Any activity not described in subsection (b) of this section is ineligible under this fund unless the activity is approved by the TxCDBG. Other ineligible activities are temporary solutions, such as emergency inter-connects that are not used on an on-going basis for supply or treatment and back-ups not required by the regulations of the Texas Commission on Environmental Quality. The TxCDBG will not reimburse for force account work for construction activities on the STEP project.

(d) Funding cycle. Applications are accepted two times a year as long as funds are available. Funds will be divided among the two application periods. After all projects are ranked, only those that can be fully funded will be awarded a grant. There will be no marginally funded grant awards. The TxCDBG will not accept an application for STEP fund assistance until TxCDBG staff and representatives of the potential applicant have evaluated the self-help process and TxCDBG staff determine that self-help is a feasible method for completion of the water or sewer project, the community is committed to self-help as the means to address the problem, and the community is ready and has the capacity to begin and complete a self-help project. If it is determined that the community meets all of the STEP criteria then an invitation to apply for funds will be extended to the community and the application may be submitted.

(e) Threshold criteria. The self-help response to water and sewer needs may not be appropriate in every community. In most cases, the decision by a community to utilize self-help to obtain needed water and sewer facilities is based on the community's realization that it cannot afford even a "no frills" water or sewer system based on the initial construction costs and the operations/maintenance costs (including debt service costs) for water or sewer facilities installed through conventional financing and construction methods. The following are threshold requirements for the STEP framework: Without all these elements the project may not be considered under the STEP fund.

(1) The community receiving benefits from the project must have one or more sparkplugs (preferably three). Sparkplugs are local leaders willing to both lead and sustain the effort to complete the project. While local officials may serve as sparkplugs, at least two of the three sparkplugs must be residents and not local officials. One of the sparkplugs should have the skills necessary to maintain the paperwork needed for the project. One of the sparkplugs should have knowledge or skills necessary to lead the self-help effort, and one sparkplug can have a combination of these skills or just be the motivator and problem solver of the group.

(2) The community receiving benefits from the project should exhibit a readiness to proceed with the project. The community's readiness to proceed is based on a strong local perception of the problem and the willingness to take action to solve the problem. A community's readiness to proceed is shown when the following conditions exist:

(A) A strong local perception of the problem exists.

(B) The community has the perception that local implementation is the best and maybe only solution to the problem.

(C) The residents of the community have confidence that they can adequately complete the project.

(D) The community has no strong competing priority.

(E) The local government is supportive of the effort and understands the urgency.

(F) There exists a public and private willingness to pay additional costs if needed such as fees, hook-ups for churches, and other costs.

(G) Some effort and attention have already been given to local assessment of the problem.

(H) There is enthusiastic, capable support for the community from the county or regional field staff of any regulatory agency involved with solutions to the problem.

(3) The community receiving benefits from the project should have the capacity and manpower with the skills needed to complete the project. The capacity and skills to complete the project include the following:

(A) Skilled workers within the community such as an electrician, plumber, engineer water system operator and persons with experience operating heavy equipment, and persons with construction skills and pipe laying experience.

(B) The community has a list of volunteers that includes the tasks that are assigned to each volunteer.

(C) The community has equipment that will be needed to complete the project.

(D) The community has letters stating support from local businesses in form of donation of supplies or manpower.

(E) The community has letter from the water and/or sewer service provider supporting the project and agreeing to provide service.

(F) A letter from a Certified Public Accountant documenting that applying locality has financial and management capacity to compete project.

(4) The community receiving benefits from the project must be able to show that by completing the proposed project through self-help volunteer methods the community can achieve at least a 40% savings off the retail price of completing the same project through the bid/contract process. The 40% savings and requirement that the project must be performed predominately by community volunteer workers is determined for each water or sewer activity with its own distinct beneficiaries. The information provided to the TxCDBG to document the reduced project cost through self-help includes the following:

(A) Two engineering break-outs of cost, one that shows the retail construction cost and another that shows the self-help cost and demonstrates the 40% savings.

(B) Documents containing material prices and pledges of equipment.

(C) A list of the volunteers by project completion task.

(D) A determination of appropriate technology for the project and the feasibility of project through a letter from an engineer.

(5) Project work, except for any contract administrative activities or engineering services activities, must be performed predominately by community volunteer workers.

(f) Selection procedures.

(1) During each of the two application rounds, the Department staff initially evaluate eligible cities or counties that have expressed an interest in using the self-help method and potentially applying for funding under the STEP Fund. Department staff assess whether self-help is a feasible method for completion of the water or sewer project, the community is committed to self-help as the means to address the problem, and the community is ready along with having the capacity to begin and complete a self-help project. If Department staff determines that the community meets all of the STEP threshold criteria then the community is invited to apply prior to the application deadline.

(2) The Department will not accept an application under the STEP Fund unless this assessment and invitation process is followed.

(3) Applicants invited to apply under the STEP Fund are scored using the selection criteria to determine the ranking.

(4) Following a final technical review, the TxCDBG staff makes funding recommendations to the Executive Director of the Department.

(5) Upon announcement of contract awards, the Department staff works with recipients to execute the contract agreements. While the award must be based on the information provided in the application, the Department may negotiate any element of the contract with the recipient as long as the contract amount is not increased and the level of benefits described in the application is not decreased. The level of benefits may be negotiated only when the project is partially funded.

(g) Selection criteria. The following is an outline of the selection criteria used by the Department for scoring applications under the STEP fund. One hundred twenty (120) points are available. A project must score at least 75 points overall and 15 points under the factor in paragraph (2) of this subsection to be considered for funding.

(1) Project impact (total--up to 60 points). When necessary, a weighted average is used to assign scores to applications which include activities in the different project impact scoring levels. Using as a base figure the TxCDBG funds requested minus the TxCDBG funds requested for engineering and administration, a percentage of the total TxCDBG construction dollars for each activity will be calculated. The percentage of the total TxCDBG construction dollars for each activity will then be multiplied by the appropriate project impact point level. The sum of these calculations will determine the composite project impact score. Factors that are evaluated by the TxCDBG staff in the assignment of scores within the predetermined scoring ranges for activities include, but are not limited to, how the proposed project will resolve the identified need and the severity of the need within the applying jurisdiction; and projects designed to bring existing services up to at least the state minimum standards as set by the applicable regulatory agency are generally given additional consideration. The different project impact scoring levels and scoring ranges within each level are:

(A) first time water and/or sewer service--up to 60--40 points

(B) water activities addressing drought conditions--up to 60--40 points

(C) activities addressing severe impact to a water system (imminent loss of well, transmission line, supply impact)--up to 60--40 points

(D) water and/or sewer activities addressing an imminent threat to health as documented by the Texas Commission of Environmental Quality or Texas Department of State Health Services--60--40 points

(E) Problems due to severe sewer issues that can be addressed through the STEP process (documented)--up to 60--40 points

(F) activities addressing documented severe water pressure problems--up to 50--40 points

(G) replacement of existing water or sewer lines that are not addressing activities described in subparagraphs (A) - (F) of this paragraph--up to 40--30 points

(H) all other proposed water and sewer projects that are not addressing activities described in subparagraphs (A) - (G) of this paragraph--up to 30--20 points

(2) STEP Characteristics, Merits of the Project, and Local Effort (total--up to 30 points). The TxCDBG staff will assess the proposal for the following STEP characteristics not scored in other factors:

(A) Degree work will be performed by community volunteer workers, including information provided on the volunteer work to total work;

(B) Local leaders (sparkplugs) willing to both lead and sustain the effort;

(C) Readiness to proceed--the local perception of the problem and the willingness to take action to solve it;

(D) Capacity--the manpower required for the proposal including skills required to solve the problem;

(E) Merits of the projects, including the severity of the need, whether the applicant sought funding from other sources, cost in TxCDBG dollars requested per beneficiary, etc.; and

(F) Local efforts being made by applicants in utilizing local resources for community development.

(3) Past participation and performance (total--up to 15 points). An applicant receives up to 15 points on the following two factors.

(A) Ten of the 15 points available are awarded to applicants that do not have a current TxCDBG STEP grant.

(B) An applicant can receive from zero to five points based on the applicant's past performance on previously awarded TxCDBG contracts. The applicant's score will be primarily based on our assessment of the applicant's performance on the applicant's two most recent TxCDBG contracts that have reached the end of the original contract period stipulated in the contract. The TxCDBG may also assess the applicant's performance on existing TxCDBG contracts that have not reached the end of the original contract period. Applicants that have never received a TxCDBG grant award will automatically receive these points. The TxCDBG will assess the applicant's performance on TxCDBG contracts up to the application deadline date. The applicant's performance after the application deadline date will not be evaluated in this assessment. The evaluation of an applicant's past performance may include, but is not necessarily limited to the following:

(i) The applicant's completion of the previous contract activities within the original contract period.

(ii) The applicant's submission of all contract reporting requirements such as Quarterly Progress Reports, Certificates of Expenditures, and Project Completion Reports.

(iii) The applicant's submission of the required close-out documents within the period prescribed for such submission.

(iv) The applicant's timely response to monitoring findings on previous TxCDBG contracts especially any instances when the monitoring findings included disallowed costs and the applicant's timely response to audit findings on previous TxCDBG contracts.

(v) The applicant's timely response to audit findings on previous TxCDBG contracts.

(4) Percentage of savings off the retail price (total--up to 10 points). For STEP, the percentage of savings off of the retail price is considered a form of community match for the project. In STEP, a threshold requirement is a minimum of 40% savings off the retail price for construction activities. The population category under which county applications are scored is dependent upon the project type and the beneficiary population served. If the project is for beneficiaries for the entire county, the total population of the county is used. If the project is for activities in the unincorporated area of the county with a target area of beneficiaries, the population category is based on the unincorporated residents for the entire county. For county applications addressing water and sewer improvements in unincorporated areas, the population category is based on the actual number of beneficiaries to be served by the project activities. The population category under which multi-jurisdiction applications are scored is based on the combined populations of the applicants according to the 2000 Census. An applicant can receive from zero to 10 points based on the following population levels and savings percentages:

(A) Communities with populations equal to or less than 1,500 according to the 2000 census:

(i) 55% or more savings--10 points

(ii) 50% - 54.99% savings--9 points

(iii) 45% - 49.99% savings--7 points

(iv) 41% - 44.99% Savings--5 points

(B) Communities with populations above 1,500 but equal to or less than 3,000 according to the 2000 census:

(i) 55% or more savings--10 points

(ii) 50% - 54.99% savings--8 points

(iii) 45% - 49.99% savings--6 points

(iv) 41% - 44.99% Savings--3 points

(C) Communities with populations above 3,000 but equal to or less than 5,000 according to the 2000 census:

(i) 55% or more savings--10 points

(ii) 50% - 54.99% savings--7 points

(iii) 45% - 49.99% savings--5 points

(iv) 41% - 44.99% Savings--2 points

(D) Communities with populations above 5,000 but less than 10,000 according to the 2000 census:

(i) 55% or more savings--10 points

(ii) 50% - 54.99% savings--6 points

(iii) 45% - 49.99% savings--3 points

(iv) 41% - 44.99% Savings--1 point

(E) Communities with populations that are 10,000 or above 10,000 according to the 2000 census:

(i) 55% or more savings--10 points

(ii) 50% - 54.99% savings--5 points

(iii) 45% - 49.99% savings--2 points

(iv) 41% - 44.99% Savings--0 points

(5) Benefit to low/moderate income persons (total--up to 5 points). Applicants are required to meet the 51 percent low/moderate-income benefit for each activity as a threshold requirement. Any project where at least 60 percent of the TxCDBG funds benefit low/moderate-income persons will receive 5 points.

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 December 7, 2009.

TRD-200905637
Charles S. (Charlie) Stone
Executive Director
Texas Department of Rural Affairs
Effective date: December 27, 2009
Proposal publication date: October 23, 2009
For further information, please call: (512) 936-6734

♦ ♦ ♦

TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 74. CURRICULUM REQUIREMENTS

SUBCHAPTER A. REQUIRED CURRICULUM

19 TAC §74.3

The State Board of Education (SBOE) adopts an amendment to §74.3, concerning curriculum requirements. The amendment is adopted without changes to the proposed text as published in the October 9, 2009, issue of the *Texas Register* (34 TexReg 6974) and will not be republished. The section establishes the description of a required secondary curriculum. The adopted amendment makes the rule consistent with recent legislation passed by the 81st Texas Legislature, 2009.

The 81st Texas Legislature, 2009, passed House Bill (HB) 3, amending the Texas Education Code (TEC), §28.025, to increase flexibility in graduation requirements for students. HB 3 removes SBOE authority to designate a specific course or a specific number of credits in the enrichment curriculum as requirements for the recommended high school program, effective immediately. HB 3 also added a new fine arts requirement for the minimum high school program.

The adopted amendment to 19 TAC Chapter 74, Curriculum Requirements, Subchapter A, Required Curriculum, §74.3, Description of a Required Secondary Curriculum, adds language in SBOE rule to address the graduation requirements for the minimum and recommended high school programs mandated by HB 3.

The adopted amendment has no new procedural and reporting requirements. The adopted amendment has no new locally maintained paperwork requirements.

The Texas Education Agency determined that there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

In accordance with the TEC, §7.102(f), the SBOE approved this rule action for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2010-2011 school year. The earlier effective date will allow districts to begin preparing for implementation. The effective date is 20 days after filing as adopted.

No public comments were received on the proposal.

The amendment is adopted under the TEC, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to by rule designate subjects constituting a well-balanced curriculum and to require each district to provide instruction in the essential knowledge and skills at appropriate grade levels; and §28.025, which authorizes the SBOE to by rule determine curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with §28.002.

The amendment implements the TEC, §§7.102(c)(4), 28.002, and 28.025.

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 December 3, 2009.

TRD-200905581
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Effective date: December 23, 2009
Proposal publication date: October 9, 2009
For further information, please call: (512) 475-1497

♦ ♦ ♦

SUBCHAPTER C. OTHER PROVISIONS

19 TAC §74.35, §74.37

The State Board of Education (SBOE) adopts an amendment to §74.35 and new §74.37, concerning curriculum requirements. The amendment and new section are adopted without changes to the proposed text as published in the October 9, 2009, issue of the *Texas Register* (34 TexReg 6976) and will not be republished. Section 74.35 establishes additional requirements for high school health classes. In accordance with recent legislation passed by the 81st Texas Legislature, 2009, the adopted amendment reorganizes §74.35 and adds provisions relating to alcohol awareness. Adopted new §74.37 adds requirements related to physical education.

The 81st Texas Legislature, 2009, passed House Bill (HB) 3076, Senate Bill (SB) 1219, and SB 1344, each of which are related to health education, and SB 891, which is related to physical education.

Health Education

HB 2176, passed by the 80th Texas Legislature, 2007, added the Texas Education Code (TEC), §28.002(p), which required the SBOE, in conjunction with the Office of the Attorney General, to develop a parenting and paternity awareness (p.a.p.a.) program that school districts must use in the high school health curriculum. This program must address parenting skills and responsibilities, including child support and other legal rights, and re-

lationship skills, including money management, communication skills, and marriage preparation. In high schools that do not have a family violence prevention program, skills relating to the prevention of family violence must be included. The SBOE adopted 19 TAC §74.35, Additional Requirements for High School Health Classes, to outline school district and open-enrollment charter school requirements for implementation of this program. The materials for the p.a.p.a. program were approved by the SBOE at the January 2008 meeting. These materials are provided to school districts at no charge.

HB 3076 and SB 1219, passed by the 81st Texas Legislature, 2009, amend the TEC, §28.002(p), to allow a teacher to modify the suggested sequence and pace of the p.a.p.a. program. HB 3076 also amended the TEC, §28.002(p), to allow the p.a.p.a. program to be used in middle and junior high schools. HB 3076 added the TEC, §28.002(p-4), which specifies that a student under 14 years of age may not participate in the p.a.p.a. program without parental consent. HB 3076 also added the TEC, §28.002(p-2), which allows school districts to develop or adopt research-based programs to be used in conjunction with the p.a.p.a. program and the TEC, §28.002(p-3), which requires agency evaluation and distribution of information relating to programs and materials.

SB 1344, passed by the 81st Texas Legislature, 2009, amends the TEC, §28.002, by adding language that requires the SBOE to adopt Texas Essential Knowledge and Skills (TEKS) that address binge drinking and alcohol poisoning.

The adopted amendment to 19 TAC §74.35, Additional Requirements for High School Health Classes, reorganizes the rule to specify modified requirements for the p.a.p.a. program and to add provisions relating to alcohol awareness in accordance with HB 3076, SB 1219, and SB 1344.

Physical Education

SB 891, passed by the 81st Texas Legislature, 2009, amends the TEC, §28.002, by adding language that requires the SBOE, in identifying TEKS, to ensure that the curriculum emphasizes lifetime physical activity; is consistent with national physical education standards; requires that, on a weekly basis, at least 50% of the physical education class be used for actual student physical activity; offers students an opportunity to choose among many types of physical activity; meets the needs of students of all physical ability levels; takes into account the effect that gender and cultural differences might have on student interest in physical activity; teaches self-management and movement skills, cooperation, fair play, and responsible participation in physical activity; promotes student participation in physical activity outside of school; and allows physical education classes to be an enjoyable experience for students. In addition, SB 891 added the TEC, §25.114, addressing a student-to-teacher ratio for physical education classes and student safety.

The adopted new 19 TAC §74.37, Public School Physical Education Curriculum, identifies in rule the essential knowledge and skills of physical education in accordance with SB 891.

Revisions to the TEKS for health and physical education are scheduled to be adopted by the SBOE in 2013. The adopted revisions to 19 TAC Chapter 74, Curriculum Requirements, Subchapter C, Other Provisions, put the requirements into rule as part of the required curriculum until the TEKS for health and physical education are revised.

The adopted rule actions have no new procedural and reporting requirements. The adopted rule actions have no new locally maintained paperwork requirements.

The Texas Education Agency determined that there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

In accordance with the TEC, §7.102(f), the SBOE approved this rule action for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2010-2011 school year. The earlier effective date will allow districts to begin preparing for implementation. The effective date is 20 days after filing as adopted.

Following is a summary of public comments and corresponding responses regarding the proposed revisions to 19 TAC Chapter 74, Subchapter C.

Comment. A representative of the Career and Technology Association of Texas commented that career and technical education courses should continue to be allowed as substitutions for physical education graduation credit.

Response. The comment addressed issues outside the scope of the current rule action proposed for 19 TAC Chapter 74, Subchapter C.

Comment. A professor from The University of Texas at Austin commented that the SBOE should continue to require 1.5 credits of physical education and .5 credit of health as part of the graduation requirements under the minimum high school program and the distinguished achievement program. The individual also commented that the SBOE should require all physical education courses, including substitutions, to address the Texas Essential Knowledge and Skills and that the courses should be delivered and monitored by certified physical education teachers.

Response. The comment addressed issues outside the scope of the current rule action proposed for 19 TAC Chapter 74, Subchapter C.

Comment. A representative of the American Heart Association commented in support of SB 891 and explained that the rules the SBOE would adopt include a clear definition of skills that will support meaningful physical education.

Response. The SBOE agreed.

The amendment and new section are adopted under the TEC, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002(d), which authorizes the SBOE to identify the essential knowledge and skills of physical education that ensure specific curriculum; §28.002(p), which authorizes the SBOE, in conjunction with the Office of the Attorney General, to develop a parenting and paternity awareness program that a school district shall use in the district's high school health curriculum; and §28.002(r), which authorizes the SBOE to adopt essential knowledge and skills that address binge drinking and alcohol poisoning.

The amendment and new section implement the TEC, §7.102(c)(4) and §28.002(d), (p), (p-2), (p-3), (p-4), and (r).

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 December 3, 2009.

TRD-200905582
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Effective date: December 23, 2009
Proposal publication date: October 9, 2009
For further information, please call: (512) 475-1497

♦ ♦ ♦

CHAPTER 101. ASSESSMENT

The State Board of Education (SBOE) adopts amendments to §§101.5, 101.7, 101.9, 101.11, 101.31, and 101.33, concerning assessment. The amendments are adopted without changes to the proposed text as published in the October 9, 2009, issue of the *Texas Register* (34 TexReg 6982) and will not be republished. The sections establish provisions relating to requirements for student testing, graduation, grade advancement, remediation, release of tests, and private school administration of state tests. The adopted amendments implement significant changes to the Texas student assessment program made by House Bill (HB) 3, 81st Texas Legislature, 2009.

The SBOE also adopted the repeal of §101.23, Performance Standards. However, the adopted repeal will be filed at a later date to coordinate the repeal with the adoption of new 19 TAC §101.3004, which would establish in commissioner rule the same scale scores that had been set by the SBOE in 101.23. The Texas Education Code (TEC), §39.0241(a), transferred authority for setting all performance standards on all state-developed assessments to the commissioner of education.

In June 2009, the 81st Texas Legislature enacted HB 3, which made significant changes to the Texas student assessment program. These legislative changes include: restricting the administration of the Texas Assessment of Knowledge and Skills (TAKS) assessments in Spanish to eligible students of limited English proficiency in Grades 3-5 instead of Grades 3-6; removing exemptions from statewide testing that are no longer allowed under state and federal law for certain students served by special education; specifying that the Texas Education Agency (TEA) is no longer required to develop TAKS study guides; excluding from release assessments administered for the purpose of retesting; revising the Student Success Initiative (SSI) requirements, including the removal of the automatic grade level retention provision for students in Grade 3 who do not meet the TAKS reading assessment standard; and requiring the commissioner of education to determine satisfactory performance levels for assessment instruments.

These changes in statute require the amendment of SBOE rules in 19 TAC Chapter 101. In addition, other technical and conforming changes are required to align the SBOE rules in 19 TAC Chapter 101 with state and federal law. Some of these changes stem from the enactment of HB 3, while others were identified during the statutorily required four-year rule review of 19 TAC Chapter 101 adopted by the SBOE in March 2009. The adopted amendments to 19 TAC Chapter 101, Subchapters A and B, include the following.

Section 101.5, Student Testing Requirements, was amended to limit the administration of the TAKS assessments in Spanish to eligible students of limited English proficiency in Grades 3-5. Other technical changes were made to align the rule with state and federal law.

Section 101.7, Testing Requirements for Graduation, was amended to reference state assessment performance standards determined by the commissioner of education. HB 3 transfers the statutory authority to set the standards from the SBOE to the commissioner of education.

Section 101.9, Grade Advancement Requirements, was amended to reflect new SSI requirements, including the removal of the automatic grade level retention provision for students in Grade 3 who do not meet the TAKS reading assessment standard.

Section 101.11, Remediation, was amended to specify that the TEA is no longer required to develop TAKS study guides and to reference a new remediation requirement in HB 3 for students in Grades 3-8 who fail any TAKS assessment.

Section 101.31, Private Schools, was amended to incorporate technical changes due to the enactment of HB 3.

Section 101.33, Release of Tests, was amended to reflect the exclusion from release of assessments administered for the purpose of retesting.

The adopted rule action eliminating the Spanish Grade 6 TAKS removes all reporting and procedural requirements for the TEA that are directly associated with these assessments. The adopted rule actions have no new locally maintained paperwork requirements.

The TEA determined that there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

In accordance with the TEC, §7.102(f), the SBOE approved this rule action for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2010-2011 school year. The earlier effective date will ensure the rules are consistent with amended statute prior to the beginning of statewide testing in spring 2010. The effective date is 20 days after filing as adopted.

No public comments were received on the proposal.

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §§101.5, 101.7, 101.9, 101.11

The amendments are adopted under the TEC, Chapter 39, Subchapter B, which authorizes the State Board of Education to adopt rules to create and implement a statewide assessment program.

The amendments implement the TEC, Chapter 39, Subchapter 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.

Filed with the Office of the Secretary of State on December 3, 2009.

TRD-200905583

Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Effective date: December 23, 2009
Proposal publication date: October 9, 2009
For further information, please call: (512) 475-1497

♦ ♦ ♦

SUBCHAPTER B. DEVELOPMENT AND ADMINISTRATION OF TESTS

19 TAC §101.31, §101.33

The amendments are adopted under the TEC, Chapter 39, Subchapter B, which authorizes the State Board of Education to adopt rules to create and implement a statewide assessment program.

The amendments implement the TEC, Chapter 39, Subchapter 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.

Filed with the Office of the Secretary of State on December 3, 2009.

TRD-200905584
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Effective date: December 23, 2009
Proposal publication date: October 9, 2009
For further information, please call: (512) 475-1497

♦ ♦ ♦

PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 239. STUDENT SERVICES CERTIFICATES

The State Board for Educator Certification (SBEC) adopts amendments to §§239.1, 239.5, 239.10, 239.15, 239.20, 239.25, 239.30, 239.40, 239.45, 239.50, 239.55, 239.60, 239.65, 239.70, 239.80 - 239.86, 239.90 - 239.95, and 239.100 - 239.104, concerning provisions for student services certificates. The amendments to §§239.1, 239.5, 239.10, 239.15, 239.20, 239.25, 239.30, 239.40, 239.45, 239.50, 239.55, 239.60, 239.65, 239.70, 239.80 - 239.86, 239.90 - 239.95, and 239.100 - 239.104 are adopted without changes to the proposed text as published in the September 4, 2009, issue of the *Texas Register* (34 TexReg 6057) and will not be republished. The sections provide for rules that establish requirements for minimum admission, preparation, standards, issuance, renewal, and transition and implementation dates for the school counselor, school librarian, educational diagnostician, and reading specialist certificates. In addition, the rules establish certification requirements for master teacher certificates in the subject areas of reading, mathematics, technology, and science.

The adopted amendments to 19 TAC Chapter 239 update the rules to reflect current law relating to the school counselor certificate, school librarian certificate, educational diagnostician certificate, reading specialist certificate, and master teacher certificate. The adopted amendments result from the SBEC's rule review conducted in accordance with Texas Government Code, §2001.039.

The adopted amendments reflect discussions held during the June 29, 2009, stakeholder meeting. Following is a description of the adopted amendments.

Subchapter A. School Counselor Certificate

Language in 19 TAC §239.1(c) was amended to clarify that the holder of the school counselor certificate may provide counseling services to all students in Prekindergarten-Grade 12. Language was amended in §239.10(a), relating to field-based training experiences, to provide consistency with language in current 19 TAC §239.50(a). Language was amended in §239.20(2) to clarify that the examination is based on standards in 19 TAC §239.15, Standards for the School Counselor Certificate.

Subchapter B. School Librarian Certificate

Language in 19 TAC §239.40(c) was amended to clarify that the holder of the school librarian certificate may serve as a librarian in Prekindergarten-Grade 12. Language was added in §239.60(2) to clarify that the examination is based on standards in 19 TAC §239.55, Standards for the School Librarian Certificate.

Subchapter C. Educational Diagnostician Certificate

Language in 19 TAC §239.80(c) was amended to clarify that the educational assessment and evaluation is required by law and that the grade level designation for the holder of the educational diagnostician certificate is from Early Childhood-Grade 12. Language was amended in §239.82(a), relating to field-based training experiences, to provide consistency with language in current 19 TAC §239.50(a). Language was added in §239.81(a)(2) and §239.84 to specify that a classroom teaching certificate is required for admission to an educator preparation program and for the issuance of the educational diagnostician certificate. Language was added in §239.84(2) to clarify that the examination is based on standards in 19 TAC §239.83, Standards for the Educational Diagnostician Certificate.

Subchapter D. Reading Specialist Certificate

Language in 19 TAC §239.90(c) was amended to clarify that the grade level designation for the holder of the reading specialist certificate is Prekindergarten-Grade 12. Language was amended in §239.92(a), relating to field-based training experiences, to provide consistency with language in current 19 TAC §239.50(a).

Subchapter E. Master Teacher Certificate

Language in 19 TAC §239.100 was amended to clarify the master teacher certificate provisions. Language was amended in §239.101(b) to clarify that the grade level designations for the holder of the master reading teacher certificate is Prekindergarten-Grade 12. Language was added in §239.103(e) to align the provision for course of instruction with the master mathematics teacher certificate in §239.102(d) and the master science teacher certificate in §239.104(c).

Technical Changes

Throughout Chapter 239, numerous grammatical and technical changes were made, such as the term "preparation program" was replaced by the term "educator preparation program"; "assessments" was replaced by the term "examination" where appropriate; "admitted individual" was replaced by the term "candidate"; "hours" was replaced by the term "clock-hours"; "district" was replaced by the term "school district"; and "campus" was replaced by the term "school campus." Language was amended to clarify that accrediting organizations must be recognized by the Texas Higher Education Coordinating Board. Language was amended to specify creditable years instead of school years of teaching experience. Also, statutory citation references were updated and standardized to reflect current law and *Texas Register* formatting requirements.

References to other SBEC rules were updated and/or added as part of the adopted amendments to 19 TAC Chapter 239. For example, language in §§239.20(4), 239.60(4), 239.84(5), 239.93(4), 239.101(c)(2)(A), 239.102(c)(2), 239.103(c)(2)(A), and 239.104(b)(2) was amended to add a reference to 19 TAC Chapter 153, School District Personnel, Subchapter CC, Commissioner's Rules on Creditable Years of Service.

The adopted amendments have no procedural and reporting implications. Also, the adopted amendments have no locally maintained paperwork requirements.

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 following comments were received regarding the proposed amendments.

Comment: A representative of the Texas Counseling Association commented that §239.20(3) should be amended to specify a master's degree in counseling.

Board Response: The SBEC disagreed with the specific requirement of a master's degree in counseling and took action to adopt, subject to SBOE review, the amendments, maintaining the language as published as proposed. The SBEC has approved five entities to offer an alternative certification program (ACP) for the school counselor certificate. These ACPs do not offer a master's degree. However, a candidate must hold a master's degree for the issuance of the school counselor certificate. There are 46 university-based school counselor programs. Candidates who complete a university-based program will complete a master's degree. The degree may be in education with emphasis in counseling or it may be in counseling. Whether enrolled in a university-based program or ACP, a candidate for the school counselor certificate must receive specialized training that is based on the school counselor standards listed in 19 TAC §239.15.

Comment: The past-president of the Texas Educational Diagnosticians' Association (TEDA) commented that §239.80(c) should be changed to specify the grade level designation of the educational diagnostician certificate from "Early Childhood-Grade 12" to "Early Childhood through postsecondary transition." The commenter stated that Grade 12 causes limitations for the students served. The commenter further stated that the Individuals with Disabilities Education Act (IDEA) requires educational diagnosticians to provide students with the necessary services to transition to postsecondary, including current assessments.

Board Response: The SBEC disagreed with changing language in §239.80(c) from "Early Childhood-Grade 12" to "Early Childhood through postsecondary transition" and took action to adopt, subject to SBOE review, the amendments, maintaining the language as published as proposed. The SBEC is only authorized to certify educators to serve public school students through age 22. If the IDEA authorizes educational diagnosticians to serve students after they have graduated, that is outside the authority of SBEC certification.

Comment: The president and the vice president of the TEDA commented that the TEDA supports the proposed amendments to §239.81 and §239.84 that would require a teaching certificate for admission to an educational diagnostician preparation program and for the issuance of the standard educational diagnostician certificate. While the commenter also supports the proposed change of "early childhood programs" to "Early Childhood-Grade 12" in §239.80(c), the commenter requested a change from "Grade 12" to "through postsecondary transition." The commenter stated that Grade 12 causes limitations for the students served. The commenter further stated that the IDEA requires educational diagnosticians to provide students with the necessary services to transition to postsecondary, including current assessments.

Board Response: The SBEC agreed with requiring the teaching certificate for admission to an educational diagnostician preparation program and for issuance of the standard educational diagnostician certificate and took action to adopt, subject to SBOE review, the amendments, maintaining the language as published as proposed. The SBEC disagreed with changing language in §239.80(c) from "Early Childhood-Grade 12" to "Early Childhood through postsecondary transition" and took action to adopt, subject to SBOE review, the amendments, maintaining the language as published as proposed. The SBEC is only authorized to certify educators to serve public school students through age 22. If the IDEA authorizes educational diagnosticians to serve students after they have graduated, that is outside the authority of SBEC certification.

Comment: One elementary principal and one school counselor commented that the two years of teaching experience should be retained. The commenters further stated that the rule should be amended to require, at a minimum, a master's degree in counseling.

Board Response: The SBEC agreed with requiring two years of teaching experience for the school counselor certificate and took action to adopt, subject to SBOE review, the amendments, maintaining the language as published as proposed. The language in §239.20(4) requires two creditable years of classroom teaching experience. The SBEC disagreed with the specific requirement of a master's degree in counseling and took action to adopt, subject to SBOE review, the amendments, maintaining the language as published as proposed. The SBEC has approved five entities to offer an ACP for the school counselor certificate. These ACPs do not offer a master's degree. However, a candidate must hold a master's degree for the issuance of the school counselor certificate. There are 46 university-based school counselor programs. Candidates who complete a university-based program will complete a master's degree. The degree may be in education with emphasis in counseling or it may be in counseling. Whether enrolled in a university-based program or ACP, a candidate for the school counselor certificate must receive specialized training that is based on the school counselor standards listed in 19 TAC §239.15.

Comment: The executive coordinator of Family Education and Guidance Services commented in support of the two years of teaching experience for school counselors. The commenter stated that counselors teach everyday and need the experience of developing lesson plans and classroom management. The commenter further stated that academic planning is part of the counselor's responsibilities and the counselor needs a clear understanding of the classroom setting.

Board Response: The SBEC agreed with requiring two years of teaching experience for the school counselor certificate and took action to adopt, subject to SBOE review, the amendments, maintaining the language as published as proposed. The language in §239.20(4) requires two creditable years of classroom teaching experience.

Comment: One elementary principal and one elementary school counselor commented that a counselor needs to have teaching experience prior to being a counselor. The school counselor stated that without teaching experience a counselor would not be able to understand what teachers go through on a daily basis and that schools work differently than clinical settings. The principal commented that teaching experience provides the knowledge to collaborate with teachers in supporting the students' social and emotional growth related to academic needs.

Board Response: The SBEC agreed with requiring teaching experience for the school counselor certificate and took action to adopt, subject to SBOE review, the amendments, maintaining the language as published as proposed. The language in §239.20(4) requires two creditable years of classroom teaching experience.

Comment: One elementary school counselor commented that every counselor should have at least three years of teaching experience. The commenter stated that she would not possess the classroom management skills necessary without classroom teaching experience.

Board Response: The SBEC agreed that teaching experience should be required for the issuance of the school counselor certificate; however, the SBEC disagreed with requiring at least three years of teaching experience and took action to adopt, subject to SBOE review, the amendments, maintaining the language as published as proposed. The language in §239.20(4) requires two creditable years of classroom teaching experience. The two-year teaching experience requirement is consistent with the requirement for other professional certificates, including the educational diagnostician certificate and the school librarian certificate.

Comment: One elementary school counselor commented that her five years of classroom teaching experience prepared her to be a better counselor and that she learned to be patient, empathetic, and flexible. The commenter further stated that it was what she observed and experienced as a teacher that made her decide to become a counselor.

Board Response: The SBEC agreed with requiring teaching experience for the school counselor certificate and took action to adopt, subject to SBOE review, the amendments, maintaining the language as published as proposed. The language in §239.20(4) requires two creditable years of classroom teaching experience.

Comment: One high school counselor, one middle school counselor, and two individuals commented that it is important for a school counselor to have taught at least two years. One of the individuals stated that a counselor cannot be effective without the experience of being in the classroom, which lends itself to close interaction with students and parents. The other individual stated that counselors need teaching experience to have a better understanding of what teachers are experiencing in order for counselors to assist teachers with problem situations.

Board Response: The SBEC agreed with requiring two years of teaching experience for the school counselor certificate and took action to adopt, subject to SBOE review, the amendments, maintaining the language as published as proposed. The language in §239.20(4) requires two creditable years of classroom teaching experience.

Comment: An assistant professor with Texas State University-San Marcos commented in agreement with the teaching experience requirement for the school counselor certificate. However, the commenter expressed concern that some school districts in the central Texas area are hiring individuals in school counselor positions who have no graduate experience. The commenter suggested amending 19 TAC Chapter 230 to read "have completed 24 semester credit hours of graduate-level credit in guidance and counseling" for the issuance of an emergency permit. The commenter requested that the SBEC consider revising 19 TAC Chapter 230 in addition to the revisions to 19 TAC Chapter 239. The commenter also suggested dropping the teaching experience requirement and allowing districts to hire licensed professional counselors if the practice of hiring unqualified personnel for school counseling positions continues.

Board Response: The SBEC agreed with requiring teaching experience for the school counselor certificate and took action to adopt, subject to SBOE review, the amendments, maintaining the language as published as proposed. The language in §239.20(4) requires two creditable years of classroom teaching experience. The SBEC disagreed with allowing districts to hire a licensed professional counselor as a school counselor and took action to adopt, subject to SBOE review, the amendments, maintaining the language as published as proposed. To serve as a school counselor, the rules in 19 TAC §239.20 and §230.504(g)(1) require the school counselor certificate or emergency permit and two years of classroom teaching experience.

The comment regarding 19 TAC Chapter 230 addresses issues outside the scope of the current rule proposal. The language in 19 TAC Chapter 239, Subchapter A, relates to the school counselor certificate and not to the issuance of emergency permits. The requirements for the issuance of an emergency permit for a school counselor are codified in 19 TAC §230.504(g)(1).

Comment: An individual commented that there are no specifications as to what type of master's degree is required for the school counselor certificate. The individual suggested that language be added stating that the SBEC reserves the right to review and approve the type of master's degree submitted for acceptance to prevent persons with inappropriate or unacceptable master's degrees from becoming certified school counselors.

Board Response: The SBEC disagreed that language be added stating that the SBEC reserves the right to review and approve the type of master's degree accepted for the issuance of the standard school counselor certificate and took action to adopt, subject to SBOE review, the amendments, maintaining the language as published as proposed. The language in §239.20(3) requires an individual to hold, at a minimum, a master's degree for the issuance of the standard school counselor certificate. To review each master's degree submitted on a case-by-case basis

would allow for inconsistency in the interpretation of the master's degree requirement. By maintaining the language as published as proposed, there would be no opportunity for misinterpretation.

Comment: One director of guidance and counseling, one testing coordinator, 19 school counselors, and three individuals commented that the teaching experience requirement should be retained. Several of the commenters stated that their classroom teaching experience was very valuable to their ability to be effective school counselors. A commenter further noted that having classroom experience broadens one's perspective, provides the tools necessary to deal with a variety of situations, and provides strategies to deal with cultural differences. Another commenter also noted that having teaching experience assists with understanding education as a system and with being able to successfully assist students, parents, and teachers, as well as providing invaluable experience in understanding the educational, social, and behavioral needs of students.

Board Response: The SBEC agreed that teaching experience should be retained for the issuance of the school counselor certificate and took action to adopt, subject to SBOE review, the amendments, maintaining the language as published as proposed. The language in §239.20(4) requires two creditable years of classroom teaching experience.

Comment: One school counselor commented that the number of years of teaching experience to obtain the school counselor certificate should not be reduced.

Board Response: The SBEC agreed that the number of years of teaching experience required for the issuance of the school counselor certificate should not be reduced and took action to adopt, subject to SBOE review, the amendments, maintaining the language as published as proposed. The language in §239.20(4) requires two creditable years of classroom teaching experience.

The SBOE took no action on the review of amendments to 19 TAC §§239.1, 239.5, 239.10, 239.15, 239.20, 239.25, 239.30, 239.40, 239.45, 239.50, 239.55, 239.60, 239.65, 239.70, 239.80 - 239.86, 239.90 - 239.95, and 239.100 - 239.104 at the November 20, 2009, SBOE meeting.

SUBCHAPTER A. SCHOOL COUNSELOR CERTIFICATE

19 TAC §§239.1, 239.5, 239.10, 239.15, 239.20, 239.25, 239.30

The amendments are adopted under the Texas Education Code (TEC), §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.040(4), which states that the SBEC shall for each class of educator certificate, appoint an advisory committee composed of members of that class to recommend standards for that class to the board; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; §21.041(b)(3), which requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.041(b)(5), which requires the SBEC to propose rules that provide for the issuance of an educator certificate to a person who holds a similar certificate issued by another state or foreign country, subject to the TEC, §21.052; §21.044, which authorizes the SBEC to propose rules establishing the training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program and specify the minimum academic qualifications required for a certificate; §21.048(a), which requires the SBEC to propose rules prescribing comprehensive examinations for each class of certificate issued by the SBEC; §21.054, which requires the SBEC to propose rules establishing a process for identifying continuing education courses and programs that fulfill educators' continuing education requirements; and §22.0831(f), which authorizes the SBEC to propose rules to implement the national criminal history record information review of certified educators.

The adopted amendments implement the TEC, §§21.031(a), 21.040(4), 21.041(b)(1) - (5), 21.044, 21.048(a), 21.054, and 22.0831(f).

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 December 3, 2009.

TRD-200905574

Jerel Booker

Associate Commissioner, Educator Quality and Standards, Texas Education Agency

State Board for Educator Certification

Effective date: December 23, 2009

Proposal publication date: September 4, 2009

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

SUBCHAPTER B. SCHOOL LIBRARIAN CERTIFICATE

19 TAC §§239.40, 239.45, 239.50, 239.55, 239.60, 239.65, 239.70

The amendments are adopted under the Texas Education Code (TEC), §21.040(4), which states that the State Board for Educator Certification (SBEC) shall for each class of educator certificate, appoint an advisory committee composed of members of that class to recommend standards for that class to the board; §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; §21.041(b)(3), which requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.044, which authorizes the SBEC to propose rules establishing the training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program and specify the minimum academic qualifications required for a certificate; §21.048(a), which requires the SBEC to propose rules prescribing comprehensive examinations for each class of certificate issued by the SBEC; and §21.054, which requires the SBEC to propose rules establishing a process for identifying

continuing education courses and programs that fulfill educators' continuing education requirements.

The adopted amendments implement the TEC, §§21.040(4), 21.041(b)(2) - (4), 21.044, 21.048(a), and 21.054.

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 December 3, 2009.

TRD-200905575

Jerel Booker

Associate Commissioner, Educator Quality and Standards, Texas Education Agency

State Board for Educator Certification

Effective date: December 23, 2009

Proposal publication date: September 4, 2009

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

♦ ♦ ♦

SUBCHAPTER C. EDUCATIONAL DIAGNOSTICIAN CERTIFICATE

19 TAC §§239.80 - 239.86

The amendments are adopted under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(a), which allows the SBEC to adopt rules as necessary for its own procedures; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; §21.041(b)(3), which requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid; and §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate.

The adopted amendments implement the TEC, §21.031(a) and §21.041(a) and (b)(1) - (4).

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 December 3, 2009.

TRD-200905576

Jerel Booker

Associate Commissioner, Educator Quality and Standards, Texas Education Agency

State Board for Educator Certification

Effective date: December 23, 2009

Proposal publication date: September 4, 2009

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

♦ ♦ ♦

SUBCHAPTER D. READING SPECIALIST CERTIFICATE

19 TAC §§239.90 - 239.95

The amendments are adopted under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; §21.041(b)(3), which requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid; and §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate.

The adopted amendments implement the TEC, §21.031(a) and §21.041(b)(1) - (4).

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 December 3, 2009.

TRD-200905577

Jerel Booker

Associate Commissioner, Educator Quality and Standards, Texas Education Agency

State Board for Educator Certification

Effective date: December 23, 2009

Proposal publication date: September 4, 2009

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

♦ ♦ ♦

SUBCHAPTER E. MASTER TEACHER CERTIFICATE

19 TAC §§239.100 - 239.104

The amendments are adopted under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; §21.041(b)(3), which requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.041(b)(9), which requires the SBEC to propose rules that provide for continuing education requirements; §21.048(a), which requires the SBEC to propose rules prescribing compre-

hensive examinations for each class of certificate issued by the SBEC; §21.0481, which requires the SBEC to establish a master reading teacher certificate; §21.0482, which requires the SBEC to establish a master mathematics teacher certificate to teach at the elementary school grade levels, middle school grade levels, and high school grade levels; §21.0483, which requires the SBEC to establish a master technology teacher certificate; and §21.0484, which requires the SBEC to establish a master science teacher certificate.

The adopted amendments implement the TEC, §§21.031(a), 21.041(b)(1) - (4) and (9), 21.048(a), 21.0481, 21.0482, 21.0483, and 21.0484.

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 December 3, 2009.

TRD-200905578

Jerel Booker

Associate Commissioner, Educator Quality and Standards, Texas Education Agency

State Board for Educator Certification

Effective date: December 23, 2009

Proposal publication date: September 4, 2009

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

♦ ♦ ♦

CHAPTER 240. AMERICAN SIGN LANGUAGE CERTIFICATE

19 TAC §240.1

The State Board for Educator Certification (SBEC) adopts the repeal of §240.1, concerning provisions for the American Sign Language (ASL) certificate. The repeal of §240.1 is adopted without changes to the proposed text as published in the September 4, 2009, issue of the *Texas Register* (34 TexReg 6072) and will not be republished. The section establishes the program and assessment requirements for the ASL certificate. The adopted repeal removes this provision for the ASL certificate from rule.

The adopted repeal is necessary since §240.1 is obsolete, with an expiration date of September 1, 2006, specified in rule. The adopted repeal of 19 TAC §240.1 is also necessary since the ASL certificate based on standards established for the Examination for the Certification of Educators in Texas (ExCET) has been replaced with the ASL certificate based on the standards established for the Texas Examination of Educator Standards (TExES). The current rules for the ASL certificate are codified in 19 TAC §231.1, Criteria for Assignment of Public School Personnel, and §233.15, Languages Other Than English. The adopted repeal results from the SBEC's rule review of 19 TAC Chapter 240 conducted in accordance with Texas Government Code, §2001.039.

The adopted repeal has no procedural and reporting implications to school districts and educators. Also, the adopted repeal has no locally maintained paperwork requirements to school districts and educators.

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 following comments were received regarding the proposed amendments.

Comment: The director of Personnel and Federal Programs with the Goliad Independent School District inquired as to whether the proposal would do away with the ASL certificate. The director noted that ASL may be easier for a learning disabled child to learn than a grammar-based, spoken language.

Board Response: The SBEC offers the following clarification. The repeal of 19 TAC Chapter 240 does not eliminate the ASL certificate. The current rules for the ASL certificate are found in 19 TAC §231.1 and §233.15. The repeal of 19 TAC Chapter 240 is necessary since the rule in this chapter is obsolete and has been replaced with the rules in §231.1 and §233.15 for issuing an ASL certificate based on the standards established for the TExES. Therefore, the ASL certificate would continue to be issued.

Comment: An individual expressed concern that the proposal to repeal 19 TAC Chapter 240 may eliminate ASL as a foreign language. The individual noted that she did not want to see ASL out of the curriculum in Texas.

Board Response: The SBEC offers the following clarification. The repeal of 19 TAC Chapter 240 does not eliminate ASL from the curriculum in Texas. The current rules for the ASL certificate are found in 19 TAC §231.1 and §233.15. The repeal of 19 TAC Chapter 240 is necessary since the rule in this chapter is obsolete and has been replaced with the rules in §231.1 and §233.15 for issuing an ASL certificate based on the standards established for the TExES. Therefore, the ASL certificate would continue to be issued.

The repeal is adopted under the Texas Education Code (TEC), §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and §21.041(b)(6), which requires the SBEC to provide for special or restricted certification of educators, including certification of instructors of ASL.

The adopted repeal implements the TEC, §21.031(a) and §21.041(b)(1), (2), and (6).

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 December 3, 2009.

TRD-200905579

Jerel Booker
Associate Commissioner, Educator Quality and Standards, Texas Education Agency
State Board for Educator Certification
Effective date: December 23, 2009
Proposal publication date: September 4, 2009
For further information, please call: (512) 475-1497

♦ ♦ ♦

TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 71. APPLICATIONS AND APPLICANTS

22 TAC §71.17

The Texas Board of Chiropractic Examiners (Board) adopts new §71.17, Temporary Faculty License. The new rule is adopted with changes to the proposed text as published in the September 18, 2009, issue of the *Texas Register* (34 TexReg 6407) and will be republished. The new rule as adopted corrects a grammatical error in proposed §71.17(c).

The new rule is adopted to comply with the requirements of House Bill (HB) 3450, 81st Legislature, Regular Session (2009). HB 3450 amended the Chiropractic Act (Texas Occupations Code §201.308) to allow the Board to issue temporary faculty licenses to qualified faculty members at Parker Chiropractic College and Texas College of Chiropractic.

The new rule establishes procedures for the Board to issue temporary faculty licenses to qualified faculty members at Parker Chiropractic College and Texas College of Chiropractic.

No comments were received by the Board on the proposed new rule.

The new rule is adopted under Texas Occupations Code §201.152, relating to rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic. Section 201.308 requires the board to adopt rules to issue temporary licenses to qualified members of the faculty of Parker Chiropractic College and Texas College of Chiropractic.

§71.17. Temporary Faculty License.

(a) The board may issue a temporary faculty license to a person that meets the requirements set forth under Texas Occupations Code §201.308.

(b) An applicant for a temporary faculty license under this section shall apply to the board, in writing, on a form prescribed by the board, prior to beginning work at the sponsoring school. The application shall be submitted on the applicant's behalf by the sponsoring school and shall be signed by either the dean of the chiropractic school or the president of the institution.

(c) In order to receive a license under this section, a person must sign and agree to the following oath: "I affirm that I have read and that I am familiar with the Texas Chiropractic Act and the Board's rules. I affirm that I will abide by the requirements of the Act and the Board's rules while practicing under this license. I acknowledge that this license grants me a limited privilege to practice chiropractic in Texas and that while practicing under this license I will be subject to the oversight and disciplinary authority of the Board and my sponsoring chiropractic school."

(d) A person practicing under a temporary faculty license may either apply for a renewal of that license or apply for a permanent unrestricted license as provided for under this chapter. If a person has filed either an application for renewal or an application for a permanent unrestricted license, a person may continue to practice under an expired temporary faculty license while the board is evaluating the person's application and while waiting for the results of any examination required for permanent licensure.

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 December 4, 2009.

TRD-200905607
Glenn Parker
Executive Director
Texas Board of Chiropractic Examiners
Effective date: December 24, 2009
Proposal publication date: September 18, 2009
For further information, please call: (512) 305-6716

♦ ♦ ♦

CHAPTER 73. LICENSES AND RENEWALS

22 TAC §73.7

The Texas Board of Chiropractic Examiners (Board) adopts an amendment to §73.7, Approved Continuing Education Courses, concerning board fees for continuing education course applications, without changes to the proposed text as published in the October 9, 2009, issue of the *Texas Register* (34 TexReg 6989) and will not be republished.

The section establishes requirements and procedures related to application for and approval of continuing education courses. Previously, the section listed a specific board fee for an application. Because all board fees are listed in §75.7, Required Fees and Charges, the reference in §73.7(c) to a specific fee amount was removed.

The amendment removes a reference to the specific fee amount for submittal of an application for board approval of a continuing education course. The specific amounts for all board fees are listed in §75.7, Required Fees and Charges.

No comments were received by the Board on the proposed amendment.

The amendment is adopted under Texas Occupations Code §201.152, relating to rules, and §201.356, relating to continuing education. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic; §201.356 requires the Board to adopt rules concerning continuing education.

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 December 4, 2009.

TRD-200905606
Glenn Parker
Executive Director
Texas Board of Chiropractic Examiners
Effective date: December 24, 2009
Proposal publication date: October 9, 2009
For further information, please call: (512) 305-6716

♦ ♦ ♦

CHAPTER 75. RULES OF PRACTICE

22 TAC §75.17

The Texas Board of Chiropractic Examiners (Board) adopts an amendment to §75.17, Scope of Practice, with changes to the proposed text as published in the September 18, 2009, issue of the *Texas Register* (34 TexReg 6407), to clarify the classes of lasers that licensed doctors of chiropractic may use to provide therapeutic care for a patient.

The section establishes rules and guidelines for the practice of chiropractic in the State of Texas. Subsection (e)(2)(K) was vague and without scientific value in identifying the kinds of lasers that may be used by doctors of chiropractic in providing therapeutic care for a patient.

The amendment adds language to §75.17(e)(2)(K) to allow an adequately trained licensee to use therapeutic (non-invasive, non-incisive) lasers in the therapeutic treatment of patients provided that the licensee has received adequate training in the use of the laser and appropriate safety precautions; that the patient, the licensee and all others present are provided with appropriate safety devices; and that the laser is used within the chiropractic scope of practice in Texas.

Two comments were received by the Board in opposition to the proposed amendment. Both commenters felt that the use of the term "therapeutic lasers" is actually more general than the language it replaces and that the Board should adopt language used by the Federal Food and Drug Administration regarding "non-invasive, non-incisive lasers," set forth at 21 CFR §890.5500. That rule refers to energy emitting devices for topical heating that operate at infrared frequencies from 700 to 5,000 nanometers. The Board, however, finds that the suggested language may be too specific. The Board does agree to modify the rule to clarify that it covers only non-invasive, non-incisive lasers.

One commenter asserted that in promulgating this amendment, the Board failed to comply with the Chiropractic Act, Texas Occupations Code, §201.1526, relating to development of proposed rules regarding scope of practice of chiropractic. The Board disagrees. The Board's interpretation of the Chiropractic Act is that the specific requirements of §201.1526 applied only to the initial development of the scope of practice rule. The rule was first adopted in 2006 in compliance with the requirements of §201.1526. See the June 2, 2006, issue of the *Texas Register* (31 TexReg 4613). No change was made in response to this comment.

One commenter asserted that the proposed amendment would be contrary to the requirement in §201.1525(2) of the Texas Occupations Code that the scope of practice rule "must clearly specify any equipment and the use of the equipment that is prohibited." The Board disagrees. This revision to the description of lasers that may be used as part of the practice of chiropractic in Texas clearly provides that the lasers are to be used only for therapeutic purposes and, as addressed in the comment above, the rule has been revised in response to comment to clarify that only a non-invasive, non-incisive laser may be used. In addition, §75.17(e)(3) provides that treatment procedures and services outside the scope of practice of chiropractic in Texas include incisive and surgical procedures, the use of x-ray therapy or therapy that exposes the body to radioactive materials, and other treatment procedures and services that are inconsistent with the practice of chiropractic. No change was made in response to this comment.

The amendment is adopted under Texas Occupations Code §201.152, relating to rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic. Section 201.1525 requires the Board to adopt rules that clarify the scope of practice for chiropractors in the State of Texas.

§75.17. Scope of Practice.

(a) Aspects of Practice.

(1) A person practices chiropractic if they:

(A) use objective or subjective means to analyze, examine, or evaluate the biomechanical condition of the spine and musculoskeletal system of the human body; or

(B) perform nonsurgical, nonincisive procedures, including adjustment and manipulation, to improve the subluxation complex or the biomechanics of the musculoskeletal system.

(2) The practice of chiropractic does not include:

(A) incisive or surgical procedures;

(B) the prescription of controlled substances, dangerous drugs, or any other drug that requires a prescription; or

(C) the use of x-ray therapy or therapy that exposes the body to radioactive materials.

(3) Needles may be used in the practice of chiropractic under standards set forth by the Board but may not be used for procedures that are incisive or surgical.

(A) The use of a needle for a procedure is incisive if the procedure results in the removal of tissue other than for the purpose of drawing blood.

(B) The use of a needle for a procedure is surgical if the procedure is listed in the surgical section of the CPT Codebook.

(4) This section does not apply to:

(A) a health care professional licensed under another statute of this state and acting within the scope of their license; or

(B) any other activity not regulated by state or federal law.

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

(1) Board--the Texas Board of Chiropractic Examiners.

(2) CPT Codebook--the American Medical Association's annual Current Procedural Terminology Codebook (2004). The CPT Codebook has been adopted by the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services as Level I of the common procedure coding system.

(3) Incision--A cut or a surgical wound; also, a division of the soft parts made with a knife or hot laser.

(4) Musculoskeletal system--The system of muscles and tendons and ligaments and bones and joints and associated tissues and nerves that move the body and maintain its form.

(5) On-site--the presence of a licensed chiropractor in the clinic, but not necessarily in the room, while a patient is undergoing an examination or treatment procedure or service.

(6) Practice of chiropractic--the description and terms set forth under Texas Occupations Code §201.002, relating to the practice of chiropractic.

(7) Subluxation complex--a neuromusculoskeletal condition that involves an aberrant relationship between two adjacent articular structures that may have functional or pathological sequelae, causing an alteration in the biomechanical and/or neuro-physiological reflections of these articular structures, their proximal structures, and/or other body systems that may be directly or indirectly affected by them.

(c) Examination and Evaluation

(1) In the practice of Chiropractic, licensees of this board provide necessary examination and evaluation services to:

(A) Determine the bio-mechanical condition of the spine and musculoskeletal system of the human body including, but not limited to, the following:

(i) the health and integrity of the structures of the system;

(ii) the coordination, balance, efficiency, strength, conditioning and functional health and integrity of the system;

(iii) the existence of the structural pathology, functional pathology or other abnormality of the system;

(iv) the nature, severity, complicating factors and effects of said structural pathology, functional pathology or other abnormality of the system;

(v) the etiology of said structural pathology, functional pathology or other abnormality of the system; and

(vi) the effect of said structural pathology, functional pathology or other abnormality of the system on the health of an individual patient or population of patients;

(B) Determine the existence of subluxation complexes of the spine and musculoskeletal system of the human body and to evaluate their condition including, but not limited to:

(i) The nature, severity, complicating factors and effects of said subluxation complexes;

(ii) the etiology of said subluxation complexes; and

(iii) The effect of said subluxation complexes on the health of an individual patient or population of patients;

(C) Determine the treatment procedures that are indicated in the therapeutic care of a patient or condition;

(D) Determine the treatment procedures that are contraindicated in the therapeutic care of a patient or condition; and

(E) Differentiate a patient or condition for which chiropractic treatment is appropriate from a patient or condition that is in need of care from a medical or other class of provider.

(2) To evaluate and examine individual patients or patient populations, licensees of this board are authorized to use:

(A) physical examinations;

(B) diagnostic imaging;

(C) laboratory examination;

(D) electro-diagnostic testing;

(E) sonography; and

(F) other forms of testing and measurement.

(3) Examination and evaluation services which require a license holder to obtain additional training or certification, in addition to the requirements of a basic chiropractic license, include:

(A) Electro-neuro Diagnostic Testing training requirements and standards (paraspinal surface electromyography excluded) include:

(i) Board approved training consisting of one hundred and twenty (120) hours of initial clinical and didactic training in the technical and professional components of the procedures or completion of a neurology diplomate program with sixty (60) hours of certification training in the technical and professional components of the procedures (these hours may be applied to a doctor's annual continuing education requirement);

(ii) The professional component of these procedures may not be delegated to a technician and must be directly performed by a qualified and licensed doctor of chiropractic who must be on-site during the technical component of the procedures;

(iii) The technical component of these procedures may be delegated to a technician if, said technician meets the training requirements of this section and is a licensed health care provider authorized to provide those services under Texas law;

(iv) The technical component of surface (non-needle) procedures may be delegated to a technician that has successfully completed Board approved training consisting of sixty (60) hours of initial clinical and didactic training in the technical component of the procedures; and

(v) Procedures must be performed in a manner consistent with generally accepted parameters, including clean needle techniques, standards of the Center for Communicable Disease, and meet safe and professional standards.

(B) Performance of radiologic procedures, which are authorized under the Texas Chiropractic Act, Texas Occupations Code, Chapter 201, may be delegated to an assistant who meets the training requirements set forth under §78.1 of this title (relating to Registration of Chiropractic Radiologic Technologists).

(4) Examination and evaluation services, and the equipment used for such services, which are outside the scope of chiropractic practice include:

(A) incisive or surgical procedures;

(B) the prescription of controlled substances, dangerous drugs, or any other drug that requires a prescription;

(C) the use of x-ray therapy or therapy that exposes the body to radioactive materials; or

(D) other examination and evaluation services that are inconsistent with the practice of chiropractic and with the examination and evaluation services described under this subsection.

(d) Analysis, Diagnosis, and Other Opinions

(1) In the practice of chiropractic, licensees may render an analysis, diagnosis, or other opinion regarding the findings of examinations and evaluations. Such opinions could include, but are not limited to, the following:

(A) An analysis, diagnosis or other opinion regarding the biomechanical condition of the spine or musculoskeletal system including, but not limited to, the following:

(i) the health and integrity of the structures of the system;

(ii) the coordination, balance, efficiency, strength, conditioning and functional health and integrity of the system;

(iii) the existence of structural pathology, functional pathology or other abnormality of the system;

(iv) the nature, severity, complicating factors and effects of said structural pathology, functional pathology, or other abnormality of the system;

(v) the etiology of said structural pathology, functional pathology or other abnormality of the system; and

(vi) the effect of said structural pathology, functional pathology or other abnormality of the system on the health of an individual patient or population of patients;

(B) An analysis, diagnosis or other opinion regarding a subluxation complex of the spine or musculoskeletal system including, but not limited to, the following:

(i) the nature, severity, complicating factors and effects of said subluxation complex;

(ii) the etiology of said subluxation complex; and

(iii) the effect of said subluxation complex on the health of an individual patient or population of patients;

(C) An opinion regarding the treatment procedures that are indicated in the therapeutic care of a patient or condition;

(D) An opinion regarding the likelihood of recovery of a patient or condition under an indicated course of treatment;

(E) An opinion regarding the risks associated with the treatment procedures that are indicated in the therapeutic care of a patient or condition;

(F) An opinion regarding the risks associated with not receiving the treatment procedures that are indicated in the therapeutic care of a patient or condition;

(G) An opinion regarding the treatment procedures that are contraindicated in the therapeutic care of a patient or condition;

(H) An opinion that a patient or condition is in need of care from a medical or other class of provider;

(I) An opinion regarding an individual's ability to perform normal job functions and activities of daily living, and the assessment of any disability or impairment;

(J) An opinion regarding the biomechanical risks to a patient, or patient population from various occupations, job duties or functions, activities of daily living, sports or athletics, or from the ergonomics of a given environment; and

(K) Other necessary or appropriate opinions consistent with the practice of chiropractic.

(2) Analysis, diagnosis, and other opinions regarding the findings of examinations and evaluations which are outside the scope of chiropractic include:

(A) incisive or surgical procedures;

(B) the prescription of controlled substances, dangerous drugs, or any other drug that requires a prescription;

(C) the use of x-ray therapy or therapy that exposes the body to radioactive materials; or

(D) other analysis, diagnosis, and other opinions that are inconsistent with the practice of chiropractic and with the analysis, diagnosis, and other opinions described under this subsection.

(e) Treatment Procedures and Services

(1) In the practice of chiropractic, licensees recommend, perform or oversee the performance of the treatment procedures that are indicated in the therapeutic care of a patient or patient population in order to:

(A) Improve, correct, or optimize the biomechanical condition of the spine or musculoskeletal system of the human body including, but not limited to, the following:

(i) the health and integrity of the structures of the musculoskeletal system; and

(ii) the coordination, balance, efficiency, strength, conditioning, and functional health and integrity of the musculoskeletal system;

(B) Promote the healing of, recovery from, or prevent the development or deterioration of abnormalities of the biomechanical condition of the spine or musculoskeletal system of the human body including, but not limited to, the following:

(i) the structural pathology, functional pathology, or other abnormality of the musculoskeletal system;

(ii) the effects and complicating factors of any structural pathology, functional pathology, or other abnormality of the musculoskeletal system;

(iii) the etiology of any structural pathology, functional pathology, or other abnormality of the musculoskeletal system; and

(iv) the effect of any structural pathology, functional pathology, or other abnormality of the musculoskeletal system on the health of an individual patient or population of patients; and

(C) Promote the healing of, recovery from, or prevent the development or deterioration of a subluxation complex of the spine or musculoskeletal system, including, but not limited to, the following:

(i) the structural pathology, functional pathology, or other abnormality of a subluxation complex;

(ii) the effects and complicating factors of any structural pathology, functional pathology, or other abnormality of a subluxation complex;

(iii) the etiology of any structural pathology, functional pathology, or other abnormality of a subluxation complex; and

(iv) the effect of any structural pathology, functional pathology, or other abnormality of a subluxation complex on the health of an individual patient or population of patients.

(2) In order to provide therapeutic care for a patient or patient population, licensees are authorized to use:

(A) osseous and soft tissue adjustment and manipulative techniques;

(B) physical and rehabilitative procedures and modalities;

(C) acupuncture and other reflex techniques;

(D) exercise therapy;

(E) patient education;

(F) advice and counsel;

(G) diet and weight control;

(H) immobilization;

(I) splinting;

(J) bracing;

(K) Therapeutic lasers (non-invasive, non-incisive), with adequate training and the use of appropriate safety devices and procedures for the patient, the licensee and all other persons present during the use of the laser;

(L) durable medical goods and devices;

(M) homeopathic and botanical medicines, including vitamins, minerals; phytonutrients, antioxidants, enzymes, neutraceuticals, and glandular extracts;

(N) non-prescription drugs;

(O) manipulation under anesthesia;

(P) referral of patients to other doctors and health care providers; and

(Q) other treatment procedures and services consistent with the practice of chiropractic.

(3) The treatment procedures and services provided by a licensee which are outside of the scope of practice include:

(A) incisive or surgical procedures;

(B) the prescription of controlled substances, dangerous drugs, or any other drug that requires a prescription;

(C) the use of x-ray therapy or therapy that exposes the body to radioactive materials; or

(D) other treatment procedures and services that are inconsistent with the practice of chiropractic and with the treatment procedures and services described under this subsection.

(f) Questions Regarding Scope of Practice. Further questions regarding whether a service or procedure is within the scope of practice and this rule may be submitted in writing to the Board and should contain the following information:

(1) a detailed description of the service or procedure that will provide the Board with sufficient background information and detail to make an informed decision;

(2) information on the use of the service or procedure by chiropractors in Texas or in other jurisdictions; and

(3) an explanation of how the service or procedure is consistent with either:

(A) using subjective or objective means to analyze, examine, or evaluate the biomechanical condition of the spine and musculoskeletal system of the human body; or

(B) performing nonsurgical, nonincisive procedures, including adjustment and manipulation, to improve the subluxation complex or the biomechanics of the musculoskeletal system.

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 December 4, 2009.

TRD-200905605
Glenn Parker
Executive Director
Texas Board of Chiropractic Examiners
Effective date: December 24, 2009
Proposal publication date: September 18, 2009
For further information, please call: (512) 305-6716

PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 273. GENERAL RULES

22 TAC §§273.4, 273.7, 273.13

The Texas Optometry Board adopts amendments to §273.4 and §273.7 and new §273.13 without changes to the proposed text published in the September 4, 2009, issue of the *Texas Register* (34 TexReg 6086).

The amendments to §273.4 concern fees. The amendments raise the license renewal fees by $29.00 in order to provide funding for increased expenses to operate the agency. Amendments also change the late renewal fee for renewals one to ninety days late, and for renewals 90 to 365 days late, and the late fee for failure to timely obtain continuing education, since these fees are based on the license renewal fee. The amendments also change the fee for the Retired License to the amount of the inactive renewal fee as required by §351.265 and in conformance with Occupations Code §112.051. A new subsection sets an application fee of $25.00 for former licensees applying for a Retired License.

The amendments to §273.7 concern the Retired License for volunteer charity care. The amendments set out the requirements for implementing House Bill 675, 81st Legislature, Regular Session, including application requirements for a Retired License to practice volunteer charity care, definition of charity care, and requirements to reinstate a license.

New §273.13 concerns the authority of a community health center to contract with or employ optometrists and therapeutic optometrists. The new rule implements the provisions of Senate Bill 1476, 81st Legislature, Regular Session.

No comments were received.

The amendments and new section are adopted under the Texas Optometry Act, Texas Occupations Code, §§351.151, 351.152, 351.304, 351.308 and 351.265; Occupations Code §112.051; Senate Bill 1, 81st Legislature, Regular Session, Senate Bill 1476, 81st Legislature, Regular Session and House Bill 675, 81st Legislature, Regular Session. No other sections are affected by the amendments.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession; §351.152 as granting the Board the authority to establish by rule reasonable and necessary fees to cover the costs of administering the act; §351.304 as setting the requirements for late renewal fees, and §351.308 as setting the fee for delayed continuing education compliance. Section 351.265 creates a new category of Retired License and §112.051 sets out similar requirements for the license. Senate Bill 1 authorizes the funding mechanism for the agency. House Bill 675, 81st Legislature, Regular Session, creates a new category of Retired License. Senate Bill 1476, 81st Legislature, Regular Session, authorizes the Board to certify community health center to contract with or employ optometrists and therapeutic optometrists.

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 December 4, 2009.

TRD-200905608
Chris Kloeris
Executive Director
Texas Optometry Board
Effective date: December 24, 2009
Proposal publication date: September 4, 2009
For further information, please call: (512) 305-8502

♦ ♦ ♦

CHAPTER 275. CONTINUING EDUCATION

22 TAC §275.1

The Texas Optometry Board adopts amendments to §275.1 without change to the proposed text published in the September 4, 2009, issue of the *Texas Register* (34 TexReg 6088).

The amendments concern continuing education requirements for the Retired License for volunteer charity care. The amendments include the requirements for persons authorized by House Bill 675, 81st Legislature, Regular Session, to apply for a Retired License.

No comments were received.

The amendments are adopted under the Texas Optometry Act, Texas Occupations Code, §351.151 and §351.358, Occupations Code §112.051; and House Bill 675, 81st Legislature, Regular Session. No other sections are affected by the amendments.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession, and §351.358 as setting the continuing education requirements for licensees. House Bill 675, 81st Legislature, Regular Session creates a new category of Retired License and §112.051 sets out similar requirements for the license.

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 December 4, 2009.

TRD-200905609
Chris Kloeris
Executive Director
Texas Optometry Board
Effective date: December 24, 2009
Proposal publication date: September 4, 2009
For further information, please call: (512) 305-8502

♦ ♦ ♦

PART 28. EXECUTIVE COUNCIL OF PHYSICAL THERAPY AND OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 651. FEES

22 TAC §§651.1 - 651.3

The Executive Council of Physical Therapy and Occupational Therapy Examiners adopts amendments to §§651.1 - 651.3 concerning fees. Sections 651.1 and 651.2 are adopted without changes as published in the October 2, 2009, issue of the *Texas Register* (34 TexReg 6822). Section 651.3 is adopted with changes and will be republished.

The amendment specifies fees charged by the Council, including fees for Facility Registration Applications and Renewals, Occupational Therapy Late Renewal Fee, and License Restoration Fee, and a new Preliminary Criminal History Evaluation Letter, which reflects the changes in the 81st legislative session. The rule's adoption will become effective on January 1, 2010.

Two comments were received regarding the fees proposed with an objection to any fee increases. Both writers are sole practitioners who will receive a decrease in the fees as a result of the adoption.

The amendments are adopted under the Executive Council of Physical Therapy and Occupational Therapy Examiners Practice Act, Title 3 Subtitle H, Chapter 452, Texas Occupational Code, which provides the Executive Council with the authority to adopt rules consistent with the Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapters 452 - 454, Occupational Code is affected by amendments.

§651.3. Administrative Services Fees.

(a) Verification/Transfer of Licensure--$50.

(b) Duplicate/Replacement License--$30.

(c) Duplicate Renewal Certificate/Wallet Card--$30.

(d) Duplicate of Facility Registration Certificate--$30.

(e) Reinstatement of Suspended or Revoked License--$50.

(f) Insufficient Funds Check Fee--$25.

(g) ACH Return Fee--$25.

(h) Preliminary Criminal History Evaluation Letter--$50.

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 December 4, 2009.

TRD-200905621
John Maline
Executive Director
Executive Council of Physical Therapy and Occupational Therapy Examiners
Effective date: January 1, 2010
Proposal publication date: October 2, 2009
For further information, please call: (512) 305-6900

♦ ♦ ♦

TITLE 25. HEALTH SERVICES

PART 11. CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS

CHAPTER 703. PROJECT CONTRACTS AND GRANTS

25 TAC §§703.1 - 703.14

The Cancer Prevention and Research Institute of Texas (Institute) adopts the repeal of §§703.1 - 703.14, concerning project contracts and grants, without changes to the proposal as published in the August 28, 2009, issue of the *Texas Register* (34 TexReg 5860).

The 2007 Legislature enacted House Bill 14, which amended Chapter 102 of the Health and Safety Code, abolished the Texas Cancer Council, created the Institute, and provided rulemaking authority to the Institute's Oversight Committee. The 2009 Legislature enacted House Bill 1358, which expressly directs the Institute's Oversight Committee to adopt rules regarding the procedure for making grant awards by the Institute. The repealed Chapter 703 rules are not adequate to address the grant award procedures required by the law. The matters addressed by the repealed provisions have been incorporated into a new Chapter 703. The new Chapter 703 is adopted and is published in the Adopted Rules section of this issue of the *Texas Register.*

The Institute received no comments regarding the repeal of Chapter 703.

The repeal is adopted pursuant to the authority of the Health and Safety Code Annotated, §102.108 and §102.251, which provide the Institute with rulemaking authority and to adopt rules relating to grant award procedures.

There is no other statute, article, or code that is affected by this repeal.

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 December 1, 2009.

TRD-200905523
William "Bill" Gimson
Executive Director
Cancer Prevention and Research Institute of Texas
Effective date: December 21, 2009
Proposal publication date: August 28, 2009
For further information, please call: (512) 305-8422

♦ ♦ ♦

CHAPTER 703. GRANTS FOR CANCER PREVENTION AND RESEARCH

25 TAC §§703.1 - 703.15

The Cancer Prevention and Research Institute of Texas (Institute or CPRIT) adopts new Chapter 703, §§703.1 - 703.15, concerning grants for cancer prevention and research, with changes to the proposed text as published in the August 28, 2009, issue of the *Texas Register* (34 TexReg 5861). Simultaneous with the adoption of the new Chapter 703, the Institute adopts the repeal of current Chapter 703 in its entirety.

The 2007 Legislature enacted legislation amending Chapter 102 of the Health and Safety Code to create the Institute and provide rulemaking authority to the Institute's Oversight Committee. The 2009 Legislature adopted legislation that expressly directs the Institute's Oversight Committee to adopt rules regarding the procedure for making grant awards for cancer prevention and research by the Institute. The adopted rules provide guidance regarding the Institute's grant applications and awards for cancer prevention and research. In addition, these rules are adopted pursuant to and in satisfaction of the provisions of Health and Safety Code, Chapter 102, and other relevant statutes.

The Institute received comments from the following parties: the American Cancer Society, Cancer Care Services, the Crosetto Foundation to End Premature Cancer Deaths (Crosetto Foundation), Global Contour Group, the Gulf Coast Consortia (GCC), the Methodist Hospital Research Institute (MHRI), the Office of the Vice President of Research at Texas A&M University (TAMU), Texas Tech University Health Sciences Center (TTUHSC), and the University of Texas System (UT System). No party indicated that they did not support the new Chapter 703 rules with revisions. Specific observations and suggested changes are provided in the following section-by-section summary of the comments received and the Institute's response.

The Institute notes that in addition to comments filed regarding the proposed rules, the Crosetto Foundation also filed extensive revisions to a request for a research grant application previously issued by the Institute as well as ten pages of commentary titled "Introduction" that details "background information about issues that, had they been resolved, would have opened the door to my innovation that could have saved many lives from premature cancer death through early detection." The historical information provided by Crosetto Foundation is specific to the founder's invention and an account of his efforts to receive funding from various international, federal and non-profit organizations spanning 17 years, as well as his discussions with various elected officials. Because the historical information provided by Crosetto Foundation pertaining to the founder's invention and the revisions to the Institute's request for research grant applications are beyond the scope of the rulemaking, the Institute will not respond specifically to these items. Crosetto Foundation provided several changes to the text of the Institute's proposed

rules. Crosetto Foundation's recommended changes to the proposed rules are addressed herein.

§703.1. Purpose and Application.

Crosetto Foundation suggests a change to subsection (a) to insert, "Identify and fund innovations and projects that demonstrate having higher potential with respect to others to substantially reduce premature cancer death and save lives at a lower cost per life saved compared to current costs." The Institute declines to make this change because subsection (a) reflects the Institute's mandate as set forth in the Texas Constitution and the statute. The text of the suggested insertion is not included in the statute and will not be made to the rule. Crosetto Foundation suggests a change to subsection (a)(2) to add the words, "in saving lives from premature death from cancer at a lower cost per life saved through" following "...substantial increase" and before "in cancer research..." The Institute declines to make this change because subsection (a) reflects the Institute's mandate as set forth in the Texas Constitution and the statute. The text of the suggested insertion is not included in the statute and will not be made to the rule. Crosetto Foundation states that the suggested changes are "aimed to solve the calamity of premature cancer death...Everywhere taxpayer money needs to be justified and spent in that effort and not used to create a market that does not solve the problem as has occurred over the past half century...If everyone will focus on making efforts toward solutions that substantially reduce cancer death, the goal will be reached; if money is just spent to gain knowledge by doing research, the cancer calamity will never be solved and more money will be justified to be spent without solving the problem." The Institute's mission, as set forth by the statute and approved by Texas voters, is to create and expedite innovation in the area of cancer research leading to the medical or scientific breakthroughs in the prevention or cancer and cures for cancer. The Institute notes that Crosetto Foundation's position is not inconsistent with the Institute's more expansive statutory mandate.

MHRI suggests a change to subsection (a)(1) to add cancer treatments to areas of potential medical or scientific breakthroughs. The Institute declines to make this change because subsection (a)(1) reflects the Institute's mandate as set forth in the Texas Constitution and the statute. The text of the suggested insertion is not included in the statute and will not be made to the rule.

§703.2. Definitions.

American Cancer Society suggests a change to reflect that cancer prevention programs should include early detection of cancer and be designed to mitigate the mortality of all types of cancer in humans. The Institute agrees with the proposed change and the definition of "cancer prevention" includes early detection.

Cancer Care Services suggests a change to address post-diagnosis effects in cancer prevention programs. The Institute agrees with the proposed change and amends the definition of "cancer prevention" to include post-diagnosis effects.

Crosetto Foundation suggests a change to the definition of "cancer prevention and control program" to refer to primary and secondary prevention, including "early detection through screening of asymptomatic people." The Institute agrees that cancer prevention includes early detection, and reflects the change in the definition of "cancer prevention." Crosetto Foundation proposes adding "the study of the signals that can be extracted from the mutation of normal cells into cancerous cells in order to identify the ones that provide the best and most reliable information for early cancer detection," to the definition of "cancer research." The Institute declines to make the proposed change because it is too specific to provide general guidance. The Institute notes that research into the causes and cures for all types of cancer encompasses Crosetto Foundation's proposed change without the requested revision to the rule. Crosetto Foundation proposes changes to the definition of "scientific research and prevention program committee" to include several questions Crosetto Foundation desires all applicants to address as well as the "responsibility of the reviewer not to reject innovations that can benefit mankind" if certain conditions are met, including "the reviewer or the decision maker cannot provide scientific arguments to invalidate applicant's claims," "the reviewer or decision maker declares himself/herself incompetent in the specific field" or "the applicant demonstrates that the reviewer's judgment was not scientifically correct or that he/she was incompetent in the field." The Institute declines to make the proposed revisions because the changes are too specific to provide general guidance. In addition, the proposed revisions are contrary to other Chapter 703 rule provisions.

MHRI suggests changes to the definitions of "applicant," and "cancer research." The Institute agrees with expanding the definition of "applicant" to include research institutions and non-profit organizations and amends the definition. To maintain consistency, the Institute also amends the definition of "recipient" to reflect the changes made to the definition of "applicant." The Institute agrees with expanding the definition of "cancer research" to include cancer detection and treatment and amends the definition. MHRI also suggests that the definition for "Institute" be added. The Institute agrees with the proposed change and amends the rule.

TAMU suggests expanding the definition of "cancer research" to include cancer related medical devices as well as preclinical studies and animal studies. The Institute agrees with the changes and amends the definition.

TTUHSC comments generally to seek clarification regarding the use of money from the Cancer Prevention and Research Fund to pay for travel for research collaborators and/or training. The Institute notes that the definition of "authorized expenses" includes travel as an authorized expense.

UT System suggests changes to the definitions of "applicant," "authorized expenses," "Cancer Prevention and Research Fund," and "recipient." The Institute agrees with the change proposed for the definitions of "applicant" and "recipient" to collectively refer university and academic health institutions by the statutory definition for institutions of higher education and to include consortia. These definitions have been amended. The Institute declines to make the change to add tuition expenses for training programs to the definition of "authorized expenses" because the items are not included in the statutory definition of this term. The Institute declines to replace the term "contract" with the term "grant agreement" in the definition of "Cancer Prevention and Research Fund." Health and Safety Code Chapter 102 is clear that the grants awarded by the Institute must be awarded by a contract. The rules in Chapter 703 reflect this statutory mandate. UT System also suggests that the term "cancer prevention" should be defined. The Institute agrees and adds the definition.

The Institute includes the definitions for "Chief Commercialization Officer," "Commercialization Review Council," and "Commercial prospects" to provide additional guidance. The definition of "Scientific research and prevention program committee"

is changed to clarify that experts in the field of commercialization may also be appointed to scientific research and prevention program committees and to reflect proposed revisions to Chapter 702.

§703.3. Grant Applications.

Crosetto Foundation suggests a change to subsection (b) to reflect that modifications to the format and content requirements for requests for application may be made in order to improve the return to taxpayers and maximize the number of lives saved from premature cancer death at a lower cost per life saved compared to current costs. The Institute declines to amend the rule because the proposed change unreasonably limits the reasons that the Institute may modify format and content requirements. The Institute notes that it is possible to modify format and content requirements for the reasons proposed by Crosetto Foundation without the requested change to the rule. Crosetto Foundation suggests changes to subsection (c) to include specific requirements for four different grant programs proposed by Crosetto Foundation with particular budgets, timeframes, funding priorities and evaluation criteria. The Institute disagrees with the proposed changes and the rule is not amended. It is the Institute's discretion to design grant programs to achieve statutory objectives. The Institute notes that the potential areas for research and prevention requests for applications as included in the rule are broad in scope and may encompass several areas addressed by Crosetto Foundation without the requested change to the rule. Crosetto Foundation suggests a change to subsection (f) to state that the failure to send a written copy to CPRIT Scientific Review Office or provide a recording of the exchanged messages between the applicant and a reviewer for the purpose of making sure the reviewer fully understands the innovation's benefits to the patient will serve as grounds for disqualification. The Institute disagrees with this change and the rule will not be amended. The proposed change is inconsistent with other provisions of Chapter 703 that prohibits an applicant from contacting a reviewer about the status or substance of a pending application. The proposed change also unreasonably eliminates all potential grounds for disqualification. Crosetto Foundation suggests a change to subsection (g). Subsection (g) is moved to §703.6(h). The Institute will address Crosetto Foundation's suggested change in the response to comments for §703.6.

GCC comments that the Chapter 703 rules do not provide for submissions from research consortia such as the GCC. The Institute disagrees with this comment. Subsection (c)(3) specifies that cancer research grant applications may address multiple investigator awards, including collaborative projects. The Institute notes that changes made to the definition of "applicant" and "recipient" to include consortia provide additional clarification that a research consortia is eligible to receive a grant from the Institute.

MHRI suggests a change to subsections (a) and (d) to replace the term "cancer prevention" with the term "cancer prevention and control." The Institute declines to make this change. Instead, the definition of "cancer prevention" is added to §703.2. MHRI recommends inserting a requirement in subsection (a) that rules for data and intellectual property sharing be included in the request for applications. The Institute declines to make this change because data and intellectual property sharing provisions will be addressed by the contract between the Institute and the grant recipient. The contract terms may be specific to the recipient and subject to negotiation. MHRI suggests including retention of investigators as one of the possible cancer research grant application areas. The Institute declines to make this change because retention of talented investigators can be accomplished through the support provided by other grant applications. Recruitment grants will focus on bringing talented investigators from outside of the state to relocate to Texas.

MHRI and UT Systems comment that general rules are required to address the confidential treatment, if any, of grant applications and suggest changes to various sections of Chapter 703 rules requiring parties with access to confidential and proprietary information during the grant application and review process to certify in writing that they will maintain the confidentiality of the process and proceedings, including all associated materials, and will not disclose the information to third parties. The Institute agrees and adds subsections (g), (h), and (i) to address confidential and proprietary information submitted by applicants to the Institute. Subsection (h) reflects the statutory guidance on information that is considered public information with regard to grant applications.

TTUHSC comments that CPRIT funding should be used to ensure retention of key translational researchers like clinical investigators and clinical pharmacologists in academic medicine. TTUHSC comments that these investigators "take many years to get to the point of being ready to receive their first independent grant support and when they face frustrations in getting funded they are easily lured away by industry." Retaining highly trained translational investigators in the state's medical schools and research institutes will clearly benefit the CPRIT mission, according to TTUHSC. The Institute declines to amend the rule at this time and notes that several research and prevention grants are designed to support new and emerging talent, including recruitment grants, training, and short-term, high impact programs.

UT System suggests that modifications to the Institute's requests for applications that change format and content requirements be published in the *Texas Register.* The Institute agrees and amends the rule. The Institute notes that modifications to format and content requirements may be time-sensitive. Publication through the Institute's website will disseminate the modifications to potential applicants more quickly. UT System suggests a change to subsection (e) to clarify that grounds failure to comply with the material and substantive requirements of a request for applications may serve as grounds for disqualification. The Institute agrees with this change and amends the rule.

The Institute deletes subsection (e) regarding designation of contractors and moves subsection (f) to §703.10(c)(13) and subsection (g) to §703.6(h). The Institute includes a new subsection (e) to clarify that requests for applications will seek information regarding whether the proposed project includes commercial aspects.

§703.4. Grants Management.

MHRI suggests adding a requirement that any third-party grants management service must operate under the terms of a confidentiality agreement. The Institute agrees with the change and reflects the requirement suggested by MHRI in §703.6(i).

§703.5. Scientific Research and Prevention Programs Committee Members.

MHRI and UT System suggest a change to subsection (b) to require that an individual appointed to serve as a member of a scientific research and prevention programs committee must reside in another state. The Institute declines to make this change. The Institute will endeavor to recruit individuals that are not residents of Texas to serve on scientific research and prevention program committees in order to minimize potential conflicts of

interest. However, the Institute wishes to retain some flexibility in the event that particular specialties or other reasons justify recruiting individuals that reside in the state to serve on the review committees. MHRI suggests a change to subsection (c) to require that scientific research and prevention program committee members execute an agreement to maintain the confidentiality of the proceedings and grant applications submitted to the Institute. UT System offers a similar suggestion to change subsection (g) to require reviewers to certify in writing to maintain the confidentiality of the process and proceedings and all associated materials. The Institute agrees with the suggested changes and reflects the requirements suggested by MHRI and UT System in §703.6(i).

UT System suggests a change to subsection (f) to include the statutory reference to recusal requirements for scientific research and prevention program committee members. The Institute agrees with the change and the rule is amended.

The Institute makes a change to subsection (a) to recognize that an expert in the field of commercialization may be a member of a scientific research and prevention program committee. The Institute deletes subsections (g) and (h) because these provisions are now addressed in the proposed amendments to Chapter 702.

§703.6. Grants Review Process.

Crosetto Foundation suggests two changes to subsection (a). The first change would replace the words "the area of cancer prevention and cures for cancer" in (a)(1) with the phrase, "providing the maximum reduction of premature cancer death at the lowest cost per life saved compared to current cost and to costs from other proposals." The Institute declines to make this change. Subsection (a) provides the statutory direction regarding prioritization for funding cancer research and prevention applications submitted to the Institute. The suggested change is not found in the statute and will not be made in the rule. The second change is to delete subsection (a)(2) - (7). The Institute declines to make this change. The provisions in subsection (a) proposed for deletion provide the statutory direction regarding prioritization for funding cancer research and prevention applications submitted to the Institute. The rule will not be amended.

Crosetto Foundation suggests three changes to subsection (b). The first suggested change is further define the projects the Institute will endeavor to fund as those with "the maximum impact in the reduction of premature cancer death at a lower cost per life saved compared to current cost and to costs of other proposals." The Institute declines to make this change because the statute does not require this calculation. Furthermore, the proposed change may serve to unduly restrict the types of projects eligible for funding by requiring a specific quantification of the reduction of premature cancer deaths. It may be impossible to calculate this figure for most, if not all, cancer research projects at the time applications are submitted. The Institute notes that the potential for scientific discoveries that will make a meaningful difference to cancer patients can occur at any stage in the research process. If the Institute limits funding at the outset to only those proposals that claim to demonstrate an immediate reduction in premature cancer death, early stage and developing research would suffer and potential treatment-altering innovations may be missed. The second change suggested to subsection (b) is to describe the peer review process as proposed by Crosetto Foundation, where each reviewer should provide scientific arguments supporting his acceptance or rejection of the proposal that comply with Crosetto Foundation's proposed standard evaluation criteria. The Institute declines to make this change because it describes a process that is inconsistent with the peer review process set forth elsewhere in Chapter 703, particularly with regard to Crosetto Foundation's recommended standard evaluation criteria. The third change suggested to subsection (b) requires the Chief Scientific Officer and Chief Prevention Officer to guarantee that the reviewer's acceptance or rejection of the proposal complies with Crosetto Foundation's recommended standard evaluation criteria. "In case of doubts or disagreements that cannot be resolved with logical reasoning, calculations, etc., because the reviewer who is rejecting applicant's claims cannot support his rejection with solid scientific arguments," Crosetto Foundation proposes resolving the issue, "by having the two parties in disagreement propose a small experiment at the expense of CPRIT. The result of the experiment will establish who was correct and in the event applicant's claims were proven to be correct, the reviewer who could not be convinced by logical reasoning should resign from his position. In the event the results will show applicant's claims were wrong, the proposal will be withdrawn from further consideration." CPRIT disagrees with this change because it is inconsistent with the peer review process set forth in Chapter 703. The decision to recommend funding for an application is entirely within the purview of the scientific research and prevention program committee and will be based on the sufficiency, scientific merit and, if applicable, the commercial prospects of the application. Debates and dueling experiments as proposed by the Crosetto Foundation will increase the time, expense, and resources necessary for the evaluation of grant applications.

Crosetto Foundation suggests a change to subsections (c), (d), and (f) to require that the results for the peer review process and the funding recommendations by the Scientific and Prevention Review Councils and the Executive Director should be mainly based on the supporting arguments for the scores assigned pursuant to Crosetto Foundation's recommended standard evaluation criteria. The Institute disagrees with these changes because the Crosetto Foundation's recommended evaluation criteria will not used in the Institute's application evaluation and funding recommendation process. It is left to the Institute's discretion to establish the evaluation criteria used to score grant applications, as guided by the statute. Crosetto Foundation also recommends deleting the requirement in subsection (f) that the grant funding recommendations include a statement of how the grant applications recommended for funding meet one or more standards of subsection (a). The Institute disagrees with this change and the rule will not be amended. The statement required by subsection (f) demonstrates the Institute's obligation to prioritize funding recommendation based on the several statutory criteria included in subsection (a). Crosetto Foundation suggests a change to subsection (g) to state that the decision to recommend a grant application for funding is based on "objective criteria calculated with a score, supported by solid scientific argument" by the scientific research and prevention programs committee. The Institute declines to make this change because it may serve to unreasonably limit the reasons for recommending a grant for funding. The Institute notes that scientific research and prevention program committee's decision regarding funding recommendations will encompass consideration of objective criteria, scores, and scientific support, as set forth elsewhere in this section.

Crosetto Foundation suggests a change to new subsection (h) to allow for and encourage official communication between the applicant and reviewers in order to allow reviewers to fully understand the potential impact of the subject of the application. The communication must be public or in the presence of a staff

person of the CPRIT Review Office, recorded, and stored as an electronic file at the CPRIT Scientific Review Office. The Institute disagrees with this change and the rule is not amended. The application process provided for by Chapter 703 rules gives every applicant the same opportunity to explain the scientific merit, including the potential impact, of the research or prevention program that is the subject of the grant application. To allow and encourage applicants to make additional public presentations to reviewers has the potential to overwhelm the review process and the resources of the Institute. To the extent that reviewers have questions about an application, Chapter 703 rules provide for the reviewer to seek additional information from the applicant through communication initiated by CPRIT staff.

MHRI suggests a change to subsection (a) to replace the term "cancer prevention" with the term "cancer prevention and control." The Institute declines to make this change. Instead, the definition of "cancer prevention" is added to §703.2. MHRI comments to seek clarification regarding the relationship of between projects representing the most creative, most innovate science and the priorities listed in subsection (a)(1) - (11). The Institute revises subsections (a) and (b) to clarify that projects that fulfill one or more of the statutory standards listed in subsection (a)(1) - (11) are likely to also represent the types of creative, innovative scientific research and prevention program projects that the Institute seeks to identify and fund. MHRI suggests changes to subsection (a)(1) and (5) to include the terms "detection" and "treatment." The Institute declines to make these changes. Subsection (a) provides the statutory direction regarding prioritization for funding cancer research and prevention applications submitted to the Institute. The suggested changes are not found in the statute and will not be made in the rule. However, the Institute notes that cancer detection and treatment are subsumed under the general category of "research into the prevention and cure for cancer." MHRI suggests changes to subsection (a)(10) to include "other research institutions" in the statutory direction to enhance research superiority at institutions of higher education. The Institute declines to make this change. Subsection (a) provides the statutory direction regarding prioritization for funding cancer research and prevention applications submitted to the Institute. The suggested change is not found in the statute and will not be made in the rule. However, the Institute notes that the Institute's cancer research applications are designed to generally enhance research superiority in the state and are not limited to institutions of higher education. MHRI suggests a change to subsection (a)(11) to eliminate the word "substantial" when describing the desired increase in high quality jobs and to include private entities when increasing applied science or technology research capabilities at institutions of higher education. The Institute declines to make this change. Subsection (a) provides the statutory direction regarding prioritization for funding cancer research and prevention applications submitted to the Institute. The suggested change is not found in the statute and will not be made in the rule. MHRI comments seeking information regarding how the scientific research and prevention program committees will agree upon applications to be funded and what the committee will do if the members cannot agree. This rule provides several standards that the committees will use to evaluate the applications. To the extent that committee members disagree regarding applications to be funded, the resolution of the dispute is likely to be fact-specific and the Institute is unable to provide additional guidance at this time. MHRI comments to seek clarification regarding the use of the phrase "as may be appropriate" in subsection (e). The Institute amends this section to clarify that the subject matter of the application will determine which review council will evaluate the funding recommendations of the individual scientific research and prevention program committees. MHRI comments to seek clarification regarding the procedures the review councils will use to agree upon funding recommendations. This rule provides several standards that the review council will use to evaluate the applications recommended for funding. The agreement of the review council regarding its recommendation for applications to be funded is likely to be fact-specific and the Institute is unable to provide additional guidance at this time.

TAMU suggests including "substantial mitigation of cancer" in subsection (a)(1). The Institute declines to make the change. Subsection (a) provides the statutory direction regarding prioritization for funding cancer research and prevention applications submitted to the Institute. The suggested change is not found in the statute and will not be made in the rule. However, the Institute notes that the substantial mitigation of cancer is subsumed under the general category of "research into the prevention or cures for cancer."

UT System suggests a change to subsection (a)(10) to include the phrase, "retaining existing research superiority." The Institute declines to make this change. Subsection (a) provides the statutory direction regarding prioritization for funding cancer research and prevention applications submitted to the Institute. The suggested change is not found in the statute and will not be made in the rule. However, the Institute notes that the grants from Cancer Prevention and Research Funds serve to retain existing research superiority because only research and prevention programs based in Texas are eligible. UT System suggests a change to subsection (b) to include a statement that the Chief Scientific Officer or Chief Prevention Officer may determine not to forward a grant application to the applicable council for incompleteness or lack of merit. The Institute agrees with the change and revises subsections (b) and (c) to reflect that the Institute may rely upon a two-stage peer review process depending upon the number of applications received and that incomplete or non-competitive applications will not be reviewed further. UT System suggests a change to add subsection (g) to require reviewers to certify in writing to maintain the confidentiality of the process and proceedings and all associated materials. The Institute agrees with the suggested change and reflects the requirements suggested by UT System in subsection (i).

The Institute makes changes to reorder subsections (a) and (b) and include a reference to promoting commercial prospects, if applicable to the project. The Institute inserts the former §703.3(g) to create a new subsection (h). The Institute makes changes to subsections (c), (d), (e) and (f) to reflect that the Commercialization Review Council will be a part of the grant review process as may be appropriate to the subject matter of the application.

§703.7. Executive Director's Funding Recommendation.

Crosetto Foundation suggests a change to include additional requirements for the Executive Director's funding recommendation such as requesting "additional supporting scientific material from the reviewers if a specific proposal is claimed by the applicant that will save more lives with respect to another proposal and the reviewer's rejection claims or claims to lower such estimates are not supported by convincing solid scientific arguments. Reviewer's rejection claims should be disclosed to the applicant so he could further explain aspects of his proposal that were not fully understood." The Institute disagrees with this change because it is inconsistent with the statute and conflicts with the Institute's grant review process. The proposed change will not improve

efficiency or enhance the evaluation of the grants. Implementing a process that allows rejected applicants to seek further review threatens the finality of the review process and may serve to overwhelm the resources of the Institute.

MHRI suggests a change to replace the term "cancer prevention" with the term "cancer prevention and control." The Institute declines to make this change. Instead, the definition of "cancer prevention" is added to §703.2. MHRI comments to seek clarification regarding the Executive Director's authority to modify the list submitted by the review council. By requiring that the Executive Director's list of applications recommended for funding be substantially based on the list submitted by the review council, the rule reflects the statutory direction that the Executive Director has some discretion with regard to the list of funding recommendations. To the extent that the Executive Director exercises his/her authority to modify the list of recommendations, it is likely to be fact specific and the Institute is unable to provide additional guidance at this time. MHRI comments to seek clarification regarding whether there is any limit upon the Executive Director's discretion to modify the list. The statute states that the Oversight Committee may override the Executive Director's funding recommendations by a two-thirds vote of the committee.

The Institute amends the rule to reflect the participation of the Commercialization Review Council in developing the prioritized list of applications to be awarded cancer research and prevention grants.

§703.8. Overriding the Executive Director's Funding Recommendation.

Crosetto Foundation suggests a change to subsection (b) to expand upon the reason for the vote to disregard the slate of recommendations to include, "because [the Oversight committee] has compelling arguments that should be put forth in a document because they believe that a specific project will not reduce premature cancer death, nor will reduce health care cost." The Institute declines to make this change. Because the vote will take place in an open meeting, there will be a written record of the vote to disregard the Executive Director's funding recommendation. However, the reason suggested by Crosetto Foundation for the vote to disregard unreasonably limits the Oversight's Committee's discretion and is not supported by statute. Crosetto Foundation suggests a change to subsection (c) to insert the requirement that the Oversight Committee "must have solid arguments that CPRIT mission and mandate from the legislation is not implemented in order to disregard the slate of funding recommendations, and to permit the Oversight Committee to forward a request for further investigation to the Scientific Review Council or Prevention Review Council." The statute does not limit the Oversight Committee's authority to disregard the Executive Director's recommendation beyond requiring that at least two-thirds of the members vote to do so. For this reason, the Institute declines to make the change suggested by Crosetto Foundation requiring the Oversight Committee to find that the Executive Director's proposed slate is inconsistent with the Institute's mission or legislative mandate. The Institute agrees that the Oversight Committee should be able to request further investigation from the review council and revises subsection (c).

MHRI comments to seek information regarding whether the Oversight Committee will only review the applications in "batches" and whether this will delay the consideration of grants if the Institute waits for several applications to accumulate before forwarding the recommended slate to the committee. There is no minimum number of applications necessary to constitute a slate of recommendations under the rule. The Executive Director's slate of funding recommendations may be comprised of all applications that have received final approval from the review council(s) in time for the next scheduled Oversight Committee meeting. MHRI comments to seek information regarding how the Executive Director will put together a revised list of funding recommendations if the Oversight Committee rejects the Executive Director's list of funding recommendations. This is likely to be a fact-specific issue, however the Institute notes that subsection (c) provides that the Oversight Committee will instruct the Executive Director regarding the process and timetable for resubmission.

§703.9. Limitation on the Review of Grant Process.

MHRI comments to seek clarification regarding whether a conflict of interest held by the Executive Director or Oversight Committee member will also serve as grounds for reconsideration. Chapter 702 addresses prohibited conflict of interests and includes potential conflicts that may be held by the Executive Director, an Oversight Committee member, a scientific research and prevention programs committee member, or an Institute employee. MHRI comments to seek clarification regarding remedies for undue influence exercised by the Executive Director an Oversight Committee member. Such actions are addressed by the conflict of interest provisions of Chapter 702. The Institute amends subsections (b) and (c) to refer to the conflict of interest issues addressed fully in Chapter 702. The Institute deletes subsections (d), (e) and (f) to avoid duplication of the issues addressed fully in Chapter 702.

The Institute amends subsection (a) to clarify that the decision to recommend a grant application for funding may also be based on the commercial prospects, if applicable, of the grant application.

§703.10. Awarding Grants by Contract.

MHRI comments to seek clarification regarding the purpose of the lien in subsection (c)(1)(A) and the priority of the lien relative to other existing liens. The lien is required by the statute and the priority will be addressed by the contract between the Institute and the grant recipient. MHRI comments to seek clarification regarding how the capital improvement's depreciation will be accounted for. To the extent that a capital improvement is made with CPRIT funds, the Institute will negotiate a contract with the recipient that will address issues related to the priority of the lien relative to existing liens and the proper accounting of depreciation. MHRI suggests changes to subsection (c)(2) to provide further clarification that any intellectual property sharing between the Institute and the grant recipient will be proportional to the share of Institute funding relative to other sources. While MHRI's suggested change is likely to be the Institute's standard practice, the Institute declines to make this change because intellectual property sharing agreements will be based upon the specific circumstances of the grant and the Institute desires some discretion on the issue to address in the contract between the Institute and the recipient. MHRI comments to seek clarification regarding whether results and/or data will be required to be published from the funded project. The contract between the Institute and the recipient will address the specific terms regarding publication of material created with grant funds or related to the research that is the subject of grant funds. MHRI comments to seek clarification regarding ethical and medical implications of the research. The contract between the Institute and the recipient will specify required certifications and assurances as necessary based upon the research to be performed, including IRB certifications to address ethical and medical implications. MHRI

suggests changes to subsection (c)(7) to reflect statutory direction. The Institute agrees with the change and amends the rule. MHRI suggests changes to subsection (c)(8) eliminate regular inspection reviews and specify that the review may be on an annual basis and upon request. The Institute disagrees with this change because it is contrary to the statutory direction that grant recipients submit to regular inspections. The Institute notes that the subsection is amended to clarify that the inspections will take place during business hours with reasonable notice.

TAMU suggests a change to subsection (c) to replace "shall" with "may" to reflect the statute. The Institute agrees with the change and amends the rule. The Institute notes that some of the provisions specified by subsection (c) are statutorily mandated to be included in a contract between the Institute and the recipient. TAMU suggests that subsection (c)(2) be clarified/expanded to "reinforce current intellectual property practices at Texas institutions of higher education." TAMU states that as a general rule, universities retain ownership of intellectual property they develop, as well as royalties or other considerations derived from commercialization of such intellectual property. TAMU is concerned that "if the Institute, rather than a Texas institution of higher education, retains all benefits resulting from intellectual property, institutions of higher education and industry will have little incentive to collaborate on CPRIT projects where valuable intellectual property is likely to flow from a project." The Institute declines to make this change and the rule is not amended. Although it is unlikely that the Institute will seek an ownership of the intellectual property developed as a result of CPRIT-funded research, Texas law mandates that all contracts include an agreement that allows the state to collect royalties, income and other benefits realized as a result of projects undertaken with the money awarded. To provide more clarity regarding the Institute's intellectual property policies and practices and to give interested parties an opportunity to provide comments, the Institute plans to initiate an administrative rulemaking project to address intellectual property policies and practices. TAMU suggests a change to subsection (c)(3) to "recognize standard university policies respecting academic freedom by acknowledging copyright ownership in the creators of pedagogical, scholarly or artistic works and teaching materials." The Institute declines to make this change because the rule provides general guidance regarding terms to be included in the contract between the Institute and the grant recipient. Terms applicable to specific recipients will be included in the final contract.

UT System suggests changes to the title of this section and subsections (a), (c), (c)(1), (c)(9), and (c)(12) to replace the term "contract" with the term "grant agreement." The Institute disagrees with this change and the rule will not be amended. Health and Safety Code Chapter 102 is clear that the grants awarded by the Institute must be awarded by a contract. The rules in Chapter 703 reflect this statutory mandate. UT System suggests a change to subsection (a) to specify that the Oversight Committee shall negotiate the awarding of grant funds on behalf of the state through the Executive Director. The Institute agrees with this change and amends the rule to also include the Institute's General Counsel. UT System suggests a change to subsection (c)(8) to clarify the requirement for inspection reviews must be during normal business hours with reasonable notice. The Institute agrees with the change and the rule is amended. UT System suggests changes to subsection (c)(9) to limit the requirement to produce progress reports to multi-year grants. The Institute disagrees with the change because it is contrary to the statutory direction that grant recipients present progress reports to the Executive Director.

The Institute deletes subsections (a) and (f) because these provisions are already addressed in the statute. The Institute eliminates the proposed subsection (e) and included the text as the new subsection (c)(12). The Institute reflects the text of proposed §703.3(f) as the new subsection (c)(13).

§703.11. Requirement to Demonstrate Available Funds.

GCC suggests a change to this section to clarify that the submitting institutions for multi-institutional consortia may reflect total encumbered funds available through all of the institutions participating in the consortia proposal in order to satisfy the requirement to demonstrate available funds. The Institute agrees and amends the rule to include subsection (e).

Global Contour Ltd suggests a change to subsection (c) include "cash, receivables, credit line, investment funds, etc. available for product commercialization." The Institute declines to make this change because receivables and credit lines are contrary to the statutory mandate that the recipient have funds available and not yet expended for research that is the subject of the grant. The Institute notes that cash and investment funds available for product commercialization would be considered encumbered funds without revising subsection (c).

MHRI comments to seek clarification regarding whether the requirement to demonstrate matching funds applies to prevention grant recipients also. The statutory requirement to demonstrate matching funds refers only to recipients of cancer research grants. MHRI suggests a change to subsections (b) and (d) to delete the words, "Recipient available funds sufficient to fulfill the requirement of this section," and replace the deletion with the words, "Encumbered funds." The Institute agrees and amends the rule. MHRI comments to seek clarification regarding the meaning of "the requirement or limitation that is related to the term 'dedicated to cancer research.'" The requirement refers to the statutory mandate that the matching funds must be associated with the subject of the grant. MHRI suggests a change to subsection (d)(3) to clarify that the value of facilities, equipment, materials and supplies, and other assets dedicated to, acquired for or to be consumed in the course of the research are excluded from the category of non-cash contributions. The Institute disagrees because the suggested change is inconsistent with the statute. MHRI comments to seek clarification regarding the meaning of subsection (d)(4). The phrase means that income that has been earned by the applicant, but is not yet available to the applicant may not be counted as available funds to demonstrate the matching requirement. MHRI suggests a change to subsection (d)(7) to include the words, "and published in the *Texas Register."* MHRI comments that if the Oversight Committee makes a determination regarding other items that are not to be considered encumbered funds, a mechanism is needed "by which this will be communicated." The Institute declines to make this change because changes related to exclusions from encumbered funds may be time-sensitive. Publication through the Institute's web-based electronic system will disseminate the information to applicants more quickly. MHRI comments that, "Because of the importance of this section and vagueness of the exclusions, there needs to be a mechanism whereby a recipient of funds can get State confirmation that the funds it is using as encumbered funds qualify in the State's view as such, prior to receiving the funding." Applicants approved to receive research funding awards must demonstrate available matching funds prior to receiving the funding award. The Institute will

work with applicants approved for funding awards to review and approve the certification of available funds as part of the contracting process.

TTUHSC suggests the following changes to subsection (c) to clarify that the value of drug development grants qualify as encumbered funds. TTUHSC explains that federal programs like the National Cancer Institute provide drug development support and supplies (contract work for the testing, formulation development, and manufacture of drugs) to academic drug developers through programs like Rapid Access to Intervention Discovery (RAID) or Drug Development Group (DDG). Clarifying that the value of the drug supplies qualifies as matching funds may help ensure that drugs with potential market and patient care impact can be moved forward more rapidly. The Institute agrees and the rule is amended.

UT System suggests a change to the title of the section to include the words, "for Cancer Research Grants." The Institute agrees and the title is amended. UT System suggests a change to subsection (d)(1) to clarify that the value of non-reimbursed faculty time is not considered an in-kind cost that does not qualify as encumbered funds. The Institute disagrees because the change is inconsistent with the statute or is superfluous. The Institute notes that to the extent that a faculty member is dedicating time to the subject area of the grant application and the salary of the faculty member is not otherwise reimbursed by the CPRIT grant, the salary paid by the Institution would constitute a match. The UT System suggests a change to subsection (d)(3) to clarify that equipment should be excluded from consideration as a noncash contribution that does not qualify as encumbered funds. The Institute disagrees because the change is inconsistent with the statute.

§703.12. Limitation on the Use of Funds.

MHRI suggests a change to subsection (a) to include the term "cancer prevention" with the term "cancer prevention and control." The Institute declines to make this change. Instead, the definition of "cancer prevention" is added to §703.2. MHRI comments to seek clarification regarding whether cancer prevention programs are exempt from the five percent limitation on indirect costs. The statute that imposes a limit on the percentage amount of CPRIT funds that may be used to pay indirect costs refers to only to cancer research grants. MHRI comments to seek clarification regarding how the Oversight Committee will approve funds to be used for facility purchase, construction, remodel, or renovation purposes. Pursuant to the process established in the Chapter 703 rules, an applicant will request funds for facility purchase, construction, remodel, or renovation purposes in the application filed with the Institute. The request will be reviewed as part of the Institute's grant review process and a specific funding recommendation will be made approving the application, including the amount to be used for facility purchase, construction, remodel or renovation. MHRI comments to seek clarification regarding the limitation in subsection (e). The statute limits the amount of money from the Cancer Prevention and Research Fund to be spent for cancer prevention and control programs to ten percent of the total amount awarded annually. The Institute issues specific requests for applications for prevention programs.

TAMU suggests a change to subsection (c) to allow for recovery and expenditure of full indirect costs. The Institute declines to make the change because the statute states that a person receiving grant funds for cancer research may not spend more than five percent of the money for indirect costs.

UT System suggests changes to subsections (a) and (b) to replace the term "contract" with "grant agreement." The Institute disagrees with this change and the rule will not be amended. Health and Safety Code Chapter 102 is clear that the grants awarded by the Institute must be awarded by a contract. The rules in Chapter 703 reflect this statutory mandate. UT System suggests a change to subsection (c) to subject cancer prevention programs to the five percent indirect cost limit that applies to cancer research projects. The Institute disagrees with the change because it is inconsistent with the statute and the rule is not amended. UT System suggests changes to subsection (d) and (e) to include the words "by the recipient." The Institute declines to make these changes because the words are superfluous and do not provide additional guidance.

§703.13. Audits.

MHRI suggests changes to this section to clarify that the request for documents related to the grant must be made in writing and provide a reasonable timeframe for response. The Institute agrees with these changes and the rule is amended. MHRI suggests a change to this subsection to indicate that the right to audit "shall not apply to documents and information and subject to confidentiality provisions of agreements with third parties executed by the recipient prior to receiving funding of the grant that is the subject of the audit." The Institute declines to make this change, however, the rule is amended to provide that if confidential information must be disclosed during the course of the audit, the Institute and its employees will execute a non-disclosure agreement with the grant recipient.

UT System suggests a change to this section to establish a time limit for an audit request. The Institute agrees with this suggestion and amends the rule to reflect that the Institute may make an audit request at any during the term of the grant and for four years after the grant expires.

§703.14. Termination of Grants.

MHRI and UT System suggest a change to this section to clarify that either party may terminate the grant prior to the expiration of the grant agreement by mutual agreement with 30 days written notice. The Institute agrees with this suggestion and amends this section to add a new subsection (d). The Institute notes that the change is made to clarify that mutual termination is an option. However, this change in no way is meant to limit the Institute's discretion to unilaterally terminate a grant pursuant to the provisions of subsection (a) or to suggest that termination of a grant must be by mutual agreement.

UT System suggests a change to subsection (a) to replace the term "contract" with "grant agreement." The Institute disagrees with this change and the rule will not be amended. Health and Safety Code Chapter 102 is clear that the grants awarded by the Institute must be awarded by a contract. The rules in Chapter 703 reflect this statutory mandate.

The Institute adds subsection (a)(2) to reflect that the Institute may terminate the grant prior to the expiration of the contract if funds allocated to the grant become reduced, depleted, or unavailable during the grant period, and CPRIT is unable to obtain additional funds for such purposes.

§703.15. Multiyear Projects.

The Institute makes a change to subsection (d) to reflect the new title for §703.11.

UT System suggests a change to subsection (c) to add that "not more than twenty-five (25%) percent of unexpended grant funds from the project budget may be carried forward to the next fiscal year." The Institute declines to make this change. Provisions related to carry-over in future budget years may be specific to the project and will be addressed in the contract between the Institute and the recipient.

The new sections are adopted under the authority of the Health and Safety Code Annotated, §102.108 and §102.251, which provide the Institute's Oversight Committee with rulemaking authority and direct the Institute to adopt rules relating to grant award procedures.

§703.1. Purpose and Application.

(a) Grant awards from the Institute shall:

(1) Create and expedite innovation in the area of cancer research and enhance the potential for medical or scientific breakthrough in the prevention of cancer and cures for cancer;

(2) Attract, create, or expand research capabilities of public or private institutions of higher education and other public or private entities that will promote a substantial increase in cancer research and in the creation of high-quality new jobs in Texas; and

(3) Develop and implement the *Texas Cancer Plan.*

(b) This chapter applies to all grant proposals considered by the Institute for initial funding on or after September 1, 2009.

§703.2. Definitions.

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

(1) Applicant--the public or private institution of higher education as defined by §61.003, Education Code, research institution, government organization, non-governmental organization, non-profit organization, other public entity, private company, individual, or consortia, including any combination of the aforementioned, that submits an application to the Institute for a grant funded by the Cancer Prevention and Research Fund or the proceeds of general obligation bonds issued on behalf of the Institute. Unless otherwise indicated, this term includes the principal investigator.

(2) Authorized expenses--items including honoraria, salaries and benefits, consumable supplies, other operating expenses, contracted research and development, capital equipment, construction or renovation of state or private facilities, travel, and conference fees and expenses, except as otherwise provided by this chapter.

(3) Cancer prevention--a reduction in the risk of developing cancer, including early detection, control and/or mitigation of the incidence, disability, mortality, or post-diagnosis effects of cancer.

(4) Cancer prevention and control program--cancer prevention programs designed to mitigate the incidence of all types of cancer in humans.

(5) Cancer Prevention and Research Fund--the dedicated account in the general revenue fund consisting of patent, royalty, and license fees and other income received under a contract with a grant recipient, legislative appropriations, gifts, grants, and other donations, and earned interest.

(6) Cancer research--research into the causes, detection, treatments, and cures for all types of cancer in humans, including pre-clinical studies, animal studies, translational research, and clinical research to develop therapies, protocols, medical pharmaceuticals, medical devices or procedures for the detection, treatment, cure or substantial mitigation of all types of cancer in humans.

(7) Chief Commercialization Officer--the individual employed by the Institute to oversee the review and evaluation of commercial prospects of the grant applications for cancer research and prevention activities.

(8) Chief Prevention Officer--the individual employed by the Institute to oversee the scientific and program review and evaluation of the grant applications for cancer prevention activities.

(9) Chief Scientific Officer--the individual employed by the Institute to oversee the scientific review and evaluation of the grant applications for cancer research activities.

(10) Commercialization Review Council--the group of individuals designated to review the commercial prospects of cancer research and prevention program applications.

(11) Commercial prospects--the potential for development of commercial products or services or the development of infrastructure to support these efforts, including but not limited to pre-clinical, clinical, manufacturing, and scale up activities.

(12) Encumbered funds--funds that are designated by a recipient for a specific purpose.

(13) Indirect costs--the expenses of doing business that are not readily identified with a particular grant, contract, project, function, or activity, but are necessary for the general operation of the organization or the performance of the organization's activities.

(14) Institute--the Cancer Prevention and Research Institute of Texas.

(15) Prevention Review Council--the group of individuals designated as chairs of the prevention program committees created to review cancer prevention program applications.

(16) Recipient--the public or private institution of higher education as defined by §61.003, Education Code, research institution, government organization, non-governmental organization, non-profit organization, other public entity, private company, individual, or consortia, or any combination of the aforementioned that is awarded a grant funded by the Cancer Prevention and Research Fund or the proceeds of general obligation bonds issued on behalf of the Institute.

(17) Scientific research and prevention program committee--one or more groups of experts in the field of cancer research, prevention or commercialization appointed by the Executive Director and approved by the Oversight Committee for the purpose of reviewing grant applications and making recommendations to the Executive Director regarding the award of cancer research and prevention grants.

(18) Scientific Review Council--the group of individuals designated as chairs of the scientific research and prevention program committees created to review cancer research applications.

§703.3. Grant Applications.

(a) The Institute will accept grant applications for cancer research and prevention programs to be funded by the Cancer Prevention and Research Fund or the proceeds of general obligation bonds issued on behalf of the Institute in response to standard format requests for applications that will be publicly issued by the Institute at least annually. The requests for applications will be announced in the *Texas Register* and available through the Institute's public website.

(b) The Institute reserves the right to modify the format and content requirements for the requests for applications from time to time. Notice of modifications will be announced in the *Texas Register* and available through the Institute's public website.

(c) Requests for cancer research grant applications issued by the Institute may address, but are not limited to, the following areas:

(1) Short-term, high-impact programs;

(2) Individual investigator awards;

(3) Multiple investigator awards, including collaborative projects, centers, core facilities, shared instrumentation, and infrastructure;

(4) Recruitment to the state of new, emerging, and established investigators;

(5) Training; and

(6) Implementation of the *Texas Cancer Plan.*

(d) Requests for cancer prevention grant applications issued by the Institute may address, but are not limited to, the following areas:

(1) Innovation awards;

(2) Education, outreach and training;

(3) Evidence based prevention programs and services;

(4) Collaborative projects;

(5) Infrastructure/capacity building grants; and

(6) Implementation of the *Texas Cancer Plan.*

(e) The request for applications shall seek information from applicants regarding whether the proposed project includes commercial prospects, including, but not limited to commercial abstracts or business plans.

(f) Failure to comply with the material and substantive requirements set forth in the request for applications may serve as grounds for disqualification from further consideration of the grant application by the Institute.

(g) The Institute will undertake reasonable efforts to protect information contained in an application from unauthorized disclosure, consistent with need for objective review of the application and the requirements of state law, including the establishment of procedures to be followed by Oversight Committee members, Institute employees, and scientific research and prevention program committee members.

(h) The following information is public information and may be disclosed under Chapter 552, Government Code:

(1) The applicant's name and address;

(2) The amount of funding applied for;

(3) The type of cancer to be addressed under the proposal; and

(4) Any other information designated by the Institute with the consent of the grant applicant.

(i) To assist the Institute in identifying and protecting the confidentiality of information submitted to the agency, the applicant shall identify all confidential and proprietary information on the application or other documents provided to the Institute. However, the applicant's failure to identify information as confidential and proprietary does not constitute a waiver of the designation for purposes of Chapter 552 of the Government Code, or other applicable federal or state law or regulation.

§703.4. Grants Management.

The Institute may engage third-party grants management services to assist in some or all aspects of the grant application process, as determined by an agreement with the Institute.

§703.5. Scientific Research and Prevention Programs Committee Members.

(a) The Executive Director, with approval of a simple majority of the Oversight Committee, will appoint experts in the fields of cancer research, prevention or commercialization to serve as members of scientific research and prevention programs committee for terms designated by the Executive Director.

(b) An individual appointed to serve as a member of a scientific research and prevention programs committee may be a resident of another state.

(c) Scientific research and prevention programs committee members are responsible for reviewing the scientific research and prevention programs grant applications assigned to the individual member's committee.

(d) Scientific research and prevention programs committee members may receive an honorarium.

(e) A member of a scientific research and prevention programs committee is prohibited from attempting to use the committee member's official position to influence a decision to approve or award a grant or contract to the committee member's employer.

(f) A member of a scientific research and prevention programs committee must comply with the requirements set forth in Chapter 702 of this title (relating to Institute Standards on Ethics and Conflicts, Including the Acceptance of Gifts and Donations to the Institute) and Chapter 102, Health and Safety Code.

§703.6. Grants Review Process.

(a) The Institute will use the grants review process to identify the most creative, and innovative projects representing the best science and, if appropriate, commercial prospects. To the extent possible, priority for funding for cancer research and cancer prevention applications will be given to proposals that:

(1) Could lead to immediate or long-term medical and scientific breakthroughs in the area of cancer prevention or cures for cancer;

(2) Strengthen and enhance fundamental science in cancer research;

(3) Ensure a comprehensive coordinated approach to cancer research and prevention;

(4) Are interdisciplinary or interinstitutional;

(5) Address federal or other major research sponsors' priorities in emerging scientific or technology fields in the area of cancer prevention, or cures for cancer;

(6) Are matched with funds available by a private or nonprofit entity and institution or institutions of higher education;

(7) Use money from the Cancer Prevention and Research Fund or the proceeds of general obligation bonds issued on behalf of the Institute to obtain additional cancer research and prevention funding from other sources;

(8) Are collaborative between any combination of private and nonprofit entities, public or private agencies or institutions in this state, and public or private institutions outside this state;

(9) Have a demonstrable economic development benefit to this state;

(10) Enhance research superiority at institutions of higher education or in this state by creating new research superiority, attracting existing research superiority from institutions not located in this

state and other research entities, or enhancing existing research superiority by attracting from outside this state additional researchers and resources; and

(11) Expedite innovation and commercialization, attract, create, or expand private sector entities that will drive a substantial increase in high-quality jobs, and increase higher education applied science or technology research capabilities.

(b) Based upon the number of applications received and the resources available for the scientific research and prevention program committees, the Institute reserves the option to conduct an initial evaluation of the grant applications by one or more scientific research and prevention program committees. An application determined to be incomplete or otherwise noncompetitive during the initial evaluation will not be considered for further review.

(c) Grant applications that are not eliminated in the initial peer review evaluation will undergo a rigorous peer review process supervised by the Institute in coordination with the Scientific Review Council, the Prevention Review Council and the Commercialization Review Council, as may be appropriate to the subject matter of the applications.

(d) Based upon the results of the peer review process and in consideration of the standards described in subsection (a) of this section, as applicable, each scientific research and prevention program committee shall submit to the Scientific Review Council, Prevention Review Council or the Commercialization Review Council the grant applications that the committee recommends should be considered for funding awards.

(e) Grant funding recommendations made by individual research and prevention program committees will be evaluated by the Scientific Review Council, the Prevention Review Council and the Commercialization Review Council as may be appropriate to the subject area of the applications.

(f) Pursuant to a schedule developed by the Executive Director, the Scientific Review Council, the Prevention Review Council, and the Commercialization Review Council will submit a prioritized list of grant funding recommendations to the Executive Director. The list of grant funding recommendations will include a statement of how the grant applications recommended for funding meet one or more standards of subsection (a) of this section.

(g) The decision to recommend a grant application for funding is entirely within the purview of the scientific research and prevention programs committee(s) evaluating the grant application.

(h) An applicant shall not contact a scientific research and prevention programs committee member regarding the status or substance of any grant application.

(i) Prior to receiving access to confidential and proprietary information submitted by a grant applicant, all individuals, including scientific research and prevention programs committee members, CPRIT employees, Oversight Committee members, and grants management system employees shall certify that confidential and proprietary information will not be disclosed or used in any way other than for the purposes of evaluating and awarding grants. The certification may be accomplished by signing a non-disclosure agreement. The Institute will retain the signed certifications on file.

§703.7. Executive Director's Funding Recommendation.

The Executive Director shall submit to the Oversight Committee a prioritized list of applications to be awarded cancer research grants and cancer prevention program grants substantially based upon the lists submitted by the Scientific Review Council, the Prevention Review Council and the Commercialization Review Council.

§703.8. Overriding the Executive Director's Funding Recommendation.

(a) The Oversight Committee shall consider the Executive Director's funding recommendations as a comprehensive slate.

(b) The Executive Director's slate of funding recommendations is approved unless two-thirds of the members of the Oversight Committee vote to disregard the slate of recommendations.

(c) If the Oversight Committee votes to disregard the slate of funding recommendations, the Executive Director may re-submit recommendations for consideration by the Oversight Committee pursuant to a process and time table established by the Oversight Committee. The Oversight Committee may request the appropriate review council to conduct further investigation into issues specified by the Oversight Committee.

§703.9. Limitation on Review of Grant Process.

(a) The decision to recommend a grant application for funding is based upon the sufficiency, scientific merit and, if applicable, commercial prospects of the grant application, as determined through the application's peer review conducted by the scientific research and prevention program committee(s).

(b) Grounds for reconsideration of a grant application are limited to undisclosed conflict of interest concerns as set forth in Chapter 702 of this title (relating to Institute Standards on Ethics and Conflicts, Including the Acceptance of Gifts and Donations to the Institute).

(c) The applicant shall file a request with the Executive Director for a review of the grant process based on the undisclosed conflict of interest pursuant to the process and timeline set forth in Chapter 702 of this title.

§703.10. Awarding Grants by Contract.

(a) The Oversight Committee shall negotiate on behalf of the state regarding the awarding of grant funds and enter into a written contract with the grant recipient.

(b) The Oversight Committee may delegate contract negotiation duties to the Executive Director and the General Counsel for the Institute. The Executive Director may enter into a written contract with the grant recipient on behalf of the Oversight Committee.

(c) The contract between the Institute and the grant recipient may include the following provisions:

(1) If any portion of the grant has been approved by the Oversight Committee to be used to build a capital improvement, the contract shall specify that:

(A) The state retains a lien or other interest in the capital improvement in proportion to the percentage of the grant amount used to pay for the capital improvement, and

(B) If the capital improvement is sold, then the grant recipient agrees to repay to the state the grant money used to pay for the capital improvement, with interest, and share with the state a proportionate amount of any profit realized from the sale;

(2) Terms relating to intellectual property rights consistent with the standards established by the Oversight Committee pursuant to §102.256, Health and Safety Code;

(3) Terms relating to publication of material created with grant funds or related to the research or prevention program that is the subject of grant funds, including an acknowledgement of Institute funding and copyright ownership, if applicable;

(4) Repayment terms, including interest rates, to be enforced if the grant recipient has not used grant money for the purposes for which the grant was intended;

(5) A statement that the Institute does not assume responsibility for the conduct of the research project or prevention program, and that the conduct of the project and activities of all investigators are under the scope and direction of the recipient;

(6) A statement that the cancer research project or prevention program is conducted with full consideration for the ethical and medical implications of the research and that the project will comply with all federal and state laws regarding the conduct of the research;

(7) Standards established by the Oversight Committee pursuant to §102.258 and §102.259, Health and Safety Code, to ensure that grant recipients, to the extent reasonably possible, in a good faith effort to achieve a goal of more than 50 percent of such purchases, purchase goods and services for the project funded by the Institute from suppliers in this state and purchase goods and services from historically underutilized businesses as defined by Chapter 2161, Government Code, and any other state law;

(8) An agreement by the grant recipient to submit to regular inspection reviews of the grant project during normal business hours and upon reasonable notice;

(9) An agreement by the grant recipient to present progress reports to the Executive Director on a schedule specified by the contract that include information on a grant-by-grant basis quantifying the amount of additional research funding, if any, secured as a result of Cancer Prevention and Research funding;

(10) An agreement that, to the extent possible, any new or expanded preclinical testing, clinical trials, commercialization, or manufacturing of any real or intellectual property resulting from the award will be conducted in this state, including the establishment of facilities to meet this purpose;

(11) An agreement that the recipient will abide by the Uniform Grant Management Standards adopted by the Governor's Office of Budget and Planning, if applicable;

(12) An agreement that the grant recipient is under a continuing obligation to notify the Executive Director of any adverse conditions that materially impact milestones and objectives included in the contract;

(13) An agreement that the design, conduct, and reporting of the research or prevention program will not be biased by conflicting financial interest of the applicant or any individuals associated with the grant. This duty is fulfilled by certifying that an appropriate written, enforced conflict of interest policy governs the recipient.

§703.11. Requirement to Demonstrate Available Funds for Cancer Research Grants.

(a) At the time of award, a cancer research grant recipient must certify that encumbered funds equal to one-half of the amount of the total grant are available and not yet expended for research that is the subject of the grant. Recipients receiving multiple grant awards may provide certification at the institutional level.

(b) For purposes of the certification required by subsection (a) of this section, a recipient may use the following categories to classify encumbered funds that are dedicated to cancer research:

(1) Cancer biology and genetics, including oncogenesis and collection and characterization of tumors (genomics, proteomics, and other "omics");

(2) Cancer immunology, including vaccines;

(3) Cancer imaging and diagnostics;

(4) Cancer epidemiology and outcomes research; and

(5) Cancer treatment, including drug discovery and development and clinical trials.

(c) For purposes of the certification required by subsection (a) of this section, encumbered funds may include but are not necessarily limited to:

(1) Federal funds (including American Recovery and Reinvestment Act of 2009 funds, and the fair market value of drug development support provided to the recipient by the National Cancer Institute (NCI) or other similar programs);

(2) State of Texas funds;

(3) Other States' funds;

(4) Non-governmental funds (including private funds, foundation grants, gifts and donations); and

(5) Unrecovered indirect costs not to exceed 10 percent of the grant award amount, subject to the following conditions:

(A) These costs are not otherwise charged against the grant as the five percent indirect funds amount allowed under §703.12(c) of this chapter (relating to Limitation on Use of Funds);

(B) The Institution or recipient must have a documented federal indirect cost rate or an indirect cost rate certified by an independent accounting firm; and

(C) The allowance for unrecovered indirect costs must be specifically approved by the Executive Director.

(d) For purposes of the certification required by subsection (a) of this section, the following items do not qualify as encumbered funds:

(1) In-kind costs;

(2) Volunteer services furnished to the grant recipient;

(3) Noncash contributions;

(4) Income earned not available at the time of award;

(5) Pre-existing real estate including building, facilities and land;

(6) Deferred giving such as a charitable remainder annuity trust, a charitable remainder unitrust, or a pooled income fund; or

(7) Other items as may be determined by the Oversight Committee.

(e) For awards to investigators representing more than one institution or organization, the certification required by subsection (a) of this section may be made on a grant-award level by one or more of the participating institutions or organizations.

(f) The recipient of a multiyear grant award may demonstrate available funds on a year-by-year basis.

§703.12. Limitation on Use of Funds.

(a) A grant recipient may use the money only for cancer research and prevention programs consistent with the purpose of the Act, and in accordance with the contract between the recipient and the Institute.

(b) Money awarded from the Cancer Prevention and Research Fund or from the proceeds of bonds issued on behalf of the Institute must be used for authorized expenses. Additional guidance regarding authorized expenses for a specific program may be provided by the terms of the contract between the grant recipient and the Institute.

(c) A recipient of funds for cancer research may not spend more than five percent of the money awarded for indirect costs.

(d) Not more than five percent of the money awarded from the Cancer Prevention and Research Fund or from the proceeds of bonds issued on behalf of the Institute may be used for facility purchase, construction, remodel, or renovation purposes during any year. Any funds awarded that are expended for facility purchase, construction, remodel, or renovation are subject to the following conditions:

(1) The funds must be specifically approved by the Executive Director to be spent on facility purchase, construction, remodel, or renovation purposes with notification to the Oversight Committee; and

(2) Money spent on facility purchase, construction, remodel, or renovation projects must benefit cancer prevention and research.

(e) Not more than 10 percent of the money awarded from the Cancer Prevention and Research Fund or from the proceeds of bonds issued on behalf of the Institute may be used for cancer prevention and control programs during any year. For purposes of this subsection, the Institute is presumed to award the full amount of funds available.

(f) Grant funds may not be used for purposes other than those purposes for which the grant was awarded.

§703.13. Audits.

The Institute shall have the right to request in writing and receive from the recipient in a reasonable timeframe any and all documents and other information related to the grant at any time during or for four years after the term of the grant expires. This right includes, but is not limited to, the right to review all financial books and records of the recipient related to the grant and to perform an audit or other accounting procedures of all expenses related directly or indirectly to the grant. To the extent that confidential information must be disclosed during the course of the audit, the Institute and its employees will execute a non-disclosure agreement with the grant recipient.

§703.14. Termination of Grants.

(a) The Executive Director may terminate a grant prior to the expiration of the contract between the Institute and the grant recipient on the grounds that:

(1) The recipient has failed to meet contractual obligations; or

(2) Funds allocated to the grant are reduced, depleted, or unavailable during the award period, and CPRIT is unable to obtain additional funds for such purposes.

(b) The Executive Director shall notify the grant recipient in writing of the intent to terminate funding at least 30 days before the intended termination date.

(c) The notice shall state the reasons for termination, the procedure, and the time period for seeking reconsideration of the decision to terminate.

(d) Nothing in this section prohibits termination of the grant by mutual agreement of the parties prior to expiration of the contract. Mutual agreement is not required for termination as provided by subsection (a) of this section.

§703.15. Multiyear Projects.

(a) The Oversight Committee may grant funds for a multiyear project subject to the requirement that all funds for the multiyear project are awarded in the state fiscal year that the project is approved by the Oversight Committee.

(b) Only those funds to be expended during the fiscal year will be distributed to the multiyear grant recipient.

(c) Funds approved by the Oversight Committee for multiyear projects not expended during the fiscal year shall be maintained in an escrow account until such time as the funds are distributed for subsequent years of the project.

(d) A recipient awarded a grant for a multiyear project may fulfill the certification requirements set forth in §703.11 of this chapter (relating to Requirement to Demonstrate Available Funds for Cancer Research Grants) on a year-by-year basis at the time of the annual progress review or upon a schedule established by the contract between the Institute and the recipient.

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 December 1, 2009.

TRD-200905524
William "Bill" Gimson
Executive Director
Cancer Prevention and Research Institute of Texas
Effective date: December 21, 2009
Proposal publication date: August 28, 2009
For further information, please call: (512) 305-8422

♦ ♦ ♦

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 363. FINANCIAL ASSISTANCE PROGRAMS

SUBCHAPTER E. ECONOMICALLY DISTRESSED AREAS

DIVISION 1. ECONOMICALLY DISTRESSED AREAS PROGRAM

31 TAC §363.513

The Texas Water Development Board (Board) adopts new §363.513 in Chapter 363, Subchapter E, relating to Economically Distressed Areas, to provide financial assistance for plumbing improvements pursuant to Texas Water Code §17.9225, as added by the Act of May 30, 2009, House Bill (HB) 2374, 81st Legislature, Regular Session. The purpose of this new rule is to implement the provisions of HB 2374 and to provide guidance to political subdivisions in utilizing financial assistance under HB 2374. The new section was proposed in the October 2, 2009, issue of the *Texas Register* (34 TexReg 6838). The new section is adopted with one minor non-substantive editorial change and will be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE.

The board proposed new §363.513 (relating to Residential Water and Sewer Connections) in response to House Bill 2374, passed by the 81st Texas Legislature. HB 2374 amends Water Code, Chapter 17, Subchapter K, by adding new §17.9225 that authorizes the Board to use funds in the Economically Distressed Areas Account to provide financial assistance to a political subdivision to pay certain costs related to water and wastewater connections and plumbing improvements in economically distressed areas. Financial assistance may be provided only to residents who demonstrate an inability to pay for the improvements described in the statute in accordance with rules adopted by the Board.

SECTION BY SECTION DISCUSSION, COMMENTS AND RESPONSES TO COMMENTS.

Section 363.513 notifies applicants for financial assistance from the Economically Distressed Areas Program that funds in that program may be used to pay for connection costs under Texas Water Code §17.9225(b) for first-time connection to a public water or wastewater system. In addition, this new section provides guidance to political subdivisions on how to comply with §17.9225(c), which limits assistance under this statute to residents who demonstrate an inability to pay for the improvements. The adopted rule defines "inability to pay" by reference to the Department of Housing and Urban Development's definition of a low income family currently found in Title 24, Code of Federal Regulations, §5.603. The adopted rule also defines connection, public system, public water system, and yard water service. Finally, the adopted rule requires use of the Board's Economically Distressed Areas Program Survey Instrument in collecting the data necessary to determine those households that can demonstrate an inability to pay for the improvements.

One minor, non-substantive editorial revision was made to §363.513(d) by removing the word "median" before "household income." This change does not substantively alter the meaning or effect of the rule.

No comments were received regarding the proposed new rule.

STATUTORY AUTHORITY.

The rule is adopted under the authority of §6.101, Texas Water Code, which authorizes the Board to adopt rules necessary to carry out the powers and duties of the Board and §17.9225, Texas Water Code, which authorizes the Board to adopt rules to implement the provisions of the statute.

Cross reference to statute: Texas Water Code, Chapter 17, Subchapter K, §17.9225.

§363.513. Residential Water and Sewer Connections.

(a) Economically Distressed Area Program (EDAP) funds may be used to provide financial assistance to political subdivisions for plumbing connections to residences pursuant to §17.9225, Water Code, relating to residential water and sewer connection assistance.

(b) Definitions. The following words and terms shall have the following meanings when used in this section.

(1) Connection--joining the indoor water and wastewater plumbing of a residence to an existing public water supply or sanitary sewer system.

(2) Public System--a public water supply or sanitary sewer system.

(3) Public Water Supply System--a system that supplies safe drinking water as defined in Chapter 341, Health and Safety Code.

(4) Sanitary Sewer System--a system used to transport waste as defined by Chapter 26, Water Code.

(5) Yard Water Service--the residence supply piping that carries potable water from the water meter or other source of water supply to the point of connection to the residence.

(c) Financial assistance may be provided for first-time connection to a public system to pay for the following costs:

(1) the costs of connecting a residence to a public water supply system constructed with financial assistance;

(2) the costs of installing yard water service connections;

(3) the costs of installing indoor plumbing facilities and fixtures;

(4) the costs of connecting a residence to a sanitary sewer system constructed with financial assistance;

(5) necessary connection and permit fees; and

(6) necessary costs related to the design of plumbing improvements described by this subsection.

(d) Financial assistance under this section is limited to residences that demonstrate an inability to pay for the improvements. Proof of household income that does not exceed the definition of a low income family as defined by the Department of Housing and Urban Development shall constitute a demonstrated inability to pay for the improvements provided for purposes of this section.

(e) To document household income, the political subdivision shall use the Texas Water Development Board's Economically Distressed Areas Program Survey Instrument.

(f) The political subdivision shall determine the needs related to connection of residences in the area to be served by the project to water supply and sewer services during the planning phase of a project.

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 December 4, 2009.

TRD-200905620
Kenneth L. Petersen
General Counsel
Texas Water Development Board
Effective date: December 24, 2009
Proposal publication date: October 2, 2009
For further information, please call: (512) 463-8061

♦ ♦ ♦

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 Education Agency

Title 19, Part 2

TRD-200905558
Filed: December 3, 2009

♦ ♦ ♦

Adopted Rule Review

Comptroller of Public Accounts

Title 34, Part 1

The Comptroller of Public Accounts (comptroller) adopts the review of Texas Administrative Code, Title 34, Part 1, Chapter 7, concerning Prepaid Higher Education Tuition Program, Chapter 9, concerning Property Tax Administration, Chapter 13, concerning Unclaimed Property Reporting and Compliance, Chapter 15, concerning Electronic Transfer of Certain Payments to State Agencies and Chapter 16, concerning Electronic Transfer of Payments to the Texas State Treasury Department, pursuant to Government Code, §2001.039. The review assessed whether the reasons for adopting the chapters continue to exist.

The comptroller received no comments on the proposed review, which was published in the September 11, 2009, issue of the *Texas Register* (34 TexReg 6345).

Relating to the review of Chapter 7, the comptroller finds that the reasons for adopting Chapter 7 continue to exist and readopts the sections at this time without changes in accordance with the requirements of Government Code, §2001.039.

Relating to the review of Chapter 9, Subchapters B, E, and G continue to exist and the comptroller readopts the sections without changes in accordance with the requirements of Government Code, §2001.039. As a result of the review of Chapter 9, Subchapter A, §§9.17, 9.18, and 9.102 will be repealed and §§9.101, 9.103, and 9.105 will be amended in separate rulemakings in accordance with the Texas Administrative Procedure Act. Subchapter C, §§9.415, 9.417 and 9.419 will subsequently be amended in accordance with the Texas Administrative Procedure Act. Subchapter D, §9.801, and §9.802 will be repealed and §9.803, and §9.804 will be amended in separate rulemakings in accordance with the Texas Administrative Procedure Act. Subchapter F, §§9.1051 - 9.1058 will be amended in separate rulemakings in accordance with the Texas Administrative Procedure Act. Subchapter H, §9.3057 will be repealed, §§9.3034, 9.3042, 9.3044, 9.3045, 9.3048, 9.3049, 9.3054, 9.3059, and 9.3064 will be amended in separate rulemakings in accordance with the Texas Administrative Procedure Act. Subchapter I, §9.4033 and §9.4035 will be amended in separate rulemakings in accordance with the Texas Administrative Procedure Act. Subchapter L, §§9.4301 - 9.4303 and §§9.4305 - 9.4312 will be amended in separate rulemakings in accordance with the Texas Administrative Procedure Act.

Relating to the review of Chapter 13, the comptroller finds that the reasons for adopting Chapter 13 continue to exist and readopts the sections at this time without changes in accordance with the requirements of Government Code, §2001.039.

Relating to the review of Chapter 15, §§15.2, 15.3, 15.5 - 15.15, and 15.18 will be amended in separate rulemakings in accordance with the Texas Administrative Procedure Act.

Relating to the review of Chapter 16, the comptroller finds that the reasons for adopting does not continue to exist and will repeal the chapter in a separate rulemaking in accordance with the Texas Administrative Procedure Act.

This concludes the review of Texas Administrative Code, Title 34, Part 1, Chapters 7, 9, 13, 15, and 16.

TRD-200905683
Ashley Harden
General Counsel
Comptroller of Public Accounts
Filed: December 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: 25 TAC §265.13(r)(1)

Type of Establishment	**Minimum Gallons/ Person/Day (GPD)**
Youth camps without flush toilets, showers, or dining halls	6
Youth camps with flush toilets, but no showers or dining halls	24
Youth camps with flush toilets, showers, and dining halls	42
Camps with swimming pools - add this amount to GPD above	12

Figure: 25 TAC §265.13(r)(4)(C)

Constituent	**Level (mg/l except where otherwise stated)**
Aluminum	0.05 to 0.2
Chloride	300
Color	15 color units
Copper	1.0
Corrosivity	Non-corrosive
Fluoride	2.0
Foaming agents	0.5
Hydrogen sulfide	0.05
Iron	0.3
Manganese	0.05
Odor	3 Threshold Odor Number
pH	>7.0
Silver	0.1
Sulfate	300
Total Dissolved Solids	1,000
Zinc	5.0

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.

Department of Assistive and Rehabilitative Services

DARS Seeks Public Input About ECI Program at Stakeholder Meetings

The Texas Department of Assistive and Rehabilitative Services Division for Early Childhood Intervention (DARS ECI) is a statewide program for families with children, birth to three, with disabilities and developmental delays. ECI supports families to help their children have the resources they need to reach their goals.

Because the program is serving an increasing number of children and families with limited resources, DARS ECI is gathering information to plan and prepare for the future. DARS is asking for input from stakeholders about ECI, especially families who have received ECI services, on how it can best use limited resources to provide those services most important to children and families.

You can help by telling DARS ECI representatives your thoughts and suggestions. Parents, doctors, community providers, referral sources, and other interested parties are welcome. Comments on all areas of the ECI Program are welcomed, but there are certain questions that need more focus:

Which ECI services are most important to you?

What are the strengths and challenges of ECI that affect the quality of the program?

What other services (not offered by ECI) provide added support for families?

What changes would you make to the ECI system for the future?

If not all children could be served with available resources, which children would be prioritized to receive ECI services?

Do you have any other comments about ECI, in general?

DARS ECI also seeks input on recommendations developed through a stakeholder input process and contained in the two reports described below.

ECI Reports

In December 2008 and October 2009, DARS ECI asked a group of stakeholders to look at options and make suggestions for new ideas about ECI eligibility and the service delivery system. Stakeholders included parents of children with disabilities, pediatricians, service providers, and program administrators.

The recommendations made by the stakeholder groups are available in the following reports:

A Report to the Texas ECI System Regarding the Stakeholder Task Force Meeting on ECI Eligibility (PDF Version)/(Text version without slides)

A Report to the Texas ECI System Regarding Review of the Current ECI Service Delivery System (PDF Version)/(Text version without slides)

(For an alternate format of the reports, please contact DARS ECI at DARS.inquiries@dars.state.tx.us)

Stakeholder Meetings

Stakeholder meetings will be held around the state and will be from 4:00 p.m. - 7:00 p.m. Meeting dates and locations are:

January 5, 2010

San Antonio, Texas

Region 20 Education Service Center

The Bexar Room

1314 Hines Avenue

San Antonio, TX 78208

January 6, 2010

El Paso, Texas

Education Service Center

Region 19 Head Start

Dr. Lorenzo Garcia Conference Room

11670 Chito Samaniego

El Paso, Texas 79936

January 12, 2010

Houston, Texas

The Lighthouse of Houston

Activity Center

3602 W. Dallas Street

Houston, TX 77019

January 19, 2010

McAllen, Texas

McAllen Chamber of Commerce

Chamber Conference Room

1200 Ash Avenue

McAllen, TX 78501-4605

January 20, 2010

Laredo, Texas

Region 11 HHSC Conference Room

500 North Arkansas

Laredo, Texas 78043

January 25, 2010

Dallas, Texas

Lakewest Family YMCA

All Purpose Room

3737 Goldman

Dallas, Texas 75212

January 26, 2010

Abilene, Texas

Region 2 HHSC Conference Room

3610 Vine Street, Room 222

Abilene, Texas 79605

January 27, 2010

McKinney, Texas

Collin College

Pike Hall Auditorium

2200 W. University Drive

McKinney, TX 75070

If you need additional information or require special accommodations, please contact the DARS Inquiries Line at 1-800-628-5115, TDD/TTY 1-866-581-9328 or email requests to DARS.inquiries@dars.state.tx.us within five business days prior to the meeting.

Written suggestions and comments may be emailed by January 30, 2010 to DARS.inquiries@dars.state.tx.us or mailed to:

Texas Department of Assistive and Rehabilitative Services

Division for Early Childhood Intervention Services

4900 N. Lamar Boulevard, MC 3029

Austin, Texas 78751-2399

Please share this information with other families and people in your networks.

Automatic ECI Updates

Receive automatic updates on ECI information when it is posted to our website. Log onto www.dars.state.tx.us and click on the "Sign up for Email Updates" button. Once you register your email address, select the "DARS ECI News" checkbox on the following page, and you will receive Internet updates on the DARS ECI program sent directly to your Inbox.

TRD-200905689
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Filed: December 9, 2009

♦ ♦ ♦

Office of the Attorney General

Child Support Guidelines - 2010 Tax Charts

Pursuant to §154.061(b) of the Texas Family Code, the Office of the Attorney General of Texas, as the Title IV-D agency, has promulgated the following tax charts to assist courts in establishing the amount of a child support order. These tax charts are applicable to employed and self-employed persons in computing net monthly income.

INSTRUCTIONS FOR USE

To use these tables, first compute the obligor's annual gross income. Then recompute to determine the obligor's average monthly gross income. These tables provide a method for calculating "monthly net income" for child support purposes, subtracting from monthly gross income the social security taxes and the federal income tax withholding for a single person claiming one personal exemption and the standard deduction.

Thereafter, in many cases the guidelines call for a number of additional steps to complete the necessary calculations. For example, §§154.061 - 154.070 provide for appropriate additions to "income" as that term is defined for federal income tax purposes, and for certain subtractions from monthly net income, in order to arrive at the net resources of the obligor available for child support purposes. If necessary, one may compute an obligee's net resources using similar steps.

This agency hereby certifies that the tax charts have been reviewed by legal counsel and found to be within the agency's authority to publish.

EMPLOYED PERSONS
2010 TAX CHART

Monthly Gross Wages	Social Security Taxes: Old-Age, Survivors and Disability Insurance Taxes (6.2%)*	Social Security Taxes: Hospital (Medicare) Insurance Taxes (1.45%)*	Federal Income Taxes**	Net Monthly Income
$100.00	$6.20	$1.45	$0.00	$92.35
$200.00	$12.40	$2.90	$0.00	$184.70
$300.00	$18.60	$4.35	$0.00	$277.05
$400.00	$24.80	$5.80	$0.00	$369.40
$500.00	$31.00	$7.25	$0.00	$461.75
$600.00	$37.20	$8.70	$0.00	$554.10
$700.00	$43.40	$10.15	$0.00	$646.45
$800.00	$49.60	$11.60	$2.08	$736.72
$900.00	$55.80	$13.05	$12.08	$819.07
$1,000.00	$62.00	$14.50	$22.08	$901.42
$1,100.00	$68.20	$15.95	$32.08	$983.77
$1,200.00	$74.40	$17.40	$42.08	$1,066.12
$1,256.67***	$77.91	$18.22	$47.75	$1,112.79
$1,300.00	$80.60	$18.85	$52.08	$1,148.47
$1,400.00	$86.80	$20.30	$62.08	$1,230.82
$1,500.00	$93.00	$21.75	$73.23	$1,312.02
$1,600.00	$99.20	$23.20	$88.23	$1,389.37
$1,700.00	$105.40	$24.65	$103.23	$1,466.72
$1,800.00	$111.60	$26.10	$118.23	$1,544.07
$1,900.00	$117.80	$27.55	$133.23	$1,621.42
$2,000.00	$124.00	$29.00	$148.23	$1,698.77
$2,100.00	$130.20	$30.45	$163.23	$1,776.12
$2,200.00	$136.40	$31.90	$178.23	$1,853.47
$2,300.00	$142.60	$33.35	$193.23	$1,930.82
$2,400.00	$148.80	$34.80	$208.23	$2,008.17
$2,500.00	$155.00	$36.25	$223.23	$2,085.52
$2,600.00	$161.20	$37.70	$238.23	$2,162.87
$2,700.00	$167.40	$39.15	$253.23	$2,240.22
$2,800.00	$173.60	$40.60	$268.23	$2,317.57
$2,900.00	$179.80	$42.05	$283.23	$2,394.92
$3,000.00	$186.00	$43.50	$298.23	$2,472.27
$3,100.00	$192.20	$44.95	$313.23	$2,549.62
$3,200.00	$198.40	$46.40	$328.23	$2,626.97
$3,300.00	$204.60	$47.85	$343.23	$2,704.32
$3,400.00	$210.80	$49.30	$358.23	$2,781.67
$3,500.00	$217.00	$50.75	$373.23	$2,859.02
$3,600.00	$223.20	$52.20	$388.23	$2,936.37
$3,700.00	$229.40	$53.65	$411.98	$3,004.97
$3,800.00	$235.60	$55.10	$436.98	$3,072.32
$3,900.00	$241.80	$56.55	$461.98	$3,139.67
$4,000.00	$248.00	$58.00	$486.98	$3,207.02
$4,250.00	$263.50	$61.63	$549.48	$3,375.39
$4,500.00	$279.00	$65.25	$611.98	$3,543.77
$4,750.00	$294.50	$68.88	$674.48	$3,712.14
$5,000.00	$310.00	$72.50	$736.98	$3,880.52
$5,250.00	$325.50	$76.13	$799.48	$4,048.89
$5,500.00	$341.00	$79.75	$861.98	$4,217.27
$5,750.00	$356.50	$83.38	$924.48	$4,385.64
$6,000.00	$372.00	$87.00	$986.98	$4,554.02
$6,250.00	$387.50	$90.63	$1,049.48	$4,722.39
$6,500.00	$403.00	$94.25	$1,111.98	$4,890.77
$6,750.00	$418.50	$97.88	$1,174.48	$5,059.14
$7,000.00	$434.00	$101.50	$1,236.98	$5,227.52
$7,500.00	$465.00	$108.75	$1,361.98	$5,564.27
$8,000.00	$496.00	$116.00	$1,497.60	$5,890.40
$8,500.00	$527.00	$123.25	$1,637.60	$6,212.15
$9,000.00	$551.80****	$130.50	$1,777.60	$6,540.10
$9,500.00	$551.80	$137.75	$1,917.60	$6,892.85
$10,000.00	$551.80	$145.00	$2,057.60	$7,245.60
$10,360.60*****	$551.80	$150.23	$2,158.57	$7,500.00
$10,500.00	$551.80	$152.25	$2,197.60	$7,598.35
$11,000.00	$551.80	$159.50	$2,337.60	$7,951.10
$11,500.00	$551.80	$166.75	$2,477.60	$8,303.85
$12,000.00	$551.80	$174.00	$2,617.60	$8,656.60
$12,500.00	$551.80	$181.25	$2,757.60	$9,009.35
$13,000.00	$551.80	$188.50	$2,897.60	$9,362.10
$13,500.00	$551.80	$195.75	$3,037.60	$9,714.85
$14,000.00	$551.80	$203.00	$3,177.60	$10,067.60
$14,500.00	$551.80	$210.25	$3,317.60	$10,420.35
$15,000.00	$551.80	$217.50	$3,457.60	$10,773.10

Footnotes to Employed Persons 2010 Tax Chart:

* An employed person not subject to the Old-Age, Survivors and Disability Insurance/Hospital (Medicare) Insurance taxes will be allowed the reductions reflected in these columns, unless it is shown that such person has no similar contributory plan such as teacher retirement, federal railroad retirement, federal civil service retirement, etc.

** These amounts represent one-twelfth (1/12) of the annual federal income tax calculated for a single taxpayer claiming one personal exemption ($3,650.00) and taking the standard deduction ($5,700.00).

*** The amount represents one-twelfth (1/12) of the gross income of an individual earning the federal minimum wage ($7.25 per hour) for a 40-hour week for a full year. $7.25 per hour x 40 hours per week x 52 weeks per year equals $15,080.00 per year. One-twelfth (1/12) of $15,080.00 equals $1,256.67.

**** For annual gross wages above $106,800.00, this amount represents a monthly average of the Old-Age, Survivors and Disability Insurance tax based on the 2010 maximum Old-Age, Survivors and Disability Insurance tax of $6,621.60 per person (6.2% of the first $106,800.00 of annual gross wages equals $6,621.60). One-twelfth (1/12) of $6,621.60 equals $551.80.

***** This amount represents the point where the monthly gross wages of an employed individual would result in $7,500.00 of net resources.

* *

References Relating to Employed Persons 2010 Tax Chart:

1. Old-Age, Survivors and Disability Insurance Tax

   (a) Contribution Base

      (1) Social Security Administration's notice dated October 20, 2009, and appearing in 74 Fed. Reg. 55614 (October 28, 2009)

      (2) Section 3121(a) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 3121(a))

      (3) Section 230 of the Social Security Act, as amended (42 U.S.C. § 430)

   (b). Tax Rate

      (1) Section 3101(a) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 3101(a))

2. Hospital (Medicare) Insurance Tax

   (a) Contribution Base

      (1) Section 3121(a) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 3121(a))

(2) Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 13207, 107 Stat. 312, 467-69 (1993)

(b) Tax Rate

(1) Section 3101(b) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 3101(b))

3. Federal Income Tax

(a) Tax Rate Schedule for 2010 for Single Taxpayers

(1) Revenue Procedure 2009-50, Section 3.01, Table 3 which appears in Internal Revenue Bulletin 2009-45, dated November 9, 2009

(2) Section 1(c), (f) and (i) of the Internal Revenue Code of 1986, as (26 U.S.C. § 1(c), 1(f), 1(i))

(b) Standard Deduction

(1) Revenue Procedure 2009-50, Section 3.11(1), which appears in Internal Revenue Bulletin 2009-45, dated November 9, 2009

(2) Section 63(c) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 63(c))

(c) Personal Exemption

(1) Revenue Procedure 2009-50, Section 3.19, which appears in Internal Revenue Bulletin 2009-45, dated November 9, 2009

(2) Section 151(d) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 151(d))

SELF-EMPLOYED PERSONS
2010 TAX CHART

Monthly Net Earnings From Self-Employment *	Social Security Taxes: Old-Age, Survivors and Disability Insurance Taxes (12.4%)**	Social Security Taxes: Hospital (Medicare) Insurance Taxes (2.9%)**	Federal Income Taxes***	Net Monthly Income
$100.00	$11.45	$2.68	$0.00	$85.87
$200.00	$22.90	$5.36	$0.00	$171.74
$300.00	$34.35	$8.03	$0.00	$257.62
$400.00	$45.81	$10.71	$0.00	$343.48
$500.00	$57.26	$13.39	$0.00	$429.35
$600.00	$68.71	$16.07	$0.00	$515.22
$700.00	$80.16	$18.75	$0.00	$601.09
$800.00	$91.61	$21.43	$0.00	$686.96
$900.00	$103.06	$24.10	$5.73	$767.11
$1,000.00	$114.51	$26.78	$15.02	$843.69
$1,100.00	$125.97	$29.46	$24.31	$920.26
$1,200.00	$137.42	$32.14	$33.61	$996.83
$1,300.00	$148.87	$34.82	$42.90	$1,073.41
$1,400.00	$160.32	$37.49	$52.19	$1,150.00
$1,500.00	$171.77	$40.17	$61.49	$1,226.57
$1,600.00	$183.22	$42.85	$71.27	$1,302.66
$1,700.00	$194.67	$45.53	$85.21	$1,374.59
$1,800.00	$206.13	$48.21	$99.15	$1,446.51
$1,900.00	$217.58	$50.88	$113.09	$1,518.45
$2,000.00	$229.03	$53.56	$127.03	$1,590.38
$2,100.00	$240.48	$56.24	$140.98	$1,662.30
$2,200.00	$251.93	$58.92	$154.92	$1,734.23
$2,300.00	$263.38	$61.60	$168.86	$1,806.16
$2,400.00	$274.83	$64.28	$182.80	$1,878.09
$2,500.00	$286.29	$66.95	$196.74	$1,950.02
$2,600.00	$297.74	$69.63	$210.68	$2,021.95
$2,700.00	$309.19	$72.31	$224.62	$2,093.88
$2,800.00	$320.64	$74.99	$238.56	$2,165.81
$2,900.00	$332.09	$77.67	$252.50	$2,237.74
$3,000.00	$343.54	$80.34	$266.44	$2,309.68
$3,100.00	$354.99	$83.02	$280.38	$2,381.61
$3,200.00	$366.44	$85.70	$294.32	$2,453.54
$3,300.00	$377.90	$88.38	$308.26	$2,525.46
$3,400.00	$389.35	$91.06	$322.20	$2,597.39
$3,500.00	$400.80	$93.74	$336.14	$2,669.32
$3,600.00	$412.25	$96.41	$350.08	$2,741.26
$3,700.00	$423.70	$99.09	$364.02	$2,813.19
$3,800.00	$435.15	$101.77	$377.96	$2,885.12
$3,900.00	$446.60	$104.45	$393.10	$2,955.85
$4,000.00	$458.06	$107.13	$416.33	$3,018.48
$4,250.00	$486.68	$113.82	$474.42	$3,175.08
$4,500.00	$515.31	$120.52	$532.50	$3,331.67
$4,750.00	$543.94	$127.21	$590.59	$3,488.26
$5,000.00	$572.57	$133.91	$648.67	$3,644.85
$5,250.00	$601.20	$140.60	$706.75	$3,801.45
$5,500.00	$629.83	$147.30	$764.84	$3,958.03
$5,750.00	$658.46	$153.99	$822.92	$4,114.63
$6,000.00	$687.08	$160.69	$881.01	$4,271.22
$6,250.00	$715.71	$167.38	$939.09	$4,427.82
$6,500.00	$744.34	$174.08	$997.18	$4,584.40
$6,750.00	$772.97	$180.78	$1,055.26	$4,740.99
$7,000.00	$801.60	$187.47	$1,113.35	$4,897.58
$7,500.00	$858.86	$200.86	$1,229.51	$5,210.77
$8,000.00	$916.11	$214.25	$1,345.68	$5,523.96
$8,500.00	$973.37	$227.64	$1,469.46	$5,829.53
$9,000.00	$1,030.63	$241.03	$1,599.57	$6,128.77
$9,500.00	$1,087.88	$254.42	$1,729.68	$6,428.02
$10,000.00	$1,103.60****	$267.82	$1,865.61	$6,762.97
$10,500.00	$1,103.60	$281.21	$2,003.73	$7,111.46
$11,000.00	$1,103.60	$294.60	$2,141.86	$7,459.94
$11,057.47*****	$1,103.60	$296.14	$2,157.73	$7,500.00
$11,500.00	$1,103.60	$307.99	$2,279.98	$7,808.43
$12,000.00	$1,103.60	$321.38	$2,418.11	$8,156.91
$12,500.00	$1,103.60	$334.77	$2,556.23	$8,505.40
$13,000.00	$1,103.60	$348.16	$2,694.36	$8,853.88
$13,500.00	$1,103.60	$361.55	$2,832.48	$9,202.37
$14,000.00	$1,103.60	$374.94	$2,970.61	$9,550.85
$14,500.00	$1,103.60	$388.33	$3,108.73	$9,899.34
$15,000.00	$1,103.60	$401.72	$3,246.86	$10,247.82

Footnotes to Self-Employed Persons 2010 Tax Chart:

* Determined without regard to Section 1402(a)(12) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1402(a)(12)) (the "Code").

** In calculating each of the Old-Age, Survivors and Disability Insurance tax and the Hospital (Medicare) Insurance tax, net earnings from self-employment are reduced by the deduction under Section 1402(a)(12) of the Code. The deduction under Section 1402(a)(12) of the Code is equal to net earnings from self-employment (determined without regard to Section 1402(a)(12) of the Code) multiplied by one-half (1/2) of the sum of the Old-Age, Survivors and Disability Insurance tax rate (12.4%) and the Hospital (Medicare) Insurance tax rate (2.9%). The sum of these rates is 15.3% (12.4% + 2.9% = 15.3%). One-half (1/2) of the combined rate is 7.65% (15.3% x 1/2 = 7.65%). The deduction can be computed by multiplying the net earnings from self-employment (determined without regard to Section 1402(a)(12) of the Code) by 92.35%. This gives the same deduction as multiplying the net earnings from self-employment (determined without regard to Section 1402(a)(12) of the Code) by 7.65% and then subtracting the result.

For example, the Social Security taxes imposed on monthly net earnings from self-employment (determined without regard to Section 1402(a)(12) of the Code) of $2,500.00 are calculated as follows:

(i) Old-Age, Survivors and Disability Insurance Taxes:

$2,500.00 x 92.35% x 12.4% = $286.29

(ii) Hospital (Medicare) Insurance Taxes:

$2,500.00 x 92.35% x 2.9% = $66.95

*** These amounts represent one-twelfth (1/12) of the annual federal income tax calculated for a single taxpayer claiming one personal exemption ($3,650.00) and taking the standard deduction ($5,700.00).

In calculating the annual federal income tax, gross income is reduced by the deduction under Section 164(f) of the Code. The deduction under Section 164(f) of the Code is equal to one-half (1/2) of the self-employment taxes imposed by Section 1401 of the Code for the taxable year. For example, monthly net earnings from self-employment of $15,000.00 times 12 months equals $180,000.00. The Old-Age, Survivors and Disability Insurance taxes imposed by Section 1401 of the Code for the taxable year equal $13,243.20 ($106,800.00 x 12.4% = $13,243.20). The Hospital (Medicare) Insurance taxes imposed by Section 1401 of the Code for the taxable year equal $4,820.67 ($180,000.00 x .9235 x 2.9% = $4,820.67). The sum of the taxes imposed by Section 1401 of the Code for the taxable year equals $18,063.87 ($13,243.20 + $4,820.67 = $18,063.87). The deduction under Section 164(f) of the Code is equal to one-half (1/2) of $18,063.87 or $9,031.94.

**** For annual net earnings from self-employment (determined with regard to Section 1402(a)(12) of the Code) above $106,800.00, this amount represents a monthly average of the Old-Age, Survivors and Disability Insurance tax based on the 2010 maximum Old-Age, Survivors and Disability Insurance tax of $13,243.20 per person (12.4% of the first $106,800.00 of net earnings from self-employment (determined with regard to Section

1402(a)(12) of the Code) equals $13,243.20). One-twelfth (1/12) of $13,243.20 equals $1,103.60.

***** This amount represents the point where the monthly net earnings from self-employment of a self-employed individual would result in $7,500.00 of net resources.

* *

References Relating to Self-Employed Persons 2010 Tax Chart:

1. Old-Age, Survivors and Disability Insurance Tax

   (a) Contribution Base

      (1) Social Security Administration's notice dated October 20, 2009, and appearing in 74 Fed. Reg. 55614 (October 28, 2009)

      (2) Section 1402(b) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1402(b))

      (3) Section 230 of the Social Security Act, as amended (42 U.S.C. § 430)

   (b) Tax Rate

      (1) Section 1401(a) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1401(a))

   (c) Deduction Under Section 1402(a)(12)

      (1) Section 1402(a)(12) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1402(a)(12))

2. Hospital (Medicare) Insurance Tax

   (a) Contribution Base

      (1) Section 1402(b) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1402(b))

      (2) Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 13207, 107 Stat. 312, 467-69 (1993)

   (b) Tax Rate

      (1) Section 1401(b) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1401(b))

   (c) Deduction Under Section 1402(a)(12)

      (1) Section 1402(a)(12) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1402(a)(12))

3. Federal Income Tax

(a) Tax Rate Schedule for 2010 for Single Taxpayers

(1) Revenue Procedure 2009-50, Section 3.01, Table 3 which appears in Internal Revenue Bulletin 2009-45, dated November 9, 2009

(2) Section 1(c), (f) and (i) of the Internal Revenue Code of 1986, as (26 U.S.C. § 1(c), 1(f), 1(i))

(b) Standard Deduction

(1) Revenue Procedure 2009-50, Section 3.11(1), which appears in Internal Revenue Bulletin 2009-45, dated November 9, 2009

(1) Section 63(c) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 63(c))

(c) Personal Exemption

(1) Revenue Procedure 2009-50, Section 3.19, which appears in Internal Revenue Bulletin 2009-45, dated November 9, 2009

(2) Section 151(d) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 151(d))

(d) Deduction Under Section 164(f)

(1) Section 164(f) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 164(f))

TRD-200905634
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: December 7, 2009

♦ ♦ ♦

Notice of Settlement of a Texas Health and Safety Code and Texas Water Code Action

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Health and Safety Code (Texas Solid Waste Disposal Act) and the Texas Water Code. Before the State may settle a judicial enforcement action, pursuant to the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: Settlement Agreement in *Harris County, Texas and the State of Texas v. Linus Ike, Individually and Linus Ike d/b/a Ikeson Used Auto and Parts,* Cause No. 2007-23728, 295th Judicial District of Harris County.

Background: Defendant Linus Ike, individually and Linus Ike d/b/a Ikeson Used Auto and Parts owns and operates an automobile wrecking and salvage operation in Harris County, Texas. A suit was filed by Harris County alleging violations of the Texas Transportation Code, Texas Solid Waste Disposal Act, the Texas Water Code, the General Permit to Discharge Waste for the State of Texas, and Regulations of Harris County, Texas for Storm Water Quality Management. The suit seeks injunctive relief, civil penalties, and attorney's fees.

Nature of Settlement: The settlement awards the State $6,240.00 and Harris County $6,240.00 in civil penalties and awards $1,500.00 in attorney's fees to the State and $2,500.00 in attorney's fees to Harris County. The settlement also awards injunctive relief.

For a complete description of the proposed settlement, the proposed Agreed Final Judgment and Permanent Injunction should be reviewed. Requests for copies of the judgment and written comments on the proposed settlement should be directed to Kellie E. Billings, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0052. Written comments must be received within 30 days of publication of this notice to be considered.

For information regarding this publication, contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

TRD-200905673
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: December 8, 2009

♦ ♦ ♦

Request for Proposal

This Request for Proposal is filed pursuant to Texas Government Code §2254.021 *et seq.*

The Office of the Attorney General of Texas ("the OAG") requests that professional consultants with documented expertise and experience in the field of indirect cost recovery and cost allocation plans for governmental units submit proposals to prepare Indirect Cost Plans for State Fiscal Years 2009 ("FY09") (based on actual expenditures) and 2011 ("FY11") (based on budgeted expenditures) and to analyze and update standardized billing rates for legal services provided by the OAG. In accordance with Texas Government Code §2254.029(b), the OAG hereby discloses that similar services related to indirect cost plans and legal billing rates covering earlier fiscal years have been previously provided to the OAG by a consultant.

The OAG administers millions of dollars of federal funds for the Child Support ("Title IV-D") and Medicaid ("Title XIX") programs. Currently, the OAG is recouping its indirect costs from these federal programs based on rates approved by the United States Department of Health and Human Services ("HHS").

The OAG also provides legal services to other state agencies. The consultant selected will be responsible for analyzing the existing billing rates and actual costs and then updating the legal services rates for use in FY11.

The consultant selected to prepare the Indirect Cost Plans and to develop current, standardized legal billing rates must demonstrate the necessary qualifications and experience listed in the "QUALIFICATIONS" section. The successful consultant will also be required to perform the services and generate the reports listed in the "SCOPE OF SERVICES" section. The acceptance of a proposal by the OAG, made in response to this Request for Proposal, will be based on the OAG's evaluation of the competence, knowledge, and qualifications of the consultant, in addition to the reasonableness of the proposed fee for services. If other considerations are equal, the OAG will give preference to a consultant whose principal place of business is in Texas or who will manage the consulting contract wholly from an office in Texas. The total contract award will not exceed Forty-Nine Thousand and NO/100 Dollars ($49,000.00).

SCOPE OF SERVICES

The successful consultant will be required to render the following services and reports:

1. Prepare two (2) Indirect Cost Plans in accordance with OMB Circular A-87 - one based on FY09 actual expenditures and one based on FY11 budgeted expenditures:

*Identify the sources of financial information;

*Inventory all federal and other programs administered by the OAG;

*Classify all OAG divisions;

*Determine administrative divisions;

*Determine allocation bases for allotting services to benefitting divisions;

*Develop allocation data for each allocation base;

*Prepare allocation worksheets based upon actual FY09 expenditures and budgeted FY11 expenditures;

*Summarize costs by benefitting division;

*Collect cost data for all of the programs included in the inventory of federal and other programs administered by the OAG;

*Determine indirect cost rates throughout the OAG on an annual basis;

*Prepare and present draft Indirect Cost Plans to the OAG by April 9, 2010;

*Formalize the Actual FY09 and Budgeted FY11 Indirect Cost Plans and present them to HHS by April 30, 2010; and

*Negotiate the Indirect Cost Plans' approval with HHS by August 31, 2010.

2. Develop standardized billing rates for legal services:

*Review current criteria used by the OAG for charging various agencies;

*Determine the types of legal services provided to the agencies;

*Compile direct hours for each type of service;

*Determine effort reporting requirements;

*Re-examine billing rate options;

*Determine the actual cost of services;

*Analyze and confirm revenues and cost analyses;

*Prepare and present a draft Legal Services Billing Schedule for FY 2009 actual costs and FY 2011 budgeted costs to the OAG by July 30, 2010;

*Formalize a Legal Services Billing Schedule by August 31, 2010.

The selected consultant will accumulate and analyze all data that are required. The OAG is not expected to provide any staff resources to the selected consultant. The OAG will provide a liaison with staff within the OAG and with other state agencies, as appropriate.

QUALIFICATIONS

Each individual, company, or organization submitting a proposal pursuant to this request, must present evidence or otherwise demonstrate to the satisfaction of the OAG that such entity:

1. Has the experience to prepare and successfully negotiate the type of Indirect Cost Plan described above;

2. Has a thorough understanding of cost allocation issues and preparation of Indirect Cost Plans at the state agency level;

3. Has a thorough understanding of legal services billing procedures and preparation of a Legal Services Billing Schedule; and

4. Can program and execute the Indirect Cost Plans and Legal Services Billing Schedule within the required time frames specified in the "SCOPE OF SERVICES" section.

Please provide evidence of the above qualifications and a proposal which includes:

1. A detailed description of the plan of action to fulfill the requirements described in the "SCOPE OF SERVICES" section;

2. Detailed information on the consultant staff to be assigned to the project; and

3. The proposed fee amount for provision of the desired services.

A signed original and five (5) copies of the proposal must be received in the OAG Purchasing Section, 300 West 15th Street, Third Floor, Austin, Texas 78701, no later than 3:00 p.m., Central Standard Time, January 19, 2010. Any proposal received after the specified time and date will not be given consideration. Conditioned on the OAG's receipt of the requisite finding of fact from the Governor's Budget and Planning Office pursuant to Texas Government Code §2254.028, the OAG anticipates entering into the resultant contract on or about February 8, 2010.

A proposal must include all of the references and financial status information as specified below at the time of opening or it will be disqualified. Proposals should be sealed and clearly marked with the specified time and date and the title, "Proposal for Consulting Services for an Indirect Cost Recovery/Cost Allocation Plan and Legal Services Billing Schedule for the OAG".

REFERENCES AND FINANCIAL CONDITION

Prospective consultants will provide the names of at least three (3) different references meeting the following criteria:

1. The reference company or entity must have engaged the prospective consultant for the same or similar services as those to be provided in accordance with the terms of this Request for Proposal;

2. The services must have been provided by the prospective consultant to the reference company or entity within the five (5) years preceding the issuance of this Request for Proposal;

3. The reference company or entity must not be affiliated with the prospective consultant in any ownership or joint venture arrangement;

4. References must include the company or entity name, address, contact name, and telephone number for each reference. The OAG may not be used as a reference. The contact name must be the name of a senior representative of the reference company or entity who was directly responsible for interacting with the prospective consultant throughout the performance of the engagement and who can address questions about the performance of the prospective consultant from personal experience. References will accompany the proposal.

5. The prospective consultant will provide a signed release from liability for each reference provided in response to this requirement. The release from liability will absolve the specified reference company or entity from liability for information provided to the OAG concerning the prospective consultant's performance of its engagement with the reference.

6. The prospective consultant must disclose if and when it has filed for bankruptcy within the last seven (7) years. For prospective consultants conducting business as a corporation, partnership, limited liability partnership, or other form of artificial person, the prospective consultant must disclose whether any of its principals, partners, or officers have filed for bankruptcy within the last seven (7) years.

7. As part of any proposal submission, the prospective consultant must include information regarding financial condition, including income statements, balance sheets, and any other information which accurately shows the prospective consultant's current financial condition. The OAG reserves the right to request such additional financial information as it deems necessary to evaluate the prospective consultant, and by submission of a proposal, the prospective consultant agrees to provide same.

DISCLOSURE

Any individual who provides a proposal for consulting services in response to this Request for Proposal and who has been employed by the OAG or any other state agency(ies) at any time during the two (2) years preceding the tendering of the proposal will disclose in the proposal:

1. The nature of the previous employment with the OAG or any other state agency(ies);

2. The date(s) the employment(s) terminated; and

3. The annual rate(s) of compensation for the employment(s) at the time(s) of termination.

Each consultant that submits a proposal must certify to the following:

1. Consultant has no unresolved audit exception(s) with the OAG. An unresolved audit exception is an exception for which the consultant has exhausted all administrative and/or judicial remedies and refuses to comply with any resulting demand for payment.

2. Consultant certifies that the consultant's staff or governing authority has not participated in the development of specific criteria for award of this contract, and will not participate in the selection of consultant(s) awarded contracts.

3. Consultant has not retained or promised to retain an agent or utilized or promised to utilize a consultant who has participated in the development of specific criteria for the award of contract, nor will participate in the selection of any successful consultant.

4. Consultant agrees to provide information necessary to validate any statements made in consultant's response, if requested by the OAG. This may include, but is not limited to, granting permission for the OAG to verify information with third parties, and allowing inspection of consultant's records.

5. Consultant understands that failure to substantiate any statements made in the response when substantiation is requested by OAG may disqualify the response, which could cause the consultant to fail to receive a contract or to receive a contract for an amount less than that requested.

6. Consultant certifies that the consultant's organization has not had a contract terminated or been denied the renewal of any contract for noncompliance with policies or regulation of any state or federal funded program within the past five years nor is it currently prohibited from contracting with a government agency.

7. Consultant certifies that its Corporate Texas Franchise Tax payments are current, or that it is exempt from or not subject to such tax.

8. Consultant has not given nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted response.

9. Neither the consultant nor the firm, corporation, partnership or institution represented by the consultant, anyone acting for such firm, corporation partnership or institution has violated the antitrust laws of this State, the Federal antitrust laws nor communicated directly or in-

directly its response to any competitor or any other person engaged in such line or business.

10. Under Family Code §231.006 (relating to child support), the consultant certifies that the individual or business entity named in this response is not ineligible to receive a specified payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

11. If the consultant is an individual not residing in Texas or a business entity not incorporated in or whose principal domicile is not in Texas, the consultant certifies that it either: (a) holds a permit issued by the Texas comptroller to collect or remit all state and local sales and use taxes that become due and owing as a result of the consultant's business in Texas; or (b) does not sell tangible personal property or services that are subject to the state and local sales and use tax.

12. Consultant certifies that if a Texas address is shown as the address of the vendor, vendor qualifies as a Texas Bidder as defined in 34 TAC §20.32(68)

13. Consultant certifies that it has not received compensation for participation in the preparation of the specifications for this solicitation.

14. Consultant must answer the following questions:

*If an award is issued, do you plan to utilize a subcontractor or supplier for any portion of the contract? If consultant plans to utilize a subcontractor, the subcontractor will comply with the same terms as the consultant as contained in this solicitation and other relevant OAG policy and procedure and the subcontractor must be approved in advance by OAG.

*If yes, what percentage of the total award would be subcontracted or supplied by Historically Underutilized Businesses (HUBs)?

*If no, explain why no subcontracting opportunities are available or what efforts were made to subcontract part of this project.

*Is consultant certified as a Texas HUB?

PAYMENT

Payment for services will be made upon receipt of invoices presented to the OAG in the form and manner specified by the OAG after certification of acceptance of all deliverables.

PROPOSAL PREPARATION AND CONTRACTING EXPENSES

All proposals must be typed, double spaced, on 8 1/2" x 11" paper, clearly legible, with all pages sequentially numbered and bound or stapled together. The name of the prospective consultant must be typed at the top of each page. Do not attach covers, binders, pamphlets, or other items not specifically requested.

A Table of Contents must be included with respective page numbers opposite each topic. The proposal must contain the following completed items in the following sequence:

1. Transmittal Letter: A letter addressed to Ms. Julie Geeslin (address at the end of this Request for Proposal) that identifies the person or entity submitting the proposal and includes a commitment by that person or entity to provide the services required by the OAG. The letter must state, "The proposal enclosed is binding and valid at the discretion of the OAG." The letter must specifically identify the project for this proposal. The letter must include "full acceptance of the terms and conditions of the contract resulting from this Request for Proposal." Any exceptions must be specifically noted in the letter. However, any exceptions may disqualify the proposal from further consideration at the OAG's discretion.

2. Executive Summary: A summary of the contents of the proposal, excluding cost information. Address services that are offered beyond those specifically requested as well as those offered within specified deliverables. Explain any missing or other requirements not met, realizing that failure to provide necessary information or offer required service deliverables may result in disqualification of the proposal.

3. Project Proposal.

4. Cost Proposal.

5. Relevant Technical Skill Statement (with references and vitae).

6. Relevant Experience Statement (with references and vitae).

To be considered responsive, a proposal must set forth full, accurate, and complete information as required by this request. A non-responsive proposal will not be considered for further evaluation. If the requirement that is not met is considered a minor irregularity or an inconsequential variation, an exception may be made at the discretion of the OAG and the proposal may be considered responsive.

A written request for withdrawal of a proposal is permitted any time prior to the submission deadline and must be received by Ms. Julie Geeslin (address at the end of this Request for Proposal). After the deadline, proposals will be considered firm and binding offers at the option of the OAG.

Preliminary and final negotiations with top-ranked prospective consultants may be held at the discretion of the OAG. The OAG may decide, at its sole option and in its sole discretion, to negotiate with one, several, or none of the prospective consultants submitting proposals pursuant to this request. During the negotiation process, the OAG and any prospective consultant(s) with whom the OAG chooses to negotiate, may adjust the scope of the services, alter the method of providing the services, and/or alter the costs of the services so long as the changes are mutually agreed upon and are in the best interest of the OAG. Statements made by a prospective consultant in the proposal packet or in other appropriate written form will be binding unless specifically changed during final negotiations. A contract award may be made by the OAG without negotiations if the OAG determines that such an award is in the OAG's best interest.

All prospective consultants of record will be sent written notice of which, if any, prospective consultant(s) is selected for the contract award on or about February 12, 2010 or within ten (10) days of making an award, whichever is later.

All proposals are considered to be public information subsequent to an award of the contract. All information relating to proposals will be subject to the Public Information Act, Texas Government Code Annotated, Chapter 552, after the award of the contract. All documents will be presumed to be public unless a specific exception in that Act applies. Prospective consultants are requested to avoid providing information which is proprietary, but if it is necessary to do so, proposals must specify the specific information which the prospective consultant considers to be exempted from disclosure under the Act and those pages or portions of pages which contain the protected information must be clearly marked. The specific exemption which the prospective consultant believes protects that information must be cited. The OAG will assume that a proposal submitted to the OAG contains no proprietary or confidential information if the prospective consultant has not marked or otherwise identified such information in the proposal at the time of its submission to the OAG.

The OAG has sole discretion and the absolute right to reject any and all offers, terminate this Request for Proposal, or amend or delay this Request for Proposal. The OAG will not pay any cost incurred by a prospective consultant in the preparation of a response to this Request

for Proposal and such costs will not be included in the budget of the prospective consultant submitted pursuant to this Request for Proposal. The issuance of this Request for Proposal does not constitute a commitment by the OAG to award any contract. This Request for Proposal and any contract which may result from it are subject to appropriation of State and Federal funds and the Request for Proposal and/or contract may be terminated at any time if such funds are not available.

The OAG reserves the right to accept or reject any or all proposals submitted in response to this request and to negotiate modifications necessary to improve the quality or cost effectiveness of any proposal to the OAG. The OAG is under no legal obligation to enter into a contract with any offeror of any proposal on the basis of this request. The OAG intends any material provided in this Request for Proposal only and solely as a means of identifying the scope of services and qualifications sought.

The State of Texas assumes no responsibility for expenses incurred in the preparation of responses to this Request for Proposal. All expenses associated with the preparation of the proposal solicited by this Request for Proposal will remain the sole responsibility of the prospective consultant. Further, in the event that the prospective consultant is engaged to provide the services contemplated by this Request for Proposal, any expenses incurred by the prospective consultant associated with the negotiation and execution of the contract for the engagement will remain the obligation of the consultant.

Please address responses to:

Ms. Julie Geeslin

Budget and Purchasing Division

Office of the Attorney General of Texas

300 W. 15th Street, Third Floor

Austin, Texas 78701

Phone: (512) 475-4495

For information regarding this publication, contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

TRD-200905677
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: December 9, 2009

♦ ♦ ♦

Cameron County Regional Mobility Authority

Notice of Availability of Request for Qualifications for Bond Counsel Services

The Cameron County Regional Mobility Authority ("CCRMA"), a political subdivision of the State of Texas, is soliciting statements of interest and qualifications from law firms interested in representing the CCRMA in connection with bond issuances and other financing transactions, including advising the CCRMA in its use of the proceeds generated from successful financings.

Copies of the request for qualifications ("RFQ") may be obtained electronically from the website of the CCRMA at www.cameroncountyrma.org. Copies are also available by contacting Pete Sepulveda, Jr. at (956) 982-5414. Periodic updates, addenda, and clarifications may be posted on the CCRMA website, and interested parties are responsible for monitoring the website accordingly. Final proposals must be received by the Cameron County Regional Mobility Authority, 1100 E. Monroe Street, Suite 256, Brownsville, Texas 78521 by 4:00 p.m., CST, January 11, 2010, to be eligible for consideration.

Each firm will be evaluated based on the criteria and process set forth in the RFQ. The final selection of a firm or firms to serve as bond counsel, if any, will be made by the CCRMA Board of Directors.

TRD-200905679
Pete Sepulveda, Jr.
RMA Coordinator
Cameron County Regional Mobility Authority
Filed: December 9, 2009

♦ ♦ ♦

Cancer Prevention and Research Institute of Texas

Request for Applications P-10-CCP1

Community Collaborative Prevention Programs and Services for Breast, Cervical, and Colorectal Cancers

The Cancer Prevention and Research Institute of Texas (CPRIT) seeks innovative grant applications from qualified organizations located in the State of Texas that would provide services through development of collaborations that address documented cancer prevention and control challenges. Priority areas include breast, cervical, and colorectal cancers. CPRIT expects measurable outcomes of supported activities that demonstrate impact on incidence, mortality, morbidity, or interim measures related to outcome. CPRIT will award two types of projects under this RFA, Full Project Award funding and Planning Awards. Successful applicants for the Full Project Award are eligible for a grant award of up to $3 million in total funding over a maximum of 3 years (36 months). Applicants requesting over $1 million are required to submit a Preapplication. Successful applicants for the Planning Award are eligible for a grant award of up to $15,000 in total funding and planning must be completed by August 2010 in order for the applicant to submit a full application at the next release of this RFA. A request for applications titled Community Collaborative Prevention Programs and Services for Breast, Cervical, and Colorectal Cancers is available online at www.cprit.state.tx.us. Applications will be accepted beginning at 7:00 a.m. CST on December 18, 2009, and must be submitted via the CPRIT Application Receipt System (www.CPRITGrants.org). Only applications submitted at this portal will be considered eligible for evaluation. Full applications are due on or before 3:00 p.m. Central Time on Monday, March 1, 2010. Preapplications for those requesting over $1 million are due on or before 3:00 p.m. Central Time on Monday, January 18, 2010. Planning Award requests are due on or before 3:00 p.m. Central Time on Monday, February 8, 2010. CPRIT will not accept late applications or applications that are not submitted via the portal.

TRD-200905665
William "Bill" Gimson
Executive Director
Cancer Prevention and Research Institute of Texas
Filed: December 8, 2009

♦ ♦ ♦

Request for Applications P-10-HPP2 Health Promotion, Public Education, and Outreach Programs

The Cancer Prevention and Research Institute of Texas (CPRIT) seeks grant applications from qualified organizations located in the State of Texas that propose innovation in the delivery of community education using culturally competent and evidence-based methods that, if successful, would change personal behaviors, thereby leading to cancer

prevention, risk reduction, and early detection and to improve quality of life for survivors. CPRIT expects measurable outcomes of supported activities. Successful applicants are eligible for a grant award of up to $300,000 in direct costs for up to 24 months. A request for applications titled Health Promotion, Public Education, and Outreach Programs is available online at www.cprit.state.tx.us. Applications will be accepted beginning at 7:00 a.m. CST on December 18, 2009, and must be submitted via the CPRIT Application Receipt System (www.CPRITGrants.org). Only applications submitted at this portal will be considered eligible for evaluation. Applications are due on or before 3:00 p.m. Central Time on Monday, March 1, 2010. CPRIT will not accept late applications or applications that are not submitted via the portal.

TRD-200905662
William "Bill" Gimson
Executive Director
Cancer Prevention and Research Institute of Texas
Filed: December 8, 2009

♦ ♦ ♦

Request for Applications P-10-IAC1

Innovation Awards for Cancer Prevention Programs and Services

The Cancer Prevention and Research Institute of Texas (CPRIT) seeks grant applications from qualified organizations located in the State of Texas that propose projects or pilot programs that are exceptionally innovative and propose new ways to improve cancer prevention and control programs and services. Programs may explore the feasibility of expanding existing programs to areas that are underserved or seek to establish a base of evidence where none exists. CPRIT expects measurable outcomes of supported activities. Successful applicants are eligible for a grant award of up to $150,000 in total costs for up to 18 months. A request for applications titled Innovation Awards for Cancer Prevention Programs and Services is available online at www.cprit.state.tx.us. Applications will be accepted beginning at 7:00 a.m. CST on December 18, 2009, and must be submitted via the CPRIT Application Receipt System (www.CPRITGrants.org). Only applications submitted at this portal will be considered eligible for evaluation. Applications are due on or before 3:00 p.m. CST on Monday, March 1, 2010. CPRIT will not accept late applications or applications that are not submitted via the portal.

TRD-200905664
William "Bill" Gimson
Executive Director
Cancer Prevention and Research Institute of Texas
Filed: December 8, 2009

♦ ♦ ♦

Request for Applications P-10-PET1 Health Care Professional Education and Training

The Cancer Prevention and Research Institute of Texas (CPRIT) seeks grant applications from qualified organizations located in the State of Texas that would provide health care professional education and training to increase the number of people who improve their health behaviors related to prevention of cancer, obtain recommended cancer screening tests, have cancers detected at earlier stages, and improve quality of life for cancer survivors. Successful applicants are eligible for a grant award of up to $300,000 in direct costs for up to 24 months. A request for applications titled Health Care Professional Education and Training is available online at www.cprit.state.tx.us. Applications will be accepted beginning at 7:00 a.m. CST on December 18, 2009, and must be submitted via the CPRIT Application Receipt System (www.CPRITGrants.org). Only applications submitted at this portal will be considered eligible for evaluation. Applications are due on or before 3:00 p.m. Central Time on Monday, March 1, 2010. CPRIT will not accept late applications or applications that are not submitted via the portal.

TRD-200905661
William "Bill" Gimson
Executive Director
Cancer Prevention and Research Institute of Texas
Filed: December 8, 2009

♦ ♦ ♦

Request for Applications R-10-COMP1

Company Investment Award

The Cancer Prevention and Research Institute of Texas (CPRIT) seeks applications from companies or limited partnerships located in Texas, or those that are willing to relocate to Texas for commercially oriented translational research, therapeutic and medical technology products, diagnostic- or treatment-oriented information technology products, diagnostics, tools, services, and infrastructure projects. Common to all applications under this RFA (with the exception of infrastructure applicants) should be the intent to develop products that would eventually be approved for marketing for the diagnosis, prevention, or treatment of cancer. Eligible products or services include, but are not limited to, therapeutics (e.g., small molecules and biologics), diagnostics, devices, and potential breakthrough technologies, including software and research discovery techniques. Eligible stages of development include translational research, proof-of-concept studies, preclinical studies, and Phase I or Phase II clinical trials. By exception, Phase III clinical trials and later stage commercialization projects will be considered where circumstances warrant CPRIT investment. No maximum will be set on the amount of funding that can be requested. Funding will be milestone driven. Funds may be used for salary and fringe benefits, research supplies, equipment, clinical trial expenses, intellectual property protection, external consultants and service providers, and other appropriate development costs, subject to certain limitations set forth by Texas law.

All applicants must submit a letter of intent indicating that they will be submitting an application in response to this RFA by 3:00 p.m. Central Time on January 5, 2010, and must be submitted via the CPRIT Application Receipt System (www.CPRITGrants.org). A detailed Request For Applications (RFA) is available online at www.cprit.state.tx.us. Applications will be accepted beginning at 7:00 a.m. Central Time on February 12, 2010 through 3:00 p.m. Central Time on March 1, 2010, and must be submitted via the CPRIT Application Receipt System (www.CPRITGrants.org). CPRIT will not accept letters of intent or applications that are not submitted via the CPRIT Application Receipt System.

TRD-200905658
William "Bill" Gimson
Executive Director
Cancer Prevention and Research Institute of Texas
Filed: December 8, 2009

♦ ♦ ♦

Capital Area Rural Transportation System

Request for Proposal CARTS ITS Phase 3

The Capital Area Rural Transportation System (CARTS), a Rural Transit District serving a nine county region surrounding Austin, Texas requests a solutions-based proposal from qualified companies to effect its Phase 3 advanced technology project. This project will pro-

vide for its local and regional fixed route services to be integrated with its extant ITS network, including its electronic fare media, and incorporating route and schedule management software, station-based and route-based on-time bus arrival technology and displays, including its solar-powered flag stop prototype. CARTS will contract with one company to integrate all aspects of the project.

Release of RFP - December 7, 2009

Pre-Proposal meeting - December 16, 2009

Proposal Due Date - January 20, 2010

If you wish to receive a copy of the RFP, please send by electronic mail a notice that your company wishes to participate with appropriate contact information and a brief description of products or services that you provide.

These notices should be sent to ITSP3@RideCARTS.com.

TRD-200905543
Dave Marsh
General Manager
Capital Area Rural Transportation System
Filed: December 2, 2009

♦ ♦ ♦

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of November 25, 2009, through December 3, 2009. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for this activity extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on December 9, 2009. The public comment period for this project will close at 5:00 p.m. on January 9, 2010.

FEDERAL AGENCY ACTIONS:

Applicant: Peninsula Clear Lake, LLC; Location: The project is located at the confluence of Clear Creek and Clear Lake, west of Davis Road and north of FM 2094, in Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: League City, Texas. Approximate UTM Coordinates in NAD 83 (meters): Zone 15; Easting: 298712; Northing: 3269605. Project Description: The applicant proposes to retain the unauthorized impacts to 0.83 acre of waters of the U.S. associated with the construction of a canal lot subdivision. The applicant was authorized, under Department of the Army (DA) Permit 24280, to impact 8.57 acres of waters of the U.S. During the construction of the canal lot subdivision, deviations from the original site development plan were made. These deviations resulted in the unauthorized impacts of 0.83 acre of waters of the U.S. Specifically, 0.26 acre of wetlands was filled, 0.42 acre of wetlands was excavated, and 0.15 acre of open water was excavated. In addition to the above referenced impacts, the applicant excavated 0.89 acre of uplands to create open water. CCC Project No.: 10-0019-F1. Type of Application: U.S.A.C.E. permit application #SWG-1996-02935 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Brownsville Navigation District; Location: The project is located approximately 13 miles northeast of Brownsville, on the south side of the Brownsville Ship Channel (BSC), at 18501 R. L. Ostos Road, Port of Brownville, Cameron County, Texas. The two existing berths are located between U.S. Army Corps of Engineers (Corps) Stations 74+267.5 and 74+867.5, and 74+133 and 75+738, respectively. The new area proposed for dredging is located between Corps Stations 74+225 to 73+810.5. The project can be located on the U.S.G.S. quadrangle map titled: Palmito Hill, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 664200; Northing: 2872400. Project Description: The applicant proposes a 10-year extension of time to conduct maintenance dredging on two areas on the BSC used as lay berths for ship breaking activities. Dredging would be by mechanical means to a depth of -26 feet mean low tide. Approximately 18,000 to 20,000 cubic yards of material would be dredged from these lay berth areas, including some shoaling that has accumulated since the last dredge operation. In addition, the applicant requests authorization to dredge an additional 412 feet of shore area (approximately 0.8 acre) east of the existing work to -20 feet MLT to be bulkheaded for a floating dock to increase the lay berth capacity and to include it in the maintenance dredging project. Dredged material would be placed into existing disposal areas onsite. The existing work was originally authorized under Department of the Army permit 21141. CCC Project No.: 10-0026-F1. Type of Application: U.S.A.C.E. permit application #SWG-1997-01926 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above, including a copy of the consistency certifications for inspection, may be obtained from Ms. Tammy Brooks, Consistency Review Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200905639
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: December 7, 2009

♦ ♦ ♦

Comptroller of Public Accounts

Notice of Contract Award

The Comptroller of Public Accounts (Comptroller) announces the following contract award:

The notice of request for proposals (RFP #192d) was published in the April 3, 2009, issue of the *Texas Register* (34 TexReg 2273).

The contractor will provide investment management services to the Comptroller and the Texas Prepaid Higher Education Tuition Board.

The contract was awarded to Shenkman Capital Management Inc., 461 Fifth Avenue, 22nd Floor, New York, NY 10017. The total amount of the contract is based on the fair market value of assets for which services are provided. The term of the contract is September 30, 2009 through August 31, 2014, with option to renew for up to two (2) additional one (1) year periods, one (1) year at a time.

TRD-200905684
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: December 9, 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 12/14/09 - 12/20/09 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 12/14/09 - 12/20/09 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-200905641
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: December 7, 2009

♦ ♦ ♦

Deep East Texas Council of Governments

Request for Proposals for Manufactured Homes

Overview

The Deep East Texas Council of Governments (DETCOG) is seeking to purchase and have installed new manufactured (mobile) homes to remediate unmet housing needs and damages resulting from Hurricane Ike to families in the DETCOG area. In order to develop a pool of qualified manufacturers, DETCOG is seeking bids from companies who specialize in the replacement of damaged homes with new manufactured (mobile) homes in support of its Hurricane Ike Disaster Recovery Program. Firms will be expected to transport and provide complete installation of the homes.

Obtaining Full RFP and Submission Information

The Full RFP can be obtained at http:/detcog.org or by contacting:

Shanna Fuller

Phone (409) 384-5704, ext. 292

Fax (409) 384-5390

Email: sfuller@detcog.org

Submission is due to DETCOG no later than January 15th by 4:00 p.m.

TRD-200905674
Walter G. Diggles, Sr.
Executive Director
Deep East Texas Council of Governments
Filed: December 8, 2009

♦ ♦ ♦

Commission on State Emergency Communications

Notice of Proposed 9-1-1 Fees and 9-1-1 Equalization/Poison Control Surcharges and Allocations

Notice is given to the public of the Commission on State Emergency Communications' (CSEC) proposed rates for the wireline 9-1-1 emergency service fee (wireline fee) and equalization surcharge (surcharge), and the allocation of surcharge revenue under Texas Health and Safety Code §771.072(d) and (e). The current and proposed wireline fee rate is $.50 per "local exchange access line or equivalent local exchange access line" as defined by CSEC in 1 Texas Administrative Code (TAC) §255.4. The current and proposed surcharge percentage is set by CSEC rule at 1.0 % of the charges for "intrastate long-distance service" as defined by CSEC in 1 TAC §255.2.

Interested parties have 45 days from the date this notice is published in the *Texas Register* to file comments. Comments should be submitted to the Public Utility Commission of Texas c/o Central Records, P.O. Box 13326, Austin, Texas 78711-3326. Hearing and speech-impaired individuals with text telephone (TTY) may contact the Public Utility Commission at (512) 936-7136. All comments should reference Project Number 37715.

Wireline Fee and Surcharge Rate

The wireline fee is applicable in the geographic areas within each of Texas' 24 Councils of Government (COGs) in which 9-1-1 service is provided through the state 9-1-1 program. This does not include areas for the following counties and cities within COG areas that are not participating in the state 9-1-1 program. The counties not participating include: Smith, Taylor, Austin, Bexar, Comal, Guadalupe, Brazos, Calhoun, Cameron, Denton, El Paso, Ector, Galveston, Harris, Henderson, Howard, Kerr, Lubbock, McLennan, Medina, Midland, Montgomery, Wichita, Wilbarger, Potter, Randall, Tarrant, Rusk and Harrison. The cities not participating include: Addison, Aransas Pass, Dallas, Plano, Coppell, DeSoto, Ennis, Cedar Hill, Longview, Wylie, Denison, Duncanville, Farmers Branch, Garland, Highland Park, Mesquite, Richardson, Sherman, University Park, Glenn Heights, Hutchins, Lancaster, Portland, Rowlett, Corpus Christi, Kilgore and Sunnyvale.

The surcharge is a statewide fee that is applicable irrespective of whether 9-1-1 service is provided by the COGS through the state 9-1-1 program or by an "Emergency Communication District" (ECD) as that term is defined in Texas Health and Safety Code §771.001(3).

Allocation of Surcharge

COGs

CSEC allocates appropriated surcharge for 9-1-1 to the COGs in order to subsidize those COGs whose statutory allocation of appropriated service fees (wireline and wireless fees) is insufficient to fund their CSEC-approved strategic plans. Allocation of appropriated surcharge is based on need as initially determined by CSEC staff during the strategic plan process. The requirements of the RPCs' strategic plans are prescribed by CSEC in 1 TAC §255.1.

The RPCs submit their strategic plans in three stages: Stage 1 is submitted in even number of years, reviewed by CSEC, and incorporated as appropriate into CSEC's Legislative Appropriations Request. Stage 2 is submitted in odd numbered years to correspond with the legisla-

tive session and requires detailed planning and financial information to allocate appropriated funding. Stage 3 is required when contingent funding has been certified by the Comptroller. At each stage, CSEC staff reviews and analyzes each plan to ensure that it is in accord with CSEC's hierarchical budget components. For the 2010 - 2011 biennia 14 RPCs will be allocated surcharge in order to fund the components. For the ensuing biennium, there is sufficient surcharge to fund the components of these RPCs except for ancillary equipment maintenance.

Surcharge allocation to the COGs is limited by Texas Health and Safety Code §771.072(d) to "not more than .5 percent" of the revenue received from the surcharge. The Comptroller's estimate of available revenue (AR) for surcharge for FY 2010 is $39.684 million. For FY 2010, appropriated surcharge to be allocated to fund the RPCs strategic plans is within statutory limits at $10.494 million.

Poison Control Program

Funding of the Poison Control Program is appropriated and allocated in accordance with CSEC's legislative bill pattern. (Referenced documents can be reviewed through the Public Utility Commission's InterChange at http://interchange.puc.state.tx.us/ by logging-in with project number 37715.) The Department of State Health Services (DSHS) is currently responsible for B.1.1 Strategy: Poison Call Center Operations while CSEC is responsible for B.1.2. Strategy: Statewide Poison Network Operations and B.1.3 Strategy: Poison Program Management. CSEC issues vouchers to reimburse DSHS up to the amount of the appropriation for Poison Call Center Operations, and pays vendors for Network Operations and Program Management--including the Department of Information Resources. CSEC allocates appropriated surcharge to DSHS to fund approved grants for the six regional poison control centers. Funding criteria and awarding of grants is currently done in accordance with DSHS rule 25 TAC §5.52.

The allocation of surcharge to DSHS is limited by statute to "not more than .8 percent" of the revenue received from the surcharge. The Comptroller's estimate of available revenue (AR) for surcharge for FY 2010 is $39.684 million. For FY 2010, appropriated surcharge to be allocated is within statutory limits at $7.463 million.

Additional details and related information can be obtained by request to the Commission on State Emergency Communications, Project 37715, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942.

TRD-200905688
Patrick Tyler
General Counsel
Commission on State Emergency Communications
Filed: December 9, 2009

♦ ♦ ♦

Employees Retirement System of Texas

Revised Notice - Request for Proposals to Conduct Eligibility Audits

This Notice takes place of the previous Notice published on October 23, 2009, issue of the *Texas Register* (34 TexReg 7380), TRD-200904623.

In accordance with §1551.055 and §1551.062 of the Texas Insurance Code, the Employees Retirement System of Texas ("ERS") is soliciting proposals from qualified auditing firms to perform dependent eligibility audits of the participants enrolled in the health programs of the Texas Employees Group Benefits Program ("GBP"). A qualified provider of auditing services ("Auditor") shall supply the level of services required in the Request for Proposal ("RFP") and meet other requirements that are in the best interest of ERS, the GBP health programs, their participants, or the state of Texas, and shall be required to execute a Contractual Agreement ("Contract") provided by and satisfactory to ERS.

As provided in Chapter 1551 of the Texas Insurance Code, ERS is the administrator for the GBP which provides health benefits to over 264,000 state agency and certain higher education employees, retirees, and approximately 198,000 dependents. ERS is responsible for contracting with health carriers and third party administrators to provide coverage for GBP participants or administer such coverage throughout the state of Texas. The services requested and described in the RFP have been broken into two separate scopes of audit services: 1) an initial 100% dependent eligibility audit, and 2) an ongoing annual audit for newly added dependents enrolled in the GBP health programs. Qualified Auditors shall submit a proposal and bid response materials to provide services for both audit scopes. An Auditor wishing to respond to this request shall meet the minimum requirements as well as those other evaluation criteria as more fully specified in Article II of the RFP. Each proposal will be evaluated individually and relative to the proposal of other qualified Auditors.

The RFP will be available on or after December 18, 2009, from ERS' website and will include documents for the Auditor's review and response. To access the secured portion of the RFP website, interested Auditors shall email their request to the attention of IVendor Mailbox at: ivendorquestions@ers.state.tx.us. The email request shall reflect the Auditor's legal name, street address, phone and fax numbers, and email address for the organization's direct point of contact. Upon receipt of this information, a user ID and password will be issued to the requesting organization that will permit access to the secured RFP when the document is published on the Vendor portion of the ERS website.

General questions concerning the RFP and/or ancillary bid materials should be sent to the IVendor Mailbox where responses, if applicable, are updated frequently. The RFP will be discussed at a web conference scheduled for Tuesday, January 5, 2010, beginning at 2:00 p.m. (CT). Auditors interested in bidding are required to register for participation in the web conference no later than close of business on Monday, December 28, 2009, by emailing an acknowledgment to the IVendor Mailbox as referenced above.

To be eligible for consideration, all Auditors are required to submit a total of six (6) sets of the proposal in a sealed container. One (1) proposal shall be labeled as an "Original" and include a fully executed signature page and Business Associate Agreement, **signed in blue ink,** and without amendment or revision. Two (2) additional duplicates of the proposal, including all required exhibits, shall be provided in printed format. The remaining three (3) complete copies shall be submitted on CD-ROMs in Excel or Word format. No PDF documents (with the exception of financial materials) may be reflected on the CD-ROMs. All materials shall be executed as noted above and must be received by ERS no later than 12:00 Noon (CT) on Thursday, January 21, 2010.

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 ERS, the GBP health programs, their participants, or the state of Texas. ERS also reserves the right to reject any proposal submitted that does not fully comply with the RFP's instructions and criteria. 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 ERS, the GBP health programs, their participants or the state of Texas.

TRD-200905557

Paula A. Jones
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
Filed: December 3, 2009

♦ ♦ ♦

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 **January 18, 2010.** 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 January 18, 2010.** 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: Adan O'Campo dba Adam Auto Service; DOCKET NUMBER: 2009-1367-PST-E; IDENTIFIER: RN101573566; LOCATION: Euless, Tarrant County; TYPE OF FACILITY: auto service center with a convenience store with retail sales of gasoline; RULE VIOLATED: 30 Texas Administrative Code (TAC) §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor underground storage tanks (USTs) for releases; 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records; 30 TAC §334.50(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; 30 TAC §334.51(a)(6) and the Code, §26.3475(c)(2), by failing to ensure that all spill and overfill prevention devices are maintained in good operating condition; 30 TAC §334.10(b) and (2)(B)(v), by failing to maintain UST records and make them immediately available for inspection; 30 TAC §115.226(1) and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain a record at the station of the dates on which gasoline was delivered to the dispensing station; 30 TAC §115.244(3) and THSC, §382.085(b), by failing to conduct 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 each current employee received in-house Stage II vapor recovery training; PENALTY: $11,609; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5800; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Atlas Pipeline Mid-Continent WestTex, LLC; DOCKET NUMBER: 2009-1505-AIR-E; IDENTIFIER: RN100215714; LOCATION: near Midkiff, Reagan County; TYPE OF FACILITY: natural gas processing plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(1) and (2), Federal Operating Permit (FOP) Number O-0609/General Operating Permit (GOP) Number 514, Site-Wide Requirements (SWR) Number (b)(2), and THSC, §382.085(b), by failing to submit a complete permit compliance certification; 30 TAC §122.143(4), FOP Number O-0609/GOP Number 514, SWR Number (b)(8), and THSC, §382.085(b), by failing to maintain records which document that an observation for visible emissions was conducted for all stationary vents for emission units in operation; and 30 TAC §116.115(c) and §122.143(4), New Source Review (NSR) Permit Number 19592, Special Condition (SC) Number 14.C., FOP Number O-0609/GOP Number 514, SWR Number (b)(7), and THSC, §382.085(b), by failing to conduct an emissions test for nitrogen oxides (NO_x) and carbon monoxide; PENALTY: $3,975; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(3) COMPANY: Maxwell Barker; DOCKET NUMBER: 2009-1837-WOC-E; IDENTIFIER: RN103286522; LOCATION: May, Brown County; TYPE OF FACILITY: licensing; 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.

(4) COMPANY: BASF Corporation; DOCKET NUMBER: 2009-1386-AIR-E; IDENTIFIER: RN100225689; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §§115.722(d), 116.115(c), and 122.143(4), 40 Code of Federal Regulations (CFR) §60.18(c)(3)(ii), Air Permit Number 8199A, SC Number 11A, FOP Number 1331, Special Term and Condition (STC) Number 14, THSC, §382.085(b), by failing to maintain the minimum net heating value of 300 British Thermal Unit per standard cubic feet per minute (BTU/scfm); 30 TAC §116.115(c) and §122.143(4), 40 CFR §60.18(c)(3)(ii), Air Permit Number 8199A, SC Number 10, FOP Number 1331, STC Number 14, and THSC, §382.085(b), by failing to remain below the maximum NO_x per thousand BTU; and 30 TAC §§115.764, 116.115(c), and 122.143(4), 40 CFR §60.18(c)(3)(ii), Air Permit Number 8199A, SC Number 12, FOP Number 1331, STC Number 14, and THSC, §382.085(b), by failing to take readings from the highly reactive volatile organic compound analyzer; PENALTY: $11,160; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: Don W. Bynum dba American Auto Salvage; DOCKET NUMBER: 2009-1838-WQ-E; IDENTIFIER: RN101951366; LOCATION: Nederland, Jefferson County; TYPE OF FACILITY: vehicle salvage yard; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit; PENALTY: $700; ENFORCEMENT COORDINATOR: Jordan Jones, (512) 239-2569; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(6) COMPANY: Cabot Corporation; DOCKET NUMBER: 2009-1417-AIR-E; IDENTIFIER: RN100210582; LOCATION: Pampa, Gray County; TYPE OF FACILITY: carbon black man-

ufacturing plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.145(2)(A), FOP Number O-01666, General Terms and Conditions (GTC), and THSC, §382.085(b), by failing to submit a complete semi-annual deviation report; and 30 TAC §122.143(4) and §122.145(2)(B), FOP Number O-01666, GTC, and THSC, §382.085(b), by failing to submit a semi-annual deviation report; PENALTY: $2,430; ENFORCEMENT COORDINATOR: Kirk Schoppe, (512) 239-0489; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(7) COMPANY: Cross Country Water Supply Corporation; DOCKET NUMBER: 2009-1452-PWS-E; IDENTIFIER: RN101439438; LOCATION: McLennan County; TYPE OF FACILITY: public water supply (PWS); RULE VIOLATED: 30 TAC §290.45(b)(1)(D)(v) and THSC, §341.0315(c), by failing to provide emergency power that is sufficient to deliver a minimum of 0.35 gallons per minute (gpm) per connection to the distribution system; PENALTY: $635; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(8) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2009-0219-AIR-E; IDENTIFIER: RN102926920; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 6257E, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $40,000; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: Gary Barton dba Fabens Exxon; DOCKET NUMBER: 2009-0712-PST-E; IDENTIFIER: RN101653509; LOCATION: Fabens, El Paso County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(c)(4)(C) and the Code, §26.3475(d), by failing to inspect and test the corrosion protection system for operability and adequacy of protection; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor the USTs for releases; 30 TAC §334.7(d)(3), by failing to provide an amended registration for any change or additional information regarding the USTs; 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection; and 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs; PENALTY: $7,916; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5800; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(10) COMPANY: Flint Hills Resources, LP; DOCKET NUMBER: 2009-1335-AIR-E; IDENTIFIER: RN100217389; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petrochemical manufacturing plant; RULE VIOLATED: 30 TAC §§101.20(3), 116.715(a), and 122.143(4), FOP Number O-01317, SC Number 16, Air Permit Number 16989/PSD-TX-794, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §101.201(a)(1) and §122.143(4), FOP Number O-01317, SC Number 2F, and THSC, §382.085(b), by failing to submit a report in a timely manner; PENALTY: $16,715; Supplemental Environmental Project (SEP) offset amount of $6,686 applied to South East Texas Regional Planning Commission - West Port Arthur Home Energy Efficiency Program; ENFORCEMENT COORDINATOR: Audra Benoit, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(11) COMPANY: Adrian Gomez; DOCKET NUMBER: 2009-1165-WQ-E; IDENTIFIER: RN105670137; LOCATION: Gordon, Palo Pinto County; TYPE OF FACILITY: rock quarry; RULE VIOLATED: 30 TAC §281.25(a)(4) and §311.74(a) and 40 CFR §122.26(c), by failing to obtain authorization to discharge storm water from a rock quarry operation to water in the state located in a water quality protected area; PENALTY: $2,647; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(12) COMPANY: City of Hempstead; DOCKET NUMBER: 2009-1401-MWD-E; IDENTIFIER: RN101920692; LOCATION: Waller County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(5) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010948001, Operational Requirements Number 1, by failing to ensure that all systems of collection, treatment, and disposal are properly operated and maintained; 30 TAC §305.125(5) and TPDES Permit Number WQ0010948001, Operational Requirements Number 1, by failing to provide back-up blower capacity; 30 TAC §305.125(4), TPDES Permit Number WQ0010948001, Permit Conditions Number 2.g., and the Code, §26.121(a), by failing to prevent the unauthorized discharge of wastewater; 30 TAC §305.125(1) and §319.9(a) and TPDES Permit Number WQ0010948001, Monitoring and Reporting Requirements Number 1, by failing to properly collect a three part manual composite sample; and 30 TAC §305.125(5) and TPDES Permit Number WQ0010948001, Monitoring and Reporting Requirements Number 5, by failing to ensure the flow meter was accurately measuring the flow rate; PENALTY: $15,675; ENFORCEMENT COORDINATOR: Heather Brister, (254) 751-0335; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(13) COMPANY: Kinder Morgan Liquids Terminals, LLC; DOCKET NUMBER: 2009-1161-AIR-E; IDENTIFIER: RN100237452; LOCATION: Galena Park, Harris County; TYPE OF FACILITY: storage tank terminal; RULE VIOLATED: 30 TAC §116.115(c), NSR Permit Number 2193, SC Number 30C, and THSC, §382.085(b), by failing to maintain a permit required destruction efficiency of 99.8%; and 30 TAC §116.116(a)(1) and THSC, §382.085(b), by failing to represent equipment in the permitting process; PENALTY: $12,805; SEP offset amount of $5,122 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(14) COMPANY: Jeremy King; DOCKET NUMBER: 2009-1830-WOC-E; IDENTIFIER: RN103358636; LOCATION: Houston, Harris County; TYPE OF FACILITY: licensing; 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: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(15) COMPANY: Manitou Limited, Incorporated; DOCKET NUMBER: 2009-1275-MWD-E; IDENTIFIER: RN101611549; LOCATION: Brazos County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1) and (5) and TPDES Permit Number WQ0012015001, Operational Requirements Number 4, by failing to maintain adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures; PENALTY: $6,950; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(16) COMPANY: City of Mart; DOCKET NUMBER: 2009-1302-MWD-E; IDENTIFIER: RN102079274; LOCATION: Mart, McLennan County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(5) and TPDES Permit Number WQ0010645001, Operational Requirements Number 4, by failing to maintain adequate safeguards to prevent the discharge of untreated

or inadequately treated wastes during electrical power failures; PENALTY: $3,725; ENFORCEMENT COORDINATOR: Heather Brister, (254) 751-0335; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(17) COMPANY: N Number 1 Airline Center, Inc. dba Number 1 Airline Food Store; DOCKET NUMBER: 2009-1358-PST-E; IDENTIFIER: RN101432367; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment, vapor space manifolding, and dynamic back pressure; PENALTY: $3,209; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(18) COMPANY: North Milam Water Supply Corporation; DOCKET NUMBER: 2009-1458-PWS-E; IDENTIFIER: RN102681889; LOCATION: Milam County; TYPE OF FACILITY: PWS; RULE 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 gpm per connection in the event of the loss of normal power supply; PENALTY: $635; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3100; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(19) COMPANY: Leonard D. Olivares dba Olivares Pumping & Septic Tank Cleaning; DOCKET NUMBER: 2009-0938-SLG-E; IDENTIFIER: RN103147559; LOCATION: Beeville, Bee County; TYPE OF FACILITY: plumbing/septic tank cleaning; RULE VIOLATED: 30 TAC §312.145(b)(1), by failing to include all of the required information on the trip tickets; and 30 TAC §312.145(b)(4), by failing to submit an annual summary of activities showing the amounts and types of waste collected, the disposition of such wastes, and the amounts and types of waste delivered to each facility; PENALTY: $1,055; ENFORCEMENT COORDINATOR: Jeremy Escobar, (512) 239-1460; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(20) COMPANY: Petrocapital Management, LLC dba Hitchcock Chevron; DOCKET NUMBER: 2009-0617-PST-E; IDENTIFIER: RN101762698; LOCATION: Hitchcock, Galveston County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; and 30 TAC §115.242(3) and THSC, §382.085(b), by failing to maintain the Stage II VRS in proper operating condition and free of defects; PENALTY: $4,673; ENFORCEMENT COORDINATOR: Brianna Carlson, (956) 425-6010; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(21) COMPANY: Prairie Hill Water Supply Corporation; DOCKET NUMBER: 2009-1459-PWS-E; IDENTIFIER: RN101459592; LOCATION: Limestone County; TYPE OF FACILITY: PWS; RULE 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 gpm per connection; PENALTY: $930; ENFORCEMENT COORDINATOR: Amanda Henry, (713) 767-3500; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(22) COMPANY: PREMIER RECYCLERS, L.L.C.; DOCKET NUMBER: 2009-1336-MSW-E; IDENTIFIER: RN105196786; LOCATION: Jasper, Jasper County; TYPE OF FACILITY: scrap metal recycling; RULE VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; 30 TAC §328.60(a), by failing to obtain a scrap tire storage site registration; 30 TAC §328.56(d)(4) and §328.63(d)(2), by failing to have an effective vector control program for the scrap tires stored on the ground; 40 CFR §279.22(c), by failing to label or clearly mark containers used to store used oil with the words "Used Oil'; 30 TAC §324.15 and 40 CFR §279.22(d), by failing to properly cleanup and dispose of contaminated soil upon detection of a release of used oil; and 30 TAC §328.23, by failing to properly store used oil filters; PENALTY: $5,246; ENFORCEMENT COORDINATOR: Ross Fife, (512) 239-2541; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(23) COMPANY: REENA & ARISH BUSINESS, INC. dba Jacks Grocery; DOCKET NUMBER: 2009-1280-PST-E; IDENTIFIER: RN102278595; LOCATION: Kingwood, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(c)(4) and the Code, §26.3475(d), by failing to inspect and test the cathodic protection system for operability and adequacy of protection; 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to timely renew a previously issued delivery certificate by submitting a properly completed UST registration and self-certification form; and 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; PENALTY: $3,770; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(24) COMPANY: Rio Grande Valley Sugar Growers, Inc.; DOCKET NUMBER: 2009-1564-AIR-E; IDENTIFIER: RN100825405; LOCATION: near Santa Rosa, Hidalgo County; TYPE OF FACILITY: sugar processing plant; RULE VIOLATED: 30 TAC §116.110(a) and THSC, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to conducting surface coating operations; 30 TAC §116.110(a) and THSC, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to conducting sandblasting operations; and 30 TAC §122.146(4) and THSC, §382.085(b), by failing to identify any other material information that must be included in the Title V certification; PENALTY: $5,855; ENFORCEMENT COORDINATOR: Kirk Schoppe, (512) 239-0489; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(25) COMPANY: SandRidge CO2, LLC; DOCKET NUMBER: 2009-1403-AIR-E; IDENTIFIER: RN100825348; LOCATION: Terrell County; TYPE OF FACILITY: carbon dioxide compressor station; RULE VIOLATED: 30 TAC §122.146(1) and THSC, §382.085(b), by failing to certify compliance for the period of May 23, 2007 through May 30, 2007; 30 TAC §116.115(c), Air Permit Number 73399, SC Number 3.A., and THSC, §382.085(b), by failing to conduct quarterly engine performance evaluations by measuring the NO_x, carbon dioxide, and oxygen content of the exhaust; 30 TAC §116.115(c), Air Permit Number 73399, SC Number 3.C., and THSC, §382.085(b), by failing to use the portable analyzer data to demonstrate compliance with the maximum allowable emission rate table; 30 TAC §116.115(c), Air Permit Number 73399, SC Number 4.B., and THSC, §382.085(b), by failing to prepare and maintain written records of quarterly engine performance evaluations; and 30 TAC §122.145(2)(B) and THSC, §382.085(b), by failing to provide deviation reports; PENALTY: $33,641; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 3300 North A Street, Building 4-107, Midland, Texas 79705-5406, (432) 570-1359.

(26) COMPANY: SHAWNA, INC.; DOCKET NUMBER: 2009-1238-PST-E; IDENTIFIER: RN102911591; LOCATION: Rising Star, Eastland County; TYPE OF FACILITY: inactive USTs; RULE VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed

upgrade implementation date, a UST system; PENALTY: $2,625; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(27) COMPANY: City of Sinton; DOCKET NUMBER: 2009-0995-MWD-E; IDENTIFIER: RN101916740; LOCATION: Sinton, San Patricio County; TYPE OF FACILITY: domestic wastewater treatment system; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010055001, Interim Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the permitted effluent limits for five-day carbonaceous biochemical oxygen demand and ammonia nitrogen; PENALTY: $2,360; ENFORCEMENT COORDINATOR: Carlie Konkol, (512) 239-0735; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(28) COMPANY: Texas Conference Association of Seventh-Day Adventists; DOCKET NUMBER: 2009-1589-PWS-E; IDENTIFIER: RN104387543; LOCATION: Harris County; TYPE OF FACILITY: school with PWS; RULE VIOLATED: 30 TAC §290.41(c)(3)(A), by failing to submit well completion data to the commission for review and approval; and 30 TAC §290.39(e)(1) and §290.46(a) and THSC, §341.035(a), by failing to submit plans and specifications for the facility that have been prepared by a licensed professional engineer; PENALTY: $286; ENFORCEMENT COORDINATOR: Amanda Henry, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(29) COMPANY: Wesley Vanderpool; DOCKET NUMBER: 2009-1261-MLM-E; IDENTIFIER: RN104159264; LOCATION: Starr County; TYPE OF FACILITY: water pump; RULE VIOLATED: 30 TAC §330.15(a) and the Code, §26.121, by failing to prevent the unauthorized discharge of waste into and adjacent to the water in the state; PENALTY: $1,020; ENFORCEMENT COORDINATOR: John Shelton, (512) 239-2563; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(30) COMPANY: Daniel C. White; DOCKET NUMBER: 2009-1877-WOC-E; IDENTIFIER: RN105828628; LOCATION: Wilbarger County; TYPE OF FACILITY: licensing; 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.

TRD-200905651
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: December 8, 2009

♦ ♦ ♦

Notice of Corrections to Agreed Orders Published on December 4, 2009

In the December 4, 2009, issue of the *Texas Register* (34 TexReg 8883), the Texas Commission on Environmental Quality (commission) published the following notice of Agreed Orders which were submitted in error by the commission.

(1) COMPANY: Alcoa Inc.; DOCKET NUMBER: 2008-1425-AIR-E; TCEQ ID NUMBER: RN100221472; as Penalty Amount: $9,827 and instead should have been submitted as Penalty: $19,655; Supplemental Environmental Project (SEP) offset amount of $9,827 applied to Texas Congress of Parents and Teachers (PTA) - Texas PTA Clean School Buses. For questions concerning this error, please contact Anna Treadwell at (512) 239-0974.

(4) COMPANY: Oneok Hydrocarbon Southwest, L.L.C.; DOCKET NUMBER: 2009-0400-AIR-E; TCEQ ID NUMBER: RN100209949; Penalty: $160,000; SEP offset amount of $80,000 applied to Barbers Hill Independent School District Barbers Hill Energy Efficiency Program and instead should have been submitted as Penalty: $160,000; SEP offset amount of $40,000 applied to Barbers Hill Independent School District Barbers Hill Energy Efficiency Program; and $40,000 applied to Houston-Galveston Area Emission Reduction Credit Organization (AERCO) Clean Cities/Clean Vehicles Program. For questions concerning this error, please contact Laurencia Fasoyiro at (713) 767-3500.

(5) COMPANY: Ralph Thomas and Janice Thomas; DOCKET NUMBER: 2008-1613-PST-E; TCEQ ID NUMBER: RN100899343; was submitted in error by the commission as an Agreed Order and instead should have been submitted as a Default Order. This is being resubmitted as a Default Order in this issue of the *Texas Register.* For questions concerning this error, please contact Rudy Calderon at (512) 239-0205.

(6) COMPANY: Rapid Marine Fuels, L.L.C. dba Rapid Environmental Services, L.L.C.; DOCKET NUMBER: 2007-1894-MLM-E; TCEQ ID NUMBER: RN100669217; was submitted in error by the commission as 30 TAC §324.1 and 40 CFR §279.45(g), by failing to properly cleanup spills or discharges of used oil; 30 TAC §324.1 and 40 CFR §279.44(d) and §279.46(h) by failing to properly cleanup spills or discharges of used oil; 30 TAC §324.1 and 40 CFR §279.44(d) and §279.46(a), (b), (c), and instead should have been submitted as 30 TAC §324.15 and 40 CFR §279.45(h), by failing to properly cleanup spills or discharges of used oil; 30 TAC §324.1 and 40 CFR §279.44(d) and §279.46(a), (b), and (c), by failing to retain records of rebuttable presumption analyses and records of used oil shipments and of all used oil accepted and delivered. For questions concerning this error, please contact Kari L. Gilbreth at (512) 239-1320.

TRD-200905680
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: December 9, 2009

♦ ♦ ♦

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 **January 18, 2010.** 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 January 18, 2010.** 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: City of La Villa; DOCKET NUMBER: 2009-0370-PWS-E; TCEQ ID NUMBER: RN101388957; LOCATION: intersection of Third Street and Nogales Street, La Villa, Hidalgo County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.110(e)(2) and (5), and §290.111(h)(3) and (11), by failing to submit a surface water monthly operating report to the commission by the tenth day of the month following the end of the reporting period; and TWC, §5.702 and 30 TAC §21.4 and §290.51, by failing to pay all outstanding fees, penalties, and interest to the commission in a timely manner; PENALTY: $3,172; Supplemental Environmental Project offset amount of $3,172 applied to Texas Association of Resource Conservation and Development Areas, Inc. Water and Wastewater Treatment Assistance; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(2) COMPANY: Harbor Seafood, Inc.; DOCKET NUMBER: 2009-0713-PST-E; TCEQ ID NUMBER: RN103915146; LOCATION: 2629 Avenue R, San Leon, Galveston County; TYPE OF FACILITY: marine vessel refueling facility; RULES VIOLATED: 30 TAC §334.76, by failing to perform initial response actions within 24 hours of confirmation of a release from an aboveground storage tank system; PENALTY: $2,500; 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.

(3) COMPANY: Jimmy P. Grady dba All American Cross Tie; DOCKET NUMBER: 2009-0429-AIR-E; TCEQ ID NUMBER: RN104918610; LOCATION: 26062 United States Highway 82, Sherman, Grayson County; TYPE OF FACILITY: landscape material and equipment yard; RULES VIOLATED: 30 TAC §111.201 and THSC, §382.085(b), by failing to comply with the general prohibition on outdoor burning; PENALTY: $1,450; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Ronald West, L.L.C.; DOCKET NUMBER: 2008-1371-MSW-E; TCEQ ID NUMBER: RN105163950; LOCATION: one mile east of Highway 339 on County Road 656, Kosse, Limestone County; TYPE OF FACILITY: land reclamation project using tires; RULES VIOLATED: 30 TAC §330.15(a) and (c) and TWC, §26.121(a), by failing to prevent the disposal of unauthorized waste; and 30 TAC §328.60(a) and TCEQ Processor Registration ID Number 6200399, by failing to store scrap tires in totally enclosed and lockable containers; PENALTY: $1,800; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(5) COMPANY: Salim Aziz Dossani dba Short Trip Food Mart; DOCKET NUMBER: 2008-1254-PST-E; TCEQ ID NUMBER: RN100860626; LOCATION: 8703 Boone Road, Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.246(4) and (5) and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain Stage II station representative certification and vapor recovery testing records at the station and make them immediately available for inspection upon request by agency personnel; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; 30 TAC §334.49(c)(2)(C) and (4) and TWC, §26.3475(d), by failing inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly and failing to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years; 30 TAC §334.50(b)(1)(A), (2)(A)(i)(III), (d)(1)(B)(ii), and TWC, §26.3475(a) and (c)(1), by failing to ensure that all underground storage tanks are monitored in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring), failing to test the line leak detectors at least once per year for performance and operational reliability, and failing to conduct reconciliation of detailed inventory control records at least once every month, sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; TCEQ AO 2005-0365-PST-E, Ordering Provision Number 2.b. and 30 TAC §334.74(2), by failing to investigate a suspected release within 30 days of discovery; TCEQ AO Docket Number 2005-0365-PST-E, Ordering Provision Number 2.a. and 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all underground storage tanks involved in the retail sale of petroleum substances used as motor fuel; and 30 TAC §115.242(1)(C) and THSC, §382.085(b), by failing to upgrade the Stage II equipment to onboard refueling vapor recovery compatible systems; PENALTY: $65,088; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(6) COMPANY: Star Fuels, Inc. dba Crosstimers CITGO; DOCKET NUMBER: 2009-0273-PST-E; TCEQ ID NUMBER: RN100606276; LOCATION: 1333 Crosstimbers Street, Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.245(2) and THSC, 382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months or upon major system replacement or modification, whichever occurs first; 30 TAC §115.242(3)(G) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition and free of defects that would impair the effectiveness of the system, including but not limited to absence or disconnection of any component that is a part of the approved system; and 30 TAC §334.51(a)(6) and TWC, §26.3475(c)(2), by failing to ensure that all spill and overfill prevention devices are maintained in good operating condition; PENALTY: $11,596; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

TRD-200905681
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: December 9, 2009

♦ ♦ ♦

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 **January 18, 2010**. 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 January 18, 2010**. 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: Benny Hernandez dba IGM Scrap Tire; DOCKET NUMBER: 2007-1679-MSW-E; TCEQ ID NUMBER: RN104544614; LOCATION: 1312 Kennedy Street, Pharr, Hidalgo County; TYPE OF FACILITY: unauthorized scrap tire storage site; RULES VIOLATED: 30 TAC §328.60(a), by failing to obtain a scrap tire storage site registration for a site that stores more than 500 used or scrap tires on the ground; 30 TAC §328.54(d), by failing to identify any vehicle or trailer used to transport used or scrap tires or tire pieces on both sides and the rear of the vehicle with the name and place of business of the transporter and the commission registration number, using numbers and letters at least two inches tall; and 30 TAC §328.57(c)(3), by failing to ensure that used or scrap tires or tire pieces are transported to an authorized scrap tire facility; PENALTY: $7,875; STAFF ATTORNEY: Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(2) COMPANY: Christopher Xindaris dba Devlyn Construction; DOCKET NUMBER: 2009-1000-WQ-E; TCEQ ID NUMBER: RN105637292; LOCATION: corner of Stan Schlueter Loop and Old Florence Road, Killeen, Bell County; TYPE OF FACILITY: three-acre construction site; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge storm water associated with construction activities; PENALTY: $1,050; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: Colby Green; DOCKET NUMBER: 2009-0940-LII-E; TCEQ ID NUMBER: RN105723324; LOCATION: 1200 Brighton Bend Lane, Cedar Park, Williamson County; TYPE OF FACILITY: landscape irrigation business; RULES VIOLATED: 30 TAC §30.5(a) and (b) and §344.30, TWC, §37.003, and Texas Occupations Code §1903.251, by failing to hold an irrigator license prior to selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system and failing to refrain from advertising or representing himself to the public as a person who can perform services for which a license or registration is required; PENALTY: $1,286; STAFF ATTORNEY: Stephanie J. Frazee, Litigation Division, MC 175, (512) 239-3693; REGIONAL OFFICE: Austin Regional Office, 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(4) COMPANY: Jerico Foster dba Foster Septic; DOCKET NUMBER: 2009-0775-SLG-E; TCEQ ID NUMBER: RN105715981; LOCATION: 13228 1/2 Columbine Lane, Houston, Harris County; TYPE OF FACILITY: sludge transporter business; RULES VIOLATED: 30 TAC §312.142(a), by failing to apply for and receive a registration to transport sewage sludge or domestic septage prior to commencing operations; 30 TAC §312.144(d), by failing to equip a vehicle used to transport liquid waste with a site gauge maintained in a manner which can be used to determine whether or not the vehicle is loaded and the approximate capacity; and 30 TAC §312.415(a), by failing to maintain a record of each individual collection and deposit; PENALTY: $3,500; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(5) COMPANY: Mohammed Vasel Ahmed; DOCKET NUMBER: 2009-0720-MWD-E; TCEQ ID NUMBER: RN103759106; LOCATION: 1,500 feet east of United States (US) Highway 59 and 1,500 feet south of US Highway 59 bridge over Willis Creek, Polk County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TAC §305.42(a) and TWC, §26.121(a)(1), by failing to obtain authorization to discharge wastewater under a Texas Pollutant Discharge Elimination System permit; PENALTY: $2,140; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(6) COMPANY: Phillip Crump; DOCKET NUMBER: 2009-0741-MSW-E; TCEQ ID NUMBER: RN105625214; LOCATION: end of Private Road 7010 off County Road (CR) 301 near Carthage, Panola 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: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(7) COMPANY: Ralph Thomas and Janice Thomas; DOCKET NUMBER: 2008-1613-PST-E; TCEQ ID NUMBER: RN100899343; LOCATION: 1800 Houston Avenue, Houston, Harris County; TYPE OF FACILITY: property with an inactive underground storage tank (UST); RULES VIOLATED: 30 TAC §334.47(a)(2) and §334.54(b), and (d)(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, 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; and 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 §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the UST system within 30 days of the occurrence of the change or addition; PENALTY: $6,300; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(8) COMPANY: Schilling Sierra, Inc.; DOCKET NUMBER: 2008-0531-PST-E; TCEQ ID NUMBER: RN101657534; LOCATION: 212 East El Paso Street, Sierra Blanca, Hudspeth County; TYPE OF FACILITY: three inactive underground storage tanks; RULES VIOLATED: 30 TAC §334.47(a)(2) and §334.54(b)(2), by failing to permanently remove from service, no later than 60 days after the prescribed implementation date, three USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements and failing to maintain all piping, pumps, man-ways, tank access points and ancillary equipment in a capped, plugged, locked, or other secured manner to prevent access, tampering, or vandalism by unauthorized persons; 30 TAC §334.7(d)(3), by failing to notify the agency of any change or addition within 30 days from the date of the occurrence of the change or addition, or within 30 days from the date on which the owner or operator first became aware of the change or addition; PENALTY: $9,095; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(9) COMPANY: Terry L. Babb, Sr. dba Twin Oaks Mobile Home Park; DOCKET NUMBER: 2009-0569-MLM-E; TCEQ ID NUMBER: RN101192995; LOCATION: 200 yards west of State Highway 31 and Farm-to-Market Road 753, Henderson County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to provide a sanitary control easement that covers the land within 150 feet of the facility's well; 30 TAC §290.41(c)(3)(K), by failing to seal the wellhead by a gasket or sealing compound; 30 TAC §290.41(c)(3)(O), by failing to protect the well with an intruder-resistant fence with a locked gate or a locked, ventilated well house to exclude possible contamination or damage to the facility by trespassers; 30 TAC §290.42(l), by failing to maintain a thorough and up-to-date plant operations manual at the facility that is available for operator review and reference; 30 TAC §290.43(c)(1) - (3), by failing to construct the ground storage tank in strict accordance with American Water Works Association standards such that the minimum number, size, and type of roof vents, man ways, drains, sample connections, access ladders, overflows, liquid level indicators, and other required appurtenances are provided; 30 TAC §290.45(b)(1)(F)(ii) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a minimum total storage capacity of 200 gallons per connection; 30 TAC §290.46(m)(1)(A), by failing to conduct an annual inspection of the facility's ground storage tank to determine that the vents are in place and properly screened, the roof hatches are closed and locked, flap valves and gasketing provide adequate protection against insects, rodents, and other vermin, the interior and exterior coating systems provide adequate protection to all metal surfaces and the tank remains watertight; 30 TAC §290.46(m)(1)(B), by failing to conduct an annual inspection of the pressure tank to determine that the pressure release device and pressure gauge are working properly, the air-water ratio is being maintained at the proper level, the exterior coating systems provide adequate protection to all metal surfaces, and the tank remains watertight; 30 TAC §290.121(a) and (b), by failing to maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with monitoring requirements; 30 TAC §290.46(m), by failing to maintain the good working condition and general appearance of the system's facilities and equipment; 30 TAC §290.46(n)(2), by failing to provide an up-to-date map of the distribution system so that valves and mains may be easily located during emergencies; 30 TAC §290.46(n)(3), by failing to maintain a copy of the well completion data on file; 30 TAC §290.110(e)(4)(A), by failing to submit the Disinfection Level Quarterly Operating Reports to the commission no later than the tenth day of the month following the end of the reporting period; 30 TAC §290.45(b)(1)(F)(iv) and THSC, §341.0315(c), by failing to provide a minimum pressure tank capacity of 20 gallons per connection; 30 TAC §290.41(c)(3)(B), by failing to maintain a well casing that extends a minimum of 18 inches above the well's sealing block; 30 TAC §290.110(c)(4)(A), by failing to monitor the disinfectant residual at representative locations throughout the distribution system at least once every seven days; 30 TAC §290.46(i), by failing to adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to insure that neither cross-connections nor other unacceptable plumbing practices are permitted; 30 TAC §290.46(s)(1), by failing to calibrate the facility's well meter at least once every three years; 30 TAC §290.43(d)(3), by failing to equip the air compressor's injection line with a filter or other device to prevent compressor lubricants and other contaminants from entering the pressure tank; 30 TAC §288.20(a) and §288.30(5)(B), by failing to adopt a drought contingency plan which includes all elements for municipal use by a retail public water supplier; 30 TAC §290.51(a)(6), TWC, §5.702, THSC, §341.049(i)(1) and TCEQ DO Docket Number 2003-1328-PWS-E, Ordering Provision Numbers 1.a. and 1.d.ii., by failing to pay all Public Health Service fees and administrative penalties to the commission in a timely manner; PENALTY: $7,537; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(10) COMPANY: Tom Huu Nguyen aka Huu Tam Nguyen dba Shop-N-Go Superette and Thuy Nga Le Nguyen aka Thuy Nga Le dba Shop-N-Go Superette; DOCKET NUMBER: 2006-1791-PST-E; TCEQ ID NUMBER: RN102241247; LOCATION: 630 West Davis Street, Vidor, Orange County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of petroleum USTs; 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, an existing UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; and 30 TAC §334.7(d)(3), by failing to provide amended registration regarding USTs within 30 days from the date of occurrence of the change or addition; PENALTY: $6,895; STAFF ATTORNEY: Tracy Chandler, Litigation Division, MC 175, (512) 239-0629; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-200905682
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: December 9, 2009

♦ ♦ ♦

Notice of Public Comment Period and Public Meeting Concerning Revisions to the Texas Emissions Reduction Plan (TERP) Guidelines for Emissions Reduction Incentive Grants, RG-388 (Guidelines)

The purpose of the comment period and meetings is to obtain public input concerning the proposed revisions to the guidelines.

The executive director of the Texas Commission on Environmental Quality (TCEQ or commission) is issuing this public notice of proposed revisions to the guidelines. In accordance with Texas Health and Safety Code (THSC), §386.053(d), the commission shall make a proposed revision to the guidelines available to the public before the 30th day preceding the date of final adoption of the revision and shall hold at least one public meeting to consider public comments on the proposed revision before final adoption.

The TERP was established by the Texas Legislature in 2001 to provide financial incentives (grants) to owners and operators of heavy-duty on-road vehicles, non-road equipment, marine vessels, locomotives, and stationary equipment to replace or upgrade their older vehicles, equipment, and/or engines with newer, cleaner models. Funding is also available to purchase and install emissions reduction retrofit systems on existing engines.

Activities eligible for funding under the TERP are intended to reduce the emissions of nitrogen oxides (NO_x). NO_x is usually a by-product of high temperature combustion, such as that which occurs in large internal combustion engines. NO_x combines with volatile organic compounds in the presence of sunlight to form ground-level ozone. Certain areas of the state have ozone levels that exceed the National Ambient Air Quality Standards established under the Federal Clean Air Act. The TERP program was established to help these areas come into compliance with these federal requirements and to help other areas of the state that are facing air quality challenges.

Under THSC, §386.053(d), the commission may propose revisions to the guidelines and criteria as necessary to improve the ability of the plan to achieve its goals. The proposed revisions incorporate changes made to the program by House Bill 1796, enacted by the 81st Legislature, 2009. Other changes are proposed to update or clarify the program criteria.

Comments may be submitted in writing or may be provided at the public meeting scheduled for January 7, 2010, 10:00 a.m., at the Texas Commission on Environmental Quality, Building E, Room 201S, 12100 Park 35 Circle, Austin, Texas, (800) 919-8377. The public meeting is not a hearing for rulemaking under Texas Government Code, Chapter 2001.

All persons desiring to make comments may do so at the public meeting. All comments submitted separate from the public meeting must be received by 5:00 p.m., on January 15, 2010, **and should be sent in writing** to Ms. Sandra Jo Garcia, Texas Commission on Environmental Quality, Air Quality Division, Implementation Grants Section, MC 204, P.O. Box 13087, Austin, Texas 78711-3087, or facsimile at (512) 239-0077. The public comment period will end at 5:00 p.m., on January 15, 2010.

Electronic copies of the proposed revisions to the guidelines may be viewed and downloaded at *www.terpgrants.org*. Written copies of the guidelines may be requested by calling the TERP toll free number at (800) 919-TERP (8377). Copies may be obtained in person during regular business hours at the Texas Commission on Environmental Quality, Building F, Room 2202, 12100 Park 35 Circle, Austin, Texas.

Persons who have special communication or other accommodation needs who are planning to attend the meeting should contact the agency at (800) 919-8377 or (512) 239-4626. Requests should be made as far in advance as possible.

For further information about the guidelines or the public meeting, please call the TERP toll free number at (800) 919-8377.

TRD-200905649
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: December 8, 2009

♦ ♦ ♦

Request for Proposals for Major Consulting Services - Field Operations Division Environmental Investigator Training Program

The Texas Commission on Environmental Quality (TCEQ) announces a Request for Proposal (RFP) for major consulting services pursuant to Texas Government Code, Chapter 2254, Subchapter B. The term of the contract will be from project initiation to August 31, 2011. The contract may be renewed by agreement of the parties for up to two additional one-year periods. The TCEQ will administer the contract. The RFP was released on December 4, 2009, and a finding of necessity has been made by the Governor's Office.

Purpose and Goal: TCEQ is seeking to develop and implement an enhanced Field Operations Division (FOD) Environmental Investigator Training Program. The TCEQ is seeking to restructure the FOD Training Program including regional office equipment need assessments, inventory analysis, procurement processes, equipment surplus recommendations, database development requirements, on-site permanent field training center development, inspection mentoring program assessment and reorganization, FOD equipment Standard Operating Procedure revisions, protocols and inspection form updates, and the development of basic investigation strategies and techniques for investigator training modules.

Review and Award Criteria: Each application will first be screened for completeness and timeliness. Proposals that are deemed incomplete or arrive after the deadline will not be reviewed. A team of reviewers from the TCEQ will evaluate the proposals as to the consultant's competence, knowledge, and qualifications and as to the reasonableness of the proposed fee for the services. The qualifications, criteria, and review process are further described in the RFP.

Deadlines: The TCEQ must receive proposals prepared according to instructions in the RFP package on or before January 8, 2010, 2:00 p.m. CST.

To Obtain a Copy of the RFP: To obtain a copy of the RFP, please visit the Electronic State Business Daily (ESBD) at *http://esbd.cpa.state.tx.us* and enter solicitation number 582-10-94537 and click find. If you require assistance, please do not hesitate to contact the Contract Coordinator, Paula Castilleja at (512) 239-6389 or via e-mail: *pcastill@tceq.state.tx.us*.

TRD-200905650
Russ Kimble
Acting Director, General Law Division
Texas Commission on Environmental Quality
Filed: December 8, 2009

♦ ♦ ♦

Texas Ethics Commission

List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports, or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Douglas at (512) 463-5800 or (800) 325-8506.

Deadline: Semiannual Report due July 15, 2009 for Candidates and Officeholders

Lori D. Massey, 410 Senna Trail, San Antonio, Texas 78256-1626

Don W. Minton, P.O. Box 2454, El Paso, Texas 79952-2454

TRD-200905548
David Reisman
Executive Director
Texas Ethics Commission
Filed: December 2, 2009

♦ ♦ ♦

Office of the Governor

Request for Grant Applications for the American Recovery and Reinvestment Act of 2009: Edward Byrne Memorial Justice Assistance Formula Grant Program

The Criminal Justice Division (CJD) of the Governor's Office is soliciting applications for law enforcement projects that reduce crime and improve the efficiency and effectiveness of the criminal justice system.

Purpose: This solicitation supports the Recovery Act through initiatives that promote public safety in eligible cities and counties.

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 federal guidelines for the JAG program. Up to $16 million will be available under this solicitation to support border security.

This solicitation is being issued in accordance with federal guidance as of December 1, 2009. 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 Request for Grant Application (RFA).

Funding Levels:

Minimum amount is $10,000.

Maximum amount - Units of local government are limited to no more than the total amount of local funds expended on criminal justice services in the entity's previous fiscal year. Criminal justice services are defined as the total amount the unit of government spent on law enforcement, corrections and judicial services.

The JAG Recovery Act program does not require a grantee to provide matching funds.

Standards: Grantees must comply with the accountability and transparency requirements of the Recovery Act, the standards applicable to grant funding cited in the *Texas Administrative Code* (1 TAC Chapter 3), and all statutes, requirements, and guidelines applicable to this funding.

Prohibitions: Grant funds may not be used 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 government agencies that are for general agency use;

(5) weapons, ammunition, tasers, 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 the 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 (i.e., supplanting);

(11) fundraising;

(12) construction;

(13) medical services;

(14) transportation, lodging, per diem or any related costs for participants, when grant funds are used to develop and conduct training;

(15) real estate;

(16) vessels (excluding police boats);

(17) aircraft (excluding police helicopters);

(18) luxury items;

(19) casinos or gambling establishments;

(20) aquariums;

(21) zoos;

(22) golf courses; and

(23) swimming pools.

Eligible Applicants:

Aransas County;

Atascosa County;

Bee County;

Brewster County;

Brooks County;

Calhoun County;

Cameron County;

Culberson County;

DeWitt County;

Dimmitt County;

Duval County;

El Paso County;

Frio County;

Goliad County;

Gonzales County;

Guadalupe County;

Hidalgo County;

Hudspeth County;

Jackson County;

Jeff Davis County;

Jim Hogg County;

Jim Wells County;

Karnes County;

Kenedy County;

Kinney County;

Kleberg County;

Lavaca County;

La Salle County;

Live Oak County;

Maverick County;

McMullen County;

Nueces County;

Pecos County;

Presidio County;

Refugio County;

San Patricio County;

Starr County;

Terrell County;

Val Verde County;

Victoria County;

Webb County;

Willacy County;

Wilson County;

Zapata County;

Zavala County;

City of Anthony;

City of Brownsville;

City of Corpus Christi;

City of Del Rio;

City of Edinburg;

City of El Paso;

City of Harlingen;

City of Kingsville;

City of La Joya;

City of Laredo;

City of McAllen;

City of Mission;

City of Orange Grove;

City of Palmview;

City of Pharr;

City of Raymondville;

City of Rio Grande City;

City of Seguin;

City of Sullivan City; and

City of Victoria.

Eligibility Requirements:

(1) Eligible applicants are limited to one application; and

(2) Municipal and County Units of government must provide law enforcement services; and

(3) Municipal and County Units of government must be current on reporting Part I violent crime data to the Texas Department of Public Safety for inclusion in the annual Uniform Crime Report (UCR) and have been current in reporting UCR data for the three preceding years; and

(4) Municipal and County Units of government that were eligible for grant funds under the Recovery Act: Edward Byrne Memorial Justice Assistance Formula Grant Program: Local Solicitation must have submitted an application for those funds; and

(5) Municipal and County Units of government must have a Data Universal Numbering System (DUNS) number assigned to its agency (http://fedgov.dnb.com/webform/displayHomePage.do); and

(6) Municipal and County Units of government must be registered in the federal Central Contractor Registration (CCR) database (http://www.ccr.gov or https://www.bpn.gov/ccr/default.aspx).

Eligible Activities:

(1) Interoperability for Communications and Data Exchange Systems;

(2) Records Management Systems;

(3) Training;

(4) Disruption of Gangs;

(5) Disruption of Trafficking in Illegal Drugs, Contraband, and Human Beings;

(6) Law Enforcement Equipment;

(7) Temporary Positions

(8) Operational Costs; and

(9) Overtime.

Project Period: Grant-funded projects must begin on or after June 1, 2010, and expire on or before May 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 who demonstrate cost effective programs focused on a comprehensive and effective approach to reducing crime while providing a strong plan for sustaining any positions proposed for funding.

Closing Date for Receipt of Applications: All applications must be certified via CJD's eGrants website on or before January 22, 2010.

Selection Process: 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 Judy Switzer at jswitzer@governor.state.tx.us or (512) 463-1919.

TRD-200905687
Katherine Fite
Assistant General Counsel
Office of the Governor
Filed: December 9, 2009

♦ ♦ ♦

Texas Health and Human Services Commission

Proposal to Extend Rate of Mental Health Targeted Case Management Services

The Texas Health and Human Services Commission announces its intent to submit to the Centers for Medicare and Medicaid Services, U.S. Department of Health and Human Services, state plan amendment 07-044. The amendment modifies the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act. The purpose of the amendment is to extend the rate for Mental Health Targeted Case Management services that was in effect on September 30, 2009, through September 30, 2010. An earlier notice published in September 21, 2007, issue of the *Texas Register* (32 TexReg 6669) extended the effective date for these services from September 30, 2007, through September 30, 2009.

The proposed amendment will have no fiscal impact to the state or the federal budgets.

Interested parties may obtain copies of the proposed amendment by contacting Dan Huggins, Director of Rate Analysis for Acute Care Services by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1432; by facsimile at (512) 491-1998; or by e-mail at dan.huggins@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services (DADS).

TRD-200905648
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: December 8, 2009

♦ ♦ ♦

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
Throughout TX	Applied Rigaku Technologies Inc.	L06293	Austin	00	11/23/09

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Abilene	Hendrick Medical Center	L02433	Abilene	101	11/24/09
Arlington	USMD Hospital at Arlington	L05727	Arlington	09	11/13/09
Arlington	Columbia Medical Center Of Arlington Subsidiary L.P. dba Medical Center of Arlington	L02228	Arlington	68	11/23/09
Austin	Seton Healthcare dba University Medical Center at Brackenridge	L00268	Austin	110	11/16/09
Austin	Seton Healthcare dba Seton Medical Center - Austin	L02896	Austin	107	11/16/09
Austin	Seton Healthcare dba Seton Medical Center - Williamson	L06128	Austin	11	11/16/09
Austin	Seton Healthcare dba Seton Medical Center - Hays	L06254	Austin	04	11/16/09
Austin	Seton Healthcare dba Seton Medical Center - Austin	L02896	Austin	108	11/20/09
Austin	Seton Healthcare dba Seton Medical Center - Hays	L06254	Austin	05	11/20/09
Corpus Christi	Radiology & Imaging of South Texas L.L.P. dba Alameda Imaging Center	L05182	Corpus Christi	24	11/13/09
Cypress	Cypress Cardiology P.A.	L04353	Cypress	23	11/13/09
Dallas	Cardinal Health	L02048	Dallas	132	11/18/09
Denton	George S. Rebecca M.D. F.A.C.C. dba Texas Cardiovascular Medicine	L05099	Denton	10	11/20/09
El Paso	Center for Integrative Cancer Medicine P.A. dba PET/CT Imaging of El Paso	L05880	El Paso	08	11/19/09
Fort Worth	Baylor All Saints Medical Center	L02212	Fort Worth	82	11/18/09
Fort Worth	Physician Reliance L.P. dba Texas Oncology at Klabzuba	L05545	Fort Worth	31	11/13/09
Fort Worth	Texas Health Harris Methodist Hospital - Fort Worth	L01837	Fort Worth	122	11/20/09
Fort Worth	Radiology Associates	L03953	Fort Worth	52	11/23/09
Houston	Memorial Hermann Hospital System dba Memorial Hospital Southwest	L00439	Houston	146	11/13/09
Houston	Tops Specialty Hospital Ltd. dba Tops Surgical Specialty Hospital	L05441	Houston	17	11/13/09
Houston	University of Tx. M.D. Anderson Cancer Ctr.	L00466	Houston	119	11/13/09
Houston	University of Tx. M.D. Anderson Cancer Ctr.	L00466	Houston	120	11/17/09
Houston	S.J. Medical Center L.L.C. dba St. Joseph Medical Center	L02279	Houston	70	11/13/09
Houston	University General Hospital L.P.	L06018	Houston	03	11/13/09
Houston	CHCA West Houston L.P. dba West Houston Medical Center	L06055	Houston	10	11/18/09
Houston	Memorial Hermann Hospital System dba Memorial Hospital Southwest	L00439	Houston	147	11/23/09
Houston	The Methodist Hospital	L00457	Houston	171	11/20/09
Houston	University of Tx. M.D. Anderson Cancer Ctr.	L00466	Houston	121	11/23/09

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
La Porte	Total Petrochemicals USA Inc.	L04640	La Porte	23	11/19/09
Longview	Good Shepherd Medical Center	L02411	Longview	83	11/17/09
Lubbock	Cardinal Health	L02737	Lubbock	56	11/13/09
Lufkin	East Texas Hematology and Oncology P.A.	L06039	Lufkin	02	11/23/09
Midland	Midland County Hospital District dba Midland Memorial Hospital	L00728	Midland	96	11/20/09
Pasadena	Patients Medical Center	L06066	Pasadena	03	11/20/09
Plano	Baylor Regional Medical Center of Plano	L05844	Plano	09	11/16/09
San Antonio	Methodist Healthcare System of San Antonio Ltd. L.L.P.	L00594	San Antonio	264	11/17/09
San Antonio	Accord Medical Management L.P. dba Nix Healthcare System	L03531	San Antonio	30	11/19/09
San Antonio	The University of Texas Health Science Center at San Antonio	L05217	San Antonio	12	11/13/09
San Antonio	Texas Cancer Clinic	L05786	San Antonio	16	11/18/09
San Antonio	Christus Santa Rosa Health Care	L02237	San Antonio	113	11/20/09
San Antonio	Accord Medical Management L.P. dba Nix Health Care System	L03531	San Antonio	30	11/19/09
Texas City	Marathon Petroleum Company L.L.C.	L04431	Texas City	26	11/16/09
Throughout TX	Eagle NDT L.L.C.	L06176	Abilene	11	11/16/09
Throughout TX	Eagle NDT L.L.C	L06176	Abilene	12	11/19/09
Throughout TX	Team Industrial Services	L00087	Alvin	212	11/17/09
Throughout TX	Rodriguez Engineering	L04700	Austin	15	11/18/09
Throughout TX	Applied Standards Inspection Inc.	L03072	Beaumont	113	11/18/09
Throughout TX	Weatherford International Inc.	L04286	Benbrook	83	11/18/09
Throughout TX	Houston Refining L.P.	L00187	Houston	64	11/10/09
Throughout TX	Halliburton Energy Services Inc.	L02113	Houston	116	11/16/09
Throughout TX	Wood Group Logging Services Inc.	L05262	Houston	35	11/19/09
Throughout TX	Marco Inspection Services L.L.C.	L06072	Kilgore	27	11/16/09
Throughout TX	Qisi Inc. dba Quality Inspection Services	L06219	LaPorte	02	11/18/09
Throughout TX	Conam Inspection & Engineering Inc.	L05010	Pasadena	174	11/13/09
Throughout TX	Ethyl Corporation	L05094	Pasadena	09	11/17/09
Throughout TX	Schlumberger Technology Corporation	L01833	Sugarland	157	11/19/09
Throughout TX	Schlumberger Technology Corporation	L01833	Sugarland	158	11/24/09
Throughout TX	Ludlum Measurements Inc.	L01963	Sweetwater	86	11/17/09
Throughout TX	City of Weatherford	L04571	Weatherford	11	11/19/09
Weatherford	Weatherford Texas Hospital Company L.L.C. dba Weatherford Regional Medical Center	L02973	Weatherford	22	11/13/09

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Throughout TX	Dean Word Company Ltd.	L04588	New Braunfels	09	11/19/09
Webster	David S. Hamer, M.D., P.A. dba Southeast Houston	L05364	Webster	10	11/16/09

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	Cogenics Inc.	L04387	Houston	20	11/20/09
Nederland	Anatec Texas Inc.	L04865	Nederland	82	11/18/09
Throughout TX	Express Energy Services	L06111	Houston	04	11/24/09
Throughout TX	Innovative Technical Solutions Inc.	L06064	San Antonio	02	11/24/09

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-200905594
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: December 4, 2009

♦ ♦ ♦

Texas Department of Insurance

Company Licensing

Application to change the name of AMERICAN MERCHANTS CASUALTY COMPANY to ENDURANCE RISK SOLUTIONS ASSURANCE CO., a foreign fire and casualty company. The home office is in Wilmington, Delaware.

Any objections must be filed with the Texas Department of Insurance, within 20 calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200905676
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: December 9, 2009

♦ ♦ ♦

Correction of Error

The Texas Department of Insurance proposed new 28 TAC §21.3202, concerning Physician Ranking Requirements, in the November 27, 2009, issue of the *Texas Register* (34 TexReg 8455). There is an error in the text of the preamble on page 8457, second column, beginning on line 14. The sentence "The costs outlined in the Public Benefit/Cost Note part of this proposal provide sufficient cost information for small or micro business to make. . . ." should read as follows:

"The costs outlined in the Public Benefit/Cost Note part of this proposal provide sufficient cost information for small or micro businesses to make. . . ."

TRD-200905630

♦ ♦ ♦

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 December 2, 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 Marcus Cable Associates, LLC d/b/a Charter Communications for an Amendment to a State-Issued Certificate of Franchise Authority; Add New Area to City of Fort Worth Service Area Footprint, Project Number 37726 before the Public Utility Commission of Texas.

The requested amendment is to expand the service area footprint to include a new area to the existing service area footprint for the City of Fort Worth, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll free) (800) 735-2989. All inquiries should reference Project Number 37726.

TRD-200905655
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 8, 2009

♦ ♦ ♦

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on December 2, 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 Friendship Cable of Texas, Inc., d/b/a Suddenlink Communications for an Amendment to its State-Issued Certificate of Franchise Authority; Add Royse City, Texas, Project Number 37727 before the Public Utility Commission of Texas.

The requested amendment is to expand the service area footprint to include the city limits of Royse City, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll free) (800) 735-2989. All inquiries should reference Project Number 37727.

TRD-200905656
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 8, 2009

♦ ♦ ♦

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on December 2, 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, LP d/b/a Suddenlink Communications for an Amendment to its State-Issued Certificate of Franchise Authority; Add Union Grove, Texas, Project Number 37728 before the Public Utility Commission of Texas.

The requested amendment is to expand the service area footprint to include the city limits of Union Grove, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll free) (800) 735-2989. All inquiries should reference Project Number 37728.

TRD-200905659
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 8, 2009

♦ ♦ ♦

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on December 7, 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 Comcast Houston, LLC for an Amendment to a State-Issued Certificate of Franchise Authority; Expansion of Service Area Footprint, Project Number 37741 before the Public Utility Commission of Texas.

The requested amendment is to expand the service area footprint to include Alvin, Friendswood, Nassau Bay, Seabrook, Taylor Lake Village, and Webster, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll free) (800) 735-2989. All inquiries should reference Project Number 37741.

TRD-200905678
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 9, 2009

♦ ♦ ♦

Announcement of Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on December 2, 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 Telcom Supply, Inc. for a State-Issued Certificate of Franchise Authority; City Limits of Livingston, Texas, Project Number 37729 before the Public Utility Commission of Texas.

The requested CFA service area includes the city limits of Livingston, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll free) (800) 735-2989. All inquiries should reference Project Number 37729.

TRD-200905660
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 8, 2009

♦ ♦ ♦

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On December 4, 2009, DSLnet Communications, Inc. filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60253. Applicant intends to reflect a change in ownership/control.

The Application: Application of DSLnet Communications, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 37736.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than December 23, 2009. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 37736.

TRD-200905654
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 8, 2009

♦ ♦ ♦

Notice of Application for Service Area Exception

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on November 30, 2009, for an amendment to certificated service area for a service area exception within Kerr County, Texas.

Docket Style and Number: Application of Pedernales Electric Cooperative, Inc. to Amend a Certificate of Convenience and Necessity for Electric Service Area Exception within Kerr County. Docket Number 37714.

The Application: Pedernales Electric Cooperative, Inc. (PEC) filed an application for a service area boundary exception to allow PEC to provide service to a specific customer located within the certificated service area of Central Texas Electric Cooperative, Inc. (CTEC). CTEC provided a letter of concurrence for the proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than December 30, 2009 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 use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 37714.

TRD-200905550
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 2, 2009

♦ ♦ ♦

Notice of Application for Waiver from Requirements

Notice is given to the public of an application filed on November 30, 2009 with the Public Utility Commission of Texas (commission) for waiver from the requirements in P.U.C. Substantive Rule §26.202.

Docket Style and Number: Application of Big Bend Telephone Company, Inc. for a Good Cause Waiver of Requirements in P.U.C. Substantive Rule §26.202. Docket Number 37116.

The Application: Big Bend Telephone Company, Inc. (Big Bend) asserts that the requirements in P.U.C. Substantive Rule §26.202 are no longer applicable nor appropriate due to the Texas Legislature's repeal of §53.202 of the Public Utility Regulatory Act (PURA) upon which P.U.C. Substantive Rule §26.202 was based. The applicant stated its belief that the requirements of the rule are no longer mandated by PURA and that, until the commission repeals P.U.C. Substantive Rule §26.202, the commission should grant good cause waivers from such rule, pursuant to P.U.C. Procedural Rule §22.5.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by December 30, 2009, 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 use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 37116.

TRD-200905549
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 2, 2009

♦ ♦ ♦

The Texas A&M University System

Renewal of an Existing Consulting Contract

In accordance with the provisions of Texas Government Code, Chapter 2254, The Texas A&M University System has renewed an existing consulting contract for benefits consulting services. The consultant will assist with management of the A&M System's health, benefit, retirement, and Workers' Compensation (WCI) insurance plans.

The Name and Address of Consultant is as follows: Gallagher Benefits Services, Inc., 6399 S. Fiddler's Green Circle, Ste 200, Greenwood Village, Colorado 80111.

The A&M System will pay an amount of $24,000.00. The contract will begin on December 1, 2009 and shall terminate in one year unless renewed for additional years up to October 31, 2014.

If any, the consultant will submit documents, films, recordings, or reports compiled by the consultant under the contract to TAMUS, no later than one year after completion of services.

Any questions regarding this posting should be directed to: Don Barwick, HUB and Procurement Manager, Office of HUB and Procurement Programs, The Texas A&M University System, 200 Technology Way, Ste 1273, College Station, Texas 77845, Voice: (979) 458-6410, E-mail: dbarwick@tamu.edu.

TRD-200905622
Don Barwick
HUB and Procurement Manager
The Texas A&M University System
Filed: December 4, 2009

♦ ♦ ♦

University of North Texas

Public Notice - Award of Major Consulting Contract

Description of Activities Consultant Will Conduct:

The selected firm will be responsible for assisting UNT with advice and guidance regarding curriculum development, comparative evaluation, research findings and dissemination, related to technology enhanced education techniques.

Name and Business Address of Consultant:

Curveshift

Dr. David Gibson

100 Notchbrook Road

Stowe, VT 05672

Total Value and Beginning and Ending Dates of Contract:

Value: $45,000.00

Beginning Date: December 2, 2009

Ending Date: May 2012

Dates on Which Documents, Films, Recordings, or Reports that Consultant is required to present are due:

Date: Consultant is required to provide written reports and plans on various dates.

TRD-200905556

Carrie Stoeckert
Assistant Director of PPS
University of North Texas
Filed: December 3, 2009

♦ ♦ ♦

Texas Water Development Board

Request for Applications

The Texas Water Development Board (TWDB) solicits Request for Applications (RFAs) for the state fiscal year 2010. The total amount of the grants to be awarded by the TWDB shall not exceed $600,000 from the Agricultural Water Conservation Fund. The rules governing the Agricultural Water Conservation Fund (31 Texas Administrative Code Chapter 367), guidelines, and instructions are available upon request from the TWDB.

Summary of the RFA

Solicitation Date (Opening): Date published in the *Texas Register*

Due Date (Closing): 60 days after RFA is published in the *Texas Register*

Anticipated Award Date: March 31, 2010

Estimated Total Funding: $600,000

Eligible applicants: State Agencies and Political Subdivisions

Contact: Aung K. Hla, Team Lead, Agricultural Water Conservation Section, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, (512) 463-7940, E-mail: aung.hla@twdb.state.tx.us

Agricultural Water Conservation Grant Categories:

1. Irrigation water use metering

Purchase, installation, maintenance, and data collection services of irrigation meters including associated telemetry and weather monitoring accessories. Use of funding from this category requires designation of representative irrigation sites. Water use data must be reported annually for each piece of equipment installed for a period of at least five years. Annual data reports must include irrigated acreage, crop type, irrigation rate (inches per acre), total water use, and latitude/longitude. Additionally, annual rainfall totals must be provided. The use of funds for this category is limited to actual cost of metering, telemetry, and weather monitoring equipment and installation costs of the equipment. The applicant will be responsible for all other costs associated with the equipment, including but not limited to labor, maintenance, and reading/reporting of the data. Additional requirements include annually reporting estimates of water savings resulting from use of the equipment.

2. Conservation education and public awareness

Design, develop, and deliver agricultural water conservation education on a local scale. New programs and expansion of existing programs are eligible. Programs should include one or more of the following components: outdoor games and activities for youth and adults, water science camps, educational publications, summer internship programs, and public water conservation festivals. The application must be related to agricultural water use and conservation. During the time period funded with this application, the recipient must annually report estimates of water savings resulting from the activities.

3. Irrigation system audits

Applications may include the cost to purchase portable flow meters and other related equipment used to measure irrigation pumpage and/or irrigated crop water use. If the applicant wishes to provide complete in-field irrigation system audits, funding can be for 50 percent cost-share of labor involved with auditing irrigation systems. An irrigation system audit is intended to assess the efficiency of the irrigation system and recommend improvements to the entire system or to specific components. The audits must be used to educate irrigators about their irrigation efficiency and for determining improvements in their irrigation management. Applicants are required to report estimated accumulative water savings for three irrigation seasons after funding date.

Grant Amount

Up to $600,000 has been initially authorized for fiscal year 2010 assistance for agricultural water conservation grants from the TWDB's Agricultural Water Conservation Fund (Fund). Funds will be awarded through a statewide competitive grants process. TWDB may fund single- and multi-year projects, not to exceed three years. All proposals will be evaluated based upon the specific criteria set forth in this solicitation.

Description of Applicant Criteria

The applicable scope of work, schedule, and contract amount will be negotiated after the TWDB selects the most qualified applicants. Failure to arrive at mutually agreeable terms of a contract with the most qualified applicant shall constitute a rejection of the Board's offer and may result in subsequent negotiations with the next most qualified applicant. The TWDB reserves the right to reject any or all applications if staff determines that the application(s) does not adequately meet the required criteria or if the funding available is less than the requested funding.

Deadline for Submission of Applications

Six double-sided, double-spaced copies of a completed application must be filed with the TWDB within 60 days of the publication of this RFA. Applications can be directed either in person to David Carter, Texas Water Development Board, Stephen F. Austin Building, Room 531, 1700 North Congress Avenue, Austin, Texas 78701; or by mail to David Carter, Texas Water Development Board, P.O. Box 13231, Capitol Station, Austin, Texas 78711-3231.

TRD-200905675
Kenneth L. Petersen
General Counsel
Texas Water Development Board
Filed: December 9, 2009

♦ ♦ ♦

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).