TEXAS REGISTER

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Diego Rodriguez

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

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

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IN THIS ISSUE

ADOPTED RULES

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/

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

THE ATTORNEY GENERAL

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

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

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

Request for Opinions

RQ-0831-GA

Requestor:

The Honorable Todd Hunter

Chair, Committee on Judiciary & Civil Jurisprudence

Texas House of Representatives

P.O. Box 2910

Austin, Texas 78768-2910

Re: Whether section 271.118, Local Government Code, prohibits a company from being selected as a construction manager-at-risk for a municipal project if a related company has been selected as project manager and design engineer (RQ-0831-GA)

Briefs requested by November 27, 2009

RQ-0832-GA

Requestor:

The Honorable Jim Keffer

Chair, Committee on Energy Resources

Texas House of Representatives

P.O. Box 2910

Austin, Texas 78768-2910

Re: Municipal responsibility for enforcing laws that affect the practice of engineering (RQ-0832-GA)

Briefs requested by November 30, 2009

RQ-0834-GA

Requestor:

The Honorable Joseph D. Brown

Grayson County Criminal District Attorney

Grayson County Justice Center, Suite 116A

Sherman, Texas 75090

Re: Whether a commissioners court may amend the county budget to reduce salaries for the county clerk's office because she closed her office temporarily for a weather-related emergency (RQ-0834-GA)

Briefs requested by December 3, 2009

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

TRD-200905018
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: November 4, 2009

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EMERGENCY RULES

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

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 21. CITRUS

SUBCHAPTER A. CITRUS QUARANTINES

4 TAC §21.6

The Texas Department of Agriculture (the department) adopts on an emergency basis, amendments to §21.6, concerning citrus quarantines.

The amendments are adopted on an emergency basis to tighten requirements related to citrus quarantines by removing an exception that under certain conditions allows movement of citrus seed from Florida into Texas. Currently citrus seed from Florida is allowed an exception from the requirements of §21.6, relating to restrictions on quarantined citrus articles. However, Florida is infested with citrus greening disease and recent research indicates that citrus greening disease can be seed-transmitted. The emergency amendments will provide the citrus industry and other citrus growers in Texas increased protection from seed-borne disease, specifically, from citrus greening. Immediate action is required because recent research indicates that citrus greening can be seed-transmitted; failure to act will result in exposing the Texas citrus industry to great peril in that citrus greening (one of the most dangerous citrus diseases) could be introduced into and spread throughout the state. The department believes that adoption of this quarantine on an emergency basis is both necessary and appropriate. The amendments delete subsection (c)(3) of §21.6, which provides conditions under which citrus seed produced in Florida may be imported to Texas, and renumber current paragraph (4) accordingly.

The amendments to §21.6 are adopted on an emergency basis under the Texas Agriculture Code (the Code), §71.009, which provides the department with the authority to adopt rules as necessary for the seizure, treatment, and destruction of plants, plant products, and other substances for the effective enforcement and administration of Chapter 71; the Code, §73.002 which provides for the state to use all constitutional measures to protect the citrus industry from destruction by pests and diseases, and the Texas Government Code, §2001.034, which provides for the adoption of administrative rules on an emergency basis, without notice and comment.

§21.6. Restrictions.

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

(c) Exceptions.

(1) - (2) (No change.)

[~~(3) Citrus seed produced in Florida may be imported into Texas under the following conditions:~~]

[~~(A) a certificate from the Florida Department of Agriculture and Consumer Services shall be provided prior to shipment, verifying that the seed is from registered stock and was harvested in territory in Florida that is free from citrus canker, and that the seed has been treated to eliminate bacterial and fungal pathogens prior to shipment. Treatment procedures shall be approved by the Texas Department of Agriculture; and~~]

[~~(B) a permit from the Texas Department of Agriculture shall be issued and, together with a copy of the certificate required by this section, shall be attached to the shipping container.~~]

(3) [~~(4)~~] Citrus plants may enter Texas on a temporary basis for display purposes only, provided they move under the conditions of a special permit issued by the department.

(A) A request for a special permit must be submitted in writing to Texas Department of Agriculture, Attention: Pest Management Programs, P.O. Box 12847, Austin, Texas 78711. The request shall be received not later than 30 days prior to proposed date of entry into the state and shall include the following information:

(i) name and address of requestor;

(ii) name and address of location where plants will be displayed in the state;

(iii) date when plants will enter the state as well as the date the plants will exit the state;

(iv) common and scientific name of plants to be displayed, including variety or cultivar; and

(v) number of each type of plant to be displayed.

(B) Each request will be considered on a case by case basis and if approved by the department, a written permit will be issued. Permit conditions will include but may not be limited to the following:

(i) Citrus plants may not be moved into Texas from an area quarantined for citrus canker or any exotic fruit fly pest;

(ii) Within 7 days prior to entering the state, all citrus plants must be treated with a foliar insecticide and a soil drench to ensure they are free of all pests;

(iii) Plants must be inspected and found free of all pests in all stages of development by the origin state department of agriculture and a phytosanitary certificate issued by the origin state indicating the treatment product used, rate applied and date of application. A non-destructive tag written in waterproof ink identifying plants inspected and certified shall be attached to all plants by the origin state department of agriculture;

(iv) The special permit must accompany the shipment at all times and be presented to a department employee upon request; and

(v) Upon return to origin, plants must be re-inspected by the origin state department of agriculture to verify all permitted plants were returned. The origin state department of agriculture must submit written verification of inspection findings to the department.

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

Filed with the Office of the Secretary of State on October 30, 2009.

TRD-200904950
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective Date: October 30, 2009
Expiration Date: February 26, 2010
For further information, please call: (512) 463-4075

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 265. GENERAL SANITATION

SUBCHAPTER M. INTERACTIVE WATER FEATURES AND FOUNTAINS

25 TAC §§265.301 - 265.308

The Department of State Health Services is renewing the effectiveness of the emergency adoption of new §§265.301 - 265.308, for a 60-day period. The text of the new sections was originally published in the July 17, 2009, issue of the *Texas Register* (34 TexReg 4703).

Filed with the Office of the Secretary of State on October 30, 2009.

TRD-200904967
Lisa Hernandez
General Counsel
Department of State Health Services
Original Effective Date: July 3, 2009
Expiration Date: December 29, 2009
For further information, please call: (512) 458-7111 x6972

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 5. TEXAS BOARD OF PARDONS AND PAROLES

CHAPTER 145. PAROLE

SUBCHAPTER C. COURT-ORDERED SPECIAL CONDITION X HEARING FOR RAUL MEZA

37 TAC §§145.50 - 145.59

The Texas Board of Pardons and Paroles is renewing the effectiveness of the emergency adoption of new §§145.50 - 145.59, for a 60-day period. The text of the new sections was originally published in the July 17, 2009, issue of the *Texas Register* (34 TexReg 4704).

Filed with the Office of the Secretary of State on October 29, 2009.

TRD-200904914
Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
Original Effective Date: July 2, 2009
Expiration Date: December 28, 2009
For further information, please call: (512) 406-5388

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PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 7. STATE OFFICE OF ADMINISTRATIVE HEARINGS

CHAPTER 165. RULES OF PROCEDURE FOR APPRAISAL REVIEW BOARD APPEALS

1 TAC §§165.1, 165.3, 165.5, 165.7, 165.9, 165.11, 165.13, 165.15, 165.17, 165.19, 165.21, 165.23, 165.25, 165.27, 165.29

The State Office of Administrative Hearings (SOAH) proposes new Chapter 165, §§165.1, 165.3, 165.5, 165.7, 165.9, 165.11, 165.13, 165.15, 165.17, 165.19, 165.21, 165.23, 165.25, 165.27, and 165.29, concerning Rules of Procedure for Appraisal Review Board Appeals. The new chapter is being proposed to establish procedures concerning appeals by property owners from orders of certain appraisal review boards. It clarifies the types and number of appeals that may be filed and establishes procedures for the hearings on such appeals.

New §165.1 sets forth the statement of purpose and scope for the new chapter. New §165.3 sets forth the definition of words and terms used in the new chapter. New §165.5 sets forth the applicability of other SOAH rules that apply to this new chapter. New §165.7 sets forth the board orders that may be appealed under this new chapter. New §165.9 sets forth the procedures for the property owner to file an appeal of a board order. New §165.11 sets forth the procedures for the chief appraiser for the appraisal district to refer the appeal to SOAH. New §165.13 sets forth procedures for the chief judge to determine if the number of appeals should be limited and establishes the percentages of overall appeals to be accepted from each county if appeals are limited. New §165.15 provides for designation of an administrative law judge. New §165.17 provides when a judge shall issue the prehearing order setting the case for hearing and the required contents of that order. New §165.19 establishes the venue for the hearings. New §165.21 establishes limitations on discovery and establishes provisions for the admission of evidence. New §165.23 provides who may represent the parties at the hearing. New §165.25 sets forth the guidelines that the judge will use to issue a determination after the hearing. New §165.27 sets forth the guidelines for filing objections to the determination issued by the judge. New §165.29 sets forth the procedure that the judge must follow if the property owner is delinquent on taxes.

Kerry D. Sullivan, General Counsel, has determined that for the first five-year period the new chapter is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering it.

Mr. Sullivan also has determined that for the first five-year period the new chapter is in effect the public benefit anticipated as a result of the new chapter will be in providing notice to the participants of the procedures for requesting and participating in hearings covered by the chapter. There will be no effect on small businesses as a result of enforcing the new chapter. The proposed new chapter would have no fiscal impact on small businesses, and there is no anticipated economic cost to individuals who are required to comply with the new chapter.

Written comments must be submitted within 30 days after publication of the proposed new chapter in the *Texas Register* to Debra Anderson, Paralegal, State Office of Administrative Hearings, P.O. Box 13025, Austin, Texas 78711-3025, or by email to debra.anderson@soah.state.tx.us, or by facsimile to (512) 463-1576. The State Office of Administrative Hearings will hold two public hearings on this proposal. The first public hearing will be held on December 8, 2009, at 10:00 a.m. at the William P. Clements Building, 300 W. 15th Street, Fourth Floor, Austin, Texas 78701. The second public hearing will be held on December 9, 2009, at 1:00 p.m. at the Preserve at North Loop, 2020 North Loop (610) West, Suite 111, Houston, Texas 77018. Comments must be received within 30 days after publication of this proposal in order to be considered.

The new chapter is proposed under Government Code, Chapter 2003, §2003.050 and §2003.903, which authorize SOAH to establish procedural rules for its hearings, and Government Code, Chapter 2001, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures.

The new chapter affects the Government Code, Chapters 2001 and 2003, and Tax Code, Chapter 41.

§165.1. Purpose and Scope.

(a) This chapter governs the procedures of the State Office of Administrative Hearings (SOAH) concerning appeals by property owners from orders of an appraisal review board.

(b) These regulations shall be construed to ensure the fair and expeditious determination of every action.

§165.3. Definitions.

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

(1) Administrative law judge or judge--An individual appointed to serve as a presiding officer by SOAH's chief administrative law judge under Texas Government Code, Chapter 2003.

(2) Appeal--An appeal brought under this chapter by a property owner from a board order determining a protest concerning appraisal or market value of property.

(3) Board--An appraisal review board of Bexar, Cameron, El Paso, Harris, Tarrant, or Travis County.

(4) Board order--An order of a board determining a protest concerning the appraised or market value of property brought under Texas Tax Code, §41.41(a)(1) or (2), if the appraised or market value of the property that was the subject of the protest, as determined by the board order, is more than $1 million.

(5) Chief Judge--The chief administrative law judge of SOAH.

(6) Costs of Appeal--The costs to be paid by the appraisal district or the property owner under §165.25 of this title (relating to Determination). The costs of appeal include the time spent by a judge on a case referred under this chapter calculated at the rate of $100 per hour for services rendered, consistent with the rate approved by the Legislature in the General Appropriations Act. Costs also include travel expenses (including transportation, meals, and lodging expenses determined under state travel regulations), postage, long distance telephone charges, court reporter charges and transcripts, and other similar expenses.

(7) SOAH--The State Office of Administrative Hearings.

§165.5. Applicability of Other SOAH Rules.

(a) Other SOAH rules of procedure found at Chapters 155, 157, and 161 of this title (relating to Rules of Procedure; Temporary Administrative Law Judges; and Requests for Records) apply in appeals under this chapter unless specific applicable procedures are set out in this chapter. The rules in this chapter control to the extent there is a conflict with the rules in Chapters 155, 157, and 161 of this title. Except as inconsistent with this chapter, the rules from other chapters that specifically apply include:

(1) §155.7 of this title (relating to Computation of Time);

(2) §155.51 of this title (relating to Jurisdiction);

(3) §155.151 of this title (relating to Assignment of Judges to Cases);

(4) §155.153 of this title (relating to Powers and Duties);

(5) §155.155 of this title (relating to Orders);

(6) §155.157 of this title (relating to Sanctioning Authority);

(7) §155.423 of this title (relating to Making a Record of the Proceeding);

(8) §155.425 of this title (relating to Procedure at Hearing);

(9) §155.431 of this title (relating to Conduct and Decorum);

(10) §157.1 of this title (relating to Temporary Administrative Law Judges); and

(11) §161.1 of this title (relating to Charges for Copies of Public Information).

(b) The provisions of §155.351 of this title (relating to Mediation) do not apply to appeals under this chapter.

§165.7. Board Orders that may be Appealed.

A property owner may appeal a board order determining a protest concerning the appraised or market value of property under Texas Tax Code, §41.41(a)(1) or of the unequal appraisal under Texas Tax Code, §41.41(a)(2) if the following prerequisites are met:

(1) The appraised or market value of the property that was the subject of the protest is more than $1 million, as determined by the board order;

(2) The board order at issue in the appeal was issued by the board of Bexar County, Cameron County, El Paso County, Harris County, Tarrant County, or Travis County; and

(3) The board order at issue in the appeal concerns a determination of the appraised or market value of real or personal property other than industrial property or minerals.

§165.9. Notice of Appeal by Property Owner.

(a) To appeal a board order to SOAH, a property owner must file with the chief appraiser of the appraisal district not later than the 30th day after the date the property owner received notice of the board order:

(1) a completed notice of appeal as described in subsection (b) of this section; and

(2) a filing fee in the amount of $300 made payable to SOAH.

(b) A completed notice of appeal by a property owner must be in the form prescribed by SOAH and include:

(1) a copy of the board order;

(2) a brief statement that explains the basis for the property owner's appeal of the order; and

(3) a statement of the property owner's opinion of the appraised or market value, as applicable, of the property that is the subject of the appeal.

(c) The form for the notice of appeal prescribed by SOAH may be found at www.soah.state.tx.us.

(d) At the hearing on the appeal, the property owner may be limited to 1-1/2 hours unless the property owner requests an extended hearing and specifies the additional time need.

§165.11. Request to Docket Case.

(a) As soon as practicable, but no more than 30 days after receiving a notice of appeal from a property owner, the chief appraiser for the appraisal district shall:

(1) file with SOAH a completed request to docket case form as prescribed by SOAH;

(2) submit to SOAH the notice of appeal, the board order, and the filing fee received from the property owner;

(3) indicate, where appropriate, those entries in the records that are subject to the appeal; and

(4) request the appointment of a qualified judge to hear the appeal.

(b) The hearing on the appeal will typically be limited to 1-1/2 hours for each party unless the property owner or the appraisal district requests an extended hearing and specifies the additional time needed in accordance with §165.21(g) of this title (relating to Hearing).

§165.13. Number of Appeals.

(a) In order to expeditiously determine the appeals using available resources, the chief judge may limit the number of appeals to SOAH under this chapter during the three-year period from January 1, 2010, through December 31, 2013, to a total of 3,000 appeals. The number of appeals for any calendar year during that period may be limited to 1,000.

(b) If the chief judge determines that available resources require that appeals be limited, the appeals that may be filed from Bexar, Cameron, El Paso, Harris, Tarrant, and Travis Counties will be determined based on the total number of lawsuits filed concerning appraisal review board orders during 2008 in each respective county as a percentage of the total number of lawsuits filed in all of those counties during 2008.

(c) If appeals are limited during any of the years designated in subsection (a) of this section, the percentage of appeals from each county, as determined from the formula in subsection (b) of this section, is as follows: Bexar, 12%; Cameron, 1.0%; El Paso, 2.0%; Harris, 63%; Tarrant, 14%; and Travis, 8.0%.

(d) The appeals will be accepted by SOAH in the order that they are received.

(e) If appeals are to be limited for any year, the chief judge will notify the chief appraiser of each appraisal district of the number of allowable appeals from the respective counties. A chief appraiser may not accept any additional appeals by property owners of board orders after a county has received its allowable number of appeals for the applicable year.

§165.15. Designation of Administrative Law Judge.
As soon as practicable after receiving a notice of appeal and filing fee, SOAH shall designate a judge to hear the appeal.

§165.17. Prehearing Orders.
(a) As soon as practicable after a judge is designated, the judge shall by order set the date, time, and place of the hearing on the appeal. The order shall be issued at least 30 days prior to the hearing date.

(b) The order shall state the statutes and administrative rules under which the hearing is to be conducted.

§165.19. Venue.
(a) The hearing shall be held in the county of the appraisal district from which the appeal was filed.

(b) The hearing shall be held in a building owned or leased by SOAH in the county of the appraisal district from which the appeal was filed. If SOAH does not have a building in the county, the hearing may be held in a public or privately-owned building in that county, preferably a building in which SOAH regularly conducts business. The hearing may not be held in a building or facility that is owned, leased, or under the control of the appraisal district.

§165.21. Hearing.
(a) The hearing of an appeal is a trial de novo. The judge may not admit into evidence the fact of previous action by the board, except as otherwise provided by this chapter.

(b) Texas Government Code, Chapter 2001, and the Texas Rules of Evidence do not apply to a hearing under this chapter.

(c) Prehearing discovery is limited to the exchange of documents the parties will rely on during the hearing. Any expert witness testimony must be reduced to writing and included in the exchange of documents.

(d) Except as otherwise ordered by the judge, all documents relied on by either party must be filed with SOAH and the other party at least ten days before the scheduled hearing. Documents that are not timely filed may be excluded from the record.

(e) Any relevant evidence is admissible, subject to the imposition of time limits and the parties' compliance with procedural requirements imposed by the judge, including a schedule for the prehearing exchange of documents.

(f) A judge may consider factors such as the hearsay nature of testimony, the qualifications of witnesses, and other restrictions on the admissibility of evidence under the Texas Rules of Evidence in assessing the weight to be given to the evidence admitted.

(g) A hearing will be limited to three hours unless otherwise ordered by the judge. A property owner may request an extended hearing on the date the notice of appeal is filed. An appraisal district may request an extended hearing on the date a request to docket case is filed. Any request for extended hearings made after those dates will be granted only for good cause as determined by the judge.

§165.23. Representation of Parties.

(a) A property owner may be represented at the hearing by:

(1) the property owner;

(2) an attorney who is licensed in Texas;

(3) a certified public accountant;

(4) a registered property tax consultant; or

(5) any other person who is not otherwise prohibited from appearing in a hearing held by SOAH.

(b) The appraisal district may be represented by the chief appraiser or a person designated by the chief appraiser.

(c) If more than one protest is filed relating to the same property, or if the property is owned in undivided or fractional interests, an authorized representative of a party may appear at the hearing as provided by Texas Tax Code, §41.45.

§165.25. Determination.

(a) As soon as practicable, but no later than the 30th day after the date the hearing is concluded, the judge shall issue a determination and send a copy to the property owner and the chief appraiser.

(b) The judge's determination:

(1) must include a determination of the appraised or market value, as applicable, of the property that is the subject of the appeal;

(2) must contain a brief analysis of the judge's rationale for, and set out the key findings in support of, the determination, but is not required to contain a detailed discussion of the evidence admitted or the contentions of the parties;

(3) may include any remedy or relief a court may order under Texas Tax Code, Chapter 42, in an appeal relating to the appraised or market value of property, other than an award of attorney's fees under Texas Tax Code, §42.29; and

(4) shall specify whether the appraisal district of property owner is required to pay the costs of appeal and the amount of those costs.

(c) If the judge determines that the appraised or market value, as applicable, of the property that is the subject of the appeal is nearer to the property owner's opinion of the appraised or market value, as applicable, of the property as stated in the notice of appeal submitted by the property owner than the value determine by the board:

(1) SOAH shall refund the property owner's filing fee;

(2) the appraisal district, on receipt of a copy of the decision, shall pay the costs of the appeal as specified in the decision; and

(3) the chief appraiser shall correct the appraised or market value, as applicable, of the property as shown in the appraisal roll to reflect the judge's determination.

(d) If the judge determines that the appraised or market value, as applicable, of the property that is the subject of the appeal is not nearer to the property owner's opinion of the appraised or market value, as applicable, of the property as stated in the property owner's notice of appeal, than the value determined by the board:

(1) SOAH shall retain the property owner's filing fee;

(2) The chief appraiser shall correct the appraised or market value, as applicable, of the property as shown in the appraisal roll to reflect the judge's determination if the value as determined by the judge is less than the value as determined by the board; and

(3) the property owner shall pay the difference between the costs of the appeal as specified in the determination and the property owner's filing fee.

§165.27. Objections to Determination.

(a) A party may file written objections to any fact or conclusion in a determination. Objections must be filed within 15 days of the date of service of the determination. A party may file a reply to objections within 15 days of the filing of the objections.

(b) A judge may extend or shorten the time to file objections or replies.

(c) The judge shall review the objections and replies. The judge may issue an amended determination in response to the objections and replies, or correct any clerical errors in the determination. If the judge determines that no changes should be made to the determination, the judge shall so notify the parties in writing.

(d) If no objections are filed by the date objections are due, a determination or amended determination becomes final on the day that objections are due. If objections are timely filed, a determination or amended determination becomes final on the date that the judge notifies the parties in writing that no changes should be made to the determination or amended determination. If the judge does not notify the parties in writing, the determination becomes final by operation of law 45 days after the date of the last objection that was timely filed.

§165.29. Delinquent Taxes.

A property owner may not file an appeal to SOAH if the taxes on the property subject to the appeal are delinquent. A judge who determines that the taxes on the property subject to an appeal are delinquent shall dismiss the pending appeal with prejudice. If an appeal is dismissed under this section, SOAH shall retain the property owner's filing 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 October 30, 2009.

TRD-200904968
Kerry D. Sullivan
General Counsel
State Office of Administrative Hearings
Earliest possible date of adoption: December 13, 2009
For further information, please call: (512) 475-4931

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TITLE 22. EXAMINING BOARDS

PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 203. LICENSING AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES

22 TAC §203.3

The Texas Funeral Service Commission (commission) proposes an amendment to §203.3, concerning Funeral Director in Charge.

The proposed amendment to §203.3 in conjunction with simultaneously proposed amendments to §203.6 and §203.22; and the proposed repeal of §203.27 are intended to: (i) clarify and simplify the rules related to the supervision of provision licensees for embalming and funeral directing; and (ii) reduce the paperwork burden on the commission and the persons who must supervise the provisional licensees.

O. C. "Chet" Robbins, Executive Director, has determined that for the first five-year period the amendment is in effect, there will be no fiscal implication for state or local governments as a result of enforcing or administering the proposed amendment.

Mr. Robbins has further determined that for each year of the first five year period the amendment is in effect, a public benefit anticipated as a result of enforcing the amendment will be the elimination of time-consuming paperwork and increased efficiency on the part of persons who supervise provisional licensees and the commission as well as allowing persons who have successfully completed their provisional programs to be placed into the funeral service community sooner. Mr. Robbins also has determined that there will be no effect on large, small or micro-businesses; there is no anticipated economic costs to persons who are required to comply with the amendment as proposed; and there is no impact on local employment or economies.

Comments on the proposal may be submitted to O. C. "Chet" Robbins at P.O. Box 12217, Capitol Station, Austin, Texas 78711-1440, (512) 479-5064 (fax), or e-mailed to chet.robbins@tfsc.state.tx.us.

The amendment is proposed under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

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

§203.3. Funeral Director in Charge.

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

(c) The [~~the~~] funeral director in charge may be served with administrative process when violations are alleged to have been committed in a funeral establishment.

(d) (No change.)

(e) In order to be designated funeral director in charge of more than one establishment, the licensee must submit a petition to the commission that clearly explains how each of the criteria in subsection (d) of this section have been met. The executive director shall decide whether to grant the petition. The request and decision will be made part of the permanent licensing file. The executive director's decision may be appealed, in writing, to the commission, and the appeal will be considered at the commission's next regularly scheduled meeting. The executive director shall advise interested parties of the action taken by the commission in writing.

(f) If the establishment employs a provisional licensee it is the responsibility of the designated funeral director in charge and the provisional licensee to schedule case work sufficient for the provisional

program. It is also the responsibility of the designated funeral director in charge to ensure that each provisional licensee is properly supervised while performing cases. The provisional licensee must file a report with funeral director in charge outlining the number of cases performed during the month and the name of the funeral director or embalmer under whom the cases were supervised.

(g) The funeral director in charge shall retain copies of all reports with supporting documentation for all case credit claimed for 2 years from the completion date of the provisional program.

(h) The funeral director in charge of the facility where the provisional licensee is employed shall notify the commission in writing upon the completion of the provisional license program, as defined as the provisional licensee meeting all the requirements for regular licensure, by submitting the number of cases performed while the licensee was under the employment of said funeral director.

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

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O. C. "Chet" Robbins
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Texas Funeral Service Commission
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For further information, please call: (512) 936-2466

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22 TAC §203.6

The Texas Funeral Service Commission (commission) proposes an amendment to §203.6, concerning Provisional Licensees.

The proposed amendment to §203.6 in conjunction with simultaneously proposed amendments to §203.3 and §203.22; and proposed repeal of §203.27 are intended to: (i) clarify and simplify the rules related to the supervision of provisional licensees for embalming and funeral directing; and (ii) reduce the paperwork burden on the commission and the persons who must supervise provisional licensees.

O. C. "Chet" Robbins, Executive Director, has determined that for the first five-year period the amendment is in effect, there will be no fiscal implication for state or local governments as a result of enforcing or administering the proposed amendment.

Mr. Robbins has further determined that for each year of the first five year period the amendment is in effect, a public benefit anticipated as a result of enforcing the amendment will be the elimination of time-consuming paperwork and increased efficiency on the part of persons who supervise provisional licensees and the commission as well as allowing persons who have successfully completed their provisional programs to be placed into the funeral service community sooner. Mr. Robbins has also determined that there will be no effect on large, small or micro-businesses; there is no anticipated economic costs to persons who are required to comply with the amendment as proposed; and there is no impact on local employment or economies.

Comments on the proposal may be submitted to O. C. "Chet" Robbins at P.O. Box 12217, Capitol Station, Austin, Texas 78711-1440, (512) 479-5064 (fax), or e-mailed to chet.robbins@tfsc.state.tx.us.

The amendment is proposed under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

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

§203.6. Provisional Licensees.

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

(c) The provisional licensure period is a minimum of 12 and a maximum of 24 consecutive months, beginning on the issue date of the provisional license [~~first case for which the licensee receives credit from with the commission~~]. The provisional licensure programs for funeral director and embalmer may be served simultaneously.

(d) Provisional licenses [~~issued after the effective date of this amendment~~] expire on the last day of the month 12 [~~twelve~~] months from their issue date. No fees shall be refunded to provisional licensees who fail to complete the program.

(e) Of the 60 cases required for each provisional licensure program, at least 10 must be complete cases [~~and performed and reported during the last three months of the program~~]. A complete funeral directing case consists of all major actions from the time of first call through interment or other disposition of the body; a complete embalming requires the provisional embalmer to handle all major actions included in §203.16 of this title (relating to Requirements Relating to Embalming) performed on a particular body. Cases performed in mortuary college may count toward the required cases if the college certifies to the commission that the cases were performed provided the student holds a current provisional license at the time the cases were performed.

(f) Provisional licensees shall retain copies of all monthly [~~training~~] reports with supporting documentation for all case credit claimed for 2 years from the completion date of the provisional program date of the training report.

(g) The provisional licensee must file a report with the funeral director in charge or the embalmer in charge, whichever is applicable, outlining the number of cases performed during the month and the name of the funeral director or embalmer under whom the cases were supervised.

[~~(g) A provisional embalmer shall assist in the embalming of six autopsied remains during the course of the provisional embalmer program. Autopsied cases completed while in an accredited mortuary college may count toward the six required autopsy cases if the college certifies to the commission that the cases were performed.~~]

[~~(h) Provisional licensees must file with the commission a training/case report for each month of the provisional license program by the 10th day of the next month as outlined in Texas Occupations Code §651.304. Each report must consist of the actual training/case report only. All supporting documentation will be kept by the provisional licensee's sponsor, not the commission. Training/case report submission post marked after the 10th day of the month will not be accepted. The licensee will not be given credit for those training/case reports and those months will not count toward the 12 required months. An additional month will be added to the provisional program for every month the training/case report is late. In any month in which the provisional licensee does not perform a case, the provisional licensee must file a "notwithstanding" report with the commission, and that month will not count toward the 12 required months. Additionally, if a licensee fails to file a report for a month that is counted as a "notwithstanding" and additional month will be added to the provisional program for every month the licensee files a "notwithstanding". If a provisional licensee files "notwithstanding" reports for two consecutive months, the licensee is required to restart the provisional licensee program. Similarly, provisional licensees who~~

~~fail to file a case report within 90 days after receiving the provisional license shall submit a new provisional license application and pay a new provisional license fee.~~]

(h) [~~(i)~~] It is the responsibility of [~~the sponsor of the provisional,~~] the funeral director in charge of the establishment, or the embalmer in charge if a commercial embalming facility and the provisional licensee to schedule case work sufficient for [~~reporting in~~] the provisional program. [~~Penalties for failure to file case reports in a timely manner may lie against the sponsor of the provisional licensee. The commission may start a provisional licensure program over if the provisional licensee fails on two occasions to timely file a case report.~~]

(i) [~~(j)~~] Each monthly [~~training/case~~] report shall be certified by the licensee under whom the provisional licensee performed the work. The supervising licensee and the provisional licensee both are subject to disciplinary action if the information submitted is not true and accurate.

(j) [~~(k)~~] Examination Requirements

(1) Applicants for licensure as a funeral director from the certificate program must sit for the Texas State Board Examination administered by the International Conference of Funeral Service Examining Boards, Inc. (International Conference).

(2) Applicants for licensure who hold associate of applied science degrees are required to sit, as applicable, for either or both of the National Board Examinations in Funeral Directing and Embalming administered by the International Conference.

(3) All applicants for licensure shall sit for the State Mortuary Law Examination administered by the commission. If full licensure has not been met within 24 months from the date the applicant initially took the State Mortuary Law Examination the applicant must retake the examination before full licensure can be accomplished regardless if the applicant passed or failed the examination.

(4) A passing score is 75% for each examination described in paragraphs (1) - (3) of this subsection. Passing scores are not determined by averaging scores on two or more examinations.

(k) [~~(l)~~] If a provisional licensee leaves the employment of a funeral director in charge or embalmer in charge, the funeral director in charge or embalmer in charge must file an affidavit as described in Texas Occupations Code, §651.304(d) within 15 [~~fifteen (15)~~] days of employment termination.

(l) [~~(m)~~] A student enrolled in an accredited mortuary college must have the college forward a letter of enrollment prior to entering the provisional program.

(m) [~~(n)~~] Upon the completion of the provisional license program, as defined as the provisional licensee meeting all the requirements for regular licensure, the funeral director in charge or embalmer in charge of the facility where the provisional licensee is employed [~~sponsor of the provisional licensee~~] shall notify the commission in writing of the same by submitting the number of cases performed while the licensee was under the employment [~~sponsorship~~] of said funeral director or embalmer [~~sponsor~~]. The commission shall verify [~~cross check~~] the information [~~provided with the information~~] held by the commission to ensure each provisional licensee has met all requirements. All information submitted to the funeral director in charge or embalmer in charge is subject to inspection. Once confirmed the commission shall issue to the provisional licensee a written [~~sponsor~~] affidavit to be completed by the funeral director in charge or the embalmer in charge [~~sponsor~~]. In addition the commission shall issue a written letter outlining the fees required for regular licensure. The funeral director in charge or the embalmer in charge [~~sponsor~~] shall execute and provide to the commission the written affidavit attesting to the proficiency of the provisional licensee in those areas observed.

(n) [~~(o)~~] While, pursuant to §651.253, Texas Occupations Code, a person is not eligible for a funeral director's or embalmer's license from the commission unless the person shall have graduated from an accredited school or college of mortuary science, the commission may, pursuant to §651.302, Texas Occupations Code, issue a provisional license to practice funeral directing or embalming to a person who is enrolled in a school or college of mortuary science that has lost its accreditation if the school or college or mortuary science was accredited at the time the student enrolled. The commission will not issue such a provisional license to practice funeral directing or embalming unless:

(1) the person signs an acknowledgement that the person understands that the person is not eligible for a funeral director's or embalmer's license unless the school or college of mortuary science regains its accreditation during the maximum 24 consecutive months provided by subsection (c) of this section; or

(2) the student transfers to an accredited school or college of mortuary science.

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

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O. C. "Chet" Robbins
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22 TAC §203.22

The Texas Funeral Service Commission (commission) proposes an amendment to §203.22, concerning Required Documentation for Embalming.

The proposed amendment to §203.22 in conjunction with simultaneously proposed amendments to §203.3 and §203.6; and the proposed repeal of §203.27 are intended to: (i) clarify and simplify the rules related to the supervision of provision licensees for embalming and funeral directing; and (ii) reduce the paperwork burden on the commission and the persons who must supervise the provisional licensees.

O. C. "Chet" Robbins, Executive Director, has determined that for the first five-year period the amendment is in effect, there will be no fiscal implication for state or local governments as a result of enforcing or administering the proposed amendment.

Mr. Robbins has further determined that for each year of the first five year period the amendment is in effect, a public benefit anticipated as a result of enforcing the amendment will be the elimination of time-consuming paperwork and increased efficiency on the part of persons who supervise provisional licensees and the commission as well as allowing persons who have successfully completed their provisional programs to be placed into the funeral service community sooner. Mr. Robbins has also determined that there will be no effect on large, small or micro-businesses; there is no anticipated economic costs to persons who

are required to comply with the amendment as proposed; and there is no impact on local employment or economies.

Comments on the proposal may be submitted to O. C. "Chet" Robbins at P.O. Box 12217, Capitol Station, Austin, Texas 78711-1440, (512) 479-5064 (fax), or e-mailed to chet.robbins@tfsc.state.tx.us.

The amendment is proposed under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

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

§203.22. Required Documentation for Embalming.

(a) (No change.)

(b) When oral or written permission to embalm cannot be obtained from the person authorized to make funeral arrangements, the funeral establishment must maintain for two years written documentation of the efforts taken as mandated by [~~section~~] §651.457, Texas Occupations Code to obtain permission to embalm.

(1) (No change.)

(2) Chapter 694, Texas Health and Safety Code authorizes county officials to dispose of unclaimed bodies, and Chapter 691, Texas Health and Safety Code authorizes the Anatomical Board to receive unclaimed bodies.

(c) The Authorization to Embalm Form 10.1.01b adopted by reference in this section, must be signed by a family member, preferably the next of kin, or the person authorized to make funeral arrangements when written authorization is secured if embalming is performed. The authorization to embalm form may not be altered, and must be used in its adopted form but may be reproduced by a licensed embalming establishment and/or a licensed funeral establishment. If a mortuary student is to assist the licensed embalmer, the authorization must be in writing pursuant to [~~section~~] §651.407, Texas Occupations Code and in the possession of the funeral establishment and/or embalmer at the time of the embalming.

(d) (No change.)

[~~(e) The Texas Funeral Service Commission Form 9-1-97 Instructor's Embalming Affidavit shall be used in all cases where embalming is performed by a mortuary student or provisional licensee.~~]

[~~(f) In the case of provisional licensees, this form must be completed and submitted to the sponsor of the provisional licensee within 30 days following the embalming procedure. All blank spaces must be completed with correct information. Should false or misleading information be submitted, an instructor or supervisor or sponsor may face disciplinary action by the Commission.~~]

(e) [~~(g)~~] A copy of the Embalming Authorization [~~and the Instructors Affidavit case report~~] shall be retained by the [~~Instructor of the~~] school or college according to [~~section~~] §651.407, Texas Occupations Code. The funeral establishment or embalming establishment [~~and provisional licensee~~] shall retain the documents for a minimum of two years.

(f) [~~(h)~~] The commission [~~Commission~~] shall randomly audit these authorizations.

(g) [~~(i)~~] A copy of this form may be obtained from the commission [~~Commission~~] and may be reproduced by a licensed embalming establishment and/or a licensed funeral establishment.

(h) [~~(j)~~] The embalming case report shall be completed and signed by the licensed embalmer performing the embalming procedure.

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

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O. C. "Chet" Robbins
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Texas Funeral Service Commission
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For further information, please call: (512) 936-2466

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22 TAC §203.27

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

The Texas Funeral Service Commission (commission) proposes the repeal of §203.27, concerning Sponsors of Provisional Licensees.

The proposed repeal of §203.27 in conjunction with simultaneously proposed amendments to §§203.3, 203.6, and 203.22 are intended to: (i) clarify and simplify the rules related to the supervision of provisional licensees for embalming and funeral directing; and (ii) reduce the paperwork burden on the commission and the persons who must supervise provisional licensees.

O. C. "Chet" Robbins, Executive Director, has determined that for each year of the first five year period the repeal is in effect, there will be no fiscal implication for state or local governments as a result of enforcing or administering the proposed repeal.

Mr. Robbins has further determined that for each year of the first five year period the repeal is in effect, a public benefit anticipated as a result of enforcing the repeal will be the elimination of time-consuming paperwork and increased efficiency on the part of persons who supervise provisional licensees and the commission as well as allowing persons who have successfully completed their provisional programs to be placed into the funeral service community sooner. Mr. Robbins has also determined that there will be no effect on large, small or micro-businesses; there is no anticipated economic costs to persons who are required to comply with the repeal as proposed; and there is no impact on local employment or economies.

Comments on the proposal may be submitted to O. C. "Chet" Robbins at P.O. Box 12217, Capitol Station, Austin, Texas 78711-1440, (512) 479-5064 (fax), or e-mailed to chet.robbins@tfsc.state.tx.us.

The repeal is proposed under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

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

§203.27. Sponsors of Provisional Licensees.

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

Filed with the Office of the Secretary of State on November 2, 2009.

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O. C. "Chet" Robbins
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22 TAC §203.39

The Texas Funeral Service Commission (commission) proposes new §203.39, concerning Embalmer in Charge.

The commission has determined that this new rule establishing an embalmer in charge of commercial embalming establishments is necessary to establish responsibility for activities that occur in a commercial embalming establishment. The new rule is also important to the simplification and streamlining of the provisional license program being proposed to be implemented with the simultaneous proposal of amendments to §§203.3, 203.6, and 203.22; and the repeal of §203.27.

O. C. "Chet" Robbins, Executive Director, has determined that for the first five-year period the new section is in effect, there will be no fiscal implication for state or local governments as a result of enforcing or administering the proposed section.

Mr. Robbins has further determined that for each year of the first five-year period the new section is in effect, a public benefit will be increased accountability for the operations of commercial embalming establishments along with assistance in streamlining and making more efficient the provisional licensing program. Mr. Robbins has also determined that there will be no effect on large, small or micro-businesses; there is no anticipated economic cost to persons who are required to comply with the section as proposed; and there is no impact on local employment or economies.

Comments on the proposal may be submitted to O. C. "Chet" Robbins at P.O. Box 12217, Capitol Station, Austin, Texas 78711-1440, (512) 479-5064 (fax), or e-mailed to chet.robbins@tfsc.state.tx.us.

The new section is proposed under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

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

§203.39. Embalmer in Charge.

(a) Each licensed commercial embalming establishment must at all times have a designated embalmer in charge, who is ultimately responsible for compliance with all mortuary, health, and vital statistics laws in the commercial embalming establishment. A commercial embalming establishment must designate an embalmer in charge at the time it receives its establishment license, and any time the embalmer in charge changes, the commercial embalming establishment must notify the commission, on a form prescribed by the commission, within 15 days.

(b) The embalmer in charge must be generally available in the routine functions of the commercial embalming establishment in order to personally carry out his or her responsibilities.

(c) The embalmer in charge may be served with administrative process when violations are alleged to have been committed in a commercial embalming establishment.

(d) An individual may not be designated as the embalmer in charge of more than one establishment unless the additional establishments are operated as branches or satellites of a primary establishment, all of the establishments are under the same ownership, same general management, and no establishment is more than 60 miles from any other establishment held under the same ownership conditions.

(e) In order to be designated embalmer in charge of more than one establishment, the licensee must submit a petition to the commission that clearly explains how each of the criteria in subsection (d) of this section have been met. The executive director shall decide whether to grant the petition. The request and decision will be made part of the permanent licensing file. The executive director's decision may be appealed, in writing, to the commission, and the appeal will be considered at the commission's next regularly scheduled meeting. The executive director shall advise interested parties of the action taken by the commission in writing.

(f) If the commercial embalming establishment employs a provisional licensee it is the responsibility of the designated embalmer in charge and the provisional licensee to schedule case work sufficient for the provisional program. It is also the responsibility of the designated embalmer in charge to ensure that each provisional licensee is properly supervised while performing cases. The provisional licensee must file a report with embalmer in charge outlining the number of cases performed during the month and the name of the embalmer under whom the cases were supervised. The embalmer in charge shall retain copies of all reports with supporting documentation for all case credit claimed for 2 years from the completion date of the provisional program.

(g) The embalmer in charge of the facility where the provisional licensee is employed shall notify the commission in writing upon the completion of the provisional license program, as defined as the provisional licensee meeting all the requirements for regular licensure, by submitting the number of cases performed while the licensee was under the employment of said embalmer.

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

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CHAPTER 205. CEMETERIES AND CREMATORIES

22 TAC §205.2

The Texas Funeral Service Commission (commission) proposes an amendment to §205.2, concerning Ingress and Egress to Cemeteries and Private Burial Grounds Which Have No Public Ingress or Egress.

In accordance with its mandate under §711.012(b), Texas Health and Safety Code, the commission adopted §205.2 concerning reasonable ingress and egress to cemeteries and private burial grounds which have no public ingress or egress and to which access is guaranteed for certain purposes under §711.041, Texas Health and Safety Code. After a series of public meetings around the state, the rule was adopted to be effective on February 19, 2009. The 81st Texas Legislature amended §711.041, Texas Health and Safety Code to more specifically describe the reasonableness of the time that access to a cemetery or private burial ground which has no public ingress or egress must be granted. The proposed amendment to §205.2 is intended to allow the consultative and mediatory process for establishing routes and times of visitation set out in §205.2 to operate to develop mutually agreeable visitation schedules and routes.

The legislature also added §711.0521 to the Texas Health and Safety Code. This provision makes it a Class C misdemeanor offense under some circumstances for certain persons to interfere with another person's reasonable right to ingress and egress under §711.041.

O. C. "Chet" Robbins, Executive Director, has determined that for the first five-year period the amendment is in effect, there will be no fiscal implication for state or local governments as a result of enforcing or administering the proposed amendment.

Mr. Robbins has further determined that for each year of the first five-year period the amendment is in effect, the public benefit anticipated as a result of enforcing the amendment hopefully will be to provide a vehicle for landowners and persons desiring to visit certain "landlocked" cemeteries to reach an amicable resolution of the issues. Mr. Robbins has also determined that there will be no effect on large, small or micro-businesses; there is no anticipated economic costs to persons who are required to comply with the amendment as proposed; and there is no impact on local employment or economies.

Comments on the proposal may be submitted to O. C. "Chet" Robbins at P.O. Box 12217, Capitol Station, Austin, Texas 78711-1440, (512) 479-5064 (fax), or e-mailed to chet.robbins@tfsc.state.tx.us.

The amendment is proposed under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

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

§205.2. Ingress and Egress to Cemeteries and Private Burial Grounds Which Have No Public Ingress or Egress.

(a) (No change.)

(b) Section 711.041(a), Texas Health and Safety Code, provides that any person who wishes to visit a cemetery or private burial grounds for which no public ingress or egress is available shall have, for the purposes usually associated with cemetery visits and during reasonable hours, as determined under §711.041(b), Texas Health and Safety Code, the right to reasonable ingress and egress for the purpose of visiting the cemetery or private burial grounds.

(c) Section 711.041(b), Texas Health and Safety Code, provides that the owner or owners of lands surrounding a cemetery or private burial grounds may designate the route or routes of reasonable ingress and egress and reasonable hours of availability.

(d) (No change.)

(e) The commission finds that the term "reasonable hours" as used in §711.041(b) [~~(a)~~], Texas Health and Safety Code, should be interpreted to mean [~~means~~] 8:00 a.m. to 5:00 p.m. on any day of the week. It is provided, however, that the hours during the day and the days of the week during which ingress and egress shall be allowed may be more particularly circumscribed by an agreement reached or an order entered pursuant to subsections (i) - (n) of this section.

(f) (No change.)

(g) The use by the Texas Legislature of the word "reasonable" in the phrase "designate the routes of reasonable ingress and egress" as set out in §711.041(b), Texas Health and Safety Code, means:

(1) that an "owner or owners of land surrounding the cemetery or private burial grounds" may not designate a route or routes of ingress and egress that discourages visits to a cemetery or private burial grounds during "reasonable hours" for the "purposes usually associated with cemetery visits" as defined in subsections (e) and (f) [~~(d) and (e)~~] of this section; and

(2) that an "owner or owners of land [~~lands~~] surrounding a cemetery or private burial grounds" may not thwart the right of ingress and egress guaranteed by §711.041, Texas Health and Safety Code, by the imposition of liability insurance or other indemnification requirements that render impractical or impossible visits during "reasonable hours" for the "purposes usually associated with cemetery visits" as defined in subsections (e) and (f) [~~(d) and (e)~~] of this section.

(h) - (m) (No change.)

(n) After consideration of the proposed order and any testimony taken, the commission may adopt the order as proposed, may adopt the order with changes, or may defer action to a future meeting. An order adopted by the commission under this section is final as of the date of the commission's [~~Commission's~~] adoption of the order, as proposed or with changes, at a meeting. A copy of the commission's [~~Commission's~~] final order will be sent to the parties by certified mail.

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

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 9. ON-SITE WASTEWATER TREATMENT RESEARCH COUNCIL

CHAPTER 286. ON-SITE WASTEWATER TREATMENT RESEARCH COUNCIL

SUBCHAPTER B. GRANTS

31 TAC §286.96

The On-Site Wastewater Treatment Research Council (council) proposes to amend §286.96.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

The council has proposed the rulemaking as a result of the rule review it conducted in the Spring and Summer of 2009. This rulemaking would remove language that is obsolete and would clarify procedures related to the awarding of grants.

SECTION BY SECTION DISCUSSION

Proposed §286.96, Awards, is amended by removing subsection (f) as council wishes the rule to reflect its practice of reimbursing indirect costs.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

The council estimates that there will be no fiscal impact on costs and revenues to state and local governments as a result of enforcing or administering the rules for each year of the first five years that the rule will be in effect.

PUBLIC BENEFITS AND COSTS

The public benefit expected as a result of adoption of the proposed rule is that procedures for awarding grants will be easier to understand and to follow consistently. The council estimates that there will be no economic cost to persons required to comply with the rules for each year of the five years that the rule is in effect.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

The council estimates that there will be no cost to small businesses or micro-businesses resulting from compliance with the proposed rule.

LOCAL EMPLOYMENT IMPACT STATEMENT

The council estimates that the rules will have no effect on employment in each geographic area affected by the rule for each of the first five years that the rule will be in effect.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Patricia Durón, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference 31 TAC Chapter 286 rules. The comment period closes on December 14, 2009. Copies of the proposed rulemaking can be obtained by contacting Patricia Durón, (512) 239-6087. For further information, please contact Cassandra Derrick, Compliance Support Division, (512) 239-5304.

STATUTORY AUTHORITY

The proposed amendment implements and is authorized under the authority of Texas Health and Safety Code, §367.008(a), which directs the council to establish procedures for awarding competitive grants and disbursing money. The council interprets this provision to authorize the adoption of rules because the Administrative Procedure Act, §2001.003, defines a "rule" as, among other things, a state agency statement of general applicability that describes the procedure or practice requirements of a state agency. Certain procedures the council adopts would necessarily affect parties other than the council and would be generally applicable to all grant applicants.

§286.96. Awards.

(a) All applicants awarded a grant will be notified of the award in writing by the executive secretary.

(b) All grantees will be required to execute a written contract with the council prior to receiving grant funds.

(c) Grantees/applicants shall comply with all applicable state and federal statutes, rules, regulations, and guidelines, including the Uniform Grant Management Standards (UGMS) adopted by the Governor's Office of Budget and Planning, and with the terms and conditions of the contract.

(d) The council shall not be liable for any expenses incurred by an applicant prior to award of the grant.

(e) All grant awards are subject to continuation of state appropriations.

~~[(f) The Council shall not reimburse indirect costs, except as required by law.]~~

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

Filed with the Office of the Secretary of State on October 30, 2009.

TRD-200904951
Janet Meyers
Council Chair
On-Site Wastewater Treatment Research Council
Earliest possible date of adoption: December 13, 2009
For further information, please call: (512) 239-6087

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 3. TEXAS HIGHWAY PATROL
SUBCHAPTER K. PARKING AND TRAFFIC ADMINISTRATION

37 TAC §3.171

The Texas Department of Public Safety proposes amendments to §3.171, concerning Parking and Traffic Administration. Amendments to §3.171 are necessary in order to update the rule so that it reflects the new raised parking violation fine and late fee provided for by Texas Government Code, §411.067.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government or local economies.

Mr. Ybarra 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 $25 administrative fine for a parking violation. In addition, an individual could be subject to a $5 late fee should the parking violation fine not be paid within 10 days. There is no anticipated negative impact on local employment.

In addition, Mr. Ybarra has also 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 to ensure the public that equitable and economical parking facilities for state employees, state officials, and the visiting public are provided and violations are properly handled.

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 Major John Reney, Jr., Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 13126, Austin, Texas 78711-3126, (512) 463-3462.

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, §411.006(4), which provides the director with the authority to adopt rules, subject to commission approval, considered necessary for the control of the department; Texas Government Code, §411.062(d), which authorizes the department to adopt rules relating to the security of persons and property within the Capitol Complex; and Texas Government Code, §411.067 which provides for the assessment of fines.

Texas Government Code, §§411.004(3), 411.006(4), 411.062(d) and 411.067 are affected by this proposal.

§3.171. Enforcement.

(a) Department officers are responsible for enforcing these parking regulations and traffic violations on state property. For purposes of enforcing the parking rules only, the department may assign either commissioned officers or noncommissioned security workers. The assignment of security workers shall only be made with the written approval of the commander of the Capitol Regional Command Office.

(1) To carry out this responsibility and authorization, the department may issue two types of citations for any parking or traffic violations occurring within the Capitol Complex.

(A) Administrative citations issued by the Highway Patrol Service are subject to administrative adjudication. Administrative citations will generally be issued for violation of parking regulations. When an administrative citation is issued for a violation of these sections, the administrative fine shall be $25 [~~$10~~].

(B) Court appearance citations constitute a notice to appear in either a municipal court or a justice court. Failure to discharge a court appearance citation may result in the issuance of a warrant of arrest.

(2) The department reserves the right to issue a court appearance citation for any violation.

(3) When a court appearance citation is issued for any violation, the penalty shall be assessed by the court in accordance with statutory law.

(b) Service of Parking Citation; Presumption of Service.

(1) A parking citation must be served personally upon the operator of a vehicle who is present at the time of service. If the operator is not present, or cannot otherwise be personally served, the parking citation must be personally served upon the registered owner of the vehicle by affixing the parking citation to the vehicle in a conspicuous place.

(2) An operator of a vehicle who is not the vehicle's owner, but who uses or operates the vehicle with the express or implied permission of the owner, shall be considered the owner's agent authorized to receive a parking citation required to be served upon the registered owner or operator of a vehicle in accordance with the provisions of this section.

(3) The original parking citation must be signed by the issuing officer. A citation that is machine- or electronically-produced need not be signed.

(4) The original and all copies of a parking citation are prima facie evidence that the parking citation was issued and that an attempt at service was made in accordance with the provisions of this section.

(c) The following procedures will apply for administrative citations.

(1) Any person who is issued an administrative citation, or for whose vehicle a citation is issued, shall pay the fine, in person or by mail, to the parking administration office, no later than the tenth calendar day after the citation is issued. If payment is not received or postmarked within the ten days, and no administrative review has been requested by the person, such failure shall be considered an admission of liability for the parking violation fine, and a $5.00 [~~$2.00~~] late charge will be assessed.

(2) If a person wishes to appeal a citation, he/she may do so in accordance with subsection (f) of this section.

(3) Unpaid fines and charges for parking offenses will be recorded in the name of the permit holder or in the name of the registered owner of the vehicle as shown in the records of the Texas Department of Transportation.

(4) Unpaid fines and charges for other violations will be recorded in the name of the person driving the vehicle.

(5) Persons with one or more unpaid fines or charges recorded in their name shall be subject to the following actions.

(A) If the unpaid charges are in the name of a person who has a parking privilege, forfeiture of that privilege will be initiated under §3.172 of this title (relating to Forfeiture of Parking Privilege).

(B) The person shall be given a written notice that any vehicle registered in the person's name is placed on an impoundment list and will be impounded or immobilized, under §3.173 of this title (relating to Impoundment of Vehicles) if found parked in the Capitol Complex.

(d) The following acts, when committed within the Capitol Complex or within other areas under the administration and control of the department as provided by §3.161 of this title (relating to General) shall constitute parking violations for which either an administrative or court appearance citation may be issued:

(1) parking overtime in a space which is limited in time by meters or signs, or parking overtime in a loading zone;

(2) moving a barricade or parking within any barricaded area;

(3) parking on any lawn, curb, sidewalk, or any area which creates an obstruction to vehicular or pedestrian traffic;

(4) parking in a "No Parking" area;

(5) parking within 15 feet of a fire plug or within a fire zone;

(6) failing to park within a lined parking space. Vehicles shall be parked within the boundaries of the designated lined spaces. The fact that other vehicles are parked improperly shall not constitute an excuse for parking with any part of the vehicle over the line;

(7) parking in a loading zone except while loading or unloading;

(8) parking over 18 inches from the curb or parking stop, measured from any part of the car body facing the curb or parking stop;

(9) parking with the rear of the vehicle facing the curb or parking stop;

(10) parking in a space or facility other than the one assigned, unless authorization has been obtained;

(11) parking in a designated parking area without displaying proper permit;

(12) parking upon any unmarked or unimproved area which has not been designated for parking;

(13) double-parking on the roadway side of a vehicle stopped or parked at the edge or curb of a street;

(14) parking in a handicapped space without displaying a proper permit;

(15) possession or use of a lost/stolen or forged permit;

(16) possession or use of a current permit that has been defaced or altered;

(17) oversized vehicle in a stall marked for small or compact vehicles;

(18) blocking or impeding a crosswalk, driveway, or alley;

(19) parking in a state parking facility by an employee who has lost his/her parking privileges due to forfeiture;

(20) parking on a public street within the Capitol Complex of a vehicle which is owned or operated by a state employee who has been issued a current parking permit which authorizes parking in a lot or garage within the Capitol Complex;

(21) parking in a parking space designated for visitors to the Capitol Complex, when the vehicle is owned or operated by a state employee whose principal place of employment is within the Capitol Complex;

(22) removing, or moving a vehicle to which is attached, an immobilization device which was placed on the vehicle under §3.173(f) of this title (relating to Immobilization of Vehicles). If damage results to the immobilization device, such a violation will be prosecuted under the applicable provisions of the Penal Code;

(23) displaying a handicapped permit issued to another person; or

(24) permit a person, other than the state employee that the permit is assigned, to use a parking permit for a purpose other than state employee parking. (A parking administration officer shall remove parking permits from these vehicles and seize any hang tag permits found in violation of this section).

(e) The following shall constitute other traffic violations for which the penalty shall be a fine set by a court in accordance with applicable law:

(1) speeding, i.e., operating a motor vehicle on state property in excess of 15 miles per hour;

(2) violation of a provision contained within subsection (d) of this section; or

(3) other violations of Texas Transportation Code, Chapters 541-600.

(f) Any person who has received an administrative citation may appeal the citation in accordance with this section.

(1) Administrative review.

(A) Any person who has received an administrative citation may request that the citation be reviewed by the department. If the request is not made within ten days, the citation is deemed final.

(B) The review will be made by a hearing officer appointed by the department. The person who received the citation may request that the review be done in person, and may bring evidence or witness(es) to present to the person conducting the review. The person may also request that the department officer who issued the citation be present to provide evidence. The hearing will not be conducted under formal rules of evidence.

(C) After reviewing the circumstances of the administrative citation, the hearing officer may order the payment of the administrative fine or the cancellation of such charges. If the citation is upheld and the appealing party fails to pay the charges or to request an appeal within ten calendar days of the decision, a $5.00 [~~$2.00~~] late charge will be assessed on the citation.

(D) The appealing party will be notified in writing of the decision regarding the review.

(2) Court appeal from administrative review decision.

(A) Any person who has requested a review of an administrative citation and who is not satisfied with the decision may file a written request for a court hearing. If a court hearing is requested, the appeal will be to the court, either municipal or justice, in which the department is currently filing court appearance citations.

(B) Any person who wishes a court hearing must file a written request within ten calendar days from the decision date shown on the review decision form. When the request is received, parking administration will file a complaint with the appropriate court and issue a court appearance citation. A copy of the citation will be mailed to the appealing party along with information on how and when to contact the court.

(3) Failure to discharge administrative citation. If a person fails to discharge an administrative citation, either by payment of the fine or by appropriate appeal, the unpaid charges will be entered under his name and he will become subject to forfeiture of his parking privilege under §3.172 of this title (relating to Forfeiture of Parking Privilege) and/or impoundment or immobilization of any vehicle registered in the person's name under §3.173 of this title (relating to Impoundment or Immobilization of Vehicles).

(g) Liability of the Vehicle Owner; Presumption of Liability.

(1) Except as provided in this subsection, the registered owner and the operator of a vehicle when not the same, shall both be liable for a parking violation charge, unless the owner proves that the vehicle was operated without his express or implied consent. Payment of the administrative fine and late charges, if any, shall operate as final disposition of the parking violation charge.

(2) A vehicle owner who is engaged in the business of renting or leasing vehicles under written rental or leasing agreements shall not be liable for a fine, late fee, or costs imposed for a parking violation on a rented or leased vehicle if, within ten days after receiving written notice of a parking violation, the owner provides in affidavit form the true name, address and driver's license number and state of issuance of the person in possession of the vehicle at the time the parking citation was issued, or a true copy of the lease or rental agreement in effect at the time the parking citation was issued. A lessor of a vehicle who fails to comply with this provision shall be treated as any other vehicle owner and shall be liable with the vehicle operator for any fine or late charge associated with the violation.

(3) It is a defense to any charge of a parking violation that, at the time of the violation, the illegally parked vehicle was reported to a law enforcement agency as having been stolen prior to the time of the violation and had not yet been recovered.

(4) In any hearing or trial to adjudicate a parking citation, it is presumed that the registered owner of a vehicle for which the citation was issued is the person who stopped, stood or parked the vehicle at the time and place of the parking violation. Proof of ownership may be made by a computer-generated record of the registration of the vehicle with the Texas Department of Transportation showing the name of the person to whom state license plates were issued. This proof is prima facie evidence of the ownership of the vehicle by the person to whom the certificate of registration was issued.

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

Filed with the Office of the Secretary of State on November 2, 2009.

TRD-200904982
Steven C. McCraw
Director
Texas Department of Public Safety
Earliest possible date of adoption: December 13, 2009
For further information, please call: (512) 424-5848

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CHAPTER 13. CONTROLLED SUBSTANCES
SUBCHAPTER A. GENERAL PROVISIONS

37 TAC §§13.1, 13.7, 13.10

The Texas Department of Public Safety proposes amendments to §§13.1, 13.7, and 13.10, concerning General Provisions. Amendments to §13.1 reformat the section and are necessary in order to add new definitions for electronic transmission, health practitioner, locum tenen, stored and temporary controlled substances registration. Due to reorganization within the department, amendments to §13.7 and §13.10 are necessary in order to change the address, phone number and name of the bureau responsible for the Controlled Substances Program.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government or local economies.

Mr. Ybarra also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the sections as proposed. There are no anticipated economic costs to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Mr. Ybarra has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rule will be current and updated rules.

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 these rules. Accordingly, the Department is not required to complete a takings impact assessment regarding these rules.

Comments on the proposal may be submitted to Johnny Hatcher, Narcotics Regulation Bureau, Regulatory Licensing Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0439, (512) 424-2458.

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; Senate Bill 1879, 80th Legislature, 2007; and Texas Health and Safety Code, §481.003.

Texas Government Code, §411.004(3), Senate Bill 1879, and Texas Health and Safety Code, §481.003 are affected by this proposal.

§13.1. Chapter Definitions.

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

(1) Act--The Texas Controlled Substances Act (Texas Health and Safety Code, Chapter 481).

(2) Administer, abuse unit, adulterant or dilutant, agent, controlled premises, controlled substance, controlled substance analogue, deliver, delivery, designated agent, director, dispense, distribute, distributor, drug, drug paraphernalia, Federal Drug Enforcement Administration, hospital, institutional practitioner, lawful possession, manufacture, marihuana, medication order, narcotic drug, official prescription form, opiate, patient, person, pharmacist, pharmacist-in-charge, pharmacy, possession, practitioner, prescribe, prescription, principal place of business, and registrant--Have the meanings assigned those terms by the Act, §481.002.

(3) Advanced practice nurse [~~or~~] (APN)--An individual recognized as a licensed advances practice nurse by the Texas Board of Nursing [~~Nurse Examiners~~].

(4) CSR--Controlled Substances Registration.

(5) Day--A [~~means a~~] calendar day unless the context clearly indicates another meaning such as a business day.

(6) Department [~~or~~] (DPS)--The Texas Department of Public Safety.

(7) Drug Enforcement Administration [~~or~~] (DEA)--The Federal Drug Enforcement Administration.

(8) Electronic transmission--The transmission of information in electronic form such as computer to computer, electronic device to computer, e-mail, or the transmission of the exact visual image of a document by way of electronic media.

(9) Emergency medical service (EMS)--An entity comprised of all needed emergency equipment and trained personnel to administer proper pre-hospital care in a medical or health situation.

(10) Emergency medical service medical director (EMSMD)--A person recognized as such under Texas Administrative Code, Title 22, Part 9, Chapter 197, §197.2(9) and has a current DPS registration.

(11) Emergency medical service provider (EMSP)--A person licensed as such by the Texas Department of State Health Services.

(12) First responder organization (FRO)--An organization certified as such by the Texas Department of State Health Services.

(13) Health practitioner--An individual licensed under the laws of this state to provide health or veterinary services during emergency or disaster situations in this state.

(14) Individual practitioner--A physician, dentist, veterinarian, optometrist, podiatrist, or other individual licensed, registered, or otherwise permitted to dispense a controlled substance in the course of professional practice, but does not include a pharmacist, a pharmacy, or an institutional practitioner.

(15) Inhalant paraphernalia--An item or other material defined as such by Texas Health and Safety Code, §485.001.

(16) Institutional practitioner--A hospital or other person (other than an individual) licensed, registered, or otherwise permitted to dispense a controlled substance in the course of professional practice, but does not include a pharmacy.

(17) Laboratory apparatus--An item subject to Subchapter E of this chapter (relating to Precursors and Apparatus).

(18) Licensed vocational nurse (LVN)--An individual recognized as a licensed vocational nurse by the Texas Board of Nursing.

(19) Locum tenen--An individual practitioner who practices in a temporary position in this state and licensed by the appropriate Texas state licensing board.

(20) Long-term care facility (LTCF)--An establishment licensed as such by the Texas Department of Aging and Disability Services.

(21) Mid-level practitioner--An individual practitioner, other than a physician, dentist, veterinarian, optometrist, or podiatrist, who is licensed, registered, or otherwise permitted to dispense a controlled substance in the course of professional practice. Examples of mid-level practitioners include, but are not limited to, health care providers such as advanced practice nurse and physician assistants who are authorized to dispense controlled substances.

(22) Narcotics controlled substance--A narcotic drug or other controlled substance that contains opium or an opiate derivative.

(23) Non-narcotic controlled substance--A controlled substance that does not contain opium or an opiate derivative.

(24) PCLAS--The precursor chemical/Laboratory Apparatus Section.

(25) Physician assistant--An individual licensed as such by the Texas Physician Assistant Board.

(26) Precursor chemical--A substance subject to Subchapter E of this chapter (relating to Precursors and Apparatus).

(27) Readily retrievable record--A record created an maintained by an automatic data processing or mechanized record keeping system so that a particular type of record can be separated from all other records in a reasonable time. The term includes a record created and maintained by annotation of each material item with an asterisk, redline, or some other manner visually identifiable apart from all other items appearing on the required record.

(28) Record--A notification, order form, statement, invoice, prescription, inventory information, or other document for the acquisition or disposal of a controlled substance, precursor, or apparatus in any manner by a registrant or permit holder under a record keeping or inventory requirement of federal law, the Act, or this chapter.

(29) Registered nurse--An individual recognized as such by the Texas Board of Nursing.

(30) Schedule II--A list of narcotic and non-narcotic controlled substances found in the most current version of Schedule II as established or altered by the commissioner of health under the Act, Subchapter B, and published in the *Texas Register.*

(31) Stored--The keeping of controlled substances at a principal place of business. The term does not include the medical lockers in emergency medical vehicles, aircraft (fixed or rotor wing) or vessels while the vehicles, aircraft or vessels are in their stations, hangers or docking stations awaiting calls.

(32) Temporary Controlled Substances Registration (TCSR)--A controlled substances registration issued to a locum tenen or a health practitioner for a period of time not to exceed 90 days.

[~~(8) Emergency medical service or EMS--A person comprised of all needed emergency equipment and trained personnel to administer proper pre-hospital care in a medical or health situation, and licensed as such by the Texas Department of State Health Services.~~]

[~~(9) Emergency medical service medical director or EMSMD--A person recognized as such under Texas Administrative Code, Title 22, Part 9, §197.2 and who has a current DPS registration.~~]

[~~(10) Emergency medical service provider or EMSP--A person licensed as such by the Texas Department of State Health Services.~~]

[~~(11) First responder organization or FRO--An organization certified as such by the Texas Department of State Health Services.~~]

[~~(12) Individual practitioner--A physician, dentist, veterinarian, optometrist, podiatrist, or other individual licensed, registered, or otherwise permitted to dispense a controlled substance in the course of professional practice, but does not include a pharmacist, a pharmacy, or an institutional practitioner.~~]

[~~(13) Inhalant paraphernalia--An item or other material defined as such by Texas Health and Safety Code, §485.001.~~]

[~~(14) Institutional practitioner--A hospital or other person (other than an individual) licensed, registered, or otherwise permitted to dispense a controlled substance in the course of professional practice, but does not include a pharmacy.~~]

[~~(15) Laboratory apparatus--An item subject to Subchapter E of this chapter (relating to Precursors and Apparatus).~~]

[~~(16) Licensed vocational nurse or LVN--An individual recognized as a licensed vocational nurse by the Texas Board of Vocational Nurse Examiners.~~]

[~~(17) Long-term care facility or LTCF--An establishment licensed as such by the Texas Department of Aging and Disability Services.~~]

[~~(18) Mid-level practitioner--An individual practitioner, other than a physician, dentist, veterinarian, optometrist, or podiatrist, who is licensed, registered, or otherwise permitted to dispense a controlled substance in the course of professional practice. Examples of mid-level practitioners include, but are not limited to, health care providers such as advanced nurse practitioners and physician assistants who are authorized to dispense controlled substances.~~]

[~~(19) Narcotic controlled substance--A narcotic drug or other controlled substance that contains opium or an opiate derivative.~~]

[~~(20) Non-narcotic controlled substance--A controlled substance that does not contain opium or an opiate derivative.~~]

[~~(21) PCLAS--The Precursor Chemical/Laboratory Apparatus Section.~~]

[~~(22) Physician assistant--An individual licensed as such by the Texas State Board of Physician Assistant Examiners.~~]

[~~(23) Precursor chemical--A substance subject to Subchapter E of this chapter (relating to Precursors and Apparatus).~~]

[~~(24) Readily retrievable record--A record created and maintained by an automatic data processing or mechanized record keeping system so that a particular type of record can be separated from all other records in a reasonable time. The term includes a record created and maintained by annotation of each material item with an asterisk, redline, or some other manner visually identifiable apart from all other items appearing on the required record.~~]

[~~(25) Record--A notification, order form, statement, invoice, prescription, inventory information, or other document for the acquisition or disposal of a controlled substance, precursor, or apparatus in any manner by a registrant or permit holder under a record keeping or inventory requirement of federal law, the Act, or this chapter.~~]

[~~(26) Registered nurse--An individual recognized as such by the Texas Board of Nurse Examiners.~~]

[~~(27) Schedule II--A list of narcotic and non-narcotic controlled substances found in the most current version of Schedule II as established or altered by the commissioner of health under the Act, Subchapter B, and published in the *Texas Register*.~~]

§13.7. Telephone Number and Address - Narcotics Regulation Bureau [~~Service~~].

To inquire about information and administrative matters with, transmit to, or otherwise contact the Narcotics Regulation Bureau [~~Service~~], in general:

(1) the telephone number is: (512) 424-2188 or 424-2189 [~~(512) 424-2150~~];

(2) the fax number is: (512) 424-5799 or 424-5373 [~~(512) 424-7166~~];

(3) the Post Office Box mailing address is: Narcotics Regulation Bureau [~~Service~~] MSC 0439 [~~0430~~], Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0439 [~~78773-0430~~]; and

(4) the physical mailing address is: Narcotics Regulation Bureau [~~Service~~] MSC 0439 [~~0430~~], Texas Department of Public Safety, 5805 N. Lamar Blvd., Austin, Texas 78752-4422.

§13.10. Telephone Number and Address - Precursor Chemical/Laboratory Apparatus Section.

To inquire about information and administrative matters with, transmit to, or otherwise contact the Precursor Chemical/Laboratory Apparatus Section (PCLAS):

(1) the telephone number is: (512) 424-2481 or (512) 424-2482;

(2) the fax number is: (512) 424-5799 [~~(512) 424-5757~~];

(3) the Post Office Box mailing address is: Precursor Chemical/Laboratory Apparatus Section MSC 0433, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0433;

(4) the physical mailing address is: Precursor Chemical/Laboratory Apparatus Section MSC 0433, Texas Department of Public Safety, 5805 N. Lamar Blvd., Austin, Texas 78752-4422; and

(5) the e-mail address is through the department's web page at "www.txdps.state.tx.us" or directly through "precursor.chemical@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 November 2, 2009.

TRD-200904983
Steven C. McCraw
Director
Texas Department of Public Safety
Earliest possible date of adoption: December 13, 2009
For further information, please call: (512) 424-5848

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SUBCHAPTER B. REGISTRATION

37 TAC §§13.21, 13.25, 13.26, 13.28, 13.30

The Texas Department of Public Safety proposes amendments to §§13.21, 13.25, 13.26, 13.28, and 13.30, concerning Registration.

Amendments to §13.21 delete words "an annual" and insert "a" registration and require a registration for all registrants engaged in activities covered by the registration provisions of the Act and clarify that the activities performed must be in this state.

Amendments to §13.25 clarify form numbers for different categories of registration.

Amendments to §13.26 add the name of the emergency medical service medical director to the CSR certificate.

Amendments to §13.28 add EMS Provider to fee exemption if qualified.

Amendments to §13.30 establish expiration dates for certain controlled substances registrations.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government or local economies.

Mr. Ybarra also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the sections as proposed. There are no anticipated economic costs to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Mr. Ybarra has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be current and updated rules.

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 these rules. Accordingly, the Department is not required to complete a takings impact assessment regarding these rules.

Comments on the proposal may be submitted to Johnny Hatcher, Narcotics Regulation Bureau, Regulatory Licensing Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0439, (512) 424-2458.

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; Senate Bill 1879, 80th Legislature, 2007; and Texas Health and Safety Code, §481.003.

Texas Government Code, §411.004(3), Senate Bill 1879, and Texas Health and Safety Code, §481.003 are affected by this proposal.

§13.21. Who Must Register.

(a) Required by Act. A person, who is required by the Act to register in order to manufacture, distribute, prescribe, possess, analyze, dispense, or conduct research with a controlled substance, must obtain a [~~an annual~~] registration from the director (CSR Section).

(b) Generally. Only a person actually engaged, in this state, in an activity covered by the registration provisions of the Act must obtain a registration. A related or affiliated person who is not engaged in a covered activity is not required to register.

(c) Activities. The director may register a person for one or more of the following categories of business activity:

(1) practitioner;

(2) pharmacy;

(3) hospital;

(4) manufacturer;

(5) researcher;

(6) teaching institution;

(7) distributor;

(8) analyst or analytical lab;

(9) EMSP;

(10) peyote distributor; or

(11) mid-level practitioner.

(d) Schedules. The director may register a person for one or more of the following schedules:

(1) Schedule I;

(2) Schedule II (narcotic);

(3) Schedule II (non-narcotic);

(4) Schedule III (narcotic);

(5) Schedule III (non-narcotic);

(6) Schedule IV; or

(7) Schedule V.

(e) Lawful possession. A registrant may lawfully possess a controlled substance to the extent authorized by the registration.

(f) An applicant may apply for registration as a manufacturer, researcher, teaching institution, distributor, analyst, or analytical laboratory only after obtaining the appropriate registration from DEA.

§13.25. Application.

(a) Required. A person required to register under this subchapter must comply with this subchapter and Subchapter F of this chapter (relating to Applications).

(b) Form. An applicant must make:

(1) a new or original application on DPS Form NAR-77, NAR-77a, or NAR 77b; and

(2) a renewal application on DPS Form NAR-78 or NAR-78a; or [~~,~~]

(3) a TCSR application on DPS Form NAR-77 or NAR-77a.

(c) Rejection. An applicant who seeks to renew a registration may correct a rejected or defective application and resubmit it for filing at any time before termination under §13.30 of this title (relating to Termination).

§13.26. Certificate.

(a) Issuance. The director will issue a certificate of registration to an applicant who qualifies for registration or renewal under the applicable provisions of the Act, Subchapter C, and this subchapter.

(b) NAR-79. The director will issue a certificate to a registrant listed in §13.21(c)(1) - (11) [~~(9)~~] of this title (relating to Who Must Register) on DPS Form NAR-79, containing:

(1) the registrant's name and address;

(2) the registration number;

(3) the business activity authorized by the registration;

(4) each schedule the registrant is authorized to handle;

(5) a "paid" or "exempt" notation;

(6) a "duplicate" notation, if the certificate is a duplicate;

(7) the certificate's issue date; and

(8) the certificate's expiration date.

(c) NAR-79a. The director will issue a certificate to a mid-level practitioner on DPS Form NAR-79a, containing:

(1) the information listed in subsection [~~§13.26~~](b) of this section [~~title (relating to Certificate)~~]; and

(2) the name of the supervising physician delegating prescriptive authority or the EMSMD.

(d) Display. The registrant must:

(1) display the certificate at the physical location of the registrant's principal place of business; or

(2) maintain the certificate so the registrant may promptly retrieve and display it at any time upon proper demand.

§13.28. Fee Exemption.

(a) Requirements. The director may exempt a person from payment of a state fee for registration or renewal, if the person's superior certifies on the DPS Form NAR-77, NAR-77a, NAR-77b, NAR-78, or NAR-78a that the person is exempted from payment of a fee under the Code of Federal Regulations, Title 21, Chapter II, §1301.21 and is registered in Texas.

(b) Effect. Exemption from payment of a new registration or renewal fee:

(1) authorizes the registrant, where applicable, to acquire, possess, or handle a controlled substance only at the exempt location; and

(2) does not relieve the registrant of another requirement or duty prescribed by law.

§13.30. Termination.

(a) When. A registration terminates:

(1) at the end of six months after expiration;

(2) upon expiration date of a TCSR; [~~when a regulatory board or DEA accepts a voluntary surrender, or denies, suspends, or revokes a license or a federal controlled substance registration; or~~]

(3) when a regulatory board or DEA accepts a voluntary surrender, or denies, suspends, or revokes a license or a federal controlled substance registration; or [~~when the person dies, ceases legal existence, or discontinues business or professional practice.~~]

(4) when a person dies, ceases legal existence, or discontinues business or professional practice.

(b) New registration required. After termination, a former registrant must apply for a new registration and may be issued a different registration number.

(c) Effect of termination. After termination, the former registration provides the registrant with no authority to manufacture, distribute, prescribe, possess, analyze, dispense, or conduct research with a controlled substance.

(d) Discontinued activity. On the day a registrant discontinues business or professional practice, the registrant or a representative of the registrant must notify the director (CSR Section) by close of business. The director may immediately terminate the registration of a person reported to the director under this subsection.

(e) Mid-level practitioner. Upon dissolution of a professional relationship between a mid-level practitioner and the delegating physician, the mid-level practitioner has no authority to distribute, prescribe, possess, or dispense a controlled substance. If the mid-level practitioner does not have a new delegating physician certifying delegation within 60 days after the dissolution of such relationship, the director may terminate the registration of the mid-level practitioner.

(f) Return certificate. A registrant must return a terminated certificate within 30 days after termination if the certificate is not expired.

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

Filed with the Office of the Secretary of State on November 2, 2009.

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Steven C. McCraw
Director
Texas Department of Public Safety
Earliest possible date of adoption: December 13, 2009
For further information, please call: (512) 424-5848

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SUBCHAPTER D. TEXAS PRESCRIPTION PROGRAM

37 TAC §§13.71 - 13.73, 13.75, 13.76, 13.86 - 13.99

The Texas Department of Public Safety proposes amendments to §§13.71 - 13.73, 13.75 and 13.76 and new §§13.86 - 13.99, concerning Texas Prescription Program.

Amendments to §13.71 add the definition of "prescription" as defined in §481.002(41).

Amendments to §13.72 change Official Prescription Program to Official Prescription Form for Schedule II Controlled Substances.

Amendments to §13.73 add rules that govern the issuance of multiple prescriptions and change the word "may" to "must" on the use of the official prescription form when dispensing schedule II controlled substances.

Amendments to §13.75 add rules that govern the filling of multiple prescriptions and that all requirements of §481.074(k), Texas Health and Safety Code are met.

Amendments to §13.76 identifies the data elements that are required to be submitted to the director.

New §13.86 sets forth who may obtain prescription forms and the registration requirements for Schedule III through V Controlled Substances. New §13.86 is filed simultaneously with the repeal of current §13.86 which is being renumbered as new §13.99.

New §13.87 provides for the proper use of the prescription form.

New §13.88 provides for the exceptions to use of the form.

New §13.89 sets forth the pharmacy general responsibility upon receipt of a prescription.

New §13.90 sets forth the pharmacy responsibility for the electronic reporting of the data elements required to be submitted to the director.

New §13.91 sets forth the electronic compatible devices that may be used to transmit the data elements to the director.

New §13.92 provides for a waiver from electronic reporting if certain minimum standards are met and the director approves the waiver.

New §13.93 sets forth the pharmacy responsibility for non-electronic reporting.

New §13.94 sets forth the pharmacy responsibility for dispensing a Schedule III - V controlled substance in an emergency situation.

New §13.95 sets forth the pharmacy responsibility upon receipt of a questionable prescription.

New §13.96 sets forth the pharmacy responsibility upon receipt of a prescription issued by a practitioner in another state.

New §13.97 sets forth the persons to whom the director may release non-statistical information and the requirements that the person must meet.

New §13.98 sets forth the circumstances and conditions under which the director may delete or return a schedule III - V controlled substance to the prescription program.

New §13.99 sets forth the procedures and information a person may use to communicate with the director reference the Texas Prescription Program.

In addition, the title of the Subchapter is changed to "Texas Prescription Program."

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government or local economies.

Mr. Ybarra also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the sections as proposed. There are no anticipated economic costs to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Mr. Ybarra has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be current and updated rules.

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 these rules. Accordingly, the Department is not required to complete a takings impact assessment regarding these rules.

Comments on the proposal may be submitted to Johnny Hatcher, Narcotics Regulation Bureau, Regulatory Licensing Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0439, (512) 424-2458.

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; Senate Bill 1879, 80th Legislature, 2007; and Texas Health and Safety Code, §481.003.

Texas Government Code, §411.004(3), Senate Bill 1879, and Texas Health and Safety Code, §481.003 are affected by this proposal.

§13.71. Subchapter Definitions.

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

(1) Emergency situation--A situation described in the Code of Federal Regulations, Title 21, Chapter II, §1306.11(d).

(2) NDC #--A National Drug Code number.

(3) Reportable prescription--A prescription for a controlled substance:

(A) listed in Schedule II - V; and

(B) not excluded from this subchapter by a rule adopted under the Act, §481.0761(b).

(4) Prescription--A controlled substance prescription as defined in §481.002(41) of the Act.

§13.72. Official Prescription Form [~~Program~~].

(a) Who may order form. A practitioner may order a quantity of official prescription forms from the director only if the practitioner is registered by the director and DEA under both state and federal law to prescribe a Schedule II controlled substance.

(b) Source. A practitioner may order the forms from the director (Texas Prescription Program [~~program~~]).

(c) Institutional practitioner. This subsection applies only to an individual who is employed by a hospital or other training institution that is registered by the director. An institutional practitioner, who is authorized by a hospital or institution to prescribe a Schedule II controlled substance under the registration of the hospital or institution, may order official prescription forms under this section, if:

(1) the practitioner prescribes a controlled substance in the usual course of the practitioner's training, teaching program, or employment at the hospital or institution;

(2) the appropriate state health regulatory agency has assigned an institutional permit or similar number to the practitioner; and

(3) the hospital or institution:

(A) maintains a current list of each institutional practitioner and each assigned institutional permit number; and

(B) makes the list available to another registrant or a member of a state health regulatory or law enforcement agency for the purpose of verifying the authority of the practitioner to prescribe the substance.

§13.73. Form.

(a) Use. A practitioner must [~~may~~] issue a prescription for a Schedule II controlled substance only on an official Texas prescription form, which includes single or multiple copy forms. This subsection also applies to a prescription issued in an emergency situation.

(b) Refills prohibited. A Schedule II prescription may not be refilled.

(c) Completion. A practitioner who prescribes any quantity of a Schedule II controlled substance must complete an official prescription form by legibly filling in the spaces provided.

(d) Issuance of multiple Schedule II prescriptions. A practitioner may issue multiple prescriptions authorizing a patient to receive a total up to a 90-day supply of a Schedule II controlled substance provided:

(1) each separate prescription is issued for a legitimate medical purpose while practitioner is acting in the usual course of professional practice;

(2) the practitioner provides written instructions on each prescription (other than the first prescription; the first prescription is intended to be filled within 21 days of issuance) indicating the earliest date on which a pharmacy may fill each prescription;

(3) the practitioner concludes that providing the patient with multiple prescriptions in this manner does not create an undue risk of diversion or abuse;

(4) the individual practitioner complies fully with all other applicable requirements under the Health and Safety Code, Chapter 481 and these regulations.

(e) [~~(d)~~] Other requirements. A practitioner:

(1) may not postdate an official prescription; and

(2) must ensure all information on the prescription is legible on all copies, including stamped or preprinted instructions; [~~.~~]

(3) must include an "earliest fill date" on all multiple issued prescriptions; and

(4) must sign and date the prescription only when issued.

§13.75. Pharmacy Responsibility--Generally.

(a) Upon receipt of a properly completed official prescription form, a dispensing pharmacist must:

(1) ensure that all requirements of §481.074(k) of the Act have been met [~~the date the prescription is presented is not later than 21 days after the date of issuance~~];

(2) ensure that the date the prescription is presented is not later than 21 days after the date of issuance. In the instance of multiple prescriptions issued by the prescribing practitioner allowing up to a 90-day supply of Schedule II controlled substances, ensure each prescription is not filled prior to the earliest date intended by the practitioner nor 21 days after earliest date the prescription may be filled;

(3) [~~(2)~~] sign the prescription;

(4) [~~(3)~~] enter the date filled and the pharmacy prescription number;

(5) [~~(4)~~] if a triplicate form, indicate on all copies whether the pharmacy dispenses to the patient a quantity less than the quantity prescribed; and

(6) [~~(5)~~] if a triplicate form, enter the following information on all copies, if different from the prescribing practitioner's information:

(A) the brand name or, if none, the generic name of the controlled substance dispensed; or

(B) the strength, quantity, and dosage form of the Schedule II controlled substance used to prepare the mixture or compound.

(b) The prescription is void if presented for filling [~~later than~~] 21 days after issuance, or 21 days after any earliest fill date. A new prescription is required.

[~~(c) Exceptions: Subsection (a)(1) and (b) do not apply to Schedule III, IV, or V controlled substance prescriptions.~~]

§13.76. Pharmacy Responsibility--Electronic Reporting.
Within the time required by the Act, a pharmacy must submit the following data elements from Schedule II prescriptions to the director:

(1) the prescribing practitioner's DPS registration number;

(2) the official prescription control number;

(3) the patient's (or the animal owner's) name, age (or date of birth), and address (including city, state, and zip code);

(4) the date the prescription was issued and filled;

(5) the NDC # of the controlled substance dispensed;

(6) the quantity of controlled substance dispensed;

(7) the pharmacy's prescription number; and

(8) the pharmacy's DPS registration number.

§13.86. Prescription Forms.
Who may order form. A practitioner, as defined in the Act, §481.002(39)(A), (C), (D), may obtain prescription forms through individual sources. If the prescription form is to be used to prescribe a controlled substance the dispensing practitioner must be registered by the director and the DEA under both state and federal law to prescribe controlled substances.

§13.87. Form.
(a) Use. A practitioner may issue, or permit to be issued, by a person under the practitioner's direction or supervision, a Schedule III - V controlled substance on a prescription form for a valid medical purpose and in the course of medical practice.

(b) Refills permitted. Schedule III - V prescriptions may be refilled up to five times within the six months period after date of issuance.

(c) Completion. A practitioner who prescribes any quantity of a Schedule III - V controlled substance must complete the prescription form by legibly filling in all required information.

(d) Other requirements. A practitioner:

(1) may not postdate a prescription form; and

(2) must ensure all information required in the Act, §481.074(k), which includes the department registration number, if licensed in Texas, is included and is legible, to include the stamped or pre-printed instructions.

§13.88. Exceptions to Use of Form.
(a) Medication order. A prescription form is not required for a medication order written for a patient who is admitted to a hospital at the time the medication order is written and filled.

(1) A practitioner may dispense or cause to be dispensed a controlled substance to a patient who:

(A) is admitted to the hospital; and

(B) will require an emergency quantity of a controlled substance upon release from the hospital.

(2) Under paragraph (1) of this subsection, the controlled substance:

(A) may only be dispensed in a properly labeled container; and

(B) may be an amount as determined appropriate by the attending practitioner as needed for proper treatment of the patient until the patient can obtain access to a pharmacy.

(b) Patient admitted to hospital. Subsection (a) of this section applies to a patient who is admitted to a hospital, including a patient:

(1) admitted to:

(A) a general hospital, special hospital, licensed ambulatory surgical center, surgical suite in a dental school, or veterinary medical school; or

(B) a hospital clinic or emergency room, if the clinic or emergency room is under the control, direction, and administration as an integral part of a general or special hospital;

(2) receiving treatment with a controlled substance from another person, who is:

(A) a member of a life flight aircraft medical team or an emergency medical ambulance crew or a paramedic-emergency medical technician; and

(B) considered an extension of an emergency room of a general or special hospital; or

(3) receiving treatment with a controlled substance while the patient is an inmate incarcerated in a correctional facility operated by the Texas Department of Criminal Justice.

(c) Animal admitted to hospital. Subsection (a) of this section applies to an animal admitted to an animal hospital, including an animal that is a permanent resident of a zoo, wildlife park, exotic game ranch, wildlife management program, or state or federal research facility.

(d) Long-Term Care Facility (LTCF). A prescription form is not required in a long-term care facility if:

(1) an individual administers the substance to an inpatient from the facility's medical emergency kit;

(2) the individual administering the substance is an authorized practitioner or an agent acting under the practitioner's order; and

(3) the facility maintains the proper records as required for an emergency medical kit in an LTCF.

§13.89. Pharmacy Responsibility--Generally

(a) Upon receipt of a properly completed prescription form, a dispensing pharmacist must:

(1) ensure that all requirements of §481.74(k) of the Act have been met;

(2) ensure that the date the prescription is presented is not later than six months after the date of issuance;

(3) ensure that the prescription presented has not been refilled more than five times during the six months period after the date the prescription was issued;

(4) sign the prescription;

(5) enter the date filled and the pharmacy prescription number;

(6) indicate whether the pharmacy dispenses to the patient a quantity less than quantity prescribed.

(b) The prescription is void if presented for filling later than six months after issuance or has been filled five times during the six months after issuance. A new prescription is required.

§13.90. Pharmacy Responsibility--Electronic Reporting.

Within the time required by the Act, a pharmacy must submit the following data elements from Schedule III - V prescriptions to the director:

(1) the prescribing practitioner's DPS registration number;

(2) the patient's (or the animal owner's) name, age (or date of birth), and address (including city, state, and zip code);

(3) the date the prescription was issued and filled;

(4) the NDC # of the controlled substance dispensed;

(5) the quantity of controlled substance dispensed;

(6) the pharmacy's prescription number; and

(7) the pharmacy's DPS registration number.

§13.91. Electronic Compatibility.

If a pharmacy submits information to the director electronically, the pharmacy must submit the information by electronic media, including a disk, tape, cassette, modem, or other manner compatible with industry standards and approval by the director.

§13.92. Waiver from Electronic Reporting.

(a) Minimum prescription threshold. If a pharmacy fills less than 15 prescriptions per month, the pharmacy may request from the director a waiver from electronic reporting. If a waiver is granted, the pharmacy must file reportable prescriptions with the director on a form approved under §13.93(c) of this title (relating to Pharmacy Responsibility--Non-electronic Reporting).

(b) Inadequate technology. If a pharmacy is not automated or cannot meet the requirements in §13.91 of this title (relating to Electronic Compatibility), the pharmacy may request from the director a waiver from electronic reporting. The request must clearly describe the technological inadequacies in the pharmacy.

(c) Written request. The waiver must be requested annually in writing.

(d) Duration. If granted, the waiver will remain in effect for no longer than twelve months, beginning the first day of the month following the month the waiver was granted.

§13.93. Pharmacy Responsibility--Non-electronic Reporting.

(a) With waiver. A pharmacy must comply with §13.90 of this title (relating to Pharmacy Responsibility--Electronic Reporting) unless the pharmacy has obtained from the director a waiver from electronic reporting under §13.92 of this title (relating to Waiver from Electronic Reporting).

(b) Non-electronic information. Within the time required by the Act, a pharmacy approved for non-electronic reporting under this subchapter must submit the following information to the director on a form approved by the director:

(1) the information required under §13.90 of this title;

(2) the prescribing practitioner's name; and

(3) the dispensing pharmacy's name, address, and telephone number.

(c) Approved forms. The director expressly approves the following non-electronic reporting forms, if the form in question legibly includes all information required by subsection (b) of this section:

(1) a copy of a prescription form;

(2) a printed computer record of the prescription.

§13.94. Pharmacy Responsibility--Emergency Situation.

(a) Documentation. If a pharmacy dispenses a Schedule III - V controlled substance in an emergency situation pursuant to an orally or telephonically communicated prescription from a practitioner or the practitioner's designated agent, the pharmacist must promptly reduce the prescription to writing, including the information required by the Act, §481.074(k).

(b) Other requirements. After dispensing a controlled substance in an emergency under this section, the dispensing pharmacy must, within the time required by the Act:

(1) maintain the written record created under subsection (a) of this section in the pharmacy records for two years from the date dispensed;

(2) note the emergency nature of the prescription; and

(3) send the information required under this subchapter to the director (Texas Prescription Program).

§13.95. Pharmacy Responsibility--Questionable Prescriptions.

If a dispensing pharmacist receives a prescription form that creates a substantial question or doubt in the mind of the dispensing pharmacist, the pharmacist must, before filling the prescription, communicate with the prescribing practitioner in order to resolve the question or doubt.

§13.96. Pharmacy Responsibility--Out-of-State Practitioner.

(a) If a pharmacist in this state receives a prescription for a Schedule III - V controlled substance that is issued by a practitioner in another state, the pharmacy may fill the prescription if the practitioner is authorized by the other state to prescribe the substance.

(b) Within the time required by the Act, the pharmacist must submit to the director the data elements required under §13.90 of this title (relating to Pharmacy Responsibility--Electronic Reporting).

§13.97. Release of Non-statistical Information.

(a) To whom. The director may release Texas Prescription Program information obtained under the Act, §481.074(q) only to an individual listed in the Act, §481.076(a).

(b) Purpose. An individual described by subsection (a) of this section may only request information for a purpose listed in the Act, §481.076.

(c) Written request. The director may require an individual seeking information under this section to submit a written request to the director before the director releases to the individual the information contained on or derived from the prescription.

(d) Proper need and Return of Information report. The director will require a person requesting information under the Act, §481.076(a)(3), to show a proper need for the information. The showing of proper need is ongoing. The director will require the person to periodically submit to the director a Return of Information report documenting use of the information and the status of the investigation or prosecution.

§13.98. Deletion or Return.

(a) Generally. Under the authority of the Act, §481.0761(b), the director may determine whether a Schedule III, IV or V controlled substance should be deleted from or returned to the prescription program.

(b) Deletions. The director has determined:

(1) the burden imposed by the Texas Prescription Program on each controlled substance listed in this subsection substantially outweighs the risk of diversion; and

(2) the following controlled substances are deleted from the program: (none).

(c) Returns. The director has determined:

(1) the burden imposed by the Texas Prescription Program on each controlled substance listed in this subsection does not substantially outweigh the risk of diversion; and

(2) the following controlled substances are returned to the program: (none).

§13.99. Communication with Director (Texas Prescription Program).

If a person is required or allowed by this subchapter to make a notification, report, or other written, telephonic, or personal communication to the director, the person must make the communication to the director through the Texas Prescription Program at the address indicated in §13.9 of this title (relating to Telephone Number and Address - Texas Prescription Program).

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

Filed with the Office of the Secretary of State on November 2, 2009.

TRD-200904985
Steven C. McCraw
Director
Texas Department of Public Safety
Earliest possible date of adoption: December 13, 2009
For further information, please call: (512) 424-5848

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SUBCHAPTER D. OFFICIAL PRESCRIPTIONS

37 TAC §13.86

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

The Texas Department of Public Safety proposes the repeal of §13.86, concerning Communication with Director (Texas Prescription Program). Repeal of the section is necessary due to the simultaneous filing of a new §13.86. The repealed section will be renumbered as new §13.99 in a simultaneous filing.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the repeal is in effect there will be no fiscal implications for state or local government or local economies.

Mr. Ybarra also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the repeal as proposed. There are no anticipated economic costs to individuals who are required to comply with the repeal as proposed. There is no anticipated negative impact on local employment.

In addition, Mr. Ybarra has also determined that for each year of the first five-year period the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be current and updated rules.

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 repeal. Accordingly, the Department is not required to complete a takings impact assessment regarding this repeal.

Comments on the proposal may be submitted to Johnny Hatcher, Narcotics Regulation Bureau, Regulatory Licensing Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0439, (512) 424-2458.

The repeal is 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; Senate Bill 1879, 80th Legislature, 2007; and Texas Health and Safety Code, §481.003.

Texas Government Code, §411.004(3), Senate Bill 1879, and Texas Health and Safety Code, §481.003 are affected by this proposal.

§13.86. Communication with Director (Texas Prescription Program).

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

Filed with the Office of the Secretary of State on November 2, 2009.

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SUBCHAPTER F. APPLICATION

37 TAC §§13.131 - 13.134, 13.137

The Texas Department of Public Safety proposes amendments to §§13.131 - 13.134 and §13.137, concerning Application.

Amendments to §13.131 add temporary controlled substances registration (TCSR) to Application definitions.

Amendments to §13.132 add change in temporary business address by locum tenen or health practitioner as information needed to be updated as required by §13.208 and clarify who may act as a supervising physician for a mid-level practitioner in a medical facility.

Amendments to §13.137 add denial as an option if the modification of a registration does not meet the requirements of this section or violates a ground of denial as described in the Act, §481.063(e).

Due to a reorganization within the department further amendments change the name of the bureau responsible for the Controlled Substances Program.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government or local economies.

Mr. Ybarra also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the sections as proposed. There are no anticipated economic costs to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Mr. Ybarra has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be current and updated rules.

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 these rules. Accordingly, the Department is not required to complete a takings impact assessment regarding these rules.

Comments on the proposal may be submitted to Johnny Hatcher, Narcotics Regulation Bureau, Regulatory Licensing Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0439, (512) 424-2458.

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; Senate Bill 1879, 80th Legislature, 2007; and Texas Health and Safety Code, §481.003.

Texas Government Code, §411.004(3), Senate Bill 1879, and Texas Health and Safety Code, §481.003 are affected by this proposal.

§13.131. Subchapter Definitions.

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

(1) Registrant--A person who holds a registration or permit covered by this chapter.

(2) Registration--A registration issued under this chapter, including a general controlled substances registration, a TCSR, a spe-

cific peyote distributor registration, or a precursor or apparatus permit issued under this chapter.

§13.132. Application Requirements.

(a) Time. A person who is required or allowed to register and who is not so registered may apply for registration at any time. A person who is currently registered may not apply for renewal of registration more than 60 days before the expiration date of the current registration.

(b) Form and content, generally. A person must make application for an original registration or renewal of registration on a form provided by the director and submitted to the director through the appropriate section of the Narcotics Regulation Bureau [~~Service~~]. An application must contain all information called for, unless:

(1) the information is not applicable; and

(2) the applicant expressly so states on the application.

(c) Applicant responsibility. The applicant is responsible for the application. If the director has not sent a form to or received a form from the applicant, this does not relieve the applicant from responsibility for:

(1) being registered or permitted;

(2) making a timely, complete application;

(3) paying the applicable fee; and

(4) updating any information as required by §13.208 of this title (relating to Requirement to Update Information) including each change of a temporary Texas business address by a locum tenen or health practitioner.

(d) Signature. This subsection and subsection (e) of this section do not apply to a permit application. Except as provided by subsection (e) of this section, one of the following individuals must sign an application form and each additional document or statement required by the director:

(1) the applicant, if the applicant is an individual;

(2) a general partner of the applicant, if the applicant is a partnership;

(3) an officer of the applicant, if the applicant is a corporation or other business association;

(4) the administrator of the applicant, if the applicant is a hospital or teaching institution; or

(5) the pharmacist-in-charge of the applicant, if the applicant is a pharmacy or a remote site.

(e) Alternative signature. If an individual is not listed in subsection (d) of this section, an applicant who is listed may authorize the individual to sign an application form or other document on the applicant's behalf by filing a power of attorney. The applicant must:

(1) ensure that the power of attorney is signed by an individual who is listed in subsection (d) of this section; and

(2) file the power of attorney with the director (CSR Section).

(f) Rejectable signature. The director may reject an application if a signature required by this chapter is incomplete or insufficient, including a signature accompanied by a notation that the signature is "reserved," "without prejudice," "locus sigilli," "L. S.," or otherwise apparently less than fully effective for the required purpose.

(g) Mid-level practitioners.

(1) each mid-level practitioner must have a supervisory physician delegating prescriptive authority as required by the Act, §481.002(39)(D). Each physician must certify the authorizing delegation on the mid-level practitioner's application and include the physician's:

(A) name;

(B) Texas Medical Board license number;

(C) DPS registration number;

(D) signature; and

(E) date of signature.

(2) Effect of signature. A physician who signs a mid-level practitioner's application as the supervising physician assumes responsibility for ensuring that the mid-level practitioner practices under the laws of this state related to controlled substances prescribing activities. A physician who fails to properly monitor the mid-level practitioner's activities is subject to disciplinary action.

(3) Registration and License Status. A supervising physician must have an unrestricted and active DPS registration and Texas Medical Board license number.

(4) Change of Delegating Physician.

(A) A change of delegating physician must be submitted in writing as required in §13.208 of this title (relating to Requirements to Update Information).

(B) A delegating physician shall notify the director in writing to terminate delegation with a mid-level practitioner.

(5) A physician who holds the position of Medical Director, Chief of Staff, or Emergency Room Department Chair at a licensed hospital may be denoted as the supervising physician for a mid-level practitioner providing medical services within the emergency room. This physician may then delegate the direct supervision of the mid-level practitioner to staff physicians providing medical services within the emergency room, provided that the supervising physician determines that the mid-level practitioners are properly trained to deliver services, that the services are of such a nature that they may be safely and competently delivered by the supervised mid-level practitioners, and that the proper paperwork has been filed with the Texas Medical Board. The supervision of mid-level practitioners must comply with all institutional rules and there must be accurate and timely internal institutional records, which are available upon request within 24 hours to the Department, which list the name and license number of the physician.

(6) [~~(5)~~] Limitations. The physician is limited to the extent and number of mid-level practitioners that the physician delegated as outlined in Chapter 157, Occupations Code.

(h) EMSP. An application from an EMSP seeking to register EMS or FRO activities must be signed by an executive of the EMSP and the EMSMD.

§13.133. Application Form and Content.

(a) Request. An applicant may request an application for registration or renewal from the director.

(b) Form. An applicant must make a new, original, or renewal application on the form required by this chapter.

(c) Renewal. The director will mail a form for an application for renewal to a registrant approximately 60 days before the expiration date of the registration to the address currently on file with the appropriate section of the Narcotics Regulation Bureau [~~Service~~].

(d) Applicant responsibility. A person should promptly notify the director through the appropriate section of the Narcotics Service if the person is a:

(1) controlled substances or peyote distributor registrant, who does not receive a renewal form within 30 days before the expiration date of the registration; or

(2) permit holder, who does not receive a renewal form within seven days before the expiration date of the registration.

(e) A CSR registrant must sign a consent to inspect under the Act, §481.063(a).

§13.134. Acceptance for Filing.

(a) Date received. The director will note the date the director receives an application submitted to the appropriate section of the Narcotics Regulation Bureau [~~Service~~] for filing.

(b) Acceptance. If the director determines the application is complete, the director will accept the application for filing. The director will not generally accept an application that fails to comply with this subchapter. In the case of a minor defect as to completeness, the director may accept the application for filing and ask the applicant to submit additional information to remedy the defect.

(c) Rejection. Not later than the 60th day after the date the director receives a defective application for filing, the director will mail written notice to the applicant rejecting the application and informing the applicant of its deficiency. The director will return a defective application to the applicant along with notice of the reason for rejecting the application for filing. An applicant may correct a rejected or defective application and resubmit it for filing at any time, if a new registration is being sought.

(d) Time limit. Not later than the 60th day after the date the director accepts an application for filing, the director will determine whether to deny or issue the registration.

(e) Multiple registrations. Although a person attempting to obtain or renew more than one registration may submit all of the registration applications in one package, an individual application must contain all the information called for on the individual form. No application may refer to another application for required information.

(f) Neutral effect of acceptance. The fact the director has accepted an application for filing does not mean the director will grant the application.

(g) Review. The director will review an application for registration and other information gathered during the inspection regarding the applicant in order to determine whether the applicant meets the relevant standards of this chapter and the Act, Subchapter C.

§13.137. Modification.

(a) Availability. A registrant may apply to the director through the appropriate section of the Narcotics Regulation Bureau [~~Service~~] for registration modification to:

(1) authorize the addition or deletion of a schedule, precursor, or apparatus;

(2) change any information on the name line of the registration;

(3) correct, at the discretion of the director, other information on the registration certificate or permit document; or

(4) change a supervising physician delegating prescriptive authority to include the physician's:

(A) name;

(B) Texas Medical Board license number;

(C) DPS registration number;

(D) signature; and

(E) date of signature.

(b) Written request. A person must notify the director in writing of the modification sought, including the signature of the registrant or other person who is authorized to sign an original application under §13.132(d) or (e) of this title (relating to Application Requirements).

(c) Denial. A modification of registration can be denied if the modification does not meet the requirements under this section or if the registrant violates a ground of denial as described in the Act, §481.063(e).

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

Filed with the Office of the Secretary of State on November 2, 2009.

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Steven C. McCraw
Director
Texas Department of Public Safety
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SUBCHAPTER G. FORFEITURE AND DESTRUCTION

37 TAC §13.161

The Texas Department of Public Safety proposes an amendment to §13.161, concerning Forfeiture and Destruction. Due to reorganization within the department, the name of the bureau responsible for the Controlled Substance Program has changed.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government or local economies.

Mr. Ybarra also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the section as proposed. There are no anticipated economic costs to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Mr. Ybarra has also 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 current and updated rules.

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 Johnny Hatcher, Narcotics Regulation Bureau, Regulatory Licensing Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0439, (512) 424-2458.

The amendment is 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; Senate Bill 1879, 80th Legislature, 2007; and Texas Health and Safety Code, §481.003.

Texas Government Code, §411.004(3), Senate Bill 1879, and Texas Health and Safety Code, §481.003 are affected by this proposal.

§13.161. Witness Responsibility - Security Control.

(a) Generally. For purposes of accountability, at least two of the witnesses to a destruction under this subchapter must, during a process conducted immediately before the physical destruction of an item:

(1) examine each item in a manner sufficient to complete the destruction inventory required by this subchapter;

(2) compare that destruction inventory with each previous inventory of the item, including one that may have been made as part of an evidence submission form, a laboratory analysis, or as part of the destruction authorization;

(3) examine each package for the integrity or breach of the package or seal;

(4) refuse to destroy an item that reasonably appears to have been tampered with or to be at variance with its purported count or weight; and

(5) ensure destruction of each item as soon as reasonably possible.

(b) Suspicious incident. Each witness must:

(1) investigate a suspicious incident or probable breach of security, including a discrepancy, loss, theft, or other potential diversion of an item to be destroyed; or

(2) report the incident or breach to an appropriate law enforcement agency or peace officer for investigation.

(c) Registrant security provisions may also apply. The registrant security provisions of this chapter apply if a witness to destruction under this subchapter is also registered individually as a controlled substances registrant or employed by a registrant. If so, the witness is responsible for making a written report to the director through the Narcotics Regulation Bureau [~~Service~~] of a probable breach of security under those provisions.

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

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Steven C. McCraw
Director
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SUBCHAPTER H. SECURITY

37 TAC §13.182

The Texas Department of Public Safety proposes an amendment to §13.182, concerning Security. Amendment to §13.182 clarifies the manner that an emergency medical locker is to be secured to a conveyance.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government or local economies.

Mr. Ybarra also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the section as proposed. There are no anticipated economic costs to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Mr. Ybarra has also 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 current and updated rules.

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 Johnny Hatcher, Narcotics Regulation Bureau, Regulatory Licensing Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0439, (512) 424-2458.

The amendment is 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; Senate Bill 1879, 80th Legislature, 2007; and Texas Health and Safety Code, §481.003.

Texas Government Code, §411.004(3), Senate Bill 1879, and Texas Health and Safety Code, §481.003 are affected by this proposal.

§13.182. Registrant - Generally.

(a) To prevent diversion. A registrant and an applicant for registration must establish and maintain effective controls and procedures

required directly or indirectly by this subchapter in order to prevent unauthorized access, theft, or diversion of a controlled substance from the legitimate to the illicit market.

(b) Lawful use. A registrant may only use a controlled substance for a lawful purpose, including:

(1) in a field of medicine, veterinary medicine, dentistry, pharmacy, or other health care profession;

(2) scientific research;

(3) delivery or sale to an authorized person; or

(4) in industrial channels.

(c) Other rules apply. Except as otherwise provided by this subchapter, a registrant must comply with the physical and other related security control provisions of the Code of Federal Regulations, Title 21, Chapter II, §§1301.71 - 1301.76. Additionally, the emergency medical storage lockers must be so attached to the vehicle, aircraft or vessel as to prevent removal for theft or diversion of the controlled substances. The director does not impose any security requirements on a peyote distributor under Subchapter C of this chapter (relating to Peyote) in addition to these federal requirements.

(d) Access control. During the regular course of business activities, a facility registered under the Act may not allow access by an individual to the facility's controlled substance storage area unless the individual is someone whose presence is authorized and required for efficient operation of the facility.

(e) Cabinet security. Except as provided by subsections (c) or (f) of this section, a registrant must store a controlled substance in a securely locked, substantially constructed cabinet or other security cabinet that meets federal security requirements.

(f) Constructive compliance. Although a cabinet fails to meet the security requirements of this section, the director may deem the cabinet to be in compliance if it is located in a room or area:

(1) to which the entrance door has been constructed so the hinge mountings inhibit removal; and

(2) for which a limited number of employees have keys or combinations to operate its locking device.

(g) Lock security. A registrant must:

(1) rekey a key lock if a key is lost or upon termination of an employee having possession of a key; and

(2) change a combination lock number:

(A) if a record of the combination is lost or stolen; or

(B) upon termination of an employee having knowledge of the combination.

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

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SUBCHAPTER I. RECORD KEEPING

37 TAC §13.208

The Texas Department of Public Safety proposes an amendment to §13.208, concerning Record Keeping. Amendment to §13.208 adds temporary registration holder as a person required to update certain information to the director.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government or local economies.

Mr. Ybarra also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the section as proposed. There are no anticipated economic costs to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Mr. Ybarra has also 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 current and updated rules.

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 Johnny Hatcher, Narcotics Regulation Bureau, Regulatory Licensing Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0439, (512) 424-2458.

The amendment is 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; Senate Bill 1879, 80th Legislature, 2007; and Texas Health and Safety Code, §481.003.

Texas Government Code, §411.004(3), Senate Bill 1879, and Texas Health and Safety Code, §481.003 are affected by this proposal.

§13.208. Requirement to Update Information.

A person, who is an applicant for or holder of a registration, a temporary registration or annual permit from the director, must notify the director through the appropriate section of the Narcotics Regulation Bureau [~~Service~~] before the seventh day after any change in the person's business name, address, physician delegating prescriptive authority, and telephone number or other information required on the application, registration, or permit.

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

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SUBCHAPTER K. INSPECTION

37 TAC §§13.233, 13.234, 13.237

The Texas Department of Public Safety proposes amendments to §§13.233, 13.234 and 13.237, concerning Inspection.

Amendment to §13.233 is necessary in order to include each member of the Narcotics Regulatory Program as a person authorized to inspect a controlled premise.

Amendments to §13.234 reformat the section to add new subsections (b) and (c). The new subsections set forth the time period in which records required to be maintained on site must be produced for inspection by the director and refer to the CFR for off site record keeping requirements.

Due to a reorganization within the department, §13.237 is amended in order to update the name of the bureau responsible for the Controlled Substance Program.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government or local economies.

Mr. Ybarra also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the sections as proposed. There are no anticipated economic costs to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Mr. Ybarra has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be current and updated rules.

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 these rules. Accordingly, the Department is not required to complete a takings impact assessment regarding these rules.

Comments on the proposal may be submitted to Johnny Hatcher, Narcotics Regulation Bureau, Regulatory Licensing Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0439, (512) 424-2458.

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; Senate Bill 1879, 80th Legislature, 2007; and Texas Health and Safety Code, §481.003.

Texas Government Code, §411.004(3), Senate Bill 1879, and Texas Health and Safety Code, §481.003 are affected by this proposal.

§13.233. Who May Inspect.

(a) Generally. This subchapter applies to the director's authority under the Act to enter and inspect controlled premises. While engaged in the inspection or an activity reasonably related to the inspection, the director may examine, audit, inventory, or, as appropriate, copy an item or record found on the premises.

(b) Delegation. The director delegates authority described in subsection (a) of this section to each member of the department who is assigned to the Criminal Investigations Division [~~Narcotics Service~~], or the Narcotics Regulation Bureau, whether or not the member is a commissioned peace officer.

(c) Assistance. When exercising an authority described in subsections (a) or (b) of this section, the director or member may be assisted by:

(1) a peace officer;

(2) another member of the department;

(3) a member of DEA;

(4) an investigator listed in the Act, §481.076(a)(1);

(5) a representative of an appropriate state health regulatory agency governing the conduct of a registrant; or

(6) another individual acting under the authority of the director or member.

§13.234. Time Limitations.

(a) For the purpose of examining, auditing, inspecting, inventorying, or, where appropriate, copying an item subject to the Act or a record required to be made or kept under the Act or this chapter, the director or a member of the department may enter the controlled premises of an applicant or registrant at a reasonable time, including:

(1) normal business hours; or

(2) at another time when the controlled premises are occupied or open to the public.

(b) Upon request of the director, a registrant or permit holder has 24 hours, excluding weekends and holidays, to produce any or all records required to be maintained on site for inspection by the department.

(c) All registrants that are authorized to maintain an off site central record keeping system, for all records permitted to be maintained off site, shall comply with Code of Federal Regulations, Title 21, Chapter II, §1304.04(b), which provides for a two business day time period to produce the records upon written request.

§13.237. Inspection of Permit Holder and Pseudoephedrine Records and Reports.

(a) Generally. The holder of a permit for distribution or receipt of a chemical precursor or laboratory apparatus may be inspected subject to the limitations of the Act, §481.077(k), §481.080(l) and §13.104 of this title (relating to Requirements for Permit Issuance).

(b) Consent to inspect - one-time. An applicant for a one-time permit must give written consent for one or more pre-permit inspections under this subchapter to determine eligibility for issuance of the permit. A written consent to an inspection under the Act, §481.078(e) or §481.081(e), is sufficient for a one-time permit if the consent is for initial inspection or any additional inspection to be conducted before issuance of the permit and at a reasonable time as necessary to determine qualification for the permit.

(c) Consent to inspect - annual. A written consent given by a person seeking an annual permit must include consent for an initial inspection to determine qualification for the permit sought and additional inspections conducted before or after issuance of the permit at a reasonable time as necessary to enforce the Act or this chapter.

(d) Pseudoephedrine Records and Reports.

(1) Generally. A wholesale distributor who distributes a product containing ephedrine, pseudoephedrine, or norpseudoephedrine to a retailer shall make available for immediate inspection to any member of the department during regular business hours upon presentation of proper credentials all files, papers, processes, controls, or facilities appropriate for verification of a required record or report. If the wholesaler is no longer in operation or closed, the records shall be made available within three (3) business days.

(2) Delegation. The director delegates authority described in this section to each member of the department who is assigned to the Narcotics Regulation Bureau [~~Service~~], whether or not the member is a commissioned peace officer.

(3) Assistance. When exercising the authority in this section, a member of the department may be assisted by:

(A) a peace officer;

(B) another member of the department;

(C) a member of DEA;

(D) a representative of an appropriate state health regulatory agency governing the conduct of a wholesaler; or

(E) another individual acting under the authority of the director or member.

(e) Statutory authority. A member of the department or peace officer is expressly authorized by the Act, §481.077(k) and §481.080(l), to audit, inspect, and copy a record of a purchase or sale of a precursor or apparatus of a person who holds an annual permit under Subchapter E of this chapter (relating to Precursors and Apparatus). Except as provided by subsection (b) of this section, this section does not apply to a person who holds a one-time permit.

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

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Steven C. McCraw
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SUBCHAPTER L. REPORTING DISCREPANCY, LOSS, THEFT, OR DIVERSION

37 TAC §13.253, §13.254

The Texas Department of Public Safety proposes amendments to §13.253 and §13.254, concerning Reporting Discrepancy, Loss, Theft, or Diversion. Due to reorganization within the department, the name of the bureau responsible for the Controlled Substance Program has been changed. Amendment to §13.254 sets forth the information required to be reported to the director by the practitioner on all lost/replacement official prescriptions.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government or local economies.

Mr. Ybarra also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the sections as proposed. There are no anticipated economic costs to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Mr. Ybarra has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rule will be current and updated rules.

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 these rules. Accordingly, the Department is not required to complete a takings impact assessment regarding these rules.

Comments on the proposal may be submitted to Johnny Hatcher, Narcotics Regulation Bureau, Regulatory Licensing Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0439, (512) 424-2458.

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; Senate Bill 1879, 80th Legislature, 2007; and Texas Health and Safety Code, §481.003.

Texas Government Code, §411.004(3), Senate Bill 1879, and Texas Health and Safety Code, §481.003 are affected by this proposal.

§13.253. Reporting Discrepancy, Loss, Theft, or Other Potential Diversion.

(a) Generally. A person covered by this subchapter must notify the director not later than the third day after the date the person learns of:

(1) a discrepancy in the amount of an item ordered from a source inside or outside this state and the amount received, if not back ordered;

(2) a loss or theft during shipment from a source inside or outside this state; or

(3) a loss or theft from current inventory.

(b) How made. A person covered by this subchapter must notify the director by submitting a report to the director through the appropriate section of the Narcotics Regulation Bureau [~~Service~~]. The report must be made on:

(1) a DPS Form NAR-91, for a registrant under Subchapter B of this chapter (relating to Registration) or Subchapter C of this chapter (relating to Peyote);

(2) a DPS Form NAR-91B, for a precursor or apparatus permit holder under Subchapter E of this chapter (relating to Precursors and Apparatus); or

(3) a duplicate of the equivalent DEA form for reporting a theft or loss of a controlled substance to DEA.

(c) Form and content. A person making a report under this section must:

(1) make the report on regular business letterhead or other reporting form; and

(2) ensure the report contains the following information:

(A) the name, address, and telephone number of the business or other person preparing the report;

(B) the printed or typed name of the individual preparing the report; and

(C) the date the person prepares the report.

(d) Additional content. If the report under this section is of:

(1) a discrepancy, it must include:

(A) the name of the item ordered;

(B) the difference in the amount actually received; and

(C) the amount shipped according to the shipping statement or invoice.

(2) a loss or theft from current inventory, it must include:

(A) the name and amount of the item lost or stolen;

(B) the physical location where the loss or theft occurred; and

(C) the date of discovery of the loss or theft.

(3) a discrepancy, loss, theft, or other potential diversion that occurred during shipment of the item, it must include:

(A) the name of the common carrier or person who transported the item; and

(B) the date the item was shipped.

§13.254. Official Prescription.

(a) Report lost forms. Not later than close of business on the day of discovery, a practitioner must report a lost or stolen official prescription form to:

(1) the local police department or sheriff's office in an effective manner; and

(2) the director (Texas Prescription Program) by telephone at the number indicated in §13.9 of this title (relating to Telephone Number and Address - Texas Prescription Program).

(b) Recovery report. Not later than close of business on the day of recovery of an official prescription form previously reported lost or stolen, a practitioner must, before using the recovered form, notify:

(1) the local law enforcement agency to which the matter was originally reported; and

(2) the director (Texas Prescription Program).

(c) Replacement/lost form. Not later than the close of business on the day that an official prescription is replaced or reported lost, with or without a replacement, the prescribing practitioner, or designated agent, shall report to the director (Texas Prescription Program) the following:

(1) patient name, address, date of birth or age;

(2) all drug information; and

(3) official prescription form DPS control number.

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

Filed with the Office of the Secretary of State on November 2, 2009.

TRD-200904992
Steven C. McCraw
Director
Texas Department of Public Safety
Earliest possible date of adoption: December 13, 2009
For further information, please call: (512) 424-5848

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SUBCHAPTER M. DENIAL, REVOCATION, AND RELATED DISCIPLINARY ACTION

37 TAC §§13.272 - 13.276, 13.278

The Texas Department of Public Safety proposes amendments to §§13.272 - 13.276 and §13.278, concerning Denial, Revocation, and Related Disciplinary Action. Amendments to the sections add "unless otherwise stated in the Act" to each action to be taken in order to more fully comply with the Act and clarify a hearing request upon receiving probation under this section.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government or local economies.

Mr. Ybarra also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the sections as proposed. There are no anticipated economic costs to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Mr. Ybarra has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be current and updated rules.

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 these rules. Accordingly, the Department is not required to complete a takings impact assessment regarding these rules.

Comments on the proposal may be submitted to Johnny Hatcher, Narcotics Regulation Bureau, Regulatory Licensing Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0439, (512) 424-2458.

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; Senate Bill 1879, 80th Legislature, 2007; and Texas Health and Safety Code, §481.003.

Texas Government Code, §411.004(3), Senate Bill 1879, and Texas Health and Safety Code, §481.003 are affected by this proposal

§13.272. General Provisions.

(a) APA applies. Except as provided by this chapter, the APA applies if the director proposes to take disciplinary action against a person's registration or to deny a person's application for registration.

(1) The person is entitled to preliminary notice from the director and a hearing as a contested case under the APA.

(2) The director will send notice by certified mail or personal delivery to the most current address of the registrant or applicant contained in the director's files. If mailed, the notice is presumed to have been received by the registrant or applicant on the third business day after the date of mailing.

(b) Pleadings. If the director pleads appropriately:

(1) the director may take a disciplinary action or make a denial under this subchapter against a chemical precursor or laboratory apparatus permit in the same manner as a disciplinary action or denial against a controlled substances registration; and

(2) a successful disciplinary action or denial by the director will also operate against any other registration issued by the director under this chapter.

(c) Action may be limited. The director may limit a disciplinary action or denial to the particular activity, schedule, controlled substance within a schedule, precursor, apparatus, or other item for which grounds for the action exist.

(d) Notification of another agency. The director will promptly notify each appropriate federal or state health regulatory agency of an order taking a disciplinary action or denial against a registration or application, other than a permit issued under Subchapter E of this chapter (relating to Precursors and Apparatus).

(e) Invalidation. A registration may:

(1) expire or terminate;

(2) be canceled, surrendered, suspended, revoked, or otherwise invalidated; or

(3) be subject to reprimand or probation.

(f) Possession. Mere possession of the physical document does not necessarily mean that the person:

(1) still holds a current, valid registration; or

(2) currently holds, has ever held, or has any of the powers or rights indicated on the document.

(g) Hearing, evidence and procedure. Except as provided by this chapter, a hearing will be governed by the APA and will be held by an administrative law judge appointed by the State Office of Administrative Hearings. A hearing will be conducted in accordance with the procedures contained in Chapter 29 of this title (relating to Practice and Procedure), and the rules of the State Office of Administrative Hearings.

(h) Under the Act, §481.063(h), the APA does not apply to a denial, suspension, or revocation of an application for registration if the denial is based on a denial or other disciplinary action taken by DEA under the Federal Controlled Substances Act.

(i) Request for Hearing. An applicant or registrant may request a hearing under this subchapter, unless otherwise stated in the Act, by submitting a timely and properly addressed written request for a hearing to the director. To be timely, the request must be received by the director no later than fifteen calendar days after the date of the registrant's or applicant's receipt of the notice of denial or other disciplinary action. To be properly addressed, a request for hearing must be mailed or sent by e-mail or facsimile to the director at the return address included in the director's notice of denial or other disciplinary action or, if none, to the director at the address of the Narcotics Regulation Bureau [~~Service~~] indicated in §13.7 of this title (relating to Telephone Number and Address - Narcotics Regulation Bureau [~~Service~~]).

§13.273. Denial.

(a) Grounds. Except as provided by §13.274(b) of this title (relating to Revocation), the director may deny an application for registration and may refuse issuance of the appropriate registration if:

(1) the applicant has not affixed a signature required by this chapter;

(2) a required form is incomplete;

(3) a required document is incomplete, illegible, or missing;

(4) the application contains a false assertion by any person;

(5) the applicant has a registration currently revoked, suspended, or voluntarily surrendered;

(6) the applicant would not qualify for a registration under the Act, §481.063(e); or

(7) the applicant does not qualify under this chapter for issuance of registration.

(b) Hearing. An applicant may request a hearing upon denial or refusal under this section, unless otherwise stated in the Act. If the director prevails at the hearing, the director may issue final order of denial.

§13.274. Revocation.

(a) Grounds. The director will revoke a registration if the registrant:

(1) violates a ground of denial described in the Act, §481.063(e);

(2) violates a section of this chapter where revocation is the penalty noted; or

(3) has a license or similar permit permanently revoked by an appropriate federal or state health regulatory agency.

(b) Effect on later application. Except as provided by this subsection, a person may not apply for registration until one year after the date a revocation became legally final.

(1) Within that year, the director will not reinstate a revoked registration unless the registrant submits a new application and proof by a preponderance of evidence that the facts supporting the revocation have been negated or otherwise substantially changed, such as:

(A) the felony conviction has been reversed or set aside on direct or collateral appeal, or a pardon based on subsequent proof of innocence has issued; or

(B) the license or similar permit was not permanently revoked by an appropriate federal or state health regulatory agency.

(2) After that year, the director will not reinstate a revoked registration unless the registrant submits a new application and:

(A) proof described by subsection (b)(1) of this section; or

(B) a showing of good cause for the new registration.

(c) After invalidation. The director may revoke a registration even though it has become invalidated by some other means, such as:

(1) cancellation, expiration, or termination;

(2) suspension;

(3) voluntary surrender; or

(4) any other means.

(d) Hearing. Upon revocation under this section, the registrant may request a hearing, unless otherwise stated in the Act. If the director prevails at the hearing, the director may issue a final order of revocation.

§13.275. Suspension.

(a) Grounds. Unless revocation is explicitly noted, the director may suspend a registration if the registrant:

(1) violates a provision of:

(A) these sections; or

(B) the Act; or

(2) has a license or similar permit suspended for a stated term by an appropriate federal or state health regulatory agency.

(b) Term, generally. Unless otherwise specified in subsections (c) and (d) of this section, the term of suspension is 12 months.

(c) Special term. The director may impose the same term as a court or federal or state health regulatory agency imposed in the underlying matter and if the court's judgment or adjudication is deferred for a felony or serious misdemeanor and the registrant is then placed on probation or community supervision, the term of suspension may be equal to the actual time served on probation.

(d) Additional term. Up to twelve months may be added to the term of a new suspension for each separate previous violation that has resulted in either a suspension, a probated suspension, or a written reprimand before the beginning date of the new suspension.

(e) Beginning date. A suspension or probation may be ordered to run concurrently or consecutively with another suspension or probation. The beginning date of the suspension is:

(1) a date agreed to by both parties that is no earlier than the date of the violation on which the action is based; or

(2) the earlier of the date:

(A) the registrant notifies the director in writing of the violation if the director later receives a signed waiver of a suspension hearing from the registrant that was postmarked within 10 days of its receipt by the registrant; or

(B) the suspension became legally final.

(f) End of suspension. A suspended registration remains suspended until one of the following events occurs.

(1) Before expiration of the terms of suspension and registration:

(A) the remainder of the suspension is probated; or

(B) a written request for reinstatement of the original registration is received from the registrant and accepted by the director based on good cause shown.

(2) After expiration of the term of suspension and before expiration of the term of registration, a written request for reinstatement of the original registration is received from the registrant and accepted by the director.

(3) After expiration of the terms of suspension and registration, a written application for a new registration is received from the registrant and accepted by the director.

(g) Suspension after invalidation. The director may suspend a registration even though it may have become invalid by some other means, such as:

(1) cancellation, expiration, or termination;

(2) voluntary surrender; or

(3) any other means.

(h) Hearing. Upon suspension under this section, the registrant may request a hearing, unless otherwise stated in the Act. If the director prevails at the hearing, the director may issue a:

(1) final order of suspension; or

(2) final order of written reprimand under this subchapter.

§13.276. Probation or Reprimand.

(a) Probation or reprimand. With the agreement of the parties, the director may, upon proof of mitigating factors:

(1) probate all or part of the suspension term; or

(2) issue a written reprimand in lieu of suspension.

(b) Probation period. If probated, a suspension:

(1) may be probated for a period of up to twice the maximum term of suspension; and

(2) may not be probated for less than six months.

(c) Probation terms. The director may impose reasonable terms or conditions of probation, such as:

(1) special reporting conditions;

(2) special document submission conditions;

(3) no further rule or law violations; or

(4) any other reasonable term of probation.

(d) End of probation. A probated registration remains probated until:

(1) the term of suspension has expired;

(2) all other terms or conditions of probation have been fulfilled; and

(3) a written request for reinstatement has been received by the director from the registrant, unless the probation has been revoked by the director under subsection (e) of this section; or

(4) the registration has been revoked under §13.274 of this title (relating to Revocation).

(e) Revocation after probation. Before reinstatement, a probation under this section may be revoked upon a showing that a material term or condition has been violated before the expiration date of the probation, regardless of when the petition is filed.

(f) Upon revocation of the probation, the full term of suspension must be imposed with credit for all time already served on that probation.

(g) Hearing. Upon probation under this section, the registrant may request a hearing, unless otherwise stated in the Act. If the director prevails at the hearing, the director may issue a final order of probation or reprimand.

§13.278. Cancellation.

(a) Grounds. The director may cancel a registration if the director issued the registration in error.

(b) Hearing. Upon cancellation under this section, the registrant may request a hearing, unless otherwise stated in the Act. If the director prevails at the hearing, the director may issue a final order of cancellation.

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

Filed with the Office of the Secretary of State on November 2, 2009.

TRD-200904993
Steven C. McCraw
Director
Texas Department of Public Safety
Earliest possible date of adoption: December 13, 2009
For further information, please call: (512) 424-5848

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SUBCHAPTER N. ADMINISTRATIVE PENALTIES AND HEARINGS

37 TAC §13.301, §13.304

The Texas Department of Public Safety proposes an amendment to §13.301 and §13.304, concerning Administrative Penalties and Hearings. Due to reorganization within the department, the name of the bureau responsible for the Controlled Substance Program has changed.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government or local economies.

Mr. Ybarra also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the sections as proposed. There are no anticipated economic costs to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Mr. Ybarra has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rule will be current and updated rules.

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 these rules. Accordingly, the Department is not required to complete a takings impact assessment regarding these rules.

Comments on the proposal may be submitted to Johnny Hatcher, Narcotics Regulation Bureau, Regulatory Licensing Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0439, (512) 424-2458.

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; Senate Bill 1879, 80th Legislature, 2007; and Texas Health and Safety Code, §481.003.

Texas Government Code, §411.004(3), Senate Bill 1879, and Texas Health and Safety Code, §481.003 are affected by this proposal.

§13.301. Informal Hearing.

(a) A panel shall convene at the timely request of a person receiving an administrative penalty in dispute and shall consist of the Manager, or designee, of the department's Narcotics Regulatory Program, and one or more of the following:

(1) Supervisor, or designee, of Controlled Substances Registration Section, for violations relating to registration and related record requirements;

(2) Supervisor, or designee, of Texas Prescription Program, for violations relating to prescriptions and related record requirements;

(3) Supervisor, or designee, of Precursor Chemical/Laboratory Apparatus Section, for violations relating to precursor chemical/laboratory apparatus or related record requirements; and

(4) any other member as may be appointed by the Manager of the Narcotics Regulation Bureau [~~Regulatory~~ ~~Program~~].

(b) The panel shall convene the informal hearing at the department or at another location specifically designated by the panel.

§13.304. Request for Hearing.

To be properly addressed, a request for hearing must be mailed or sent by facsimile to the director at the return address included in the director's notice of administrative penalty, or if none, to the director at the address of the Narcotics Regulation Bureau [~~Service~~] indicated in §13.7 of this title (relating to Telephone Number and Address - Narcotics Regulation Bureau [~~Service~~]) or by e-mail to tppcsr@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 November 2, 2009.

TRD-200904994
Steven C. McCraw
Director
Texas Department of Public Safety
Earliest possible date of adoption: December 13, 2009
For further information, please call: (512) 424-5848

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PART 5. TEXAS BOARD OF PARDONS AND PAROLES

CHAPTER 145. PAROLE

SUBCHAPTER A. PAROLE PROCESS

37 TAC §145.3

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC §145.3, concerning the policy statements relating to parole release decisions by the Board of Pardons and Paroles. The amendments to §145.3 are proposed to include parole commissioner to the language as it relates to the prohibition of any consideration of an offender's litigation activities when determining an offender's parole, supervision or revocation.

Rissie Owens, Chair of the Board, determined that for each year of the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering this section.

Ms. Owens also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be to bring the rule into compliance with current board practice. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rule as proposed. No regulatory flexibility analysis required by HB 3430 is necessary.

Comments should be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, TX 78701, or by e-mail to bettie.wells@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amended rule is proposed under §508.036 and §508.0441, Texas Government Code. Section 508.036 requires the board to adopt rules relating to the decision-making processes used by the board and parole panels; and §508.0441 provides the board with the authority to consider and order release on parole or mandatory supervision.

No other statutes, articles or codes are affected by these amendments.

§145.3. Policy Statements Relating to Parole Release Decisions by the Board of Pardons and Paroles.

To aid the Board of Pardons and Paroles in its analysis and research of parole release, the board adopts the following policies.

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

(4) Any consideration by a board [~~Board~~] member or parole commissioner of an offender's litigation activities when determining an offender's candidacy for parole is strictly prohibited. No offender will be denied the opportunity to present to the judiciary, including appellate courts, his or her allegations concerning violations of fundamental constitutional rights. Any consideration of such legal activity during the parole review, supervision or revocation process is a violation of Board policy. In the event parole is denied in violation of this subsection, the offender may pursue a remedy under the special review provisions of §145.17 of this title (relating to Action Upon Review--Release Denied). In the event parole or mandatory supervision is revoked in violation of this subsection, the offender may pursue a remedy under the motion to reopen hearing provisions of §146.11 of this title (relating to Releasee's Motion to Reopen Hearing or Reinstate Supervision).

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 October 30, 2009.

TRD-200904940
Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
Earliest possible date of adoption: December 13, 2009
For further information, please call: (512) 406-5388

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PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 423. FIRE SUPPRESSION

SUBCHAPTER A. MINIMUM STANDARDS FOR STRUCTURE FIRE PROTECTION PERSONNEL CERTIFICATION

37 TAC §423.1

The Texas Commission on Fire Protection (Commission) proposes an amendment to §423.1, concerning Minimum Standards for Structure Fire Protection Personnel. This proposed amendment, as established by the Sunset Commission, requires the Commission to first review and approve the applicant's finger-print based criminal history record. If the applicant is denied by the Commission due to the results of the finger-print based criminal history record, the Commission must follow the criteria established in Title 37, Chapter 403 of the Texas Administrative Code.

Jake Soteriou, Deputy Director of Standards and Certification, has determined that for the first five-year period the proposed amendment is in effect, there will be no fiscal implications for

state or local government as a result of enforcing or administering this section as amended.

Mr. Soteriou has also determined that for the first five years the proposed amendment is in effect, there will be no effect on microbusinesses, small businesses or persons required to comply with the amended section as propose; therefore, no regulatory flexibility analysis is required.

The public will benefit from the passage of this section because it will be more difficult for citizens with a criminal history to become firefighters.

Written comments on this proposal may be submitted to Garry Warren L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, 1701 N. Congress, Suite 1-105, Austin, Texas 78701. Written comments must be received no later than 30 days from the date of publication of the proposed amendment in the *Texas Register.*

This amendment is proposed under Government Code (Code), Title 4, Subtitle B, Subchapter B, Regulation and Assisting Fire Fighters and Fire Departments, §419.0325, Criminal History Record Information Approval Required for Certification which provides the Commission the authority to approve and deny applications for fire protection personnel.

§423.1. Minimum Standards for Structure Fire Protection Personnel.

(a) Fire protection personnel of any local government entity, who receive probationary or temporary appointment to structure fire protection duties, must be certified by the Commission [~~commission~~] within one year from the date of their appointment in a structural fire protection personnel position.

(b) Prior to being appointed to fire suppression duties or certified as fire protection personnel, the Commission must review and approve the applicants fingerprint based criminal history record information obtained from the Department of Public Safety and the Federal Bureau of Investigation. The individual or fire department must follow the procedure established by the Department of Public Safety to initiate and complete the electronic fingerprint process. The results will be available to the Commission through the Department of Public Safety's data base. The Commission will follow the criteria established in Title 37, Chapter 403 of the Texas Administrative Code (TAC) for denying a person certification based on the results of the fingerprint based criminal history record check.

(c) [~~(b)~~] Prior to being appointed to fire suppression duties, personnel must complete a Commission-approved [~~commission approved~~] basic structure fire suppression program and successfully complete a Commission [~~commission~~] recognized emergency medical course. The individual must successfully pass the Commission [~~commission~~] examination pertaining to that curriculum as required by §423.3 of this title. The Commission [~~commission~~] recognizes the following emergency medical training:

(1) Department of State Health Services Emergency Medical Service Personnel certification training;

(2) an American Red Cross Emergency Response course, including the optional lessons and enrichment sections;

(3) an American Safety and Health Institute First Responder course;

(4) National Registry of Emergency Medical Technicians certification; or

(5) medical training deemed equivalent by the Commission [~~commission~~].

(d) [~~(c)~~] Personnel holding any level of structure fire protection personnel certification must comply with the continuing education requirements specified in §441.7 of this title (relating to Continuing Education for Structure Fire Protection Personnel).

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 October 29, 2009.

TRD-200904934
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: December 13, 2009
For further information, please call: (512) 936-3838

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CHAPTER 435. FIRE FIGHTER SAFETY

37 TAC §435.23

The Texas Commission on Fire Protection (Commission) proposes a new section to Chapter 435, Fire Fighter Safety, §435.23, concerning Fire Fighter Injuries. The purpose of the proposed new section is to allow the Commission to gather and analyze data relating to injuries received by fire fighters in the performance of their duties. The Commission will evaluate the information and data received and identify causative factors relating to the injuries. They will then make recommendations and develop training processes to reduce the number of injuries to fire service personnel.

Mr. Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five-year period the new section is in effect there will be no fiscal impact on state and local governments.

Mr. Soteriou 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 the new section will a potential for fiscal savings to the taxpayer by reducing the number of injuries, which would result in fewer Workmen's Compensation claims and medical payments.

Comments on the proposed new section may be submitted to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us. Comments must be received within 30 days of publication of this proposed new section in the *Texas Register.*

This new section is proposed under Texas Government Code, (Code), Title 4, Subtitle B, Chapter 419, Subchapter B, Regulating and Assisting Fire Fighters and Fire Departments, §419.048, which states the Commission must gather and evaluate information and data on fire protection personnel injuries and may assist fire departments with that information in order to reduce fire protection personnel injuries.

§435.23. Fire Fighter Injuries.

(a) A fire department shall report all Texas Workers' Compensation Commission reportable injuries that occur to on-duty regulated fire protection personnel on the Commission form.

(b) Minor injuries are those injuries that do not result in the fire fighter missing more than one duty period or does not involve the failure of personal protective equipment. Minor injuries shall be reported within 30 business days of the injury event.

(c) Major injuries are those that require the fire fighter to miss more than one duty period. Major injuries shall be reported within five business days of the injury event.

(d) Investigatable injuries are those resulting from the malfunction of personal protective equipment, failure of personal protective equipment to protect the fire fighter from injury, or injuries sustained from failure to comply with any provision of Commission mandated department SOPs. Investigable injuries shall be reported within five business days of the injury event.

(e) The regulated entity shall secure any personal protective equipment involved in a fire fighter injury and shall be made available to the Commission for inspection.

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 October 29, 2009.

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Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: December 13, 2009
For further information, please call: (512) 936-3838

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CHAPTER 451. FIRE OFFICER
SUBCHAPTER A. MINIMUM STANDARDS FOR FIRE OFFICER I

37 TAC §451.5

The Texas Commission on Fire Protection (Commission) proposes amendments to §451.5, concerning Examination Requirements. The purpose of this proposed amendment is to remove subsection (c), which was inadvertently left in from the last proposal and adoption and must be proposed and adopted again to remove that subsection.

Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five-year period this proposed amendment is in effect there will be no fiscal impact on state and local governments.

Mr. Soteriou has also determined that for each year of the first five years this proposed amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be a better understanding of the prerequisites needed before an individual can take the Fire Officer I examination. There are no additional costs of compliance for small or large businesses or individuals that are required to comply with this proposed amendment.

Comments regarding this proposed amendment may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us. Comments will be reviewed and discussed at a future Commission meeting.

This amendment is proposed under Texas Government Code, Chapter 419, Subchapter B, Regulating and Assisting Fire Fighters and Fire Departments.

Cross reference to statute: Texas Government Code, §419.035, Certification Examinations.

§451.5. Examination Requirements.

(a) Examination requirements of Chapter 439 of this title (relating to Examinations for Certification) must be met in order to receive Fire Officer I certification.

(b) Individuals will be permitted to take the Commission examination for Fire Officer I certification by documenting the following: Structure Fire Protection Personnel certification and Fire Service Instructor certification through the Commission or the equivalent IFSAC seals, and completing a Commission-approved Fire Officer I curriculum.

~~[(c) No individual will be permitted to take the Commission examination for Fire Officer I certification unless the individual documents completion of the Fire Fighter I and Fire Fighter II level training as required by Chapter 1, Basic Fire Suppression, of the Commission's Certification Curriculum Manual and holds, as a minimum, Fire Service Instructor I certification through the Commission, or documents accreditation from International Fire Service Accreditation Congress as an Instructor I.]~~

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 October 29, 2009.

TRD-200904933
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: December 13, 2009
For further information, please call: (512) 936-3838

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SUBCHAPTER B. MINIMUM STANDARDS FOR FIRE OFFICER II

37 TAC §451.205

The Texas Commission on Fire Protection (Commission) proposes amendments to Chapter 451, Fire Officer, Subchapter B, Minimum Standards for Fire Officer II, §451.205, concerning Examination Requirements. The purpose of this proposed amendment is to remove subsection (c), which was inadvertently left in from the last proposal and adoption and must be proposed and adopted again to remove that subsection.

Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal impact on state and local governments.

Mr. Soteriou has also determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be a better understanding of the prerequisites needed before an in-

dividual can take the Fire Officer II examination. There are no additional costs of compliance for small or large businesses or individuals that are required to comply with this proposed amendment.

Comments regarding this proposed amendment may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us. Comments will be reviewed and discussed at a future Commission meeting.

This amendment is proposed under Texas Government Code, Chapter 419, Subchapter B, Regulating and Assisting Fire Fighters and Fire Departments.

Cross reference to statute: Texas Government Code, §419.035, Certification Examinations.

§451.205. Examination Requirements.

(a) Examination requirements of Chapter 439 of this title (relating to Examinations for Certification) must be met in order to receive Fire Officer II certification.

(b) Individuals will be permitted to take the Commission examination for Fire Officer II certification by documenting the following: Structure Fire Protection Personnel certification, Fire Service Instructor certification and Fire Officer I certification through the Commission or the equivalent IFSAC seals, and completing a Commission-approved Fire Officer II curriculum.

~~[(c) No individual will be permitted to take the Commission examination for Fire Officer II certification unless the individual documents completion of the Fire Fighter I and Fire Fighter II level training as required by Chapter 1, Basic Fire Suppression, of the Commission's Certification Curriculum Manual and holds, as a minimum, Fire Service Instructor I certification through the Commission, or documents accreditation from the International Fire Service Accreditation Congress as an Instructor I.]~~

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

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Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: December 13, 2009
For further information, please call: (512) 936-3838

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CHAPTER 461. GENERAL ADMINISTRATION

37 TAC §§461.1 - 461.4

(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 Commission on Fire Protection or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Commission on Fire Protection (Commission) proposes to repeal Chapter 461, General Administration, §461.1, concerning Committee Members, §461.2, concerning Meetings, §461.3, concerning Commission Inspection, and §461.4, concerning Definitions. The purpose of this proposed repeal, according to Senate Bill (AN ACT), No. 1011, Section 28, upon the effectiveness of this ACT, all money, loans and other contracts, leases, property and obligations of the Commission related to the fire department emergency program, which was used only to award grants for the education of firefighters or purchasing necessary firefighting equipment shall be transferred to the Texas Forest Service.

Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five-year period this proposed repeal is in effect there will be no fiscal impact on state or local governments.

Mr. Soteriou has also determined that for each year of the first five years this proposed repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be that the Commission will maintain a clear, concise set of rules and avoid the potential for confusion from retaining rules that are being transferred to the Texas Forest Service. There will be no additional costs of compliance for small or large businesses or individuals that are required to comply with this proposed repeal.

Comments regarding this proposed repeal may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or by email at info@tcfp.state.tx.us. Comments will be reviewed and discussed at a future Commission meeting.

This repeal is proposed under Texas Government Code, Chapter 419, Subchapter C, Fire Department Emergency Program, §§419.051 - 419.064.

Cross reference to statute: Texas Government Code, Chapter 419, Subchapter Z, Miscellaneous Provisions.

§461.1. Committee Members.

§461.2. Meetings.

§461.3. Commission Inspection.

§461.4. Definitions.

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

Filed with the Office of the Secretary of State on October 29, 2009.

TRD-200904936
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: December 13, 2009
For further information, please call: (512) 936-3838

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CHAPTER 463. APPLICATION CRITERIA

37 TAC §§463.1 - 463.6

(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 Commission on Fire Protection or in the Texas Register office,

Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Commission on Fire Protection (Commission) proposes to repeal Chapter 463, §463.1, Application Process, §463.2, Limitations on Loans, Scholarships and Grants, §463.3, Application Form, §463.4, Competitive Needs Criteria, §463.5, Criteria for Eligibility for Loans, and §463.6, Contract Information. The purpose of this proposed repeal, according to Senate Bill (AN ACT), No. 1011, Section 28, upon the effectiveness of this ACT, all money, loans and other contracts, leases, property and obligations of the Commission related to the fire department emergency program, which was used only to award grants for the education of firefighters or purchasing necessary firefighting equipment shall be transferred to the Texas Forest Service.

Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five-year period this proposed repeal is in effect there will be no fiscal impact on state or local governments.

Mr. Soteriou has also determined that for each year of the first five years this proposed repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be that the Commission will maintain a clear, concise set of rules and avoid the potential for confusion from retaining rules that are being transferred to the Texas Forest Service. There will be no additional costs of compliance for small or large businesses or individuals that are required to comply with this proposed repeal.

Comments regarding this proposed repeal may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or by email at info@tcfp.state.tx.us. Comments will be reviewed and discussed at a future Commission meeting.

This repeal is proposed under Texas Government Code, Chapter 419, Subchapter C, Fire Department Emergency Program, §§419.051 - 419.064.

Cross reference to statute: Texas Government Code, Chapter 419, Subchapter Z, Miscellaneous Provisions.

§463.1. Application Process.

§463.2. Limitations on Loans, Scholarships and Grants.

§463.3. Application Form.

§463.4. Competitive Needs Criteria.

§463.5. Criteria for Eligibility for Loans.

§463.6. Contract Information.

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 October 29, 2009.

TRD-200904937
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: December 13, 2009
For further information, please call: (512) 936-3838

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CHAPTER 465. EQUIPMENT, FACILITIES, AND TRAINING STANDARDS

37 TAC §§465.1 - 465.3

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

The Texas Commission on Fire Protection (Commission) proposes to repeal Chapter 465, §465.1, Equipment Standards, §465.2, Facility Standards, and §465.3, Education and Training Standards. The purpose of this proposed repeal, according to Senate Bill (AN ACT), No. 1011, Section 28, upon the effectiveness of this ACT, all money, loans and other contracts, leases, property and obligations of the Commission related to the fire department emergency program, which was used only to award grants for the education of firefighters or purchasing necessary firefighting equipment shall be transferred to the Texas Forest Service.

Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five-year period this proposed repeal is in effect there will be no fiscal impact on state or local governments.

Mr. Soteriou has also determined that for each year of the first five years this proposed repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be that the Commission will maintain a clear, concise set of rules and avoid the potential for confusion from retaining rules that are being transferred to the Texas Forest Service. There will be no additional costs of compliance for small or large businesses or individuals that are required to comply with this proposed repeal.

Comments regarding this proposed repeal may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or by email at info@tcfp.state.tx.us. Comments will be reviewed and discussed at a future Commission meeting.

This repeal is proposed under Texas Government Code, Chapter 419, Subchapter C, Fire Department Emergency Program, §§419.051 - 419.064.

Cross reference to statute: Texas Government Code, Chapter 419, Subchapter Z, Miscellaneous Provisions.

§465.1. Equipment Standards.

§465.2. Facility Standards.

§465.3. Education and Training Standards.

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 October 29, 2009.

TRD-200904938
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: December 13, 2009
For further information, please call: (512) 936-3838

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

SUBCHAPTER B. CONFIDENTIALITY AND RELEASE OF RECORDS

40 TAC §700.209

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), new §700.209, release of child fatality records, in the chapter governing Child Protective Services. In the 81st legislative session, the Legislature enacted Senate Bill (SB) 1050, which amends Chapter 261 of the Family Code to require DFPS to release certain summary information to the public in the event of a child fatality that is investigated by DFPS as the alleged result of abuse or neglect of a child. SB 1050 governs child fatalities that occur in the home as well as child fatalities that occur in residential child-care facilities regulated by DFPS. The duty to release information and findings in the event of a child fatality that is the result of abuse or neglect is also mandatory under the federal Child Abuse Prevention and Treatment Act (CAPTA). SB 1050 provides parameters for the types of summary information and findings to be released following a child fatality investigated by DFPS, and directs the Executive Commissioner of the Health and Human Services Commission to adopt rules for the implementation of this new statute. SB 1050 applies to any child fatality that occurs on or after September 1, 2009. New §700.209 provides that notwithstanding the rules in Subchapter B of this chapter (relating to Confidentiality and Release of Records), which provide generally that CPS abuse and neglect information is strictly confidential and may not be released to the public, the public may obtain certain summary information about a child fatality in accordance with Subchapter D, Release of Records Relating to a Child Fatality, in Chapter 702 of this title (relating to General Administration). Subchapter D of Chapter 702 is proposed in this issue of the *Texas Register.*

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Brown also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the public will have access to summary information regarding child-fatalities that are the result of alleged abuse or neglect, including a summary of relevant information about DFPS's prior investigations or regulatory oversight of the family or residential child-care facility where the death occurred. There will be no effect on large, small, or micro-businesses because the proposed changes do not impose new requirements on any business and do not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed section.

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

Questions about the content of the proposal may be directed to Phoebe Knauer at (512) 438-2910 in DFPS's Legal Services Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-405, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements §261.203, Family Code, as added by SB 1050, 81st Legislative Session.

§700.209. Release of Child Fatality Records.

Notwithstanding any other provision in this subchapter, records related to a child fatality that is the subject of an investigation by Child Protective Services may be released to the general public as provided under Subchapter D, Release of Records Related to a Child Fatality, in Chapter 702 of this title (relating to General Administration).

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 October 29, 2009.

TRD-200904927
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: December 13, 2009
For further information, please call: (512) 438-3437

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CHAPTER 700. CHILD PROTECTIVE SERVICES

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§700.316, 700.320, and 700.1604, concerning extended foster care benefits for youth between their 18th and 21st birthdays, in its chapter governing Child Protective Services. The purpose of the amendments is to support youth who age out of foster care. The proposed sections implement provisions of House Bill (HB) 1151 and Senate Bill (SB) 2080, enacted in the 81st Regular Legislative Session. The sections also implement provisions from HB 1912, concerning transitional living services for youth who age out of foster care.

Extended foster care benefits to youth ages 18, 19 and 20 were authorized as an optional benefit that states may elect to provide under amendments to Title IV-E of the Social Security Act made by the federal Fostering Connections to Success and Increasing Adoptions Act of 2008 (Fostering Connections Act), P.L. 110-351. Prior to the enactment of the Fostering Connections Act, Title IV-E reimbursements were only available to states for extended foster care up to age 19, for youth who are full time students expected to complete their secondary education or equivalent training (e.g. GED) before reaching the age of 19. Prior to the enactment of HB 1151 and SB 2080, state law authorized continued foster care for those who were eligible for Title IV-E funding, as well as youth who were enrolled in a secondary school up until the youth's 22nd birthday, and those enrolled in technical or vocational training program until the youth's 21st birthday.

Following the enactment of Fostering Connections, beginning October 1, 2010, Title IV-E funding will be available for states that elect to provide extended foster care funding to youth ages 18, 19, and 20, who meet certain educational or employment criteria or who are unable to engage in those activities due to a documented medical condition. HB 1151 and SB 2080 mandate that DFPS offer the extended foster care option to this group, which overlaps to a degree with those already eligible under Texas law, but will serve additional youth not eligible under state law prior to these bills being enacted.

These proposed rules provide that beginning October 1, 2010, a youth who ages out of foster care at age 18 will continue to be eligible for extended foster care provided the youth is: (1) regularly attending high school or enrolled in a program leading toward a high school diploma or high school equivalence certificate; (2) regularly attending an institution of higher education or a postsecondary vocational or technical program; (3) actively participating in a program or activity that promotes, or removes barriers to, employment; (4) employed for at least 80 hours per month; or (5) incapable of doing any of the above due to a documented medical condition.

Youth who are eligible for extended foster care under existing Texas law and DFPS rules will continue to be eligible both before and after October 1, 2010.

HB 1912 made a number of important changes designed to enhance services to youth who age out of foster care. Among those changes, HB 1912 requires that DFPS allow youth who have aged out of foster care at age 18 to be eligible for a transitional living services when the youth lives with a person who committed abuse or neglect in the past, provided the department determines that this individual does not presently pose a threat to the health or safety of the youth. DFPS rules currently prohibit an aged-out youth from receiving transitional living benefits when living with a person who was previously found to have abused or neglected a child and does not authorize any exceptions to this general rule. In recognition of the fact that many youth who have no other place to go will return to a former family member who may have abused or neglected that youth or a sibling of that youth in the past, but who may no longer pose a threat to the young adult's health or safety due to the nature of the prior abuse/neglect or changed circumstances of the former perpetrator, HB 1912 requires DFPS to make a case-by-case determination about the youth's safety before denying eligibility for transitional living benefits to youth who live with a former perpetrator.

Section 700.316 does not replace the existing criteria for extended foster care for certain youth over the age of 18, but it broadens the rule by adding new subsections (d) and (e) to provide that a youth who turns 18 on or after October 1, 2010, while in DFPS conservatorship is eligible to remain in foster care through the month of the youth's 21st birthday provided the youth is: (1) regularly attending high school or enrolled in a program leading to a high school diploma or equivalence certificate (GED); (2) regularly attending a higher education program or post-secondary technical or vocational program; (3) actively participating in a program designed to promote employment or to remove employment barriers; (4) employed at least 80 hours per month; or (5) incapable of performing any of the above activities due to a documented medical condition.

Section 700.320 makes revisions to reflect current practice and eligibility.

Section 700.1604 revises subsection (a) to provide that Preparation for Adult Living (PAL) benefits may be provided to a youth who is living with a designated perpetrator of abuse or neglect provided DFPS has made a determination that this individual does not pose a threat to the health of safety of the youth.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be fiscal implications for state government as a result of enforcing or administering the sections. The effect on state government for the first five-year period the proposal will be in effect is no fiscal impact for fiscal year (FY) 2010, and an estimated reduction in state general revenue cost of $751,634 in FY 2011, $1,503,270 in FY 2012, $2,254,904 in FY 2013, and $2,367,649 in FY 2014. Currently, Title IV-E reimbursement eligibility is allowed only when the youth is able to complete school by the youth's 19th birthday. Extension of foster care after age 19 is paid out of state general revenue. With the changes that resulted from passage of the federal Fostering Connections Act, the categories allowed for extended Title IV-E eligibility have been expanded along with the age ranges. Following the passage by the Texas Legislature of HB 1151 and SB 2080, the state will be able to claim federal reimbursement. Passage of these bills allows the state to save general revenue by shifting expenses to the federal Title IV-E entitlement. There will be no fiscal implications for local government as a result of enforcing or administering the sections.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that additional youth ages 18, 19, and 20 will be eligible for extended foster care benefits beginning on October 1, 2010, which will provide better support to youth who are transitioning from foster care to independent living. In addition, youth will have expanded eligibility for transitional services even if they leave foster care to live with a former perpetrator of abuse or neglect who poses no present threat to the youths' health and safety. There will be no effect on large, small, or micro-businesses because the proposed change does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

HHSC has determined that the proposed amendments 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 §2007.043, Government Code.

Questions about the content of the proposal may be directed to Larry Burgess at (512) 438-5320 in DFPS's Child Protective Services Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-401, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

SUBCHAPTER C. ELIGIBILITY FOR CHILD PROTECTIVE SERVICES

40 TAC §700.316, §700.320

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement the Family Code, §264.101, as amended by HB 1151 and SB 2080, 81st Regular Legislative Session.

§700.316. General Eligibility Requirements for Foster Care Assistance.

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

(d) In addition to the eligibility criteria for continued foster care benefits after age 18 years under subsection (b) of this section, a youth who turns 18 years of age on or after October 1, 2010, while in the conservatorship of DFPS, or who is continuing to receive foster care benefits under subsection (b) of this section on or after October 1, 2010, is eligible for continued foster care benefits through the end of the month in which the youth turns 21 years of age, so long as sufficient documentation is provided on a periodic basis as required by the terms of the youth's Extended Foster Care Agreement to demonstrate that the youth is:

(1) regularly attending high school or enrolled in a program leading toward a high school diploma or high school equivalence certificate;

(2) regularly attending an institution of higher education or a post-secondary vocational or technical program;

(3) actively participating in a program or activity that promotes, or removes barriers to, employment;

(4) employed for at least 80 hours per month; or

(5) incapable of performing any of the activities listed in paragraphs (1) - (4) of this subsection due to a documented medical condition, as further described in subsection (e) of this section.

(e) There is a presumption that a youth is capable of the activities listed in subsection (d)(1) - (4) of this section. The presumption can be rebutted only if sufficient documentation is provided to verify the medical condition and that the medical condition renders the youth incapable of those activities. Such documentation of a medical condition might include a determination of disability from SSA, a determination of mental retardation, or a statement from a medical doctor. In addition, documentation must also verify the activities of daily living that the youth is rendered incapable of performing as a result of that medical condition.

§700.320. Eligibility in Medical Facilities before Placement.

(a) (No change.)

(b) The [~~If removal proceedings are initiated during the month of the child's admission to the medical facility, the~~] child's eligibility for foster care assistance commences on the date DFPS takes possession of the child pursuant to Chapter 262, Texas Family Code [~~of admission. If removal proceedings are not initiated until the following month, the child's eligibility commences on the first day of the month in which the proceedings are initiated~~].

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

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TRD-200904924
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: December 13, 2009
For further information, please call: (512) 438-3437

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SUBCHAPTER P. PREPARATION FOR ADULT LIVING
DIVISION 1. PREPARATION FOR ADULT LIVING

40 TAC §700.1604

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements the Family Code, §264.121(d), as amended by House Bill 1912, 81st Regular Legislative Session.

§700.1604. Are there specific requirements for young people to meet before receiving PAL Program benefits?

(a) The PAL Program may establish in policy specific conditions or criteria that young people must meet to receive program benefits, provided such requirements are designed to help achieve the purposes and objectives of the program. Specific conditions or criteria may include, but are not limited to, requirements that the young person:

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

(4) obtain a determination by DFPS, if the youth is to live with [~~not be living with~~] a designated perpetrator of abuse or neglect, that despite the person's prior history he or she does not pose a threat to the health and safety of the youth [~~while receiving financial benefits~~]; and

(5) (No change.)

(b) - (c) (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 October 29, 2009.

TRD-200904925
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: December 13, 2009
For further information, please call: (512) 438-3437

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SUBCHAPTER H. ADOPTION ASSISTANCE PROGRAM

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§700.801 - 700.804, 700.807, 700.820, 700.821, 700.824, 700.842, 700.845 - 700.848, 700.850, 700.860 - 700.863, 700.880, and 700.881; the repeal of §700.805 and §700.849; and new §700.825 and §700.851, concerning adoption assistance, in its Child Protective Services chapter. The purpose of the proposal is to implement mandatory provisions in the federal Fostering Connections to Success and Increasing Adoptions Act of 2008 (Fostering Connections Act), P.L. 110-351; implement optional provisions of the Fostering Connections Act as enacted by the 81st Regular Session of the Texas Legislature in House Bill (HB) 1151 and Senate Bill (SB) 2080; and clarify certain existing rules.

The Fostering Connections Act contains several provisions related to improving incentives for adoption. In particular, §402 of the act, Promotion of Adoption of Children with Special Needs, enacts several changes that will enhance the ability of states to claim federal reimbursement for adoption assistance benefits. Currently, the state is eligible for Title IV-E reimbursements for monthly adoption assistance payments only for a subset of children who are eligible to receive adoption assistance and who met certain Aid to Families with Dependent Children (AFDC) eligibility criteria, as that program existed in 1996. As part of the federal Fostering Connections Act, there will no longer be any additional AFDC eligibility requirements in order for the state to be eligible for Title IV-E reimbursements for adoption assistance benefits paid to an "applicable child," as defined in the Fostering Connections Act and these rules. This "de-linking" of AFDC and adoption assistance eligibility will be phased-in over a period between Federal Fiscal Years 2010 and 2018. Changes made by this proposal reflect this eventual de-linking, which began in October, 2009.

This proposal also implements provisions of HB 1151 and SB 2080, enacted in the 81st Regular Legislative Session, and exercising the state's option under Fostering Connections to provide extended adoption assistance benefits for youth between their 18th and 21st birthdays. Following the enactment of Fostering Connections, beginning October 1, 2010, Title IV-E funding will be available to provide extended adoption assistance to youth ages 18, 19, and 20, who are the subject of an agreement that is entered into on or after their 16th birthday and prior to their 18th birthday, if they meet certain eligibility criteria related to education or employment.

These rules provide that beginning October 1, 2010, a youth who is the subject of an adoption assistance agreement entered into between the youth's 16th and 18th birthdays will continue to be eligible for extended adoption assistance provided the youth is: (1) regularly attending high school or enrolled in a program leading toward a high school diploma or high school equivalence certificate; (2) regularly attending an institution of higher education or a postsecondary vocational or technical program; (3) actively participating in a program or activity that promotes, or removes barriers to, employment; (4) employed for at least 80 hours per month; or (5) incapable of doing any of the above due to a documented medical condition. Changes to specific rules are described below.

Section 700.801(1) adds definitions of "applicable child," "elementary or secondary student" and "extended adoption assistance benefits" to conform with federal provisions added elsewhere in this rule proposal; (2) adds a definition of "public child welfare agency" for clarity; (3) modifies the current definition of "special needs child;" and (4) deletes the reference to "state paid adoption assistance."

Section 700.802 clarifies the types of adoption assistance benefits for which an adopted child in the managing conservatorship of DFPS may be eligible, and the types of adoption assistance benefits for which an adopted child that is not in the managing conservatorship of DFPS may be eligible.

Section 700.803 clarifies the adoption assistance eligibility criteria for an adopted child in the managing conservatorship of DFPS and adds subsection (d) to reflect changes made by Fostering Connections and codified at 42 U.S.C. §673(a)(7) that out of country adoptions are not eligible for adoption assistance.

Section 700.804: (1) revises the previous definition of "special needs" to require a child to be in the managing conservatorship of DFPS; (2) adds to the previous definition of "special needs" a sibling who is adopted to join a sibling for whom the parent has permanent managing conservatorship; (3) adds a new definition of "special needs" from Fostering Connections that an applicable child who meets medical and disability requirements for Supplemental Security Income is automatically a child with special needs; and (4) clarifies the wording of other portions of the rule.

Section 700.805 is repealed as duplicative of other provisions in the revised subchapter.

Section 700.807 corrects an outdated reference to "special needs child."

Section 700.820 revises the existing provisions to clarify the Title IV-E eligibility requirements for the reimbursement of nonrecurring expenses.

Section 700.821 revises the existing provisions to set forth the Title IV-E eligibility requirements for monthly adoption assistance payments and Medicaid, depending on whether a child is an "applicable child" or not as that term is defined in §700.825 of this title (relating to Who is considered an applicable child?).

Section 700.824 clarifies the conditions that must be met for Title IV-E adoption assistance when the child is not a U.S. Citizen and conforms the rule with federal guidance.

New §700.825 adds provisions from Fostering Connections explaining who is considered an "applicable child" for adoption as-

sistance purposes. An "applicable child" is one who is a certain age at the time of entering into an adoption assistance agreement, one who has been in foster care for 60 months or more, or one who is a sibling of an applicable child.

Section 700.846 clarifies the circumstances under which DFPS may grant the retroactive receipt of adoption assistance benefits, and updates terminology.

Section 700.847 reflects new provisions for extended adoption assistance benefits.

Section 700.848 reflects changes brought about by the extended adoption assistance program and clarifies DFPS's authority to recoup a payment for which the adoptive parents were not eligible.

Section 700.849 is repealed for conformity with federal guidance.

New §700.851 adds the eligibility requirements for extended adoption assistance benefits. The rule states that a youth who turns 18 years old on or after October 1, 2010, and who is the subject of an adoption assistance agreement entered into on or after the youth's 16th birthday, may receive extended benefits if the youth is (1) regularly attending high school or enrolled in a program leading to a high school diploma or equivalence certificate (GED); (2) regularly attending a higher education program or post-secondary technical or vocational program; (3) actively participating in a program that promotes employment or is designed to remove employment barriers; (4) employed at least 80 hours per month; or (5) incapable of performing any of the above activities due to a documented medical condition.

Section 700.860 incorporates expectations related to compulsory education as contained in Fostering Connections and enacted at 42 U.S.C. §671(a)(30).

Section 700.862 clarifies DFPS's ability to recoup overpayment for which an adoptive parent was not eligible.

Section 700.863 deletes the subsection related to suspension of benefits in conformity with federal guidance.

Section 700.880 states that fair hearings related to extended adoption assistance benefits are available for those youth who attain the age or 18 years after October 1, 2010.

The amendments to §§700.842, 700.845, 700.850, 700.861, and 700.881 clarify the sections and update terminology.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be fiscal implications for state government as a result of enforcing or administering the sections. The effect on state government for the first five-year period the proposal will be in effect is an estimated additional state general revenue cost of $0 for fiscal year (FY) 2010; $99,390 for FY 2011; $232,464 for FY 2012; $353,166 for FY 2013; and $431,400 for FY 2014. There will be no fiscal implications for local government as a result of enforcing or administering the sections.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be an enhanced incentive for families to adopt older children and increased stability to adopted youth who pursue certain educational or vocational activities. There will be no effect on large, small, or micro-businesses because the proposed changes do not impose new requirements on any business and do not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

HHSC has determined that the proposed amendments, new sections, and repeals 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 §2007.043, Government Code.

Questions about the content of the proposal may be directed to Larry Burgess at (512) 438-5320 in DFPS's Child Protective Services Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-398, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

DIVISION 1. PROGRAM DESCRIPTION AND DEFINITIONS

40 TAC §§700.801 - 700.804, 700.807

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement the Family Code, §162.3041, as amended by House Bill 1151, §4 and Senate Bill 2080, §6, 81st Legislature, Regular Session; and a state option contained in the federal Fostering Connections to Success and Increasing Adoptions Act of 2008, P.L. 110-351.

§700.801. What do certain pronouns, words, and terms in this subchapter mean?

(a) (No change.)

(b) The words and terms used in this subchapter have the following meanings, unless otherwise specified or the context clearly indicates otherwise:

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

(4) AFDC eligible--A child qualified for aid under the Texas State IV-A Plan (as in effect on July 16, 1996), with the exception that the child's [~~family~~] maximum resource limit is $10,000. Requirements include that the child must live with a parent or specified relative and be deprived of parental support. Parental deprivation exists if one of the child's parents is dead, absent from the home, or has a mental or physical incapacity that prevents the parent from supporting or caring for the child, or principal wage earner parent is unemployed.

(5) [~~Agreement or~~] Adoption Assistance Agreement--The written contract for adoption assistance that is legally binding because both parties have signed it agreeing to all terms and conditions.

(6) Applicable child--A child who meets the requirements described in §700.825 of this title (relating to Who is considered an applicable child?).

(7) [~~(6)~~] Authorized entity--Any entity, such as another public agency or Tribe, with whom DFPS has a Title IV-E agreement, which permits the authorized entity to receive federal funding participation under Title IV-E of the federal Social Security Act.

(8) Child with special needs--A child who meets the definition described in §700.804 of this title (relating to Who is a child with special needs?).

(9) [~~(7)~~] Complete application--All the forms and documents that must be filled out and received by DFPS to process a request for adoption assistance and to determine a child's eligibility.

(10) [~~(8)~~] Deferred agreement--The legally binding, written contract to provide adoption assistance in the future if the need develops. A deferred agreement is used when the child is eligible for adoption assistance and you are able to meet the child's current needs, but you may be unable to meet the child's needs in the future if circumstances change.

(11) Elementary or secondary student--A child who is:

(A) enrolled or in the process of enrolling in an institution which provides elementary or secondary education in accordance with Texas law or the law of the state in which the child resides;

(B) instructed in elementary or secondary education at home in accordance with Texas law or the law of the state in which the child resides;

(C) in an independent study elementary or secondary education program, administered by a school or school district, in accordance with Texas law or the law of the state in which the child resides; or

(D) incapable of attending school on a full-time basis due to the medical condition of the child, which incapability is supported by regularly updated information.

(12) Extended adoption assistance benefits--Adoption assistance benefits available for certain children who qualify under §700.851 of this title (relating to How can my child qualify for extended adoption assistance benefits?), which are payable after a child's 18th birthday through the last day of the month in which the child attains the age of 21.

(13) [~~(9)~~] Licensed child-placing agency (LCPA)--An entity other than DFPS that is licensed or certified by the State of Texas or another state to place children for adoption.

(14) [~~(10)~~] Nonrecurring expenses--A type of adoption assistance benefits that are one-time expenses directly related to the completion of the adoption process. Also see §700.850 of this title (relating to How do I get reimbursement of nonrecurring expenses?).

(15) Public child welfare agency--The entity charged by a state's government with responsibility for child welfare activities in the state, including responsibility for investigating reports of abuse or neglect of a child, or administration of the state's programs under Title IV-B or IV-E of the Social Security Act. The term also includes an Indian Tribe or Tribal Organization directly administering a Title IV-E program.

[~~(11) Special needs child--A child who meets the definition described in §700.804 of this title (relating to Who is a special needs child?).~~]

[~~(12) State-paid adoption assistance--The state program for adoption assistance established under Texas Family Code, §162.302.~~]

(16) [~~(13)~~] Title IV-E--The federal program for adoption assistance established under Title IV-E of the Social Security Act, 42 U.S.C. §673.

§700.802. What is adoption assistance?

(a) (No change.)

(b) The three types of adoption assistance benefits that may be provided under the program are:

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

(c) If you adopt a child with special needs from DFPS conservatorship and meet the other eligibility criteria set forth in this division, you will be eligible to receive all three types of adoption assistance benefits on behalf of your child.

(d) If you adopt a child with special needs who is not in the conservatorship of DFPS on the day immediately preceding the date of adoption, and you reside in Texas, you may be entitled to receive one or more of the three types of adoption assistance benefits, depending upon whether some or all of the eligibility criteria for receipt of Title IV-E adoption assistance benefits are satisfied, as described in Division 2 of this subchapter (relating to Title IV-E Eligibility Requirements).

(e) If you adopt a child with special needs who is not in the conservatorship of DFPS on the day immediately preceding the day of adoption and you do not reside in Texas, DFPS is not responsible for providing adoption assistance. You must contact the public child welfare agency in the state where you reside to apply for adoption assistance benefits and obtain additional information on the eligibility requirements that must be satisfied to obtain adoption assistance in that state.

§700.803. What are the eligibility criteria for receipt of adoption assistance for [~~Do all~~] children adopted from the conservatorship of [~~placed for adoption by~~] DFPS [~~get adoption assistance~~]?

(a) To be eligible to receive adoption assistance on behalf of a child who is in DFPS conservatorship on the day immediately prior to date of adoption, the child you adopt must be a child with special needs, as specified in §700.804 of this title (relating to Who is a child with special needs?) and you must meet all of the additional eligibility criteria set forth in this section.

[~~(a) No. Only a special needs child, in an approved adoptive placement, can qualify for adoption assistance. When we place a child for adoption, we first determine whether the child is eligible under Title IV-E. If the child is not eligible under Title IV-E but the child is a special needs child, then we will assess the child's eligibility for the state-paid adoption assistance program.~~]

(b) You must have an approved adoptive home screening by DFPS or an LCPA in Texas or other state where the LCPA is licensed or certified. If you are verified or otherwise approved to adopt a child by DFPS or an LCPA in Texas, approval of the home screening must comply with Chapter 749, Subchapter S of this title (relating to Adoption Services: Adoptive Parents), including those requirements related to background checks and prohibited criminal and abuse or neglect history incorporated by reference from Chapter 745, Subchapter F of this title (relating to Background Checks). Additional requirements may apply depending upon the state in which you are verified or otherwise approved by an LCPA to adopt a child.

(c) [~~(b)~~] You [~~To receive any adoption assistance benefits, you~~] must sign an adoption assistance agreement before the adoption is final, which means you must sign the agreement before the adoption is legally consummated. Exceptions can be made to this requirement

only in certain circumstances, as described in §700.881 of this title (relating to Can my child still get benefits if I did not sign an adoption assistance agreement before the adoption?).

(d) Notwithstanding any other provision of this subchapter, an applicable child who meets the definition of special needs in §700.804 of this title is not eligible for adoption assistance if the child was not a U.S. citizen or resident prior to the adoption and the child was adopted outside the United States or brought into the United States for the purpose of adoption.

§700.804. Who is a child with special needs [~~child~~]?

[~~(a)~~] A [~~The~~] child with special needs is one who meets all of the criteria in this section:

(1) At the time the adoptive placement agreement is signed, the child is [~~must be~~] less than 18 years old and meets at least [~~meet~~] one of the following conditions [~~criteria when the adoptive placement agreement is signed~~]:

(A) On the day immediately preceding the date of adoption, the child was in the managing conservatorship of DFPS or an authorized entity; and:

(i) [~~(1)~~] the child is at least six years old;

(ii) [~~(2)~~] the child is at least two years old and a member of a racial or ethnic group that exits foster care at a slower pace than other racial or ethnic groups;

(iii) [~~(3)~~] the child is being adopted with a sibling or to join a sibling who has been adopted by the parents or for whom the parents already have permanent managing conservatorship or an equivalent arrangement in another state; or

(iv) [~~(4)~~] the child has a verifiable physical, mental, or emotional handicapping condition, as established by an appropriately qualified professional through a diagnosis that addresses:

(I) [~~(A)~~] what the condition is; and

(II) [~~(B)~~] that the condition is handicapping; or [~~.~~]

(B) The child has been determined by the Social Security Administration to meet all the medical or disability requirements with respect to eligibility for Supplemental Security Income (SSI) benefits;

(2) [~~(b)~~] The state has determined [~~must determine~~] that the child cannot or should not be returned to the home of his parents; and [~~.~~]

(3) [~~(c)~~] A reasonable, but unsuccessful, effort was [~~must be~~] made to find an adoptive placement without providing adoption assistance, unless doing so was not in [~~is against~~] the child's best interests. Proof of such reasonable efforts may include:

(A) [~~(1)~~] documentation that the child was registered on an adoption registry exchange for more than 60 days;

(B) [~~(2)~~] documentation of any ongoing effort, whether through child welfare entities, government or private organizations, to locate an adoptive family; or

(C) [~~(3)~~] the fact that one or more adoptive placements did not result in an adoption.

[~~(d) For a child placed by DFPS where no adoptive placement agreement is signed, in exceptional circumstances, DFPS may deem that an adoptive placement was made, but it is your responsibility to provide sufficient documentary evidence of the beginning of the adoptive placement as defined in this subchapter.~~]

§700.807. Who is eligible to receive enhanced adoption assistance?

Enhanced adoption assistance is available to an adoptive or prospective adoptive parent who enters into an initial adoption assistance agreement on or after January 1, 2009, for a child with special needs as described in §700.804 of this title (relating to Who is a child with special needs [~~child~~]?), who is in an approved adoptive placement, provided the child also meets each of the following criteria immediately prior to the signing of the adoptive placement agreement:

(1) - (4) (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 October 29, 2009.

TRD-200904915
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: December 13, 2009
For further information, please call: (512) 438-3437

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40 TAC §700.805

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

The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements the Family Code, §162.3041, as amended by House Bill 1151, §4 and Senate Bill 2080, §6, 81st Legislature, Regular Session; and a state option contained in the federal Fostering Connections to Success and Increasing Adoptions Act of 2008, P.L. 110-351.

§700.805. Can a child who is placed by an LCPA or authorized entity get adoption assistance?

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 October 29, 2009.

TRD-200904916
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: December 13, 2009
For further information, please call: (512) 438-3437

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DIVISION 2. TITLE IV-E ELIGIBILITY REQUIREMENTS

40 TAC §§700.820, 700.821, 700.824, 700.825

The amendments and new section are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new section implement the Family Code, §162.3041, as amended by House Bill 1151, §4 and Senate Bill 2080, §6, 81st Legislature, Regular Session; and a state option contained in the federal Fostering Connections to Success and Increasing Adoptions Act of 2008, P.L. 110-351.

§700.820. What are the [~~How do I get~~] Title IV-E eligibility requirements for reimbursement of nonrecurring expenses [~~adoption assistance for my child~~]?

[~~(a)~~] To be eligible for reimbursement of nonrecurring expenses [~~any adoption assistance benefits~~], your child must be a child with special needs [~~child~~] and you must sign an adoption assistance agreement with us before the child's adoption is finalized. In addition, benefits are only available to those who meet:

(1) the federal law requirements of U.S. citizenship or other immigration status described in §700.824 of this title (relating to What if the child is not a U.S. citizen?); and

(2) Title IV-E requirements regarding criminal background checks.

~~[(b) If the additional Title IV-E eligibility requirements, as described in §700.821 of this title (relating to What are the additional Title IV-E eligibility requirements?) are met, you may be entitled to monthly payments, Medicaid coverage for your child, and nonrecurring expenses.]~~

~~[(c) If the additional Title IV-E eligibility requirements are not met, the only benefit you can receive is reimbursement of nonrecurring expenses, as described in §700.850 of this title (relating to How do I get reimbursement of nonrecurring expenses?).]~~

~~[(d) If an LCPA or authorized entity is managing conservator for the child you are adopting, you need to contact the child welfare agency in the state where you reside. We are only responsible for providing adoption assistance if:]~~

~~[(1) we are the managing conservator for the child; or]~~

~~[(2) you live in Texas and an LCPA or authorized entity is managing conservator for the child.]~~

§700.821. What are the additional Title IV-E eligibility requirements for Medicaid and monthly assistance payments?

(a) In addition to the requirements in §700.820 of this title (relating to What are the Title IV-E eligibility requirements for reimbursement of nonrecurring expenses?), to be eligible for Medicaid and monthly assistance benefits, the child with special needs you adopt must be in an adoptive placement and must meet the requirements in either subsection (b) or (c) of this section, depending upon whether the child is an applicable child, as that term is defined in §700.825 of this title (relating to Who is considered an applicable child?).

(b) A child who is not an applicable child must meet one of the following conditions: [~~A special needs child must be in an adoptive placement and meet one of the following conditions to be eligible for Medicaid and monthly payments under an agreement:~~]

(1) The child is eligible for Supplemental Security Income (SSI) benefits, as determined by the Social Security Administration (SSA) prior to the finalization of the adoption;

(2) We or another public welfare agency has [~~have already~~] determined that the child met or would have met the eligibility criteria [~~was eligible~~] for Title IV-E foster care based on AFDC eligibility, as further described in §700.822 of this title (relating to How do we determine whether the child was AFDC eligible?) and §700.823 of this title (relating to What is necessary for a court order to be considered a removal?);

(3) We already determined that the child was eligible for Title IV-E adoption assistance in a prior adoption; or

(4) Just before the adoptive placement and immediately prior to termination of the minor parent's parental rights, the child was living with a minor parent in foster care, and eligible to receive Title IV-E foster care payments under 42 U.S.C. §675(4)(B).

(c) A child who is an applicable child must meet one of the following conditions:

(1) The child was in the managing conservatorship of a public child welfare agency, an LCPA, or an authorized entity at the time the adoptive placement is made;

(2) The child has been determined by the SSA to meet all the medical or disability requirements with respect to eligibility for SSI benefits;

(3) We already determined that the child was eligible for Title IV-E adoption assistance in a prior adoption; or

(4) Just before the adoptive placement and immediately prior to termination of the minor parent's parental rights, the child was living with a minor parent who was in foster care as a result of a court-ordered removal as described in §700.823 of this title.

§700.824. What if the child is not a U.S. citizen?

(a) If the child is not a U.S. citizen, then the child or the prospective adoptive parent must meet one of the following conditions before the adoption assistance agreement is signed in order to be eligible for Title IV-E assistance:

(1) the child is a qualified alien who entered the U.S. prior to August 22, 1996, or has been a qualified alien for at least five years;

(2) the child is a refugee or asylee, as defined in 8 U.S.C. §1613(b);

(3) the child meets the criteria of 8 U.S.C. §1613(b) or is a trafficking victim or a derivative beneficiary of such a victim; or

(4) if the child is a qualified alien but does not meet the requirements listed in paragraphs (1) - (3) of this subsection, the adoptive parent is a U.S. citizen or qualified alien.

~~[(a) If the child is not a U.S. citizen, then the child must meet one of the conditions specified in this subsection or in subsection (b) of this section before the agreement is signed:]~~

~~[(1) The child has been a permanent resident or other qualified alien (as described in 8 U.S.C. §1641(b)) for at least five years;]~~

[(2) The child entered the U.S. as a permanent resident or other qualified alien before August 22, 1996; or]

[(3) The child is a refugee or asylee (as defined in 8 U.S.C. §1613(b)).]

(b) For purposes of Title IV-E eligibility, the term "qualified alien" is defined in 8 U.S.C. §1641(b).

[(b) If the child does not meet one of the conditions listed in subsection (a) of this section, but has been a permanent resident or other qualified alien for less than five years, then the child is still eligible for adoption assistance if you are a U.S. citizen, permanent resident, or other qualified alien.]

(c) The child's citizenship or immigration status must be verified in accordance with federal law. If you are relying on the exception in subsection (a)(4) of this section, your citizenship or immigration status must also be verified in accordance with federal law.

[(c) A child who does not meet the conditions in subsections (a) or (b) of this section, including an undocumented child, is not eligible for Title IV-E adoption assistance.]

[(d) The child's citizenship or immigration status must be verified in accordance with federal law. If you are relying on the exception in subsection (b) of this section, your citizenship or immigration status must be verified in accordance with federal law.]

§700.825. Who is considered an applicable child?

(a) Subject to exceptions in subsection (b) of this section, an "applicable child" is a child for whom an adoption assistance agreement is entered into during the federal fiscal year listed in the figure in this subsection and who will have attained the age listed in the same figure prior to the end of that federal fiscal year, as follows:
Figure: 40 TAC §700.825(a)

(b) Notwithstanding subsection (a) of this section, beginning October 1, 2009, the term "applicable child" shall include a child who meets one of the following criteria:

(1) The child meets the "duration in care" exception because the child:

(A) has been in the conservatorship of DFPS for at least 60 consecutive months;

(B) is considered a child with special needs under §700.804 of this title (relating to Who is a child with special needs?); and

(C) meets one of the criteria in §700.821(c) of this title (relating to What are the additional Title IV-E eligibility requirements for Medicaid and monthly assistance payments?); or

(2) The child meets the "member of a sibling group" exception because the child:

(A) is the sibling of a child who meets the definition of "applicable child" in subsection (a) of this section or the duration in care exception in paragraph (1) of this subsection;

(B) is to be placed in the same adoptive placement as an applicable child who is their sibling; and

(C) meets one of the criteria in §700.821(c) of this title.

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 October 29, 2009.

TRD-200904917
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: December 13, 2009
For further information, please call: (512) 438-3437

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DIVISION 3. APPLICATION PROCESS, AGREEMENTS, AND BENEFITS

40 TAC §§700.842, 700.845 - 700.848, 700.850, 700.851

The amendments and new section are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new section implement the Family Code, §162.3041, as amended by House Bill 1151, §4 and Senate Bill 2080, §6, 81st Legislature, Regular Session; and a state option contained in the federal Fostering Connections to Success and Increasing Adoptions Act of 2008, P.L. 110-351.

§700.842. What happens if my child is determined eligible?

(a) If we determine that the child is eligible for adoption assistance, we send you a proposed adoption assistance agreement that identifies the specific benefits for which your child is eligible. We must receive your signed adoption assistance agreement before you finalize the adoption. Benefits are not available until there is a legally binding agreement.

(b) If the child is eligible for benefits other than the reimbursement of nonrecurring expenses, we send you an adoption assistance agreement that may specify a monthly payment amount. If you are not offered the maximum monthly payment amount, as described in §700.844 of this title (relating to How are monthly payment amounts determined?), you can discuss and negotiate the amount with us before you sign and return the proposed adoption assistance agreement.

(c) If you and your child do not have any current need for adoption assistance, but reasonably expect to have a need in the future, you can sign a deferred agreement, as described in §700.801(10) [§700.801(12)] of this title (relating to What do certain words and terms in this subchapter mean?).

(d) (No change.)

§700.845. Can my child get adoption assistance monthly payments in addition to Supplemental Security Income (SSI) benefits?

Only the Social Security Administration (SSA) can determine whether your child is eligible for SSI benefits. The SSA considers your family's financial resources in determining whether your child remains eligible for SSI benefits after adoption. If your child does remain eligible, the SSI benefits would be reduced by any amount you receive in adoption assistance monthly payments. If you choose to receive SSI benefits and do not sign an adoption assistance agreement with us before the

adoption is final, you will not be eligible for adoption assistance if the SSI benefits stop after the adoption is final.

§700.846. How is the effective date of the adoption assistance agreement determined?

(a) Benefits are not available for any period of time before the effective date of the adoption assistance agreement. The effective date of the agreement cannot be before the month in which we receive your completed application. DFPS may, for good cause, grant retroactive benefits for a period not to exceed 12 months prior to receipt of the completed application if you can demonstrate that:

~~[(1) your child was eligible for adoption assistance prior to receipt of the completed application;]~~

(1) [~~(2)~~] DFPS made an error in determining that the child was not eligible for benefits; or

(2) [~~(3)~~] DFPS caused a delay in the activation of benefits.

(b) The effective date of the adoption assistance agreement is always the first day of the month. A child cannot receive Medicaid and monetary payments from both the foster care and adoption assistance programs in the same month. If we are making foster care maintenance payments for the child, adoption assistance benefits begin the month after the foster care payments stop.

(c) (No change.)

§700.847. When does the adoption assistance agreement end?

The adoption assistance agreement you sign is effective through the month in which your child turns 18 years old, unless terminated earlier in accordance with §700.848 of this title (relating to When can the adoption assistance agreement and benefits be terminated before it expires?) or your child remains eligible for benefits pursuant to §700.851 of this title (relating to How can my child qualify for extended adoption assistance benefits?).

§700.848. When can the adoption assistance agreement and benefits be terminated before it expires [~~my child turns 18 years old~~]?

(a) The agreement and benefits can be terminated when any of the following occurs:

(1) the adoptive placement ends before the adoption is consummated;

(2) we discover the child was mistakenly determined eligible for benefits;

(3) the child is under the age of 18 years and you are no longer legally responsible for the child's support, such as when your parental rights are terminated[~~, or when the child emancipates, marries, or enlists in the military~~];

(4) we determine that you are no longer providing any support to [~~financially supporting~~] the child;

(5) the child dies; or

(6) you request termination of benefits.

(b) If the child is over the age of 18 years and receiving benefits pursuant to §700.851 of this title (relating to How can my child qualify for extended adoption assistance benefits?), the adoption assistance agreement and benefits may be terminated if the child no longer meets the conditions in §700.851(b) of this title.

(c) If you receive any monthly payments for a period of time when they could have been terminated, we may require you to repay the total amount or recover the overpayment by deducting amounts from future payments under a repayment plan.

§700.850. How do I get reimbursement of nonrecurring expenses?

(a) We must receive your signed adoption assistance agreement before you finalize the adoption. After you finalize the adoption, you can get reimbursement from us for your nonrecurring expenses. These expenses are defined as reasonable and necessary adoption fees, court costs, attorney fees, and "other expenses" that are directly related to the legal adoption of your child.

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

§700.851. How can my child qualify for extended adoption assistance benefits?

(a) In order to qualify for extended adoption assistance benefits:

(1) Your child must be the subject of an existing adoption assistance agreement that was initially entered into after the child's 16th birthday and prior to the child's 18th birthday; and

(2) You must provide sufficient documentation on a periodic basis as required by the adoption assistance agreement to demonstrate that your child is:

(A) regularly attending high school or enrolled in a program leading toward a high school diploma or high school equivalence certificate;

(B) regularly attending an institution of higher education or a postsecondary vocational or technical program;

(C) actively participating in a program or activity that promotes, or removes barriers to, employment;

(D) employed for at least 80 hours per month; or

(E) incapable of performing any of the activities listed in subparagraphs (A) - (D) of this paragraph due to a documented medical condition, as further described in subsection (b) of this section.

(b) There is a presumption that a child is capable of the activities listed in subsection (a)(2)(A) - (D). The presumption can be rebutted only if sufficient documentation is provided to verify the medical condition and that the medical condition renders your child incapable of those activities. Such documentation of a medical condition might include a determination of disability from SSA, a determination of mental retardation, or a statement from a medical doctor. In addition, documentation must also verify the activities of daily living your child is rendered incapable of performing as a result of that medical condition.

(c) Notwithstanding any other provision of this subchapter, no individual will be eligible for extended adoption assistance prior to October 1, 2010.

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 October 29, 2009.

TRD-200904919
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: December 13, 2009
For further information, please call: (512) 438-3437

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40 TAC §700.849

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

The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements the Family Code, §162.3041, as amended by House Bill 1151, §4 and Senate Bill 2080, §6, 81st Legislature, Regular Session; and a state option contained in the federal Fostering Connections to Success and Increasing Adoptions Act of 2008, P.L. 110-351.

§700.849. Can benefits be suspended while the agreement is effective?

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 October 29, 2009.

TRD-200904918
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: December 13, 2009
For further information, please call: (512) 438-3437

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DIVISION 4. CHANGES IN CIRCUMSTANCES

40 TAC §§700.860 - 700.863

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement the Family Code, §162.3041, as amended by House Bill 1151, §4 and Senate Bill 2080, §6, 81st Legislature, Regular Session; and a state option contained in the federal Fostering Connections to Success and Increasing Adoptions Act of 2008, P.L. 110-351.

§700.860. What if my child's or family's circumstances change?

(a) You must promptly inform us of the following changes in circumstances regarding your adopted child or your family:

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

(5) any change(s) that may affect continuing eligibility for benefits, as described in §700.848 of this title (relating to When can the adoption assistance agreement and benefits be terminated before it expires [~~my child turns 18 years old~~]?).

(b) (No change.)

(c) DFPS may periodically require documentation from you that is sufficient to demonstrate that the child who is the subject of the adoption assistance agreement and who has attained the minimum age for compulsory school attendance in Texas or the child's state of residence is a full-time elementary or secondary student as that term is defined in §700.801(11) of this title (relating to What do certain pronouns, words, and terms in this subchapter mean?). DFPS may require such documentation to include proof sufficient to demonstrate that your child is rendered incapable of being a full-time elementary or secondary student because of a medical condition.

§700.861. Will my child receive benefits if I move to, or live in, another state?

(a) If you have an adoption assistance agreement with another state that provides Medicaid coverage for your child, we will provide Texas Medicaid after you move here. Only medical assistance benefits covered by the Texas Medicaid program are provided. The state that entered into the adoption assistance agreement with you remains responsible to provide any monetary payments or other services specified in that agreement.

(b) If you have an adoption assistance agreement with us and you move to another state, we provide Texas Medicaid coverage only if the state where you live does not agree to cover your child under its state Medicaid program. We remain responsible for any monthly payments specified in your adoption assistance agreement no matter where you live, which is why you must keep us informed of your current address.

§700.862. Why must I recertify my child's eligibility?

We require the recertification of your child's eligibility to ensure that you and your child remain eligible for benefits as provided by the agreement. We may periodically send you a recertification form to fill out, sign and return to us within 60 days. Failure to promptly provide us with the required recertification information may result in an overpayment of benefits, which we may require you to repay or which we may deduct from any future benefits to which you are entitled, at our option. [~~Your monthly payments can be suspended if we do not receive your recertification form on time.~~

§700.863. Does a child remain eligible for benefits in a subsequent adoption?

(a) Yes; if you live in Texas and plan to adopt a child that had been receiving adoption assistance under a signed adoption assistance agreement, that child can remain eligible for adoption assistance benefits if the following conditions are met:

(1) (No change.)

(2) we determine that the child is a child with special needs [~~child~~], as described in §700.804 of this title (relating to Who is a child with special needs [~~child~~]?); and

(3) (No change.)

(b) (No change.)

[~~(c) Benefits may be suspended if we do not receive a certified copy of the Decree of Adoption for the subsequent adoption with 24 months after the effective date of the new agreement.~~]

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

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TRD-200904920
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: December 13, 2009
For further information, please call: (512) 438-3437

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DIVISION 5. APPEALS AND HEARINGS

40 TAC §700.880, §700.881

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement the Family Code, §162.3041, as amended by House Bill 1151, §4 and Senate Bill 2080, §6, 81st Legislature, Regular Session; and a state option contained in the federal Fostering Connections to Success and Increasing Adoptions Act of 2008, P.L. 110-351.

§700.880. What are my rights to appeal a DFPS decision regarding adoption assistance benefits?

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

(d) You have the right to appeal a denial of enhanced adoption assistance only if the child qualifies as a child with special needs [~~child~~], the child meets all eligibility criteria in §700.807(1) - (3) of this title (relating to Who is eligible to receive enhanced adoption assistance?), and DFPS has confirmed in writing that you are the appropriate prospective adoptive placement for the child.

(e) You may not appeal a denial of extended adoption assistance if your child reaches the age of 18 prior to October 1, 2010.

§700.881. Can my child still get benefits if I did not sign an adoption assistance agreement before the adoption?

(a) Yes, but only after you request a hearing and show that there is good reason to excuse your failure to have a signed adoption assistance agreement. Some good reasons that provide for a hearing are:

(1) - (2) (No change.)

(3) The child's physical, mental, or emotional handicapping condition could not be diagnosed before the adoption, but was later diagnosed by an appropriately qualified professional as having existed prior to the consummation of the adoption [~~at the time of the adoptive placement~~].

(4) - (5) (No change.)

(b) In the hearing, you have the burden to prove both:

(1) your reason for not having a signed adoption assistance agreement before the adoption; and

(2) (No change.)

(c) If we agree that your child is eligible and your failure to have a signed adoption assistance agreement should be excused, we can sign an agreed order with you and avoid having a hearing. The hearing officer must approve the agreed order, and you must sign an adoption assistance agreement consistent with its provisions, before you can receive 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.

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TRD-200904921
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: December 13, 2009
For further information, please call: (512) 438-3437

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SUBCHAPTER J. ASSISTANCE PROGRAMS FOR RELATIVES AND OTHER CAREGIVERS

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), new §§700.1002, 700.1025, 700.1027, 700.1029, 700.1031, 700.1033, 700.1035, 700.1037, 700.1039, 700.1041, 700.1043, 700.1045, 700.1047, 700.1049, 700.1051, 700.1053, 700.1055, and 700.1057, concerning the Permanency Care Assistance Program, in the chapter governing Child Protective Services. DFPS is renaming Subchapter J, Assistance Programs for Relatives and Other Caregivers. All but one of the new sections are proposed in Division 2, Permanency Care Assistance Program. The rules that were previously in Subchapter J are moved to new Division 1, Relative and Other Designated Caregiver Program.

The purpose of the new sections is to establish the Permanency Care Assistance (PCA) Program, which was mandated by House Bill 1151 and Senate Bill 2080, enacted in the 81st Regular Legislative Session. These bills require the creation of a program that meets the requirements of the optional "Guardianship Assistance Program," as authorized in amendments to Title IV-E of the Social Security Act made by the federal Fostering Connections to Success and Increasing Adoptions Act of 2008 (Fostering Connections Act), P.L. 110-351. Under the PCA program, relatives and fictive kin (non-relatives with a longstanding and significant relationship to a child prior to placement of the child with the non-relative) who become verified or licensed foster parents and who meet other eligibility criteria as specified in these rules will be eligible to receive monthly assistance benefits, Medicaid, and non-recurring expenses on behalf of a child for whom they assume managing conservatorship. In addition, persons who assume managing conservatorship of a child between a child's 16th and 18th birthday, will be eligible for continued monthly assistance and Medicaid benefits on behalf of that child after that child turns 18 years, until the child turns 21, provided the child meets certain eligibility criteria for receipt of "extended" PCA benefits.

In order to be eligible for PCA benefits, a relative or fictive kin caregiver must become a verified or licensed foster parent and care for the child in his or her home while the child is in the con-

servatorship of DFPS for at least six consecutive months prior to obtaining managing conservatorship of the child. DFPS must have ruled out adoption or return-to-home as permanency options for the child. A person who meets the eligibility criteria on behalf of one child, will also be eligible for PCA benefits on behalf of a sibling who is placed in the same home by DFPS, and for whom the person also obtains managing conservatorship. As an added incentive for persons who assume managing conservatorship of a child who is 16 or older when conservatorship is obtained, the program offers extended permanency care assistance after the child turns 18, up until the youth's 21st birthday, provided the youth engages in certain employment or educational activities or is incapable of engaging in these activities due to a documented medical condition or disability. The maximum amount of monthly assistance to which a person is entitled depends upon the authorized service level of the child at the time the PCA agreement is negotiated, and the amounts are the same as the maximum monthly amounts available under the adoption assistance program; i.e. for children at the Basic level, the maximum amount is $400 per month, and for children at the Moderate, Specialized or Intense levels, the maximum monthly amount is $545 per month. The maximum amount a person may be reimbursed for the non-recurring expenses associated with obtaining managing conservatorship is $2,000.

The eligibility criteria for the PCA program come directly from federal law and are necessary in order for the program to meet eligibility for Title IV-E funding.

This new program is in addition to the existing "Relative and Designated Caregiver Program," which provides more limited benefits to relatives and fictive kin who care for children in DFPS conservatorship, but who are not verified or licensed foster parents.

This program will not begin until September 1, 2010, consistent with appropriations received to fund the program and the anticipated time it will take to develop policy and rules, train staff, and make changes to DFPS's IMPACT database necessary to support implementation of the program.

Section 700.1002 provides a brief overview of the difference between the existing Relative and Designated Caregiver (RDC) program and the new PCA program and specifies that a person may not receive benefits under the RDC program for any period of time in which the person is receiving foster care reimbursement or PCA on behalf of the same child.

Section 700.1025 provides an overview of the PCA program and specifies the types of benefits provided under the program; i.e. monthly cash assistance payments; Medicaid coverage; and a one-time reimbursement for non-recurring expenses incurred to obtain managing conservatorship of the child. Further, if a person assumes managing conservatorship of a child after the child turns 16 years but before the child turns 18 years, the person may receive "extended" PCA until the youth turns 21 years, provided the youth meets certain criteria.

Section 700.1027 defines key terms used in Division 2 of Subchapter J with respect to the PCA program.

Section 700.1029 specifies the basic eligibility criteria for receipt of PCA benefits, which are that the person must: (1) be a relative or fictive kin; (2) become the child's managing conservator (MC) and enter into a PCA agreement (agreement) *prior to* being named the MC; (3) be eligible for the receipt of foster care reimbursements on behalf of the child for at least six consecutive months prior to becoming MC; (4) have a strong commitment to caring permanently for the child and the child must have a strong attachment to the prospective MC; and (5) if the child is 14 years or older, the child must have been consulted about the agreement. In addition, DFPS must have ruled out adoption or return-to-home as permanency options. A person who is named MC for a sibling of a child placed in the same home by DFPS is also eligible for PCA for the sibling.

Section 700.1031 provides a more detailed explanation of what must occur in order for a person to be eligible for foster care reimbursement on behalf of a child for the requisite six-month period; i.e. the person must live with the child, become a licensed or verified foster care provider, and care for a child in DFPS conservatorship under a placement agreement. The person must be a foster parent throughout the duration of a six-consecutive month period in which the child is placed in the home and the child must remain in DFPS conservatorship throughout that same six-month period.

Section 700.1033 provides a high level overview of how a person becomes a verified or licensed foster parent and where the person can obtain additional information for this process.

Section 700.1035 clarifies that Title IV-E of the Social Security Act requires that a state use the same set of minimum standards when verifying or licensing a relative of a child to become a foster parent as it does for any other foster parent; however, the Child Care Licensing division may waive "non-safety" standards on a case-by-case basis for a foster parent who cares for a related child.

Section 700.1037 sets out a process for entering into a PCA agreement. Ordinarily, the person must apply at least 30 days before being named the MC, although DFPS will expedite an application in certain limited circumstances. Under no circumstances, however, may the agreement be signed *after* the person is named MC by the court. (Note: The requirement to enter into the agreement before being named the MC is a Title IV-E requirement.)

Section 700.1039 establishes the maximum monthly payment amounts of $400 for a child whose authorized service level (ASL) is Basic at the time the agreement is negotiated; and $545 for a child whose ASL is Moderate, Specialized or Intense at the time the agreement is negotiated; and lists the factors that will be taken into consideration in negotiating the actual monthly amount, which looks at the child's needs, the resources, circumstances of the prospective MC, and the prospective MC's plans for the child's future. (Note: These are the same factors used to negotiate the amount of adoption assistance.)

Section 700.1041: (1) specifies that while the PCA agreement must be signed before a person becomes the child's MC, it becomes effective on the date managing conservatorship is awarded; (2) states that benefits become available under the agreement in the first month following the effective date of the agreement; and (3) prohibits double payment of foster care reimbursement and PCA for the same period of time.

Section 700.1043 specifies the process for obtaining reimbursement of non-recurring expenses that were incurred by the MC in the legal process of obtaining managing conservatorship, not to exceed a maximum amount of $2,000 per child. Such expenses may include legal fees, court costs, transportation to court costs, and other costs reasonably related to the legal process.

Section 700.1045 provides that a person may enter into a "deferred" PCA agreement before being named the MC, even if PCA

benefits are not needed at that time, in order to preserve eligibility should benefits be needed in the future.

Section 700.1047 clarifies that a PCA agreement remains in effect until a child turns 18 years (or up to 21 years if eligible for extended PCA) unless terminated should any of the following occur: (1) the person is not ultimately granted managing conservatorship of the child; (2) DFPS determines that the person was mistakenly determined eligible; (3) the MC is no longer legally responsible for the child, such as when managing conservatorship is granted to another individual; (4) the MC is no longer providing any support to the child; (5) the child dies; or (6) the MC requests the agreement be ended. A person who receives PCA for a period of time for which the person was not eligible may be required to repay the monies or have monies withheld from future payments under a re-payment plan. (Note: The termination conditions are very similar to those for adoption assistance).

Section 700.1049 provides the process to require notification to DFPS when there is a change in circumstances that might warrant an adjustment to the amount of monthly assistance or other change, such as a change of address, change of legal status, etc.

Section 700.1051 specifies that a person will continue to receive PCA benefits from Texas if they move to another state.

Section 700.1053 specifies the eligibility criteria for receipt of "extended" PCA benefits on behalf of a youth between the youth's 18th and 21st birthdays. The person must have assumed managing conservatorship of the youth between the youth's 16th and 18th birthdays, and the youth must be: in a secondary, GED, or higher education program, including a post-secondary vocational or technical program; in a program that promotes employment or to remove employment barriers; employed at least 80 hours a month; or incapable of any of the above activities due to a documented medical condition.

Section 700.1055 refers a person who does not meet the eligibility criteria for PCA benefits to the provisions of the "Relative and Designated Caregiver" program, which may provide an alternative source of benefits to relatives and designated caregivers who qualify under that program.

Section 700.1057 explains the rights of a person to a fair hearing in the event that PCA benefits are denied, reduced, suspended, or terminated.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be fiscal implications for state government as a result of enforcing or administering the sections. The effect on state government for the first five-year period the new sections are in effect is an estimated additional state general revenue cost of $1,955,515 in fiscal year (FY) 2010; $1,407,267 in FY 2011; $5,402,338 in FY 2012; $6,860,280 in FY 2013; and $7,078,972 in FY 2014. There will be no fiscal implications for local government as a result of enforcing or administering the sections.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a new program to provide cash assistance and Medicaid coverage for the support of foster children for whom a relative or fictive kin assumes managing conservatorship after becoming verified or licensed as a foster home and providing care to the child(ren) as a foster home for a six-consecutive month period. This new benefit will encourage permanency for children for whom relatives/fictive kin could not afford to take permanent custody without monetary support, and will help ensure stability of placements and positive outcomes for the children and the relatives/fictive kin who assume managing conservatorship of former foster children. An added incentive is provided to encourage permanency for youth ages 16 and older, through the provision of extended PCA benefits. There will be no effect on large, small, or micro-businesses because the proposed changes do not impose new requirements on any business and do not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

HHSC has determined that the proposed new sections 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 §2007.043, Government Code.

Questions about the content of the proposal may be directed to Larry Burgess at (512) 438-5320 in DFPS's Child Protective Services Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-399, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

DIVISION 1. RELATIVE AND OTHER DESIGNATED CAREGIVER PROGRAM

40 TAC §700.1002

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements Subchapter K, Chapter 264, Family Code (Sec. 264.851 *et seq.*), as added by House Bill 1151 and Senate Bill 2080, mandating the creation of a Permanency Care Assistance program and specifying the eligibility criteria; as well as the optional provisions in Title IV-E of the Social Security Act at 42 USC 673(d), as added by the federal Fostering Connections to Success and Increasing Adoptions Act of 2008 (Fostering Connections Act), P.L. 110-351.

§700.1002. How does the Relative and Other Designated Caregiver Program differ from the Permanency Care Assistance Program?

(a) The Permanency Care Assistance Program is a program that provides monthly cash assistance benefits, Medicaid health coverage, and a one-time reimbursement of nonrecurring expenses on behalf of a child to a caregiver who becomes a licensed or verified foster care provider, becomes the managing conservator of a child in DFPS conservatorship, and meets other eligibility criteria as described in Division 2 of this subchapter (relating to Permanency Care Assistance Program).

(b) A relative or other designated caregiver is not eligible to receive benefits under the Relative and Designated Caregiver Program

on behalf of any child for whom the caregiver is also receiving either foster care reimbursement or permanency care assistance.

(c) For more information on who is eligible to receive permanency care assistance, refer to Division 2 of this subchapter.

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

Filed with the Office of the Secretary of State on October 29, 2009.

TRD-200904922
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: December 13, 2009
For further information, please call: (512) 438-3437

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DIVISION 2. PERMANENCY CARE ASSISTANCE PROGRAM

40 TAC §§700.1025, 700.1027, 700.1029, 700.1031, 700.1033, 700.1035, 700.1037, 700.1039, 700.1041, 700.1043, 700.1045, 700.1047, 700.1049, 700.1051, 700.1053, 700.1055, 700.1057

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement Subchapter K, Chapter 264, Family Code (Sec. 264.851 *et seq.*), as added by House Bill 1151 and Senate Bill 2080, mandating the creation of a Permanency Care Assistance program and specifying the eligibility criteria; as well as the optional provisions in Title IV-E of the Social Security Act at 42 USC 673(d), as added by the federal Fostering Connections to Success and Increasing Adoptions Act of 2008 (Fostering Connections Act), P.L. 110-351.

§700.1025. What is the Permanency Care Assistance Program?

(a) The permanency care assistance program provides the following benefits to certain individuals who assume managing conservatorship of a child who was previously in the temporary or permanent managing conservatorship of DFPS, provided that all of the eligibility criteria in this division are satisfied:

(1) monthly cash assistance benefits through the last day of the month of the child's 18th birthday;

(2) Medicaid coverage on behalf of the child; and

(3) a one-time reimbursement of nonrecurring expenses relating to the legal process of becoming the managing conservator of the child, not to exceed $2,000 per child.

(b) Extended permanency care assistance is also available for eligible individuals on behalf of certain children over the age of 18 years, as provided under §700.1053 of this title (relating to Who is eligible for extended permanency care assistance?).

(c) The permanency care assistance program is effective September 1, 2010, and applies only to persons who enter into a permanency care agreement on or after the effective date of the program.

§700.1027. What definitions apply to this division?

The following terms have the following meanings in this division:

(1) Deferred permanency care agreement--A type of permanency care agreement that may be entered into when a prospective permanent custodian meets the eligibility criteria for receipt of permanency care assistance, but does not need any assistance at the time the agreement is signed; a deferred permanency care agreement allows a person to preserve eligibility to receive permanency care assistance in the future, should the need for such assistance arise.

(2) Elementary or secondary student--A child who is:

(A) enrolled or in the process of enrolling in an institution which provides elementary or secondary education in accordance with Texas law or the law of the state in which the child resides;

(B) instructed in elementary or secondary education at home in accordance with Texas law or the law of the state in which the child resides;

(C) in an independent study elementary or secondary education program, administered by a school or school district, in accordance with Texas law or the law of the state in which the child resides; or

(D) incapable of attending school on a full-time basis due to the medical condition of the child, which incapability is supported by regularly updated information.

(3) Extended permanency care assistance--Permanency care assistance benefits that are payable on behalf of an eligible youth after the youth's 18th birthday through the last day of the month in which the youth turns 21, as provided under §700.1053 of this title (relating to Who is eligible for extended permanency care assistance?).

(4) Permanency care agreement--A negotiated, written and legally binding agreement that is signed by DFPS and a prospective permanent custodian setting forth the specific terms and conditions of the agreement, including the types and amounts of permanency care assistance benefits that will be provided under the agreement.

(5) Permanent custodian--A person who is granted managing conservatorship of a child who was in the temporary or permanent managing conservatorship of DFPS immediately prior to managing conservatorship being granted to that person; the term does not include a parent of the child or other person from whom the child was legally removed by DFPS.

(6) Prospective permanent custodian--A person who has demonstrated a strong commitment to caring permanently for a child in the temporary or permanent managing conservatorship of DFPS and who applies for or has entered into an agreement with DFPS for permanency care assistance, but has not yet been named the managing conservator of the child.

§700.1029. What are the eligibility criteria for receipt of permanency care assistance?

(a) To receive permanency care assistance for a child, a person must:

(1) become the permanent custodian of a child who meets all of the eligibility criteria in subsection (b) or (c) of this section; and

(2) enter into a permanency care agreement with DFPS on behalf of the child prior to becoming the child's permanent custodian.

(b) A child is eligible to be the subject of a permanency care agreement if all of the following eligibility criteria apply to that child:

(1) the child's prospective permanent custodian:

(A) is related to the child by consanguinity or affinity; or

(B) has had a longstanding and significant relationship to the child prior to DFPS placing the child in the home of that person;

(2) the child's prospective permanent custodian must have been eligible for the receipt of foster care reimbursements on behalf of the child who is the subject of the permanency care agreement for at least six consecutive months prior to the effective date of the permanency care agreement;

(3) the child has demonstrated a strong attachment to the prospective permanent custodian and that person has a strong commitment to caring permanently for the child;

(4) at the time the permanency care assistance agreement is signed, DFPS has determined that neither adoption nor return of the child to the home from which the child was removed are appropriate permanency options; and

(5) if the child will be at least 14 years of age at the time the permanency care agreement is signed, DFPS has consulted with the child about the prospective permanent custodian's commitment to assume managing conservatorship of the child.

(c) If a prospective permanent custodian or permanent custodian has entered into a permanency care assistance agreement on behalf of one child for whom all the eligibility criteria in subsection (b) of this section are satisfied, that same custodian will be eligible to receive permanency care assistance on behalf of a sibling of the child if all of the following criteria apply to the sibling child:

(1) the sibling must have been placed in the home of the same custodian by DFPS; and

(2) DFPS has temporary or permanent managing conservatorship of the sibling child at the time the permanency care agreement is signed with respect to the sibling child.

§700.1031. How does a person become eligible for receipt of foster care reimbursement on behalf of a child for at least six consecutive months?

(a) Any person who is licensed or verified to provide 24-hour residential care for a child, as provided under Chapter 42, Human Resources Code, and related Child Care Licensing rules, is eligible to receive foster care reimbursement for a child who is in the temporary or permanent managing conservatorship of DFPS and who is placed with that person under a foster care agreement.

(b) For most relatives or other individuals with whom a child in DFPS conservatorship is placed, the simplest way to become eligible to receive foster care reimbursement on behalf of that child is to become a verified foster parent through Child Protective Services or a private child-placing agency and to enter into a Placement Authorization agreement with DFPS to provide 24-hour residential care for the child.

(c) In order for a person to be eligible for foster care reimbursements for a six-consecutive month period as required under §700.1029(b)(2) of this title (relating to What are the eligibility criteria for receipt of permanency care assistance?), each of the following conditions must be satisfied throughout the same consecutive six-month period:

(1) the child is living with the person;

(2) the person must be licensed or verified to care for the child;

(3) the person has entered into a Foster Care Placement Authorization agreement for the care of the child and the agreement remains in effect; and

(4) the child remains in the conservatorship of DFPS.

§700.1033. How does a person become a verified or licensed foster parent?

(a) To become a verified foster parent, a person must apply for verification with Child Protective Services or a private child-placing agency and be able to meet the minimum standards adopted by Child Care Licensing that relate to verified foster parents under Chapter 749 of this title (relating to Child-Placing Agencies), including standards relating to fingerprint-based background checks and an approved home study.

(b) A relative or other person with whom a child is placed by DFPS may obtain additional information on the eligibility criteria and process for becoming a verified or licensed foster parent from the child's caseworker or the link to Child Care Licensing information on the DFPS public website at: http://www.dfps.state.tx.us.

§700.1035. Do the same standards apply to relatives of a child who apply to become a foster parent as any other person who applies to become a foster parent?

Title IV-E of the federal Social Security Act requires that a state's child-care licensing agency apply the same standards to relatives who choose to become a foster parent as it applies to non-relatives, with the exception that the child-care licensing agency may, on a case-by-case basis, waive a non-safety related standard with respect to a relative child in care.

§700.1037. What is the process for entering into a permanency care agreement?

(a) At least 30 days prior to the date on which a prospective permanent custodian anticipates being granted managing conservatorship of the child by the court, the prospective permanent custodian must complete an application for permanency care assistance, which can be obtained from the child's caseworker. In addition to documenting the eligibility criteria for the receipt of permanency care assistance, as specified in this subchapter, the application may request additional information that will be used to negotiate the amount of monthly payments for which the person may be eligible.

(b) After receiving a completed application, and prior to the date on which managing conservatorship is awarded to the prospective permanent custodian, DFPS will notify the applicant of whether or not benefits are approved and, if so, negotiate the terms of the permanency care agreement with the prospective permanent custodian.

(c) Notwithstanding subsection (a) of this section, if through no fault of the prospective permanent custodian there is insufficient time to submit the application at least 30 days prior to the date of an anticipated award of managing conservatorship by the court, the application should be submitted as soon as possible and DFPS will expedite its handling of the application.

(d) Under no circumstances may a person be paid permanency care assistance if the permanency care agreement is not signed prior to the person becoming the child's managing conservator.

§700.1039. What is the amount of monthly payments that a permanent custodian may receive under a permanency care agreement?

(a) The amount of monthly payments that will be paid to a permanent custodian will be negotiated between DFPS and the prospective permanent custodian prior to the signing of the permanency care agreement, based on the criteria specified in subsection (b) of this section, subject to the maximum monthly payment amounts specified in subsection (c) of this section. These amounts may be periodically re-negotiated as circumstances change.

(b) The following factors are considered when negotiating the amount of monthly permanency care assistance payments to be made:

(1) the child's present need for services will be assessed in relation to the family's income, expenses, circumstances, and plans for the future;

(2) benefits are intended only to assist the permanent custodian in meeting the child's needs and the permanent custodian's responsibilities for meeting those needs;

(3) any and all sources of income and support that are specifically designated for the child (such as Retirement, Survivors, Disability Insurance (RSDI) or Veterans Administration (VA) benefits) must be applied toward meeting the child's needs;

(4) whether a publicly funded source may be used to meet the child's needs, even if the permanent custodian does not choose to take advantage of the publicly funded source; and

(5) a determination of the actual or estimated costs of meeting the child's medical needs that cannot be met through private insurance or Texas Medicaid.

(c) The maximum monthly payment amount depends upon the child's authorized service level (ASL) at the time the permanency care agreement is negotiated. The payment ceiling for a child whose ASL is Basic Care is $400 per month; the payment ceiling for a child whose ASL is Moderate, Specialized or Intense is $545 per month.

§700.1041. What is the effective date of a permanency care agreement and when will benefits begin?

(a) Although the permanency care agreement must be signed prior to the prospective permanent custodian being awarded managing conservatorship of the child, the agreement does not become effective until the date that managing conservatorship is granted to the permanent custodian by the court.

(b) Permanency benefits are available beginning in the first month following the date upon which the agreement becomes effective.

(c) Under no circumstances may a permanent custodian receive both foster care reimbursement and monthly permanency care payments for the same time period on behalf of the same child.

§700.1043. How and when is a permanent custodian reimbursed for the costs of the non-recurring expenses associated with obtaining managing conservatorship and how are these expenses calculated?

(a) A permanent custodian who has entered into a permanency care agreement will not be reimbursed for nonrecurring expenses associated with obtaining managing conservatorship of the child who is the subject of the agreement until after that person becomes the child's managing conservator.

(b) To obtain reimbursement, the permanent custodian must submit receipts or other proof of payment, such as cancelled checks, to DFPS.

(c) The nonrecurring expenses for which a person may be reimbursed include only those expenses incurred directly by the permanent custodian, or for which the permanent custodian was required to reimburse a third party, that were reasonable and necessary to complete the legal process of becoming the child's managing conservator. Such expenses may include the costs of obtaining a home study, legal fees, court costs, health and psychological examinations, and transportation and reasonable costs of lodging and food for the permanent custodian or the child.

(d) The permanent custodian must submit a claim for reimbursement and receipts or other proof of payment no more than 18 months after obtaining managing conservatorship of the child.

(e) The maximum amount that you may be reimbursed for nonrecurring expenses is $2,000 per child covered by a permanency care agreement.

§700.1045. If no assistance is needed at the time a person becomes the permanent custodian, can that person still enter into a permanency care agreement?

Yes. If a prospective permanent custodian meets the eligibility criteria for permanency care assistance, but does not need any monetary assistance or Medicaid to meet the child's needs at the time the court awards managing conservatorship of the child, that person may enter into a deferred permanency care agreement to preserve eligibility to receive permanency care assistance benefits for the child in the future, should the need arise.

§700.1047. How long does the permanency care agreement remain in effect?

(a) Unless there is a change in circumstances that affects a person's continuing eligibility for benefits, as provided in subsection (b) of this section, a permanency care agreement remains in effect at least through the end of the month in which the child turns 18 years, and possibly longer if the child and family are eligible for extended permanency care assistance after age 18, as specified in §700.1053 of this title (relating to Who is eligible for extended permanency care assistance?).

(b) A permanency care assistance agreement may be terminated before a child turns 18 years when any of the following occurs:

(1) the prospective permanent custodian is not granted managing conservatorship of the child;

(2) DFPS determines that the permanent custodian was mistakenly determined to be eligible for permanency care assistance;

(3) the permanent custodian is no longer legally responsible for the child's care due to a change in legal status prior to the child reaching the age of 18 years;

(4) the permanent custodian is no longer providing any care or other support to the child;

(5) the child dies; or

(6) the permanent custodian requests that the agreement be terminated.

(c) If the child who is the subject of the permanency care agreement is over the age of 18 years, and the child's family is receiving benefits under §700.1053 of this title, the agreement and benefits may be terminated if the child no longer meets the eligibility conditions in §700.1053(b) of this title.

(d) If a person receives monthly payments for a period of time for which the agreement could have been terminated, DFPS may require that person to repay the total amount of benefits for which the person was not eligible or may deduct the amount of any overpayment from any future benefits under a repayment plan.

§700.1049. What happens if a family's circumstances change after the permanency care agreement is signed?

(a) Each permanent custodian who enters into a permanency care agreement is responsible for notifying DFPS when any of the following changes in circumstances occur with respect to the permanent custodian or the child who is the subject of the agreement:

(1) there is a change in name or address;

(2) there is a change in marital status;

(3) the child is no longer living with the permanent custodian;

(4) there is a change in the child's legal status; or

(5) there is any change in circumstances that would warrant termination of the permanency care assistance agreement, as described in §700.1047 of this title (relating to How long does the permanency care agreement remain in effect?).

(b) If the permanent custodian is not already receiving the maximum monthly assistance payment allowable for the child, the custodian may submit a written request to increase the monthly assistance payments, specifying the change in circumstances that may justify an increase in the payment amount. Any request for an increase in the monthly payment amount is subject to the same requirements and limitations described in §700.1039 of this title (relating to What is the amount of monthly payments that a permanent custodian may receive under a permanency care agreement?).

(c) DFPS may periodically require a permanent custodian to recertify continued eligibility for the receipt of benefits as provided under the permanency care agreement and these rules. A request for recertification must be completed and returned to DFPS within 60 days of receipt. Failure to promptly provide the recertification information may result in an overpayment, which DFPS may require the permanent custodian to repay or which DFPS may deduct from any future benefits under a repayment plan.

(d) DFPS may periodically require documentation from you that is sufficient to demonstrate that the child who is the subject of the permanency care agreement and who has attained the minimum age for compulsory school attendance in Texas or the child's state of residence is a full-time elementary or secondary student as that term is defined in §700.1027 of this title (relating to What definitions apply to this division?). DFPS may require such documentation to include proof sufficient to demonstrate that your child is rendered incapable of being a full-time elementary or secondary student because of a medical condition.

§700.1051. Is a permanent custodian still eligible to receive permanency care assistance from Texas if the custodian moves to another state?

Yes. DFPS will continue to provide the monthly assistance payments specified in the permanency care agreement no matter where the permanent custodian resides, provided the permanent custodian notifies DFPS of any change of address; DFPS provides Texas Medicaid coverage only if the state to which the custodian moves does not agree to cover the child who is the subject of the permanency agreement under its state Medicaid program.

§700.1053. Who is eligible for extended permanency care assistance?

(a) A person who was the child's permanent custodian before the child turned 18 years may continue to receive permanency care assistance for the continued support of the young adult from the youth's 18th birthday through the last day of the month in which the youth turns 21 if:

(1) The permanency care assistance agreement was first entered into on behalf of the child after the child's 16th birthday and prior to the child's 18th birthday; and

(2) The permanent custodian provides sufficient documentation on a periodic basis as required by the permanency care assistance agreement to demonstrate that the youth is:

(A) regularly attending high school or enrolled in a program leading toward a high school diploma or high school equivalence certificate;

(B) regularly attending an institution of higher education or a post-secondary vocational or technical program;

(C) actively participating in a program or activity that promotes, or removes barriers to, employment;

(D) employed for at least 80 hours per month; or

(E) incapable of performing any of the activities listed in subparagraphs (A) - (D) of this paragraph due to a documented medical condition, as further described in subsection (b) of this section.

(b) There is a presumption that a youth is capable of the activities listed in subsection (a)(2)(A) - (D) of this section. The presumption can be rebutted only if sufficient documentation is provided to verify the medical condition and that the medical conditions renders the youth incapable of those activities. Such documentation of a medical condition might include a determination of disability from the Social Security Administration, a determination of mental retardation, or a statement from a medical doctor. In addition, documentation must also verify the activities of daily living that the youth is rendered incapable of performing as a result of that medical condition.

(c) Notwithstanding any other provision in this subchapter, no individual will be eligible for extended permanency care assistance prior to October 1, 2010.

§700.1055. If a person caring for a child in DFPS conservatorship does not qualify for permanency care assistance under this division, are there any other benefits to which that person may be entitled?

A relative or other caregiver for a child in DFPS conservatorship who does not qualify for permanency care assistance may be eligible for benefits under Division 1 of this subchapter (relating to Relative or Other Designated Caregiver Program).

§700.1057. What rights does a person have if permanency care assistance benefits are denied?

(a) A person has a right to request a fair hearing whenever permanency care assistance benefits are denied, delayed, suspended, reduced, or terminated. The hearing, as described in §730.1102 of this title (relating to Definitions), provides the opportunity to have a decision or action made by a DFPS employee reviewed by a higher authority within DFPS.

(b) A request for fair hearing must be submitted to DFPS in writing, within 90 days of the decision or action being appealed.

(c) Additional information regarding the fair hearing process is contained in DFPS rules in Subchapter L, Fair Hearings, of Chapter 730 of this title (relating to Legal Services).

(d) Notwithstanding any other provision in this title, a person will not be granted a fair hearing to appeal the denial of permanency care assistance if any of the following conditions apply:

(1) the person denied benefits was not a licensed or verified foster parent at the time the person applied for or was denied permanency care assistance;

(2) the child for whom the application was made did not live with the person for at least 6 consecutive months while in the conservatorship of DFPS;

(3) the person denied benefits became the managing conservator of the child prior to September 1, 2010; or

(4) the child for whom extended permanency care assistance benefits were denied turned 18 years of age before October 1, 2010.

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 October 29, 2009.

TRD-200904923
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: December 13, 2009
For further information, please call: (512) 438-3437

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CHAPTER 702. GENERAL ADMINISTRATION SUBCHAPTER D. RELEASE OF RECORDS RELATING TO A CHILD FATALITY

40 TAC §§702.301, 702.303, 702.305, 702.307, 702.309, 702.311, 702.313, 702.315, 702.317

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), new §§702.301, 702.303, 702.305, 702.307, 702.309, 702.311, 702.313, 702.315, and 702.317, concerning release of records relating to a child fatality, in its General Administration chapter. In the 81st legislative session, the Legislature enacted Senate Bill (SB) 1050, which amends Chapter 261 of the Family Code to require DFPS to release certain summary information to the public in the event of a child fatality that is investigated by DFPS as the alleged result of abuse or neglect of a child. SB 1050 governs child fatalities that occur in the home as well as child fatalities that occur in residential child-care facilities regulated by DFPS. The duty to release information and findings in the event of a child fatality that is the result of abuse or neglect is also mandatory under the federal Child Abuse Prevention and Treatment Act (CAPTA). SB 1050 provides parameters for the types of summary information and findings to be released following a child fatality investigated by DFPS, and directs the Executive Commissioner of the Health and Human Services Commission to adopt rules for the implementation of this new statute. SB 1050 applies to any child fatality that occurs on or after September 1, 2009. The new rules are proposed in new Subchapter D, Release of Records Relating to a Child Fatality.

New §702.301 provides definitions to be used in new Subchapter D, concerning the release of records to the public in the event of a child fatality investigated as the result of alleged abuse or neglect.

New §702.303 provides general notice to the public that DFPS is authorized to provide certain information to the public in the event of a child fatality, as provided in this subchapter.

New §702.305 specifies the types of child fatalities that are subject to this subchapter; i.e. child fatalities that occur in the home or in residential child-care facilities regulated by Child Care Licensing (CCL); when the fatality is investigated by either Child Protective Services (CPS) or CCL as the possible result of alleged abuse or neglect.

New §702.307 specifies that DFPS will release information relating to a child fatality upon request, and specifies that within five days of the child fatality or the date of the request, DFPS will release: (1) age and gender of the deceased child; (2) date of death; (3) whether the child was in DFPS conservatorship; and (4) whether the child was living with relatives or in residential child care at the time of death.

New §702.309 lists the type of information to be released at the completion of a CPS investigation of a child fatality, which includes a summary of CPS history with the family, previous services provided to the family by CPS, and previous risk factors identified in a prior CPS investigation that relate to the deceased child.

New §702.311 lists the type of information to be released at the completion of a CCL investigation of a child fatality, which includes basic licensing information about the child-care facility where the child was residing, including a summary of prior abuse or neglect investigations, minimum standards violations and any remedial actions involving that facility.

New §702.313 lists the information that will be redacted from any records released to the public, including the names of all individuals other than the deceased child or a sustained perpetrator of abuse or neglect, and any information that would identify a reporter, interfere with a criminal investigation, endanger the life or safety of any individual, or violate other state or federal law.

New §702.315 sets a target deadline (as required by SB 1050) of 10 days following completion of investigation for the release of the information required under §702.309 and §702.311; and authorizes an earlier release of such information to the extent available.

New §702.317 provides a cross-reference to Chapter 700, Child Protective Services, and Chapter 745, Licensing, for more information on what may be released to certain individuals other than the general public under existing law and rules with respect to an abuse or neglect investigation.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed new sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown also has determined that for each year of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the sections will be that the public will have access to summary information regarding child-fatalities that are the result of alleged abuse or neglect, including a summary of relevant information about DFPS's prior investigations or regulatory oversight of the family or residential child-care facility where the death occurred. There will be no effect on large, small, or micro-businesses because the proposed sections do not impose new requirements on any business and do not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

HHSC has determined that the proposed new sections 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 §2007.043, Government Code.

Questions about the content of the proposal may be directed to Phoebe Knauer at (512) 438-2910 in DFPS's Legal Services Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-405, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement §261.203, Family Code, as added by SB 1050, 81st Legislative Session.

§702.301. What definitions apply to this subchapter?

As used in this subchapter, the following words have the following meanings:

(1) Agency foster home--A residential child-care facility as that term is defined in Chapter 42, Human Resources Code, that is verified by a licensed or certified child-placing agency to provide care for no more than six children for 24 hours per day in the home of the verified foster parent(s).

(2) Agency foster group home--A residential child-care facility as that term is defined in Chapter 42, Human Resources Code, that is verified by a licensed or certified child-placing agency to provide care for no more than 12 children for 24 hours per day in the home of the verified foster parent(s).

(3) Department--Department of Family and Protective Services.

(4) General residential operation--A residential child-care facility as that term is defined in Chapter 42, Human Resources Code, that is licensed by the department to provide care for more than 12 children for 24 hours a day, including facilities known as children's homes, halfway houses, residential treatment centers, emergency shelters, and therapeutic camps.

(5) Independent foster home--A residential child-care facility as that term is defined in Chapter 42, Human Resources Code, that is licensed by the department to provide care for no more than six children for 24 hours per day in the home of the foster parent(s).

(6) Independent foster group home--A residential child-care facility as that term is defined in Chapter 42, Human Resources Code, that is licensed by the department to provide care for no more than 12 children for 24 hours per day in the home of the foster parent(s).

(7) Individual who works under the auspices--A person described in §745.8553 of this title (relating to Who works "under the auspices of an operation"?).

§702.303. Is the department authorized to release any information to the general public in the event of a child fatality that may be the result of abuse or neglect?

In accordance with state and federal law permitting the release of certain information and findings relating to a child fatality that is investigated in connection with alleged abuse or neglect of a child by the child's caregiver or a member of the child's household, the department may release certain information in the event of a child fatality, as provided under this subchapter.

§702.305. What types of abuse or neglect investigations are covered by this subchapter?

This subchapter applies only to:

(1) an investigation of abuse or neglect relating to a child fatality, other than a school investigation, that is conducted by the department's Child Protective Services division; and

(2) an investigation of abuse or neglect relating to a child fatality that is conducted by the department's Child Care Licensing division in which the child-care provider that is investigated for possible abuse or neglect is one of the following types of residential care providers regulated under Chapter 42, Human Resources Code:

(A) an agency foster home or agency foster group home;

(B) an independent foster home or independent foster group home; or

(C) a general residential operation.

§702.307. What information may the department release to the general public for the investigations covered by this subchapter?

(a) The department may release information regarding a child fatality only in response to a request for information relating to the child fatality.

(b) The department will release the following information no later than five days following the death of the child or the receipt of the request for information regarding the death of the child, whichever occurs later:

(1) the age and gender of the deceased child;

(2) the date of the child's death;

(3) whether the deceased child was in the conservatorship of the department at the time of the child's death; and

(4) whether, at the time of death, the child was living with:

(A) the child's parent, managing conservator, a legal guardian, or other person entitled to possession of the child; or

(B) an agency foster home, agency foster group home, independent foster home, independent foster group home, or general residential operation.

(c) Following the completion of the abuse or neglect investigation of a child fatality in which the department confirms one or more allegations of abuse or neglect relating to the child fatality, the department may release information in addition to that covered by subsection (b) of this section, as provided under §702.309 of this title (relating to What types of information may the department release following completion of an abuse or neglect investigation conducted by Child Protective Services that involves a child fatality?) and §702.311 of this title (relating to What types of information may the department release following completion of an abuse or neglect investigation conducted by Child Care Licensing that involves a child fatality?).

§702.309. What types of information may the department release following completion of an abuse or neglect investigation conducted by Child Protective Services that involves a child fatality?

(a) Upon completion of a child fatality investigation by Child Protective Services in which one or more allegations of abuse or neglect are confirmed, the department may release a summary report of all investigations in which the deceased child was an alleged victim or a child living in the same home as another alleged victim.

(b) The summary released under subsection (a) of this section shall include:

(1) the date on which each investigation began, a brief description of the nature of the alleged abuse or neglect investigated, and the disposition of those investigations;

(2) a brief description of the services, if any, which were provided by the department to the child or the child's family as a result of the investigation, including whether or not the deceased child or another child in the home was removed from the home as a result of the investigation; and

(3) if the department identified any risk factors relating to the deceased child at the completion of any investigation, a listing of the risk factors identified by the department and the actions, if any, that were taken to mitigate those risks.

§702.311. What types of information may the department release following completion of an abuse or neglect investigation conducted by Child Care Licensing that involves a child fatality?

(a) Upon completion of a child fatality investigation by Child Care Licensing in which one or more allegations of abuse or neglect are confirmed against an individual who works under the auspices of an agency foster home or agency foster group home, the department may release a summary report containing the following information:

(1) the name of the child-placing agency that most recently verified the home and the date of verification;

(2) if previously verified by the same or another child-placing agency:

(A) the name of each prior child-placing agency that verified the home;

(B) the dates on which any prior verification began and ended; and

(C) the reason for any prior closure of the home if the information is documented in the department's records;

(3) for each allegation of abuse or neglect investigated against an individual in the same home in the five-year period ending with the child fatality:

(A) the date on which the investigation was initiated;

(B) the type of alleged abuse or neglect;

(C) the disposition of the investigation;

(D) whether an appeal of the disposition is pending; and

(E) whether the deceased child was an alleged victim of any of the prior allegations of abuse or neglect;

(4) any violations of minimum standards at the same home in the five-year period ending with the child fatality;

(5) a description of the types of training required to be completed by the foster parent, employees, or other persons providing care or supervision of a child in the same home and a summary explanation of any training standards violated in the five-year period ending with the child fatality to the extent documented in the department's records; and

(6) a summary of any remedial actions taken by Child Care Licensing against the home or the child-placing agency that verified the home in the five-year period ending with the child fatality.

(b) Upon completion of a child fatality investigation by Child Care Licensing in which one or more allegations of abuse or neglect are confirmed against an individual who works under the auspices of an independent foster home, independent foster group home, or general residential operation, the department may release a summary report containing the following information:

(1) the date on which the home or operation was licensed;

(2) for each allegation of abuse or neglect investigated against an individual in the same home or operation in the five-year period ending with the child fatality:

(A) the date on which the investigation was initiated;

(B) the type of alleged abuse or neglect;

(C) the disposition of the investigation;

(D) whether an appeal of the disposition is pending; and

(E) whether the deceased child was an alleged victim of any of the prior allegations of abuse or neglect;

(3) any violations of minimum standards at the home or operation in the five-year period ending with the child fatality;

(4) a description of the types of training required to be completed by a foster parent, employee, director or other person providing care or supervision of a child in the home or operation and a summary explanation of any training standards violated in the five-year period ending with the child fatality to the extent documented in the department's records; and

(5) a summary of any remedial actions taken by Child Care Licensing against the home or operation in the five-year period ending with the child fatality.

(c) Notwithstanding any other provision in this subchapter, if a child was living with a licensed or verified child-care provider at the time of death, but the injuries that led to the child's death occurred prior to placement with that provider and Child Protective Services confirmed a finding of abuse or neglect in connection with the child fatality, the department may provide information under §702.309 of this title (relating to What types of information may the department release following completion of an abuse or neglect investigation conducted by Child Protective Services that involves a child fatality?).

§702.313. What kinds of information must be redacted from any records released to the general public under this subchapter?

(a) Prior to releasing any information to the general public in connection with a child fatality, the department shall redact from those records:

(1) the names of any individual other than the deceased child or the alleged perpetrator; and

(2) any other information, the release of which would:

(A) identify a reporter of abuse or neglect;

(B) interfere with an ongoing criminal investigation or prosecution;

(C) endanger the life or safety of any individual; or

(D) violate other state or federal law.

(b) Notwithstanding any other provision in this subchapter, the department shall not release the name of an alleged perpetrator unless that individual has exhausted all appeal rights and the finding of abuse or neglect has been sustained. The department may describe the role of the alleged perpetrator with respect to the deceased child, including whether the alleged perpetrator was a parent, relative, foster parent or other caregiver of the child.

§702.315. How soon following the completion of an investigation involving a child fatality in which abuse or neglect has been confirmed will the department provide the information required by this subchapter?

(a) When possible, the department will provide the records that are required to be provided under this subchapter within 10 days of the date the investigation is completed or the records are requested, whichever occurs later. If the department is unable to meet the 10-day deadline, the department will provide the records as soon as possible thereafter and will advise the requestor of the date on which the department anticipates having all the records available to release.

(b) Nothing in this subchapter will prevent the department from providing information prior to the completion of an investigation to the extent the information is available and its release is authorized under state or federal law or these rules.

§702.317. Does the department have other rules providing for the release of information relating to a child abuse or neglect investigation or child-care licensing regulatory activities that are not covered by this subchapter?

Yes. For more information on what the department may release to specific persons, categories of persons, or to the general public:

(1) for investigations conducted by the Child Protective Services division, refer to Subchapter B, Confidentiality and Release of Records, in Chapter 700 of this title (relating to Child Protective Services); and

(2) for Child Care Licensing regulatory activities, including investigations of abuse or neglect conducted by the Child Care Licensing division, refer to Division 3, Confidentiality, in Subchapter K, Inspections and Investigations, of Chapter 745 of this title (relating to Licensing).

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 October 29, 2009.

TRD-200904929
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: December 13, 2009
For further information, please call: (512) 438-3437

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SUBCHAPTER E. MEMORANDUM OF UNDERSTANDING WITH OTHER STATE AGENCIES

40 TAC §702.425

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), new §702.425, Memorandum of Understanding concerning Interagency Cooperation for Continuity of Youth Care between the DFPS and the Texas Youth Commission (TYC), in its General Administration chapter. The purpose of the new section is to implement House Bill (HB)1629, which was enacted by the 81st Texas Legislature, and is codified at Texas Human Resources Code §61.0767. HB 1629 facilitates coordinated planning between DFPS and TYC to ensure the provision of continued and appropriate services to youth who are in the conservatorship of DFPS and who are committed to TYC or who are on parole or supervised by TYC. The bill requires DFPS and TYC to share certain health and education information, as well as coordinate youth case management and services. Further, the bill requires TYC to ensure that both DFPS and other parties, CASA, attorneys ad litems, and guardians ad litems, are allowed to communicate with the youth and receive notice of important events that affect the lives of the youth. The two agencies are required to jointly adopt rules to implement §61.0767 by April 30, 2010. As a result, DFPS and TYC have executed a Memorandum of Understanding, which DFPS is incorporating into rule and which TYC will adopt by rule as well.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Brown also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that youth who are in DFPS conservatorship and on supervised release or parole with TYC or committed to TYC will receive better medical, mental health, case management, and educational services. There will be no effect on large, small, or micro-businesses because the proposed change does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed section.

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

Questions about the content of the proposal may be directed to Larry Burgess at (512) 438-5320 in DFPS's Child Protective Services Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-404, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules

governing the delivery of services to persons who are served or regulated by the department.

The new section implements Human Resources Code, §61.0767, as added by House Bill 1629, 81st Regular Legislative Session.

§702.425. Memorandum of Understanding concerning Interagency Cooperation for Continuity of Youth Care between the Department of Family and Protective Services (DFPS) and the Texas Youth Commission (TYC).

(a) Parties. The state agencies DFPS and TYC are the parties in this memorandum of understanding (MOU).

(b) Purpose. DFPS and TYC are required to jointly adopt rules to ensure that youth in the conservatorship of DFPS and who are committed to TYC or who are supervised or on parole with TYC receive the appropriate services.

(c) Responsibilities of DFPS.

(1) Information to be Provided at the Time of Commitment. Unless previously provided and to the extent available, DFPS will provide the following records to TYC upon commitment of a youth who is in DFPS conservatorship at the time of commitment:

(A) medical history information in DFPS records that are relevant to the youth's medical care, including, to the extent available, the medical records of the youth's last physical, last dental checkup, last vision and hearing screening, medication currently prescribed, current immunization records, and any other records needed to ensure the youth receives appropriate medical treatment;

(B) records documenting any current mental health treatment and counseling needs;

(C) records documenting any current treatment needs for drug and alcohol abuse or sex offender treatment;

(D) name and contact information of the medical consenter and alternative medical consenter for the youth; to be updated within 24 hours of any change in medical consenter or alternative medical consenter;

(E) the youth's current CPS service plan, placement summary from the youth's last caretaker, if any, and the name and contact information of the youth's attorney ad litem, guardian ad litem, or CASA, if any; and

(F) the youth's current academic achievement records, education portfolio, and current education plan.

(2) Coordination of Services for Youth under TYC Commitment or Supervised Release/Parole. DFPS will ensure that the youth's CPS caseworker or other appropriate CPS personnel will do the following in order to facilitate coordinated planning and appropriate service of any youth committed to TYC or under TYC supervised release or parole:

(A) provide TYC with the name and contact information for the youth's CPS caseworker, including timely notice of any changes in such information;

(B) provide TYC with at least 20 days advance notice of the date, time and location of any scheduled permanency hearing or placement review hearing conducted under Chapter 263, Family Code;

(C) notify TYC regarding any special issues that may arise relating to the youth's physical or mental health or relating to the youth's need for counseling or treatment, including drug or alcohol abuse treatment or sex offender treatment;

(D) contact the youth's TYC caseworker at least once each month and more often if necessary to confer regarding the youth's general welfare and any special issues relating to the youth;

(E) coordinate with TYC in the development of the youth's DFPS plan of service and any plans of service or case plans developed by TYC for the youth;

(F) visit the youth in person at least once per month;

(G) notify TYC within 5 calendar days of any change in placement made by DFPS or ordered by the family law court for youth no longer committed to TYC, but who is still on parole or supervision with TYC;

(H) attend any non-routine medical appointments for the youth and participate in writing or by telephone regarding routine medical appointments when DFPS is the youth's medical consenter;

(I) attend any TYC hearings involving the youth to the extent practicable;

(J) notify TYC of any special educational issues or meetings, including a scheduled Admission, Review or Dismissal hearing for a youth who is released under TYC supervision or parole;

(K) participate and coordinate with TYC in any transition planning at the time of the youth's discharge from detention, TYC commitment, or supervised release or parole; and

(L) notify TYC of the youth's adoption or any transfer of managing conservatorship from the department to another individual.

(3) Security Provision. All DFPS employees who visit any TYC facility will comply with that facility's security regulations.

(d) Responsibilities of TYC.

(1) Obligation to Provide General Information to DFPS Regarding Youth Committed to TYC. For youth committed to TYC, TYC will ensure that the youth's TYC caseworker or other TYC personnel, as appropriate, will provide the youth's CPS caseworker with the following information, to be updated on a timely basis as information changes:

(A) information regarding the youth's current medical care needs;

(B) clinical information relating to any trauma the youth has experienced in a TYC placement;

(C) information regarding the youth's mental health and counseling needs or treatment, including sex offender treatment or drug or alcohol treatment;

(D) a copy of the youth's individual case plan;

(E) name and contact information for the youth's educational surrogate parent;

(F) a copy of the youth's academic achievement records;

(G) a copy of the youth's re-entry and re-integration plan; and

(H) upon release of the youth, a copy of all of the youth's medical records for inclusion in the youth's medical passport maintained by DFPS.

(2) Notice of Medical Appointments for Youth Committed to TYC. TYC or TYC's medical contractor will provide advance notice of all routine and non-routine medical appointments to the youth's

medical consenter and will contact the medical consenter immediately to obtain consent for any non-routine medical care requiring consent for treatment.

(3) Notice of Significant Events for Youth Committed to TYC or under TYC supervised release or parole. TYC will provide timely notice to the youth's CPS caseworker, and any current attorney ad litem, guardian ad litem or CASA of the following events relating to any youth committed to TYC or under TYC supervised release or parole:

(A) any meetings to develop or revise the youth's TYC individual case plan;

(B) any grievance or disciplinary hearings;

(C) any education meetings, including Admission, Review, or Dismissal meetings for a youth receiving special education services;

(D) a report of alleged abuse or neglect of the youth; and

(E) a significant medical condition of the youth, as defined by §266.005, Family Code.

(4) Coordination of Services for Youth Committed to TYC or under TYC supervised release or parole. TYC will ensure that the youth's TYC caseworker or other appropriate TYC personnel will do the following in order to facilitate coordinated planning and appropriate services of any youth committed to TYC or under TYC supervised release or parole:

(A) provide DFPS with the name and contact information for the youth's TYC caseworker, including timely notice of any changes to the youth's TYC caseworker or contact information;

(B) contact the youth's CPS caseworker at least once each month and more often if necessary to confer regarding the youth's progress and any special issues relating to the youth;

(C) coordinate with the youth's CPS caseworker in the development of any DFPS plan of service for the youth and case plans developed by TYC for the youth;

(D) no later than 15 days prior to any scheduled permanency hearing or placement review hearing conducted under Chapter 263, Family Code, provide the youth's CPS caseworker with a written case report regarding the youth's progress in any rehabilitation programs administered by or on behalf of TYC;

(E) make arrangements for the youth's attendance in person, by telephone, or by videoconference in any permanency hearing or placement review hearing conducted under Chapter 263, Family Code, unless the youth's attendance has been excused by the court;

(F) attend any permanency hearing or placement review hearing conducted under Chapter 263, Family Code regarding the youth, to the extent practicable;

(G) notify the youth's CPS caseworker within 24 hours of any change in placement for youth committed to TYC;

(H) permit the youth's CPS caseworker to communicate with the youth, including in person visits at least once each month and more often if necessary;

(I) provide advance notice to the youth's CPS caseworker of any TYC court hearings involving the youth to the extent practicable; and

(J) coordinate with the youth's CPS caseworker in any community re-integration planning at the time of the youth's discharge from commitment, detention, or supervised release or parole.

(e) Relief of obligations. If either party is prohibited by state or federal law from providing any information under this rule or from taking any other action of this rule, the parties will be relieved of such obligation. If any provision under this rule is declared void as a matter of law, the parties will continue to abide by the remaining provisions.

(f) Confidentiality. To the extent required by state and federal law, each party agrees to keep the information obtained from the other party confidential. Both parties agree to comply with relevant confidentiality and security policies of the other agency. Sharing of any confidential information between the parties pursuant to this rule does not serve to waive or affect the confidential nature of the information for purposes of state or federal law.

(g) Conflicts. To the extent this rule conflicts with any agreements between TYC and DFPS, this rule shall take precedence unless and until it is amended.

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

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TRD-200904926
Gerry Williams
General Counsel
Department of Family and Protective Services
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For further information, please call: (512) 438-3437

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CHAPTER 745. LICENSING
SUBCHAPTER K. INSPECTIONS AND INVESTIGATIONS
DIVISION 3. CONFIDENTIALITY

40 TAC §745.8485

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §745.8485, concerning are investigations confidential, in its Licensing chapter. In the 81st legislative session, the Legislature enacted Senate Bill (SB) 1050, which amends Chapter 261 of the Family Code to require DFPS to release certain summary information to the public in the event of a child fatality that is investigated by DFPS as the alleged result of abuse or neglect of a child. SB 1050 governs child fatalities that occur in the home as well as child fatalities that occur in residential child-care facilities regulated by DFPS. The duty to release information and findings in the event of a child fatality that is the result of abuse or neglect is also mandatory under the federal Child Abuse Prevention and Treatment Act (CAPTA). SB 1050 provides parameters for the types of summary information and findings to be released following a child fatality investigated by DFPS, and directs the Executive Commissioner of the Health and Human Services Commission to adopt rules for the implementation of this new statute. SB 1050 applies to any child fatality that occurs on or after September 1, 2009. The amendment to §745.8485 provides that notwithstanding

the rules in the section (which provide generally that CCL abuse and neglect information is strictly confidential and may not be released to the public), the public may obtain certain summary information about a child fatality in accordance with Subchapter D, Release of Records Relating to a Child Fatality, in Chapter 702 of this title (relating to General Administration). Subchapter D of Chapter 702 is proposed in this issue of the *Texas Register.*

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Brown also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the public will have access to summary information regarding child-fatalities that are the result of alleged abuse or neglect, including a summary of relevant information about DFPS's prior investigations or regulatory oversight of the family or residential child-care facility where the death occurred. There will be no effect on large, small, or micro-businesses because the proposed changes do not impose new requirements on any business and do not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed section.

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

Questions about the content of the proposal may be directed to Phoebe Knauer at (512) 438-2910 in DFPS's Legal Services Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-405, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements §261.203, Family Code, as added by SB 1050, 81st Legislative Session.

§745.8485. Are investigations confidential?

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

(d) Records related to a child fatality that is the subject of an investigation may be released to the general public as provided under Subchapter D, Release of Records Related to a Child Fatality, in Chapter 702 of this title (relating to General Administration).

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

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Gerry Williams
General Counsel
Department of Family and Protective Services
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For further information, please call: (512) 438-3437

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CHAPTER 745. LICENSING

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §745.8659 and §745.9065, concerning will there be any publication of the denial, suspension, or revocation of my permit, and what qualifications must I meet to conduct a social study, in its Licensing chapter. The purpose of the amendments is to implement legislation in the Child Care Licensing program passed during the 81st Legislature, Regular Session, 2009.

The amendment to §745.8659 adds the option of publishing notice of a revocation or suspension of a facility's license or a family home's listing or registration on DFPS's website. This proposed change is the result of Senate Bill 68. The amendment also divides the rule into subsections in order to make the rule easier to read.

The amendment to §745.9065 adds an additional exemption for those conducting court-ordered social studies. This proposal is a result of House Bill 1012.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that more people will be able to conduct social studies and there will be easier public access to information. There will be no effect on large, small, or micro-businesses because the proposed changes do not impose new requirements on any business and do not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

HHSC has determined that the proposed amendments 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 §2007.043, Government Code.

Questions about the content of the proposal may be directed to Jennifer Ritter at (512) 438-5433 in DFPS's Licensing Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-403, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

SUBCHAPTER L. REMEDIAL ACTIONS
DIVISION 3. ADVERSE ACTIONS

40 TAC §745.8659

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.002 and §42.077, as amended by Senate Bill 68, 81st Legislature, Regular Session, 2009.

§745.8659. Will there be any publication of the denial, suspension, or revocation of my permit?

(a) If [~~Yes, if~~] you waive the administrative review and due process hearing or if the denial, suspension, or revocation is upheld in the process, we will publish a notice of the adverse action taken against you: [~~in the local newspaper.~~]

(1) On DFPS's Internet website along with other information regarding your child-care services; or

(2) In the section of a local newspaper of general circulation in the county where your operation is located.

(b) For a denial, we will publish the notice only if you were previously operating.

(c) In addition, we will send notification of the outcomes of the administrative review and the due process hearing to those state and federal programs and agencies that we previously informed of the adverse action.

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 October 30, 2009.

TRD-200904961
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: December 13, 2009
For further information, please call: (512) 438-3437

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SUBCHAPTER O. INDEPENDENT COURT-ORDERED SOCIAL STUDIES
DIVISION 2. MINIMUM QUALIFICATIONS AND OTHER REQUIREMENTS

40 TAC §745.9065

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements Texas Family Code, §107.0511, as amended by House Bill 1012, 81st Legislature, Regular Session, 2009.

§745.9065. What qualifications must I meet to conduct a social study?

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

(d) The minimum qualifications prescribed in subsections (a) and (c) of this section do not apply to an individual conducting a social study:

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

(4) As an employee or other authorized representative of the Department of Family and Protective Services; [~~or~~]

(5) If no individuals meeting these qualifications are available in a county, and the court determines the individual to be otherwise qualified to conduct the study; or [~~.~~]

(6) Who meets the training and continuing education requirements set forth in subsection (e) of this section and who did the following before September 1, 2007:

(A) Lived in a county that has a population of 500,000 or more and is adjacent to two or more counties each of which has a population of 50,000 or more;

(B) Received a four-year degree from an accredited institution of higher education;

(C) Worked as a child protective services investigator for the Department of Family and Protective Services for at least four years;

(D) Worked as a community supervision and corrections department officer; and

(E) Conducted at least 100 social studies in the previous five years.

(e) A person described by subsection (d)(6) of this section must:

(1) Complete at least eight hours of family violence dynamics training provided by a family violence service provider; and

(2) Participate annually in at least 15 hours of continuing education for child custody evaluators that meets the Model Standards of Practice for Child Custody Evaluation adopted by the Association of Family and Conciliation Courts as those standards existed May 1, 2009, or a later version of those standards if adopted by rule of the executive commissioner of the Health and Human Services Commission.

(f) [~~(e)~~] Persons conducting a pre-adoptive home screening or post-placement adoptive report as an employee or other authorized representative of a licensed child-placing agency must comply with all requirements of Chapter 749 of this title (relating to Child Placing Agencies).

(g) Subsections (d)(6) and (e) of this section expire on September 1, 2017.

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

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Gerry Williams
General Counsel
Department of Family and Protective Services
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For further information, please call: (512) 438-3437

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CHAPTER 746. MINIMUM STANDARDS FOR CHILD-CARE CENTERS

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§746.501, 746.801, 746.1309, 746.1311, and 746.5607; and new §§746.1316, 746.4131, 746.4133, 746.4135, concerning operational policies, record keeping, professional development, product safety, and transportation, in its Minimum Standards for Child-Care Centers chapter. The purpose of the amendments and new sections is to implement minimum standard changes that are the result of legislation passed during the 81st Legislature, Regular Session, 2009. House Bill (HB) 2086 requires the establishment of gang-free zones around child-care centers. Senate Bill (SB) 61 revises child passenger safety seat requirements. SB 572 requires transportation safety training. SB 95 requires standards concerning unsafe children's products.

Section 746.501 requires child-care centers to include information in their operational policies that inform parents about the consequences of engaging in organized criminal activity within 1000 feet of a child-care center, which is now considered a gang-free zone.

Section 746.801 requires child-care centers to include written certification that no unsafe children's products are in use or accessible to children in the child-care center.

Section 746.1309 requires any caregiver who transports a child in care whose chronological or developmental age is younger than nine years old to complete two additional hours of annual training in transportation safety.

Section 746.1311 requires two hours of transportation safety training for a director if the operation provides transportation for children who are chronologically or developmentally under the age of nine years.

New §746.1316 requires that any employee or owner who transports children in care whose chronological or developmental age is younger than nine years old must complete two hours of annual transportation safety training prior to transporting children.

New §746.4131 adds a definition of children's products.

New §746.4133 identifies unsafe children's products.

New §746.4135 outlines the center's responsibilities in ensuring there are no unsafe children's products in use at a child-care center.

Section 746.5607 includes new age and height requirements and clarifies and makes consistent the language for the types of safety seats that children need to be secured in. There has been some concern expressed that this rule needs to distinguish between different vehicle types, such as passenger vans, multi-function school activity buses and school buses versus the current rule language which focuses on the gross vehicle weight rating of the vehicle. DFPS is committed to child safety and encourages any comments on vehicular safety and child safety.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the reduction of risk to children while they are in out of home care. Risk to children should decrease as providers transporting children under the age of nine years receive training in transportation safety. Requiring providers and caregivers to take additional training in transportation safety should reduce the types of risk that are more likely to occur if children are being transported by a provider, such as accidentally being left in a vehicle. The risk to children will also decrease with changes to age and height requirements for children in safety seats or child booster seats.

There will be an effect on large, small, or micro-businesses because of the proposed changes relating to SB 572 and SB 61. Currently there are 3,564 child-care centers that indicated that they offer transportation to and from school. For SB 572, child-care centers will have to secure training for employees who transport children younger than nine years of age. Licensing staff calculated the impact using cost research conducted by staff and assumptions regarding child-care policy. Cost will depend on the number of employees who transport children and the availability of training resources. To figure the costs, Licensing assumed that there are two drivers per center, one substitute driver, and one director who will need the training. Using the average cost of training ($20 per employee/director) and the hourly wage of employees ($10 per hour for employees and $20 per hour for a director), Licensing estimates the cost of complying with the proposed rules relating to SB 572 to be $180 per licensed child-care center. This amount consists of $80 for three employees and one director receiving training at $20 each (4 x 20 = $80), three employees for two hours of training each at $10 per hour for each employee (3 x 2 x 10 = $60), and one director for two hours of training at $20 per hour (1 x 2 x 20 = $40). It should also be noted that directors may also conduct the facility's transportation training, which would reduce the costs.

The cost of complying with the rules associated with SB 61 is estimated to be $520 per licensed child-care center because affected child-care centers will have to purchase additional booster seats. The law previously required a child to be secured in a child passenger safety seat system if a child was younger than five years of age or less than 36 inches tall. The law now requires a child to be secured if a child is younger than eight years of age, unless the child is taller than four feet, nine inches. The manufacturing instructions and the current rules allow a safety seat or a booster seat to secure a child in this situation. Since the law now requires additional children to be secured in safety seats or booster seats, affected child-care centers may need to purchase/use additional safety seats or booster seats. Cost will depend on the number of children under eight years old being served, the total number of children being served, the amount of transportation provided by the child-care center, and the number of safety seats and booster seats already owned by the center. Licensing used the following assumptions: Two 15 passenger vans are used to transport a total of 28 children at a time; 50%

of the children that did not previously need a safety seat or a booster seat will now require one; the provider will purchase necessary booster seats because booster seats are cheaper than safety seats; the average cost of a booster seat is $40; booster seats will need to be purchased for 13 children, totaling $520 per center. It is estimated that the total cost for all child-care centers to comply with this new requirement is $1,853,280.

There is no anticipated adverse impact on small, micro, and large businesses as a result of the proposed rule changes relating to HB 2086 or SB 95. The proposed rule changes would not affect the cost of doing business because the business would not have to purchase any new equipment or hire or train staff in order to comply.

A regulatory flexibility analysis is not required for the proposed rules because they are specifically mandated by state law and therefore consistent with the health and safety of the individuals whom the state law was intended to protect. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

HHSC has determined that the proposed amendments and new sections 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 §2007.043, Government Code.

Questions about the content of the proposal may be directed to Jennifer Ritter at (512) 438-5433 in DFPS's Licensing Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-402, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION
DIVISION 4. OPERATIONAL POLICIES

40 TAC §746.501

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.064, as added by House Bill 2086, 81st Legislature, Regular Session, 2009.

§746.501. Must I have written operational policies?

Yes. You must develop written policies, which at a minimum address each of the following:

(1) - (19) (No change.)

(20) The procedures for parents to review a copy of the minimum standards and the child-care center's most recent Licensing inspection report; [~~and~~]

(21) Instructions on how a parent may contact the local Licensing office, DFPS [~~PRS~~] child abuse hotline, and DFPS [~~PRS~~] website; and [~~.~~]

(22) Your method of informing the parents that under the Texas Penal Code, any area within 1000 feet of a child-care center is a gang-free zone, where criminal offenses related to organized criminal activity are subject to harsher penalty. Your method may include:

(A) providing this information in the parent's handbook;

(B) distributing the information in writing to the required recipients; or

(C) informing parents verbally as part of the individual or group parent orientation.

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 October 30, 2009.

TRD-200904952
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: December 13, 2009
For further information, please call: (512) 438-3437

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SUBCHAPTER C. RECORD KEEPING
DIVISION 3. RECORDS THAT MUST BE KEPT ON FILE AT THE CHILD-CARE CENTER

40 TAC §746.801

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §§42.002, 42.0423, and 42.055, as added or amended by Senate Bill 95, 81st Legislature, Regular Session, 2009.

§746.801. What records must I keep at my child-care center?

You must maintain and make the following records available for our review upon request, during hours of operation. Paragraphs (18), (19), and (20) are optional, but if provided, allow [~~allows~~] Licensing to avoid duplicating the evaluation of standards, which have been evaluated by other state agencies within the past year:

(1) - (7) (No change.)

(8) Proof of request for DFPS [~~PRS~~] background checks;

(9) - (17) (No change.)

(18) Most recent Department of State Health Services [~~Texas Department of Health~~] immunization compliance review form, if applicable;

(19) Most recent Texas Department of Agriculture [~~Human Services~~] Child and Adult Care Food Program (CACFP) report, if applicable;

(20) (No change.)

(21) Record of pest extermination, if applicable; [~~and~~]

(22) Written approval from the fire marshal to provide care above or below ground level, if applicable; and [~~.~~]

(23) Most recent DFPS form certifying that you have reviewed each of the bulletins and notices issued by the United States Consumer Product Safety Commission regarding unsafe children's products and that there are no unsafe children's products in use or accessible to children in the child-care center.

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

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SUBCHAPTER D. PERSONNEL
DIVISION 4. PROFESSIONAL DEVELOPMENT

40 TAC §§746.1309, 746.1311, 746.1316

The amendments and new section are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new section implement HRC §42.0421(e), as added by Senate Bill 572, 81st Legislature, Regular Session, 2009.

§746.1309. How many clock hours of annual training must be obtained by caregivers?

(a) Each caregiver must obtain at least 15 clock hours of training each year. The 15 clock hours of annual training are exclusive of orientation, pre-service training requirements, CPR and first aid, transportation safety training, and high school child-care work-study classes.

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

(e) A caregiver who transports a child whose chronological or developmental age is younger than nine years old must meet additional training requirements, as outlined in §746.1316 of this title (relating to What additional training must a person have in order to transport a child in care).

§746.1311. How many clock hours of training must my child-care center director obtain each year?

(a) The child-care center director must obtain at least 20 clock hours of training each year. The 20 clock hours of annual training are exclusive of CPR and first aid, orientation, [~~and~~] pre-service training requirements, and transportation safety.

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

(g) If the center transports a child younger than nine years old, the director must complete two hours of annual training on transportation safety in addition to the other training requirements.

(h) [~~(g)~~] The director may obtain clock hours or CEUs from the same sources as caregivers, with the following exceptions:

(1) Training hours may not be earned for presenting training to others, with the exception of up to two hours of training on transportation safety; and

(2) No more than ten of the required 20 clock hours of annual training may be obtained through self-instructional training.

§746.1316. What additional training must a person have in order to transport a child in care?

(a) An employee or owner must complete two hours of annual training on transportation safety in order to transport a child whose chronological or development age is younger than nine years old. This training is in addition to other required training hours.

(b) The person must obtain these two hours of transportation safety training prior to transporting children.

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

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SUBCHAPTER S. SAFETY PRACTICES
DIVISION 6. PRODUCT SAFETY

40 TAC §§746.4131, 746.4133, 746.4135

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the

Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §§42.002, 42.0423, and 42.055 as added or amended by Senate Bill 95, 81st Legislature, Regular Session, 2009.

§746.4131. What are "children's products?"

Children's products are products that are designed or intended to be used by a child under 13 years of age or used by a caregiver during the care of a child under 13 years of age. The term does not include:

(1) An item that is not designed or intended to be used solely or primarily by a child under 13 years of age or for the care of a child under 13 years of age;

(2) A medication, drug, food, or other item that is intended to be ingested; or

(3) Clothing.

§746.4133. When is a children's product considered to be unsafe?

A children's product is considered to be unsafe if after it has been recalled for any reason by the United States Consumer Product Safety Commission:

(1) The recall has not been rescinded; and

(2) The product has not been made safe through being remanufactured or retrofitted.

§746.4135. What are my responsibilities regarding unsafe children's products in my child-care center?

(a) You are responsible for reviewing the United States Consumer Product Safety Commission (CPSC) recall list. You may view all current and past recalls through the CPSC's Internet website at: www.cpsc.gov. You must ensure that there are no unsafe children's products in your child-care center unless one or more of the following apply:

(1) The product is an antique or collectible children's product and is not used by, or accessible to any child; or

(2) The unsafe children's product is being retrofitted to make it safe and the product is not used by, or accessible to any child.

(b) You must certify annually in writing using a form provided by DFPS that you have reviewed each of the recall notices issued by the CPSC and that there are no unsafe products in the center except products specified in subsection (a) of this section. The form must be kept on file and available for review upon request by Licensing staff, parents, and employees during hours of operation.

(c) You must post a notice for parents and employees in a prominent and publicly accessible place that includes information on how to access a listing of unsafe children's products through the CPSC Internet website or through the DFPS Internet website.

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

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Gerry Williams
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SUBCHAPTER X. TRANSPORTATION

40 TAC §746.5607

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements Transportation Law §545.412, as amended by Senate Bill 61, 81st Legislature, Regular Session, 2009.

§746.5607. What safety seat system must I use when I transport children?

For all vehicles other than a bus with a GVWR of 10,000 pounds or more, you must secure each child in an infant safety seat, child safety seat, child booster seat, or a seat belt, as appropriate to the child's age, height, and weight according to manufacturer's instructions before starting the vehicle, and during all times the vehicle is in motion. All child passenger safety seat systems must meet federal standards for crash-tested restraint systems as set by the National Highway Traffic Safety Administration, and must be properly secured in the vehicle according to manufacturer's instructions. The following restraint devices must be used when transporting children:
Figure: 40 TAC §746.5607

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

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Gerry Williams
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CHAPTER 747. MINIMUM STANDARDS FOR CHILD-CARE HOMES

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§747.801, 747.1307, 747.1309, and 747.5407; and new §§747.1314, 747.3931, 747.3933, and 747.3935, concerning record keeping, professional development, product safety, and transportation, in its Minimum

Standards for Child-Care Homes chapter. The purpose of the amendments and new sections is to implement minimum standard changes that are the result of legislation passed during the 81st Legislature, Regular Session, 2009. Senate Bill (SB) 61 revises child passenger safety seat requirements. SB 572 requires transportation safety training. SB 95 requires standards concerning unsafe children's products.

Section 747.801 requires child-care homes to include written certification that there are no unsafe children's products in use or accessible to children in a licensed or registered home.

Section 747.1307 requires any caregiver who transports a child in care whose chronological or developmental age is younger than nine years old to complete two additional hours of annual training in transportation safety.

Section 747.1309 requires two hours of transportation safety training for a primary caregiver if the home based program provides transportation for children who are chronologically or developmentally under the age of nine years.

New §747.1314 requires any caregiver who transports children in care whose chronological or developmental age is younger than nine years old to complete two hours of annual transportation safety training prior to transporting children.

New §747.3931 adds a definition of children's products.

New §747.3933 identifies unsafe children's products.

New §747.3935 outlines the home provider's responsibilities in ensuring there are no unsafe children's products in use or accessible to children in care at the home.

Section 747.5407 includes new age and height requirements and clarifies and makes consistent the language for the types of safety seats that children need to be secured in. There has been some concern expressed that this rule needs to distinguish between different vehicle types, such as passenger vans, multifunction school activity buses and school buses versus the current rule language which focuses on the gross vehicle weight rating of the vehicle. DFPS is committed to child safety and encourages any comments on vehicular safety and child safety.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the reduction of risk to children while they are in out of home care. Risk to children should decrease as providers transporting children under the age of nine years receive training in transportation safety. Requiring providers and caregivers to take additional training in transportation safety should reduce the types of risk that are more likely to occur if children are being transported by a provider, such as accidentally being left in a vehicle. The risk to children will also decrease with changes to age and height requirements for children in safety seats or child booster seats.

There will be an effect on large, small, or micro-businesses because of the proposed changes relating to SB 572 and SB 61. Currently, there are 1,285 licensed and registered child-care homes that indicated they offer transportation to and from school. Licensing staff calculated the impact using cost research conducted by staff and assumptions regarding child-care policy. Licensing estimates the cost of complying with the proposed rules relating to SB 572 to be $20 per licensed or registered child-care home because child-care homes will have to secure training for employees who transport children younger than nine years of age. Licensing based the cost on one driver per home needing a two-hour training that will cost approximately $20.

The cost of complying with the rules associated with SB 61 is estimated to be $120 per child-care home because affected child-care homes will have to purchase additional child safety or booster seats. The law previously required a child to be secured in a child passenger safety seat system if a child was younger than five years of age or less than 36 inches tall. The law now requires a child to be secured if a child is younger than eight years of age, unless the child is taller than four feet, nine inches. The manufacturing instructions and the current rules allow a safety seat or a booster seat to secure a child in this situation. Since the law now requires additional children to be secured in safety seats or booster seats, affected child-care homes may need to purchase/use additional safety seats or booster seats. Cost will depend on the number of children under eight years old being served, the total number of children being served, the amount of transportation provided by the child-care home, and the number of safety seats or booster seats already owned by the home. Licensing used the following assumptions: One passenger vehicle is used to transport up to five children; 50% of the children that did not previously need a safety seat or a booster seat will now require one; the provider will purchase necessary booster seats because booster seats are cheaper than safety seats; the average cost of a booster seat is $40; booster seats will need to be purchased for three children, totaling $120 per child-care home. It is estimated that the total cost for all child-care homes to comply with this new requirement is $154,200.

There is no anticipated adverse impact on small, micro, and large businesses as a result of the proposed rule changes relating to SB 95. The proposed rule changes would not affect the cost of doing business because the business would not have to purchase any new equipment or hire or train staff in order to comply.

A regulatory flexibility analysis is not required for the proposed rules because they are specifically mandated by state law and therefore consistent with the health and safety of the individuals whom the state law was intended to protect. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

HHSC has determined that the proposed amendments and new sections 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 §2007.043, Government Code.

Questions about the content of the proposal may be directed to Jennifer Ritter at (512) 438-5433 in DFPS's Licensing Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-402, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

SUBCHAPTER C. RECORD KEEPING

DIVISION 3. RECORDS THAT MUST BE KEPT ON FILE AT THE CHILD-CARE HOME

40 TAC §747.801

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §§42.002, 42.0423, and 42.055, as added or amended by Senate Bill 95, 81st Legislature, Regular Session, 2009.

§747.801. What records must I keep at my child-care home?

You must maintain and make the following records available for our review upon request during hours of operation. Paragraphs (10), (11), and (12) are optional, but if provided, will allow Licensing to avoid duplicating the evaluation of standards which have been evaluated by another state agency within the past year:

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

(4) Proof of request for DFPS [~~PRS~~] background checks, as required in §747.901 of this title;

(5) - (9) (No change.)

(10) Most recent Department of State Health Services [~~Texas Department of Health~~] immunization compliance review form, if applicable;

(11) Most recent Texas Department of Agriculture [~~Human Services~~] Child and Adult Care Food Program (CACFP) report, if applicable;

(12) Most recent local workforce board Child-Care Services Contractor inspection report, if applicable; [~~and~~]

(13) Written approval from the fire marshal to provide care above or below ground level, if applicable; and [~~.~~]

(14) Most recent DFPS form certifying that you have reviewed each of the bulletins and notices issued by the United States Consumer Product Safety Commission regarding unsafe children's products and that there are no unsafe children's products in use or accessible to children in the home.

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

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Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: December 13, 2009
For further information, please call: (512) 438-3437

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SUBCHAPTER D. PERSONNEL
DIVISION 4. PROFESSIONAL DEVELOPMENT

40 TAC §§747.1307, 747.1309, 747.1314

The amendments and new section are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new section implement HRC §42.0421(e), as added by Senate Bill 572, 81st Legislature, Regular Session, 2009.

§747.1307. What topics must the 15 clock hours of annual training for caregivers include?

(a) Each caregiver counted in the child/caregiver ratio on more than ten separate occasions in one training year, as specified in §747.1311 of this title (relating to When must the annual training be obtained?) must obtain at least 15 clock hours of training annually. The 15 clock hours are exclusive of CPR, first aid, orientation, transportation safety, and any training received through a high school child-care work-study program;

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

(e) A caregiver who transports a child whose chronological or developmental age is younger than nine years old must meet additional training requirements as outlined in §747.1314 of this title (relating to What additional training must a person have in order to transport a child in care?).

§747.1309. What training topics must be included in my annual training as the primary caregiver?

(a) You must obtain at least 20 clock hours of training annually.

(1) The 20 clock hours of annual training are exclusive of the Licensing pre-application interview, [~~and~~] CPR and first-aid training, and transportation safety training; and

(2) (No change.)

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

(g) If the home transports children whose chronological or developmental age is younger than nine years old, the primary caregiver must complete two hours of annual training on transportation safety in addition to the other training hours.

§747.1314. What additional training must a person have in order to transport a child in care?

(a) A caregiver must complete two hours of annual training on transportation safety in order to transport a child whose chronological or development age is younger than nine years old. This training is in addition to other required training hours.

(b) The caregiver must obtain these two hours of transportation safety training prior to transporting children.

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

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Gerry Williams
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SUBCHAPTER S. SAFETY PRACTICES DIVISION 6. PRODUCT SAFETY

40 TAC §§747.3931, 747.3933, 747.3935

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §§42.002, 42.0423, and 42.055 as added or amended by Senate Bill 95, 81st Legislature, Regular Session, 2009.

§747.3931. What are "children's products?"

Children's products are products that are designed or intended to be used by a child under 13 years of age or used by a caregiver during the care of a child under 13 years of age. The term does not include:

(1) An item that is not designed or intended to be used solely or primarily by a child under 13 years of age or for the care of a child under 13 years of age;

(2) A medication, drug, food, or other item that is intended to be ingested; or

(3) Clothing.

§747.3933. When is a children's product considered to be unsafe?

A children's product is considered to be unsafe if after it has been recalled for any reason by the United States Consumer Product Safety Commission:

(1) The recall has not been rescinded; and

(2) The product has not been made safe through being remanufactured or retrofitted.

§747.3935. What are my responsibilities regarding unsafe children's products in my child-care home?

(a) You are responsible for reviewing the United States Consumer Product Safety Commission (CPSC) recall list. You may view all current and past recalls through the CPSC's Internet website at: www.cpsc.gov. You must ensure that there are no unsafe children's products in your child-care home unless one or more of the following apply:

(1) The product is an antique or collectible children's product and is not used by, or accessible to any child; or

(2) The unsafe children's product is being retrofitted to make it safe and the product is not used by, or accessible to any child.

(b) You must certify annually in writing using a form provided by DFPS that you have reviewed each of the recall notices issued by the CPSC and that there are no unsafe products in the home except products specified in subsection (a) of this section. The form must be kept on file and available for review upon request by Licensing staff, parents, and employees during hours of operation.

(c) You must post a notice for parents and employees in a prominent and publicly accessible place that includes information on how to access a listing of unsafe children's products through the CPSC Internet website or through the DFPS Internet website.

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

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Gerry Williams
General Counsel
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Earliest possible date of adoption: December 13, 2009
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SUBCHAPTER X. TRANSPORTATION

40 TAC §747.5407

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements Transportation Law §545.412, as amended by Senate Bill 61, 81st Legislature, Regular Session, 2009.

§747.5407. What safety seat system must I use when I transport children?

For vehicles other than a bus with a GVWR of 10,000 pounds or more, you must secure each child in an infant safety seat, child safety seat, child booster seat, or a seat belt, as appropriate to the child's age, height, and weight according to manufacturers' instructions before starting the vehicle, and during all times the vehicle is in motion. All child passenger safety seat systems must meet federal standards for crash-tested restraint systems as set by the National Highway Traffic Safety Administration, and must be properly secured in the vehicle according to manufacturer's instructions. The following restraint devices must be used when transporting all children, including children related to you: Figure: 40 TAC §747.5407

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

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TRD-200904960

Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: December 13, 2009
For further information, please call: (512) 438-3437

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CHAPTER 748. GENERAL RESIDENTIAL OPERATIONS AND RESIDENTIAL TREATMENT CENTERS

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§748.43, 748.931, and 748.4041, concerning what do certain words and terms mean in this chapter, what are the annual training requirements for caregivers and employees, and what safety restraint system must I use when I transport children, in its General Residential Operations and Residential Treatment Centers chapter. The purpose of the amendments is to implement legislation in the Child Care Licensing program passed during the 81st Legislature, Regular Session, 2009.

The amendment to §748.43 amends the definition of a "general residential operation" to be consistent with new law that includes residential treatment center as a subset of general residential operations. This change is the result of Senate Bill (SB) 68.

The amendment to §748.931 requires any persons who transport a child in care whose chronological or developmental age is younger than nine years old to complete two hours of annual training in transportation safety. This change is the result of SB 572.

The amendment to §748.4041 includes new age and height requirements and clarifies and makes consistent the language for the types of seats that children need to be secured in. This change is the result of SB 61. There has been some concern expressed that this rule needs to distinguish between different vehicle types, such as passenger vans, multifunction school activity buses and school buses versus the current rule language which focuses on the gross vehicle weight rating of the vehicle. DFPS is committed to child safety and encourages any comments on vehicular safety and child safety.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that the risk of harm to children will be reduced with changes to the age and height requirements for children in safety seats or booster seats. Risk to children should also decrease as providers transporting children under the age of nine receive training in transportation safety.

There will be an effect on large, small, or micro-businesses because of the proposed changes relating to SB 61. There are an estimated 15 small, micro businesses, and an estimated 219 large businesses that are expected to be impacted by the proposed rule. Affected child-care operations will have to purchase additional booster seats. The law previously required a child to be secured in a child passenger safety seat system if a child was younger than five years of age or less than 36 inches tall. The law now requires a child to be secured if a child is younger than eight years of age, unless the child is taller than four feet, nine inches. The manufacturing instructions and the current rules allow a safety seat or a booster seat to secure a child in this situation. Since the law now requires additional children to be secured in safety seats or booster seats, affected child-care operations may need to purchase/use additional safety seats or booster seats. Cost will depend on the number of children under eight years old being served, the total number of children being served, the amount of transportation provided by the operation, and the number of child safety seats and booster seats already owned by the operation. In fiscal year 2008, there were a total of 234 residential facilities. Licensing used the following assumptions: (1) four more children at each operation will be affected by the change in law; (2) an additional four booster seats will need to be purchased per operation (booster seats will be purchased instead of safety seats because booster seats are allowed and are cheaper); and (3) the average cost of booster seats is $40. This equals to a cost of approximately $160 per operation. There is no effect on large, small, or micro-businesses because of the proposed changes resulting from SB 68 or SB 572.

A regulatory flexibility analysis is not required for the proposed rules because they are specifically mandated by state law and therefore consistent with the health and safety of the individuals whom the state law was intended to protect. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

HHSC has determined that the proposed amendments 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 §2007.043, Government Code.

Questions about the content of the proposal may be directed to Jennifer Ritter at (512) 438-5433 in DFPS's Licensing Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-403, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

SUBCHAPTER B. DEFINITIONS AND SERVICES

DIVISION 1. DEFINITIONS

40 TAC §748.43

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.002 and §42.077, as amended by Senate Bill 68, 81st Legislature, Regular Session, 2009.

§748.43. What do certain words and terms mean in this chapter?

The words and terms used in this chapter have the meanings assigned to them under §745.21 of this title (relating to What do the following words and terms mean when used in this chapter?), unless another meaning is assigned in this section or unless the context clearly indicates otherwise. The following words and terms have the following meanings unless the context clearly indicates otherwise:

(1) - (21) (No change.)

(22) General Residential Operation--A residential child-care operation that provides child care for 13 or more children or young adults. The care may include treatment services and/or programmatic services. These operations include formerly titled emergency shelters, operations providing basic child care, operations serving children with mental retardation, and halfway houses. [~~A residential treatment center is not a general residential operation.~~]

(23) - (36) (No change.)

(37) Residential Treatment Center (RTC)--A general residential [~~child-care~~] operation for 13 or more children or young adults that exclusively provides treatment services for children with emotional disorders.

(38) - (50) (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.

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Gerry Williams
General Counsel
Department of Family and Protective Services
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SUBCHAPTER F. TRAINING AND PROFESSIONAL DEVELOPMENT
DIVISION 6. ANNUAL TRAINING

40 TAC §748.931

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042, as amended by Senate Bill 572, 81st Legislature, Regular Session, 2009.

§748.931. What are the annual training requirements for caregivers and employees?

Caregivers and certain employees must complete the following training hours:
Figure: 40 TAC §748.931

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

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Gerry Williams
General Counsel
Department of Family and Protective Services
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For further information, please call: (512) 438-3437

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SUBCHAPTER R. TRANSPORTATION
DIVISION 2. SAFETY RESTRAINTS

40 TAC §748.4041

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements Transportation Code §545.412, as amended by Senate Bill 61, 81st Legislature, Regular Session, 2009.

§748.4041. What safety restraint system must I use when I transport children?

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

(d) The following safety restraint devices for a child must be used when the vehicle is on and when transporting children:
Figure: 40 TAC §748.4041(d)

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

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For further information, please call: (512) 438-3437

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CHAPTER 749. CHILD-PLACING AGENCIES
SUBCHAPTER F. TRAINING AND PROFESSIONAL DEVELOPMENT
DIVISION 6. ANNUAL TRAINING

40 TAC §749.931

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §749.931, concerning what are the annual training requirements for caregivers and employees, in its Child-Placing Agencies chapter. The purpose of the amendment is to implement the requirements of Senate Bill 572, which was passed during the 81st Legislature, Regular Session, 2009. The amendment requires persons in foster group homes who transport a child in care whose chronological or developmental age is younger than nine years old to complete two hours of annual training in transportation safety.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Brown also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that risk to children should decrease as providers transporting children under the age of nine will receive training in transportation safety. There will be no effect on large, small or micro-businesses because the two hours of training in transportation safety is included in part of the individual's annual training requirements. This will not require any individual to acquire additional training hours beyond what they already receive in a year. There is no anticipated economic cost to persons who are required to comply with the proposed section.

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

Questions about the content of the proposal may be directed to Jennifer Ritter at (512) 438-5433 in DFPS's Licensing Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-403, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042, as amended by Senate Bill 572, 81st Legislature, Regular Session, 2009.

§749.931. What are the annual training requirements for caregivers and employees?

Caregivers and employees must complete the following training hours: Figure: 40 TAC §749.931

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

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General Counsel
Department of Family and Protective Services
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For further information, please call: (512) 438-3437

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 11. DESIGN
SUBCHAPTER C. ACCESS CONNECTIONS TO STATE HIGHWAYS

The Texas Department of Transportation (department) proposes amendments to §11.50, Access Management, and §11.51, Definitions; the repeal of §11.52, Delegation of Access Permit Authority to Municipalities or Eligible Counties, and new §11.52, Access Connection Facilities; amendments to §11.53, Locations Where the Department Controls the Access, and §11.54, Construction and Maintenance of Access Connection Facilities; the repeal of §11.55, Local Access Roads, and new §11.55, Appeal Process; the repeal of §11.56, Connection with Regionally Significant Highway, and new §11.56, Delegation of Access Permit Authority to Municipalities or Eligible Counties; and new §11.57, Local Access Roads, and §11.58, Connection with Regionally Significant Highway, all concerning access connections to the state highway system.

EXPLANATION OF PROPOSED AMENDMENTS, REPEALS, AND NEW SECTIONS

Title 43, Texas Administrative Code (TAC), Chapter 11, Subchapter C, Access Connections to State Highways, was adopted to prescribe requirements for the construction by adjacent property owners of access connections on highways on the state highway system in accordance with Transportation Code, Chapter 203, Subchapter C. Senate Bill 1609 (SB 1609), 81st Legislature, Regular Session, 2009, amended Transportation Code, §203.031 and required the Texas Transportation Commission (commission) to adopt rules for the management of access to or from a controlled access highway to include: (1) procedures for appealing a denial of access to a specific location; (2) the application to platted access points of access management standards in effect on the date that a subdivision is recorded; (3) notification to property owners of a highway construction project if the project will permanently alter permitted access at the owner's existing locations and an obligation to reinstate that existing access; (4) adoption of criteria for determining when a variance to access management standards may be granted; and (5) clarification that remodeling or demolition and rebuilding of a business does not cause new access management standards to apply unless traffic patterns are significantly impacted to the extent that

the existing access connection presents a threat to safety. The proposed amendments, repeals, and new sections are necessary to comply with the provisions of SB 1609 and clarify existing language.

Amendments to §11.50 include three changes. The first change in §11.50(b) clarifies that the requirements contained in 43 TAC Chapter 11, Subchapter C apply not only to existing access connections that are reconstructed or modified as part of a department highway project, but also to those existing access connections located on the right of way that are reconstructed, relocated, enlarged, or otherwise modified by the property owner or permit holder. Further changes to §11.50 delete subsection (c) concerning the January 1, 2004 effective date for implementation of Subchapter C provisions, and also delete subsection (d) concerning a transitional period that authorizes exceptions for specific access connection requests where significant prior commitments were made prior to January 1, 2005. Due to the passage of time following adoption of the rules, the provisions in subsections (c) and (d) are no longer necessary.

A definition of "Access management standards" is added as new §11.51(2). It identifies Chapter 2 of the Access Management Manual as the source of standards, criteria, and specifications that govern the location, design, construction, and maintenance of access connections. There is no current definition of this term and it is necessary for describing with specificity the conditions for issuance of an access connection permit.

A definition of "Construction of an access connection" is added as new §11.51(5). It refers to all methods and types of construction of an access connection including installation, original construction, reconstruction, relocation, enlargement, or other material modification. Use of the term is necessary for describing permit requirements under new 43 TAC §11.52, and construction and maintenance requirements for access connection facilities under amended 43 TAC §11.54.

A definition of "Design division" is added as new §11.51(7). It identifies the administrative office of the department responsible for the development of engineering design guidance and oversight of projects developed on the state highway system. There is no current definition for this term and it is important to clearly identify the office responsible for prescribing the terms of a permit under new 43 TAC §11.52(b) and initially handling a property owner's appeal under new 43 TAC §11.55.

A definition of "Development" is added as new §11.51(8). It refers to the new construction or the enlargement of any exterior dimension of a building, structure, or improvement. Use of the term is necessary for describing requirements under new 43 TAC §11.52(f) for application of the pre-existing access management standards to platted access points.

A definition of "Director" is added as new §11.51(9). It identifies the chief administrative officer in charge of the design division as the director. There is no current definition for this term and it is important to clearly identify the person responsible for prescribing the terms of a permit under new 43 TAC §11.52(b) and initially handling a property owner's appeal under new 43 TAC §11.55.

A definition of "District" is added as new §11.51(10). It refers to one of the 25 geographic districts into which the department is divided. There is no current definition for this term and it is necessary to provide the definition of "District engineer" under new 43 TAC §11.51(11).

A definition of "District engineer" is added as new §11.51(11). It identifies the chief administrative officer in charge of a district, or that officer's designee. There is no current definition for this term and it is necessary to identify the person responsible for approving or denying a permit request under new 43 TAC §11.52(b), approving or denying a variance request under new 43 TAC §11.52(e), and determination of access connection repairs under new 43 TAC §11.54(d).

A definition of "Permit" is added as new §11.51(17). It refers to the authorization issued by the department for entry to and or exit from a state highway and adjacent real property. There is no current definition for this term and it is necessary for defining the term "permittee" in renumbered §11.51(18), describing authorization for access connections under new 43 TAC §11.52, and identifying the circumstances for a property owner's appeal under new 43 TAC §11.55.

Amendments to renumbered §11.51(18) add the words "real," "the owner's," and "owner's" to the definition of "Permittee." The changes clarify that the adjacent real property owner is the appropriate person to receive an access connection permit.

A definition of "Platted access point" is added as new §11.51(19). It refers to an access connection identified in a plat or replat of a subdivision of real property properly recorded in the county clerk's office. Use of the term is necessary for describing requirements under new 43 TAC §11.52(f) for application of the pre-existing access management standards to platted access points.

Amendments to renumbered §11.51(21) delete the words "road or street or an entrance or exit from a public school, a publicly owned cemetery, or other publicly owned places or buildings that provide for public access" and replace them with the words "street, road, or highway" in the definition of "Public driveway." The changes clarify that a public driveway is only a street, road, or highway. Driveways that enter or exit publicly owned places or buildings do not qualify for that status.

A definition of "Undeveloped property" is added as new §11.51(24). It refers to the real property identified in a plat or replat of a subdivision properly recorded in the county clerk's office on which development has not commenced. Use of the term is necessary for describing requirements under new 43 TAC §11.52(f) for application of the pre-existing access management standards to platted access points.

Current §11.52, dealing with Delegation of Access Permit Authority to Municipalities or Eligible Counties, is repealed and is proposed as new §11.56, which is addressed further below in this preamble.

New §11.52 formalizes: (1) the process for issuance of an access connection permit; (2) the access management standards governing the location, design, construction, and maintenance of access connections; (3) the procedure for granting a variance to a requirement in the access management standards; (4) the applicable standards for previously platted access points; and (5) the applicable standards for remodeled and rebuilt business structures. It establishes detailed requirements and processes that consolidate department practices, are consistent with the provisions of SB 1609, and facilitate the ability of property owners to locate and understand the required procedures.

New §11.52(a) requires that a property owner obtain a permit prior to: (1) the construction of an access connection; or (2) a material change in the use of the real property, traffic volume, or vehicle types using the access connection that would result

in the application of more stringent requirements under the access management standards than are applicable to the existing access connection. It also clarifies that the permit will not be construed to grant, convey, or extinguish an interest in real property held by either the state or a permittee.

New §11.52(b) authorizes the director of the design division and the district engineer to establish the terms and conditions of a permit to ensure compliance with access management standards and to protect both the highway and the safety of the traveling public. It also provides that permits will be issued in accordance with applicable state and federal laws and that the impact on drainage, utility relocation, and the environment will also be considered. An engineering study may be required to assist in the evaluation process. The district engineer is authorized to approve or deny each request for a permit, and each denial must be in writing and include the reasons for the denial.

New §11.52(c) designates Chapter 2 of the department's December 2009 Access Management Manual as the access management standards to govern criteria and specifications for the location, design, construction, and maintenance of all access connections. The standards may be periodically revised and updated by written order of the commission, and the current version must be available online at the department's website.

New §11.52(d) requires the property owner to design the access connection in accordance with the access management standards and applicable law, and authorizes the department to review and approve the location and manner in which the owner constructs that portion of the access connection physically located within state highway right of way.

New §11.52(e) provides property owners with a procedure by which a variance may be granted to any requirement contained in the access management standards. A variance request must be approved by the district engineer. It will be considered only if the property owner demonstrates to the district engineer by documented information that undue hardship or unusual conditions provide justification for the change, and that alternate measures can provide adequate protection for the highway and the safety of the traveling public. For each request for a variance, the property owner must clearly demonstrate that: (1) a significant negative impact to the owner's real property or its use will likely result from a denial of the variance request, including (i) loss of reasonable access to the property; or (ii) undue hardship on a business located on the property; or (2) the existence of an unusual condition affecting the property that was not caused by the owner and justifies the request for the variance. When the property owner satisfies the preceding requirement, the requested variance will be approved unless the district engineer determines that the location, design, and construction of the requested access connection will: (1) adversely affect the safety, design, construction, operation, or maintenance of the highway; or (2) likely impair the ability of the state to receive federal funds. Finally, reasonable conditions for approval of the variance may be prescribed by the department in order to minimize any adverse impact on the safety, design, construction, operation, or maintenance of the highway.

New §11.52(f) provides that platted access points that are located on undeveloped property are subject to the access management standards in effect on the date that the subdivision plat was properly recorded if: (1) development of the tract commences and the request for a permit is submitted to the department before the fifth anniversary of the date that the subdivision plat was recorded; and (2) the design of the highway facility in the vicinity of the platted access points did not materially change after the date that the plat was recorded so as to significantly impact the traffic patterns to the extent that the applicable platted access points present a threat to public safety.

New §11.52(g) provides that the remodeling or demolition and rebuilding of a business structure on a permittee's real property do not require a new permit or the application of more stringent access management standards than are applicable to the approved access connection, unless the district engineer finds that the remodeled or rebuilt structure will significantly impact traffic patterns to the extent that the existing access connection location presents a threat to public safety. A finding of significant impact and threat to public safety by the district engineer must be in writing and include the reasons for the finding.

Amendments to §11.53(a) delete the word "Where" and replace it with the word "If," and add the word "property" between the words "adjacent" and "owner." These changes are for grammatical and clarification purposes.

Amendments to §11.54 add captions to subsections (a), (b), (c), and (e) to make the format of the section consistent with other sections in this subchapter. The descriptive words "construction, reconstruction, relocation, enlargement, modification" are added to subsections (a) and (b) to cover all of the activities that might impact an access connection. The phrase "except as otherwise provided in subsection (c) of this section" is added to subsections (a) and (b), and the phrase "at the expense of the state" is added to subsection (c)(1) to clarify that the owner's obligation to pay for all costs related to the driveways does not apply when an owner's existing access connection is destroyed or removed by the state in the construction or reconstruction of a section of highway. When the state causes the need for repair, the department rather than the owner is responsible for the cost.

New §11.54(c)(2) includes a requirement of SB 1609 relating to the permanent alteration of permitted access due to the construction or reconstruction of a section of highway. If the department determines that the proposed construction or reconstruction will permanently alter permitted access at an adjacent owner's existing driveway location, the department will provide the owner with at least 60 days written notice prior to commencement of construction, and will at the expense of the state, reinstate the pre-existing access to the most practicable extent possible after due consideration of the impact of the new construction on highway safety, mobility, and efficient operation.

New §11.54(d) authorizes the department to inspect the construction of an owner's access connection and require changes or repairs that the district engineer reasonably determines are necessary to bring the access connection into compliance with terms and conditions of the permit. A decision to require a change or repair must be in writing, describe the actions to be performed, and provide a reasonable period for compliance.

Current §11.55, dealing with Local Access Roads, is repealed and is proposed as new §11.57, which is addressed further down in this preamble.

New §11.55 provides the property owner with a procedure to appeal an adverse decision by the department that relates to an access connection subject to this subchapter. The appeal process gives the owner an opportunity to appeal a district decision first to the director of the design division, and if not satisfied at that level, the appeal can be presented to the department's executive director, and finally relief can be requested from a board of

variance. This process is consistent with the requirements of SB 1609.

New §11.55(a) and (b) authorize an owner or its authorized representative to file a petition of appeal to contest: (1) a requirement for a change or repair under new §11.54(d); (2) the denial of a request for a variance under new §11.52(e); (3) a finding of significant impact and threat to public safety under new §11.52(g); or (4) the denial of a request for a driveway permit under new §11.52(b). The petition must be filed with the director of the design division before the 31st day after the date written notice of the denial is received by the applicant.

New §11.55(c) requires that the petition must: (1) be in writing; (2) completely and succinctly state the grounds for the appeal and its factual basis; and (3) include sufficient factual documentation, such as drawings, surveys, or photographs to establish the merits of the appeal.

New §11.55(d) provides that the applicant has the burden of demonstrating that the department incorrectly applied its access connection requirements to the applicable facts.

New §11.55(e) requires the director of the design division to issue, before the 91st day after the date of receipt of the petition, a written decision approving or disapproving the appeal, and to immediately send the decision to the applicant. If a written decision is not issued within the 90-day period, the appeal is considered to be approved and the request granted. The deemed approval is subject to: (1) any required purchase of access rights in accordance with §11.53 if the applicant has no existing right of access; and (2) consent of the Federal Highway Administration in accordance with 23 C.F.R. §710.401 if the requested access connection is on an interstate highway.

New §11.55(f) provides the owner an opportunity to appeal the design division director's decision under new §11.55(e). The owner must submit its written petition of appeal to the executive director before the 31st day after the date that written notice of the decision is received. The executive director will issue, before the 91st day after the date of receipt of the petition, a written decision approving or disapproving the appeal.

New §11.55(g) provides the owner an opportunity to appeal the executive director's decision to a board of variance under new §11.55(f). The owner must submit to the executive director its written petition of appeal to a board of variance, before the 31st day after the date that written notice of the adverse decision is received. The executive director will then appoint a board of variance composed of at least three persons who are not below the level of department division director, office director, or district engineer and each of whom was not involved in the original decision to deny the applicant's request. A majority of the members of the board constitutes a quorum. The board of variance shall, before the 10th day preceding the date of the board meeting, give the applicant notice of the time and place of the meeting and afford the applicant an opportunity to attend and present evidence regarding the appeal. Before the 11th day after the date of the meeting, the board of variance will issue a final written decision approving or disapproving the appeal.

Current §11.56, dealing with Connection with Regionally Significant Highway, is repealed and is proposed as new §11.58, which is addressed further down in this preamble.

New §11.56 uses the language from repealed §11.52 and, in addition, corrects a section number reference from §11.56 to §11.58 to correspond to the new section in the subchapter and deletes a superfluous reference to "United States Department of Transportation" to consistently reference the Federal Highway Administration throughout the subchapter.

New §11.57 uses the language from repealed §11.55 and, in addition, corrects a section number reference from §11.56 to §11.58 to correspond to the new section in the subchapter.

New §11.58 uses the language from repealed §11.56 with no changes to the text.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the repeals, amendments, and new sections as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the repeals, amendments, and new sections. There are no anticipated economic costs for persons required to comply with the sections as proposed.

Mark A. Marek, P.E., Director, Design Division has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the repeals, amendments, and new sections.

PUBLIC BENEFIT

Mr. Marek has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the repeals, amendments, and new sections will be consolidation of applicable regulations into 43 TAC Chapter 11 and improved efficiency and consistency in the handling of access connections on the state highway system. There will be no adverse economic effect on small businesses.

PUBLIC HEARING

Pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed rules. The public hearing will be held at 9:00 a.m. on Wednesday, December 2, 2009, in the first floor hearing room of the Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin, Texas and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 8:30 a.m. Any interested persons may appear and offer comments, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views and identical or similar comments through a representative member when possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc. for proper reference. Any suggestions or requests for alternative language or other revisions to the proposed text should be submitted in written form. Presentations must remain pertinent to the issues being discussed. A person may not assign a portion of his or her time to another speaker. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Government and Public Affairs Division, 125 East 11th

Street, Austin, Texas 78701-2483, (512) 305-9137 at least two working days prior to the hearing so that appropriate services can be provided.

SUBMITTAL OF COMMENTS

Written comments on the amendments to §§11.50, 11.51, 11.53, and 11.54; repeal of §§11.52, 11.55, and 11.56; and new §§11.52, 11.55, 11.56, 11.57, and 11.58 may be submitted to Mark A. Marek, P.E., Director, Design Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on December 14, 2009.

43 TAC §§11.50 - 11.58

STATUTORY AUTHORITY

The amendments and new sections are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §203.031, which provides the commission with the authority to control access to highways.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 203.

§11.50. Access Management.

(a) Purpose and need. Access management is an engineering and planning method of balancing the needs of mobility and safety on a highway system with the needs of access to adjacent land uses. Access management is one method of preserving the substantial public investment in the ground transportation system by preserving the roadway level of service. Further, access management can significantly enhance traffic safety by reducing traffic accidents, personal injury, and property damage. It has been noted that access management practices can promote a more coordinated intergovernmental, long term approach to land use and transportation decisions in the context of quality of life, economic development, livable communities, and public safety. Given the benefits to the ground transportation system and public safety, it is the intention of the department to promote the use of access management on the state highway system.

(b) Applicability. This subchapter applies to all new access connections constructed on highways on the state highway system. It also applies to existing access connections that are: [~~may be reconstructed or otherwise modified as part of a department project.~~]

(1) reconstructed or otherwise modified as part of a department project; or

(2) located on the right of way and are reconstructed, relocated, enlarged, or otherwise modified by the permittee or property owner.

[~~(c) Effective date. The provisions of this subchapter are effective January 1, 2004.~~]

[~~(d) Transition period. Exceptions to the provisions of this subchapter may be granted for specific access connection requests where significant prior commitments have been made, prior to January 1, 2005, based on previous department policy.~~]

§11.51. Definitions.

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

(1) Access connection--Facility for entry and/or exit such as a driveway, street, road, or highway that connects to a highway on the state highway system.

(2) Access management standards--The standards, criteria, and specifications prescribed in Chapter 2, Access Management Standards, of the department's Access Management Manual that govern the location, design, construction, and maintenance of access connections.

(3) [~~(2)~~] Commercial driveway--An entrance to, or exit from, any commercial, business, or similar type establishment.

(4) [~~(3)~~] Commission--The Texas Transportation Commission.

(5) Construction of an access connection--The installation, construction, reconstruction, relocation, enlargement, or other material modification of an access connection.

(6) [~~(4)~~] Department--The Texas Department of Transportation.

(7) Design division--The administrative office of the department responsible for the development of engineering design guidance and oversight of projects developed on the state highway system.

(8) Development--The new construction or the enlargement of any exterior dimension of a building, structure, or improvement.

(9) Director--The chief administrative officer in charge of the design division.

(10) District--One of the 25 geographic districts into which the department is divided.

(11) District engineer--The chief administrative officer in charge of the district in which the access connection is located, or that officer's designee.

(12) [~~(5)~~] Eligible county--A county with a population of 3.3 million or more or a county adjacent to a county with a population of 3.3 million or more.

(13) [~~(6)~~] Engineering study--An appropriate level of analysis as determined by the department, which may include a traffic impact analysis, that determines the expected impact that permitting access will have on mobility, safety, and the efficient operation of the state highway system.

(14) [~~(7)~~] Executive director--The executive director of the department, or a designee not below the level of deputy executive director or assistant executive director.

(15) [~~(8)~~] Local access management plan--A plan or guideline in a formally adopted rule or ordinance that is related to the application of access management within the municipality's or eligible county's jurisdiction.

(16) [~~(9)~~] Local access road--A local public street or road, generally one parallel to a highway on the state highway system to which access for businesses or properties located between the highway and the local access road is provided as a substitute for access to the highway. A local access road may also be called a lateral road or reverse frontage road, depending on individual location and application.

(17) Permit--Authorization for entry to or exit from a state highway and adjacent real property, issued by the department under Transportation Code, Chapter 203.

(18) [~~(10)~~] Permittee--A real property owner, or the owner's [~~its~~] authorized representative, who receives an access connection permit from the department to construct or modify an access

connection from the owner's property to a highway on the state highway system.

(19) Platted access point--An access connection identified in a plat or replat of a subdivision of real property properly recorded in the county clerk's office in accordance with Property Code, §12.002.

(20) [~~(11)~~] Private driveway--An entrance to or exit from a residential dwelling, farm, or ranch for the exclusive use and benefit of the permittee.

(21) [~~(12)~~] Public driveway--An approach from a publicly maintained street, road, or highway [~~road or street or an entrance or exit from a public school, a publicly owned cemetery, or other publicly owned places or buildings that provide for public access~~].

(22) [~~(13)~~] Regionally significant highway--A highway functionally classified as a minor arterial or higher.

(23) [~~(14)~~] Traffic impact analysis--A traffic engineering study to the level of analysis determined by the department that determines the potential current and future traffic impacts of a proposed traffic generator and is signed, sealed, and dated by an engineer licensed to practice in the state of Texas.

(24) Undeveloped property--The real property identified in a plat or replat of a subdivision properly recorded in the county clerk's office in accordance with Property Code, §12.002, on which development has not commenced.

§11.52. Access Connection Facilities.

(a) Permit.

(1) A permit is required before:

(A) the construction of an access connection; or

(B) a material change in the use of a permittee's real property, traffic volume for the access connection, or vehicle types using the access connection, that would result in the application of more stringent requirements under the department's access management standards than are applicable to the existing approved access connection.

(2) The permit provides for a definite understanding as to the location and manner in which the access connection will be constructed and maintained.

(3) No term or condition of a permit will be construed to grant, convey, or extinguish an interest in real property held by either the state or a permittee.

(b) Permit requirements.

(1) The permit will include the terms, conditions, and attachments for driveway design and location plans that are prescribed by the director and the district engineer in order to ensure compliance with the access management standards and to protect and preserve the state highway system and the safety, health, and welfare of its use by the traveling public.

(2) Permits will be issued in accordance with the access management standards and all applicable state and federal laws, including rules and regulations. Access connection spacing, materials, geometrics, accessibility, and other design specifications will be considered, as well as the impact on drainage and hydraulics, utility location or relocation, and the environment that will result from the requested construction of an access connection.

(3) An engineering study may be required to assist in the permit evaluation process.

(4) The district engineer will approve or deny each request for a permit. A decision denying a request for access to a specific location must be in writing and include the reasons for the denial.

(c) Access Management Standards. Chapter 2, Access Management Standards, of the department's December 2009 Access Management Manual, governs the standards, criteria, and specifications for the location, design, construction, and maintenance of all access connections. Chapter 2, Access Management Standards is available online at the Texas Department of Transportation web site. That chapter may be periodically revised and updated by the department, provided that the revisions and updates are first approved by written order of the commission. The web site will reflect each change approved by the commission and the changes will be applicable to applications for permits filed after the effective date of such a change.

(d) Design.

(1) The design for the construction of an access connection is the responsibility of the permittee. The design must be accomplished in a manner and to the standards described in subsection (b) of this section.

(2) The location and manner in which the construction of an access connection will be performed within the right of way must be reviewed and approved by the department.

(e) Variance.

(1) A variance to any requirement contained in the access management standards may be granted if justified in accordance with this subsection and approved by the district engineer.

(2) A request for a variance will be considered only if the property owner or its authorized representative demonstrates that undue hardship or unusual conditions provide justification and alternate measures can be prescribed in keeping with the intent of this subchapter. All requests for a variance must be fully documented with design data and other pertinent information.

(3) For each request for a variance, the property owner, or the owner's authorized representative, must clearly demonstrate that:

(A) a significant negative impact to the owner's real property or its use will likely result from the denial of its request for the variance, including:

(i) the loss of reasonable access to the property; or

(ii) undue hardship on a business located on the property; or

(B) an unusual condition affecting the property exists that was not caused by the property owner and justifies the request for the variance.

(4) When the property owner or its authorized representative satisfies the requirement of paragraph (3) of this subsection, the requested variance will be approved unless the district engineer determines that the location, design, and construction of the requested access connection will:

(A) adversely affect the safety, design, construction, mobility, efficient operation, or maintenance of the highway; or

(B) likely impair the ability of the state or the department to receive funds for highway construction or maintenance from the federal government.

(5) Reasonable conditions for approval of a variance, including a requirement for alternate measures, may be prescribed by the department in order to minimize any adverse impact on the safety, de-

sign, construction, mobility, efficient operation, or maintenance of the highway.

(f) Platted access points.

(1) Platted access points that are located on undeveloped property are subject to the access management standards in effect on the date that the subdivision plat or replat was properly recorded if:

(A) development of the tract of real property to be served by the permit commences, and the request for a permit at a platted access point location is submitted to the department, before the fifth anniversary of the date that the subdivision plat or replat was properly recorded; and

(B) any material changes to the design of the highway facility in the vicinity of the platted access points after the date that the subdivision plat or replat was properly recorded do not significantly impact traffic patterns to the extent that the platted access points present a threat to public safety.

(2) Platted access points that are located on undeveloped property to which paragraph (1) of this subsection do not apply, are subject to the access management standards in effect on the date that the request for the permit is submitted to the department.

(g) Remodeled business. The remodeling or demolition and rebuilding of a business structure or improvement on a permittee's real property do not require a new permit or the application of more stringent access management standards than are applicable to the approved access connection, unless the district engineer makes an affirmative finding that the remodeled or rebuilt structure or improvement will significantly impact traffic patterns to the extent that the existing access connection location presents a threat to public safety. The finding of significant impact and threat to public safety must be in writing and include the reasons for the finding. To the extent this subsection conflicts with the requirement in subsection (a) of this section for a new permit related to a material change in the use of the permitted real property, this subsection controls.

§11.53. Locations Where the Department Controls the Access.

(a) Access purchase requests. If [~~Where~~] new access connections are requested on highways where the adjacent property owner has no existing right of access, requests to purchase access will be considered under the provisions of this section. The request must include an engineering study acceptable to the department.

(b) Approval. The commission will make the final determination concerning new access connections under this section. The commission may consider the findings of the engineering study and the mobility and safety of the highway system, or any other relevant factors.

(c) Documentation. When the commission approves the sale of access to the owner of property adjoining the highway facility, the sale will be accomplished under Transportation Code, Chapter 202, Subchapter B. Access points approved by the commission under this section will be specifically described by a metes and bounds property description.

§11.54. Construction and Maintenance of Access Connection Facilities.

(a) Cost for commercial and private driveways. For commercial and private driveways, the cost of materials, installation, construction, reconstruction, relocation, enlargement, modification, and maintenance shall be the responsibility of the permittee, except as otherwise provided in subsection (c) of this section.

(b) Cost for public driveways. For public driveways, the cost of materials, [~~and~~] installation, construction, reconstruction, relocation, enlargement, and modification shall be the responsibility of the permittee, except as otherwise provided in subsection (c) of this section. The department shall maintain all portions of public [~~access~~] driveways that lie within the state highway right of way and that connect to highways that are the maintenance responsibility of the department.

(c) Reconstruction by department. [~~Any existing access connections that are destroyed or removed in the construction or reconstruction of a section of highway will be reestablished by the department to the extent necessary to provide reasonable access.~~]

(1) Any existing access connections that are destroyed or removed in the construction or reconstruction of a section of highway will be reestablished by the department at the expense of the state to the extent necessary to provide reasonable access.

(2) If the department determines that the proposed construction or reconstruction of a section of highway will permanently alter permitted access to or from a state highway at an adjacent property owner's existing driveway location, the department will:

(A) provide the property owner with written notice of the highway project before the 60th day preceding the date construction of the highway project begins; and

(B) at the expense of the state, reinstate the pre-existing access to the most practicable extent possible after due consideration of the impact on highway safety, mobility, and efficient operation, and of any changes to traffic patterns that are likely to result from the highway construction or reconstruction.

(d) Inspection. The department may inspect the construction of an access connection at the time the work is being performed and at any time after the work is completed. The permittee or the permittee's heirs, successors, and assigns shall make the changes or repairs that the district engineer reasonably determines are necessary to bring the access connection into compliance with terms and conditions of the permit. A decision to require a change or repair will be in writing, describe the actions to be performed, and provide a reasonable period for compliance.

(e) [~~(d)~~] Drainage and safety. The department may undertake actions deemed necessary to correct drainage or safety problems related to existing or new access connection facilities.

§11.55. Appeal Process.

(a) A property owner or its authorized representative, as the applicant, may file a petition of appeal to contest:

(1) a requirement for a change or repair under §11.54(d) of this subchapter (relating to Inspection);

(2) the denial of a request for a variance under §11.52(e) of this subchapter (relating to Variance);

(3) a finding of significant impact and threat to public safety under §11.52(g) of this subchapter (relating to Remodeled business); or

(4) the denial of a request for a driveway permit under §11.52(b) of this subchapter (relating to Permit requirements).

(b) The petition must be filed with the director before the 31st day after the date written notice of the denial, requirement, or finding is received by the applicant.

(c) The petition must:

(1) be in writing;

(2) completely and succinctly state the grounds for appeal and its factual basis; and

(3) include sufficient factual documentation, such as drawings, surveys, or photographs, to establish the merits of the appeal.

(d) The applicant has the burden of demonstrating that the department incorrectly applied its access connection requirements to the applicable facts.

(e) For a petition that satisfies the requirements of this section, the director will issue, before the 91st day after the date of receipt of the petition, a written decision approving or disapproving the appeal and, on issuance, immediately send the decision to the applicant. If a written decision is not issued within the 90-day period, the appeal is considered to be approved and the request granted, subject to:

(1) purchase of access rights in accordance with §11.53 of this subchapter (relating to Locations Where the Department Controls the Access) if the applicant has no existing right of access; and

(2) consent of the Federal Highway Administration in accordance with 23 C.F.R. §710.401 if the requested access connection is on an interstate highway.

(f) To appeal a decision issued under subsection (e) of this section, the applicant must submit its written petition of appeal to the executive director before the 31st day after the date that written notice of the decision is received. The petition must satisfy the requirements of subsection (c) of this section. The executive director will issue, before the 31st day after the date of receipt of the petition, a written decision approving or disapproving the appeal.

(g) To appeal a decision of the executive director issued under subsection (f) of this section, the applicant must submit to the executive director its written petition of appeal to a board of variance, before the 31st day after the date that the executive director's decision under subsection (f) of this section is received. On receipt of the petition, the procedure set out in this subsection applies.

(1) The executive director will appoint a board of variance composed of at least three persons, each of whom is not below the level of department division director, office director, or district engineer and was not involved in the original decision to deny the applicant's request. A majority of the members of the board constitutes a quorum.

(2) The board of variance will meet and consider the appeal. Before the 10th day preceding the date of the meeting, the board will give the applicant notice of the time and place of the meeting and afford the applicant an opportunity to attend and present evidence regarding the appeal.

(3) Before the 11th day after the date of the meeting, the board of variance will issue a final written decision approving or disapproving the appeal.

§11.56. Delegation of Access Permit Authority to Municipalities or Eligible Counties.

(a) Intent. Except as provided in §11.58 of this subchapter (relating to Connection with Regionally Significant Highway), a municipality or eligible county may include highways on the state highway system in its local access management plan. The intent of the department is to allow municipalities or eligible counties, upon request, to assume responsibility for issuing permits for access connections to state highways within the jurisdiction of the municipality or eligible county under a local access management plan when the municipality or eligible county has the ability to issue permits.

(b) Precedence. A local access management plan supersedes an order of the commission under Transportation Code, §203.031(a)(2) or (4) to the extent that they conflict, unless:

(1) the Federal Highway Administration notifies the department that enforcement of the local access management plan would impair the ability of the state or the department to receive funds for highway construction or maintenance from the federal government; or

(2) the department owns the access rights.

(c) Application. The department will apply a local access management plan under this section when the municipality or eligible county provides its local access management plan to the department with an indication of its desire that the plan be applied within its jurisdiction and an implementation date. The department will implement any subsequent changes to the local access management plan when the municipality or eligible county submits the changes to the department with a proposed implementation date for the changes.

(d) Local access permitting function. A municipality or eligible county that desires to undertake the access permitting process on highways on the state highway system shall submit its proposed permitting procedures to the department. If the department determines that the proposed procedures adequately address the requirements in subsection (f) of this section, it will transfer to the municipality or eligible county the access permitting function within the municipality's or eligible county's jurisdiction. The municipality or eligible county shall submit to the department a copy of each approved access permit on the state highway system within ten working days of its approval.

(e) Assumption of permitting function optional. Municipalities or eligible counties are not required to take over the access permitting function for state highways within their jurisdiction.

(f) Engineering. Granting access location permit authority to municipalities or eligible counties does not preclude the need to properly engineer access locations. Any impacts to drainage or hydraulics on highways on the state highway system resulting from access connections must be coordinated with the department prior to any local access approval. Issuance of access permits by a municipality or eligible county must address driveway geometrics, utility location or relocation, compliance with the Americans with Disabilities Act (ADA) and Texas Accessibility Standards (TAS), and all other applicable state and federal laws, rules, and regulations. In addition, each access connection must comply with the applicable environmental review requirements in Chapter 2 of this title (relating to Environmental Policy).

§11.57. Local Access Roads.

(a) If local access roads are necessary to restore circulation or to resolve a landlocked condition on a remaining parcel of land, or will otherwise benefit the state highway system, local access roads may be included in a department project on a standard participation basis as established in Appendix A of §15.55 of this title (relating to Construction Cost Participation).

(b) Except as provided in §11.58 of this subchapter (relating to Connection with Regionally Significant Highway), executive director approval must be obtained prior to the department entering into any agreements to provide local access roads in conjunction with a department project.

(c) Local access roads will not be considered service projects as defined in §15.56 of this title (relating to Local Financing of Highway Improvement Projects on the State Highway System).

§11.58. Connection with Regionally Significant Highway.

(a) Purpose. A public or private entity may not connect a regionally significant highway to a segment of the state highway system without the approval of the commission. This section prescribes the procedure by which the commission will consider approval.

(b) Request. An entity seeking approval to connect a regionally significant highway to a segment of the state highway system must send a written request to the executive director. The request must include a detailed schematic indicating the location of the connection, including an overpass, underpass, intersection, or interchange, and the location of the logical termini of the connection.

(c) Approval criteria. The commission will approve a request made under this section if:

(1) the highway to be connected is identified in a conforming Transportation Improvement Program;

(2) the requestor agrees to design and construct the connection in compliance with subsection (d) of this section; and

(3) the requestor satisfies the applicable requirements under subsection (e) of this section concerning public involvement and a study of the social, environmental, and economic impacts of the connection.

(d) Design and construction. The requestor shall design and construct the connection in accordance with the schematics required by subsection (b) of this section and §26.33(d), (f), and (g) - (l) of this title (relating to Design and Construction), which for the purposes of this subsection apply as if the requestor were a regional mobility authority.

(e) Environmental review and public involvement.

(1) This subsection applies only to construction activities and utility adjustments related to the proposed connection that are:

(A) within rights of way owned by the department; and

(B) if a terminus of the proposed connection is outside of the department's right of way, between the terminus and the department's right of way.

(2) This subsection does not apply to a project developed by a county or other local governmental entity under Transportation Code, §228.011 or §228.0111, or that the department funds solely with money held in a project subaccount created under Transportation Code, §228.012.

(3) The requestor, as project sponsor, shall perform and document all environmental studies, environmental compliance, and public involvement activities arising as a result of construction of the proposed access connection. The requestor will not perform its environmental compliance and public involvement activities under memoranda of agreement, programmatic agreements, or other environmental agreements between the department and a state or federal agency. The requestor shall apply for, obtain, and comply with all permits and approvals required by state and federal law, and shall establish all commitments needed to address public, state agency, and federal agency concerns.

(4) The requestor's environmental documents, environmental studies, environmental compliance, and public involvement activities must comply with the requirements of Chapter 2, Subchapter A, of this title (relating to Environmental Review and Public Involvement for Transportation Projects).

(5) The requestor shall submit the environmental documentation, including supporting documents, to the department, and request the department review the environmental documentation. The department shall review the environmental documentation and supporting documents and shall determine whether or not the requestor has completed agency coordination relating to the environmental impact of the proposed access connection, and has responded to public comments relating to the connection. If the department determines that the requestor has not demonstrated completion of agency coordination or response to public comment related to the connection, the requestor shall provide any additional documentation requested by the department. The commission will not grant access connection until the requestor satisfies the requirements of this paragraph.

(6) If Federal Highway Administration (FHWA) regulations specify that a project or connection requires FHWA approval, the requestor shall perform all environmental and public involvement activities as the project sponsor, and shall produce an environmental document that meets FHWA requirements.

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

Filed with the Office of the Secretary of State on October 30, 2009.

TRD-200904943
Bob Jackson
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: December 13, 2009
For further information, please call: (512) 463-8683

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43 TAC §§11.52, 11.55, 11.56

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

STATUTORY AUTHORITY

The repeals are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §203.031, which provides the commission with the authority to control access to highways.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 203.

§11.52. Delegation of Access Permit Authority to Municipalities or Eligible Counties.

§11.55. Local Access Roads.

§11.56. Connection with Regionally Significant Highway.

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 October 30, 2009.

TRD-200904942
Bob Jackson
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: December 13, 2009
For further information, please call: (512) 463-8683

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CHAPTER 15. TRANSPORTATION PLANNING AND PROGRAMMING

SUBCHAPTER A. TRANSPORTATION PLANNING

43 TAC §15.9, §15.10

The Texas Department of Transportation (department) proposes amendments to §15.9, Corridor Advisory Committees, and new §15.10, Corridor Segment Advisory Committees, concerning transportation planning.

EXPLANATION OF PROPOSED AMENDMENTS AND NEW SECTION

At the July 26, 2007 and August 23, 2007 meetings of the Texas Transportation Commission (commission), the commission requested that rules be drafted that would authorize the creation of committees to assist the department in the planning and development of major corridors in the state, including elements of the Trans-Texas Corridor. The commission established that focusing only on what can be viewed as one piece of the puzzle, in that case the development of the Trans-Texas Corridor, would not fully provide the transportation solutions needed to remedy critically important mobility needs in the state. The commission subsequently adopted §15.9, concerning corridor advisory committees, providing that the commission by order will create advisory committees to assist the department in the transportation planning process for the Interstate Highway 35 corridor and in the corridor planned as part of Interstate Highway 69 (including TTC-69), and may create an advisory committee for any other corridor, including an element of the Trans-Texas Corridor. Corridor advisory committees have been created for the Interstate Highway 35 and Interstate Highway 69 corridors.

Transportation Code, §201.601 and 23 U.S.C. §135 require the department to develop a statewide transportation plan and transportation improvement program that encompasses all modes of transportation. Transportation Code, §201.601, 23 U.S.C. §135, and other law requires the department to seek opinions and assistance from other state agencies, political subdivisions, and other interested parties concerning the transportation plan and transportation improvement program. Transportation Code, §201.117 authorizes the commission to establish, as it considers necessary, advisory committees on any of the matters under its jurisdiction, and to determine the purpose, duties, and membership of each advisory committee.

Transportation improvement programs are created for metropolitan planning areas and other areas of the state outside metropolitan planning areas. Generally, segments of a corridor will be located in those areas but not the entire corridor. Segment level advisory committees, as opposed to corridor advisory committees, are best able to assist the department in this part of the transportation planning process, as those committees, given their structure and membership, would be more focused on local issues and concerns.

Under current 43 TAC §24.13, the commission creates corridor segment committees for proposed segments of the Trans-Texas Corridor or certain transportation facilities that may become segments of the Trans-Texas Corridor to provide input, advice, and recommendations to the commission and the department regarding the designation of a route for the segment for which the committee was created and the construction of the proposed segment of the Trans-Texas Corridor or a facility that may become all or part of the segment. A corridor segment committee may also provide input, advice, and recommendations on other segment level planning, development, and financing matters as requested by the department. New §15.10 provides for the creation of corridor segment advisory committees. The functions of corridor segment committees created under 43 TAC §24.13 will be transitioned to these new advisory committees under new §15.10. The committee structure provided in §15.9 and new §15.10 will better address and distinguish between corridor-wide issues and local issues and concerns.

Amendments to §15.9(a) delete references to TTC-35, the proposed element of the Trans-Texas Corridor that, as proposed, would generally parallel Interstate Highway 35. The department has recommended the no action alternative on the TTC-35 environmental study to the Federal Highway Administration. This recommendation by the department will effectively end efforts to develop TTC-35 through the Trans-Texas Corridor concept.

Amendments to §15.9(c) clarify that corridor advisory committees may coordinate with, or obtain information from, a corridor segment advisory committee created under new §15.10, instead of the corridor segment committees created under 43 TAC §24.13.

Amendments to §15.9(e) revise the sunset date of corridor advisory committees created by the commission. Subsection 15.9(e) currently provides that each advisory committee created under §15.9 is abolished December 31, 2009. This sunset date was established in accordance with Government Code, §2110.008. The commission determines that each existing advisory committee created under §15.9 is necessary for improved communication between the department and the public. Therefore, §15.9(e) is amended to revise the sunset date to December 31, 2011.

New §15.10(a) provides that the commission by order will create a corridor segment advisory committee to assist the department in the transportation planning process for the Interstate Highway 35 corridor and in the corridor planned as part of Interstate Highway 69 (including TTC-69), and may create an advisory committee for any other corridor.

The purpose of a corridor segment advisory committee is to facilitate and achieve support and consensus from affected communities, governmental entities, and other interested parties in the planning of transportation improvements in the segment of a corridor for which it is created and in the establishment of development plans for that segment. An advisory committee's advice and recommendations will provide the department with an enhanced understanding of public, business, and private concerns about the segment for which it is created, facilitating the department's communications and project development objectives and resulting in greater cooperation between the department and all affected parties during project planning and development.

New §15.10(b) prescribes the membership of a corridor segment advisory committee. Members of a committee will be appointed by counties, metropolitan planning organizations, and other entities designated by the commission within whose boundaries or service area all or part of a proposed segment is located. The commission may appoint as a member individuals who reside or have a business in the area in which a segment may be located, and who have an interest in transportation. Having members appointed by those entities will ensure that a committee represents the interests of local and regional groups that will best be able to carry out the purposes of an advisory committee as prescribed in §15.10(a).

New §15.10(c) prescribes the duties of a corridor segment advisory committee. An advisory committee shall report to the executive director its advice and recommendations on transportation improvements to be made in the segment of a corridor for which it is created, including facilities to be included in a development plan for that segment, facilities to be included in a development plan for a segment of the Trans-Texas Corridor, and upgrades and other improvements to be made to existing facilities located in that segment, and on other segment level planning and development matters as requested by the department. In developing advice and recommendations, an advisory committee will evaluate economic, political, societal, and demographic population trends affecting transportation, and will consider existing facilities, upgrades to existing facilities, new or planned facilities, multimodal solutions, and available financing options.

New §15.10(d) provides that a corridor segment advisory committee is subject to the requirements for operating procedures applicable to a department advisory committee under 43 TAC §1.85.

New §15.10(e) provides that a corridor segment advisory committee may be abolished at any time by the commission, but in no event may a committee continue beyond completion of the segment for which the committee is created. Except as otherwise specified, an advisory committee created under §15.10 is abolished December 31, 2011, unless the commission amends its rules to provide for a different date.

FISCAL NOTE

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

Mark Tomlinson, Director, Texas Turnpike Authority Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments and new section.

PUBLIC BENEFIT AND COST

Mr. Tomlinson has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments and new section will be to ensure the general public and local and regional entities have additional opportunities to provide input and recommendations to the department relating to the planning and development of transportation corridors and facilities in the state. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §15.9 and new §15.10 may be submitted to Mark Tomlinson, Director, Texas Turnpike Authority Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on December 14, 2009.

STATUTORY AUTHORITY

The amendments and new section are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, Transportation Code, §201.117, which provides the commission with the authority to establish, as it considers necessary, advisory committees on any of the matters under its jurisdiction, and Government Code, Chapter 2110, which requires a state agency establishing an advisory committee to by rule state the purpose and tasks of the committee and describe the manner in which the committee will report to the agency.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 201 and Government Code, Chapter 2110.

§15.9. Corridor Advisory Committees.

(a) Purpose. The commission by order will create advisory committees to assist the department in the transportation planning process for the Interstate Highway 35 corridor [~~(including TTC-35)~~] and in the corridor planned as part of Interstate Highway 69 (including TTC-69), and may create an advisory committee for any other corridor, including an element of the Trans-Texas Corridor. The purpose of an advisory committee is to facilitate and achieve support and consensus from affected communities, governmental entities, and other interested parties in the planning of transportation improvements in the corridor for which it is created and in the establishment of development plans for that corridor. An advisory committee's advice and recommendations will provide the department with an enhanced understanding of public, business, and private concerns about the corridor for which it is created, facilitating the department's communications and project development objectives and resulting in greater cooperation between the department and all affected parties during project planning and development.

(b) Membership. An advisory committee may be composed of members of the following groups as deemed appropriate by the commission: affected property owners and owners of business establishments; technical experts; representatives of local governmental entities; members of the general public; economic development officials; chambers of commerce officials; members of the environmental community; department staff; and professional consultants representing the department.

(c) Duties. An advisory committee shall report to the executive director its advice and recommendations on transportation improvements to be made in the corridor for which it is created, including facilities to be included in a development plan for that corridor, facilities to be included in a development plan for an element of the Trans-Texas Corridor, and upgrades and other improvements to be made to existing facilities located in that corridor, and on other corridor level planning and development matters as requested by the department. The corridor advisory committee may also provide information to, coordinate with, or request information relating to the planning and development of a segment of the corridor [~~an element of the Trans-Texas Corridor~~] from a corridor segment advisory committee established under §15.10 [~~§24.13~~] of this subchapter [~~title~~] (relating to Corridor Segment Advisory Committees [~~Planning and Development~~]). In developing advice and recommendations, an advisory committee will evaluate economic, political, societal, and demographic population trends affecting transportation, and will consider existing facilities, upgrades to existing facilities, new or planned facilities, multimodal solutions, and available financing options.

(d) Additional requirements. An advisory committee is subject to the requirements for operating procedures and reimbursement of expenses applicable to a department advisory committee under §1.85 of this title (relating to Department Advisory Committees).

(e) Duration. An advisory committee created under this section is abolished December 31, 2011 [~~2009~~], unless the commission amends its rules to provide for a different date.

§15.10. Corridor Segment Advisory Committees.

(a) Purpose. The commission by order will create a corridor segment advisory committee to assist the department in the transportation planning process for the Interstate Highway 35 corridor and in the corridor planned as part of Interstate Highway 69 (including TTC-69), and may create an advisory committee for any other corridor. The purpose of an advisory committee is to facilitate and achieve support and consensus from affected communities, governmental entities, and other interested parties in the planning of transportation improvements in the segment of a corridor for which it is created and in the establishment of development plans for that segment. An advisory committee's advice and recommendations will provide the department with an enhanced understanding of public, business, and private concerns about the segment for which it is created, facilitating the department's communications and project development objectives and resulting in greater cooperation between the department and all affected parties during project planning and development.

(b) Membership. A corridor segment advisory committee consists of the following members:

(1) one member appointed by the county judge of each county in which the proposed segment may be located, representing the general public within the county;

(2) one member appointed by each metropolitan planning organization within whose boundaries all or part of the proposed segment may be located, representing the general public within the metropolitan planning organization;

(3) additional members representing the general public within cities designated by the commission, in which all or part of a proposed segment may be located, each of whom will be appointed by the mayor of a designated city; and

(4) additional members, each of whom:

(A) will represent, and be appointed by the governing body of, a port, chamber of commerce, economic development council or corporation, or other organization that has an interest in transportation, within whose service area all or part of a proposed segment may be located and that is designated by the commission to appoint a member of the committee; or

(B) is an individual who resides or has a business in the area in which the segment may be located, has an interest in transportation, and is appointed to the committee by the commission.

(c) Duties. An advisory committee shall report to the executive director its advice and recommendations on transportation improvements to be made in the segment of a corridor for which it is created, including facilities to be included in a development plan for that segment, facilities to be included in a development plan for a segment of the Trans-Texas Corridor, and upgrades and other improvements to be made to existing facilities located in that segment, and other segment level planning, development, and financing matters as requested by the department. A corridor segment advisory committee may provide information to, coordinate with, or request information from a corridor advisory committee created under §15.9 of this subchapter (relating to Corridor Advisory Committees). In developing advice and recommendations, a corridor segment advisory committee will evaluate economic, political, societal, and demographic population trends affecting transportation, and will consider existing facilities, upgrades to existing facilities, new or planned facilities, multimodal solutions, and available financing options.

(d) Additional requirements. A corridor segment advisory committee is subject to the requirements for operating procedures applicable to a department advisory committee under §1.85 of this title (relating to Department Advisory Committees).

(e) Duration. A corridor segment advisory committee may be abolished at any time by the commission, but in no event may a committee continue beyond completion of the segment for which the committee is created. Except as otherwise specified in this paragraph, a committee created under this section is abolished December 31, 2011, unless the commission amends its rules to provide for a different date.

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 October 30, 2009.

TRD-200904944
Bob Jackson
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: December 13, 2009
For further information, please call: (512) 463-8683

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CHAPTER 22. USE OF STATE PROPERTY
SUBCHAPTER B. USE OF STATE HIGHWAY RIGHT OF WAY

43 TAC §22.11, §22.17

The Texas Department of Transportation (department) proposes amendments to §22.11, Definitions, and §22.17, Memorial Markers, concerning use of state highway right of way.

EXPLANATION OF PROPOSED AMENDMENTS

The amendments implement changes required by Senate Bill 2028, 81st Legislature, 2009, which requires a program to allow for memorials on state highway right of way for all peace officers killed in the line of duty that is identical to the existing program for Department of Public Safety State Troopers. For efficiency, the department is expanding the existing program to include all peace officers.

Amendments to §22.11 replace the definition of "trooper" with the definition of "peace officer" to address the changes in the program. Senate Bill 2028 created a memorial marker program for all peace officers. The department's current program for state troopers is extended to provide for all peace officers to meet the requirements of Transportation Code, §201.910, as amended by Senate Bill 2028. The remaining definitions are renumbered accordingly.

Amendments to §22.17(a) clarify the purpose of the program. The memorial marker program is expanded to include all peace officers and this change is reflected in the new language. Throughout §22.17, references to "trooper" are replaced with "peace officer" to address the changes to the program. The amendments also clarify that only state highway right of way is eligible for a marker under this program and that the markers must be privately funded.

Amendments to §22.17(c)(2)(F) clarify that the written certification must come from the governmental entity that employed the peace officer. This change was needed to address the expansion of the program beyond state troopers.

Amendments to §22.17(g) clarify where the memorial marker should be placed on the highway. The current rule references the "clear zone," as defined in the department's design manual. This term gave little guidance to a person unfamiliar with the design manual. The amendments provide for a location of a memorial that can be more easily identified by a requestor without requiring the requestor to review the design manual. In addition, placement of the marker close to the right of way line provides for the safest location of the marker. This change will help eliminate confusion and questions regarding location of the sign.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, fiscal years 2010-2014, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments. Senate Bill 2028 required implementation, therefore, any costs associated with the program are a result of the change to the statute.

Toribio Garza, Jr., Director, Maintenance Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Mr. Garza has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be to allow memorials for peace officers to be placed on highway right of way. There are no anticipated economic costs for persons required to comply with the sections as proposed except the cost voluntarily supplied by those requesting the memorial. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §22.11 and §22.17 may be submitted to Toribio Garza, Jr., Director, Maintenance Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on December 14, 2009.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §201.910 which requires the commission by rule to adopt a program that authorizes memorial markers honoring peace officers killed in the line of duty.

CROSS REFERENCE TO STATUTE

Transportation Code, §201.910.

§22.11. Definitions.

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

(1) Area engineer--The chief administrative officer in charge of an area office of the department.

(2) Area office--An office responsible for carrying out the department's primary functions at the local level for a designated geographical area within a district.

(3) Arterial roadway--A roadway which contains predominately at-grade intersections, allows continuous access to abutting property, and has posted speeds equal to or less than 45 miles per hour.

(4) Banner--A sign painted or fabricated on fabric mesh or flexible plastic above or along a roadway or highway.

(5) BC Sheets--The latest edition of Barricade and Construction Standards published by the department.

(6) Closure--The temporary direct or indirect restriction, in whole or in part, of vehicular use of a segment of the state highway system. This includes, but may not be limited to, the main lanes (including service roads, ramps, and connectors) and the shoulders of any numbered highway on the state highway system.

(7) Commission--The Texas Transportation Commission.

(8) Compliant Work Zone Traffic Control Device List--A list of all work zone traffic control devices that have been determined by the department to be crashworthy based on the criteria contained in National Cooperative Highway Research Report 350: Recommended Procedures for the Safety Performance Evaluation of Highway Features. A copy of this list is available on the department's website, or by contacting the department's Traffic Operations Division or the appropriate area engineer.

(9) Controlled access highway--In accordance with applicable state law, the main lanes and shoulders of a state highway on which owners or occupants of abutting lands and other persons are denied access to or from the highway except at such points only and in such manner as may be determined by the department.

(10) Department--The Texas Department of Transportation.

(11) District--A subdivision of the department responsible for the day-to-day operations of the department in a specific geographically defined area.

(12) District engineer--The chief administrative officer of a district of the department or his or her designee.

(13) DPS--The Texas Department of Public Safety.

(14) Edible agricultural commodity--Any product produced and sold for human consumption.

(15) Executive director--The chief administrative officer of the department.

(16) Film and video production--The on-location creation of a film or video project including, but not limited to, feature films, television productions, television commercials, documentaries, music videos, and corporate or industrial communication productions.

(17) Non-profit corporation--A corporation that is incorporated or holds a certificate of authority under the Texas Non-Profit Corporation Act, Texas Civil Statutes, Articles 1396-1.01 et seq.

(18) Peace officer--A law enforcement officer or peace officer of this state or a political subdivision of this state or a federal law enforcement officer or special agent performing duties in this state.

(19) [~~(18)~~] Person--An individual, corporation, organization, business trust, estate, trust, partnership, association, and any other legal entity.

(20) [~~(19)~~] Professional engineer--A person who has been duly licensed by the Texas Board of Professional Engineers to engage in the practice of engineering in the state of Texas.

(21) [~~(20)~~] Requestor--A person requesting a closure or use of the state highway system for a special event or film/video production.

(22) [~~(21)~~] Right of way--The entire width of land between the public boundaries or property lines of a highway.

(23) [~~(22)~~] Routine traffic control--The handling of events which last no more than four hours at one location and no more than nine consecutive total hours for moving events. Examples of these events include parades, marches, and other such events, and use authorized law enforcement personnel who accept the responsibility for traffic control as being well within their capabilities to protect and direct all parties involved.

(24) [~~(23)~~] Sign--Any outdoor sign, display, light, device, figure, painting, drawing, message, plaque, poster, or other thing that is designed, intended, or used to advertise or inform.

(25) [~~(24)~~] Special event--An event serving a public purpose and sponsored by a civic or nonprofit organization, including, but not limited to, fairs, festivals, bicycle events, marathons, walkathons, rodeos, and charitable fund-raising events, but not including political events or events that could be construed to advocate or oppose a candidate for election or influence the passage or defeat of a measure on an election ballot.

(26) [~~(25)~~] State highway system--The system of highways in the state included in a comprehensive plan prepared by the department's executive director under the direction and with the approval of the commission in accordance with Transportation Code, §201.103.

(27) [~~(26)~~] Substantial negative impacts to the environment--Any harm to the natural or cultural features caused by any activity either directly or indirectly resulting from a closure or film/video production, including, but not limited to:

(A) a chemical or fuel spill;

(B) blast or fire damage to habitat or vegetation;

(C) temporary or permanent placement of fill in wetlands or waters in the right of way;

(D) alteration of a historic bridge or historic roadside park;

(E) extensive tire tracking or other damage to the contours of the site resulting in sediment runoff to water bodies or wetlands; or

(F) any disturbance or removal of protected species without proper authorization.

(28) [~~(27)~~] Texas Film Commission--The office responsible for promoting the development of the film industry in the state, currently located in the Office of the Governor's Music, Film, Television, and Multimedia Office.

(29) [~~(28)~~] Traffic control--The exclusive use of law enforcement personnel and their vehicles to direct and control traffic, pedestrians, and other items making use of the right of way, requiring very little planning and few, if any, traffic control devices.

(30) [~~(29)~~] Traffic control plan--A written description consisting of text or a combination of text and diagrams that describes how vehicular or pedestrian traffic will be controlled during a closure or film/video production as described in this subchapter.

(31) [~~(30)~~] Traffic enforcement plan--A general description in writing or a sketch showing where and how the police vehicles will be used along with any supporting cones, signs, or barricades, if any. This does not require an engineer's expertise.

(32) [~~(31)~~] TMUTCD--Texas Manual on Uniform Traffic Control Devices.

~~[(32) Trooper--A commissioned peace officer employed by the Texas Department of Public Safety.]~~

(33) Turnouts--Paved areas adjacent to the roadway shoulder large enough to accommodate at least one passenger vehicle.

(34) Workday--A non-holiday for the department and a weekday, not a Saturday or Sunday.

§22.17. Memorial Markers.

(a) Purpose. [~~The commission determines it to be in the public interest to allow the placement, along state highway right-of-way, of privately funded memorials honoring Department of Public Safety (DPS) troopers killed in the line of duty.~~] This section prescribes the process by which the department will allow the placement, along state highway right-of-way, of privately funded memorials honoring peace officers killed in the line of duty [~~along state highway right-of-way~~].

(b) Agreement. The department may execute an agreement with a non-profit corporation to fund, install, and maintain memorials honoring peace officers [~~DPS troopers~~]. A corporation must enter into an agreement with the department in a form prescribed by the department prior to any request for approval to install a memorial. Once a corporation has entered into an agreement, it may request to install a memorial in a specific location on the state highway right-of-way. Corporations desiring to install memorials must submit notice of such interest to the director of the department's Maintenance Division, along with a copy of the corporation's certificate of incorporation. The agreement will contain terms and conditions the department deems necessary to protect the privacy of the deceased peace officer [~~trooper~~] and to protect the public safety, including, but not limited to:

(1) a statement that only memorials which honor peace officers [~~DPS troopers~~] who lost their lives in the line of duty will be allowed;

(2) a statement that the corporation must submit a separate request for each memorial it desires to install on state highway right-of-way;

(3) a statement that the memorials will be furnished, installed, and maintained at no cost to the department, and that the corporation will correct any superficial or structural damage done to markers within 30 days of notification for superficial damage, and within 90 days of notification for structural damage;

(4) a statement that the exact location of each memorial must be approved by the department;

(5) a statement that the department may temporarily or permanently relocate the memorials to accommodate highway construction, reconstruction, maintenance or operations;

(6) a statement that the exact wording on the memorials must be approved by the department, and that the name of the company supplying the markers must not appear on the marker;

(7) a statement that the corporation must furnish and install any initial roadside signing of the memorials which meets all department requirements;

(8) a statement that the department will furnish replacement signs if the need arises;

(9) a statement that the department may provide and maintain turnouts, where necessary, so that motorists may view the memorials;

(10) a statement that the corporation will not use the name of the department or refer to the department in any activity which is designed to collect funds or any activity which may lead to the collection of funds; and

(11) a statement that, by approving the placement of a memorial, the department is not obligated to increase maintenance around the site to a level higher than it would be if the memorial were not installed on the right-of-way.

(c) Requests for specific installations.

(1) A non-profit corporation with which the department has entered into an agreement, desiring to install a memorial on state highway right-of-way, must file a request for department approval with the district in which the right-of-way is located.

(2) A request to install a memorial must be submitted in writing to the appropriate district engineer and must, at a minimum, include:

(A) the memorial's size and materials;

(B) the wording on the memorial;

(C) the proposed location where the memorial will be installed, including county, highway, location (distance from a roadway intersection, waterway intersection, county line, etc.), and distance from the right-of-way line;

(D) written concurrence from the family of the deceased peace officer [~~trooper~~];

(E) whether or not the requestor will provide any roadside signage, such as signage indicating the distance remaining until a motorist reaches a memorial marker; and

(F) written certification from the governmental entity that employed the peace officer [~~DPS~~] that the peace officer [~~trooper~~] in question was killed in the line of duty.

(d) Department action. The district engineer or his or her designee will review the request and approve the installation of the memorial, and its location, if the request is in compliance with this section, subject to any additional terms and conditions deemed necessary to protect the safety of the traveling public. The district engineer or designee will send written notice of his or her determination. If the district engineer or designee does not approve the request, he or she will send written notice describing the modifications needed. These notifications will include, as appropriate:

(1) the department's approval or a requirement that a revision be made in the request;

(2) the approved location on the right-of-way to install the memorial;

(3) whether or not the department wishes to have a representative present when the memorial is installed;

(4) specific times of day when the installation may occur;

(5) the name and telephone number of a department contact; and

(6) any other information the department deems appropriate.

(e) Appeal. The requestor may appeal a district engineer's disapproval to the executive director or his or her designee, by submitting to that official by mail or facsimile a notice of appeal, along with the information provided to the district engineer.

(f) Specifications.

(1) All material used in the construction and installation of the memorial must be approved by the department.

(2) The dimensions of a memorial must not exceed four and one-half feet in height, two feet in width, and six inches in depth.

(g) Location. A memorial approved for installation under this section shall be placed as close to the right of way line as possible unless otherwise approved by the district engineer [~~far from the edge of the pavement as possible~~], and may not be placed:

(1) in a location where it may prevent the driver of a vehicle from having a clear and unobstructed view of official signs and approaching and merging traffic; or

[~~(2) inside the clear zone as defined in the latest edition of the department's Design Division Operations and Procedures Manual; or~~]

(2) [~~(3)~~] where it will cause substantial negative impact to landscape features or maintenance operations.

(h) Installation.

(1) Once the corporation has received the department's approval to install a memorial, the corporation will have 90 days from the date of the approval to install the memorial.

(2) If the department determines the memorial has not been installed according to this section, an agreement, or the department's approval, the department may require the corporation to relocate or remove the memorial. If so requested, the corporation will relocate or remove the memorial within 30 days. If the memorial has not been relocated or removed after 30 days has passed, the department may remove or relocate the memorial. If the department determines the memorial poses a potential hazard, the department may immediately relocate or remove the memorial without having first notified the corporation.

(i) Termination of agreement. The agreement may be canceled by either party for any reason upon 30 days written notice to the other party. Termination of the agreement will also cancel any department approval to install a memorial not yet installed.

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 October 30, 2009.

TRD-200904945
Bob Jackson
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: December 13, 2009
For further information, please call: (512) 463-8683

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CHAPTER 25. TRAFFIC OPERATIONS
SUBCHAPTER N. MEMORIAL SIGN PROGRAM FOR VICTIMS OF IMPAIRED DRIVING

43 TAC §25.952, §25.955

The Texas Department of Transportation (department) proposes amendments to §25.952, Application, and §25.955, Sign Description, concerning the Memorial Sign Program for Victims of Impaired Driving.

EXPLANATION OF PROPOSED AMENDMENTS

Senate Bill 521, 81st Legislature, Regular Session, 2009, amended Transportation Code, §201.909, relating to the sign design for the department's existing memorial sign program. The legislation allows the sign to include the name of more than one victim, as long as the total length of the names does not exceed one line of text. These amendments are proposed to conform to Transportation Code, §201.909, as amended by Senate Bill 521.

Amendments to §25.952 provide that an application may be submitted with the name of one or more victims. To provide for additional names on the sign the applicant is required to supply the names of each victim in the application. This will enable the department the opportunity to determine whether the names will fit on one line of text.

Amendments to §25.955 are made to comply with Transportation Code, §201.909. The language limiting multiple names has been deleted. The section now states that the memorial sign may contain the name of more than one victim, as long as those names do not exceed one line of text as required under Transportation Code, §201.909(c-1). The changes also retain the option of providing only the family name if required due to the one line spacing limitations. The amendments allow the applicant the additional opportunity to request that the family name be used in place of the individual victim names.

FISCAL NOTE

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

Carol Rawson, Interim Director, Traffic Operations Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Ms. Rawson has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be improved efficiency in the operation of the department's Memorial Sign Program. Participants in the program will no longer be required to request multiple signs for crashes that involve more than one victim, as long as those names can be displayed within one line of text. There are no anticipated economic costs for persons required to comply with the section as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §§25.952 and 25.955 may be submitted to Carol Rawson, Interim Director, Traffic Operations Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on December 14, 2009.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §201.909, which requires the commission by rule to administer a memorial sign program to memorialize victims of alcohol or controlled substance-related vehicle accidents.

CROSS REFERENCE TO STATUTE

Transportation Code, §201.909.

§25.952. Application.

(a) A person may request the construction and installation of a sign memorializing one or more victims [~~a victim~~] of an alcohol or controlled substance-related vehicle crash by following the procedures set out in this subchapter.

(b) The applicant must submit on a form provided by the department an application that contains the following information:

(1) the name of each victim for whom the sign is requested [~~the victim~~];

(2) the location of the crash;

(3) the date of the crash;

(4) the name and contact information of the applicant; and

(5) the name of one of the vehicle operators involved in the crash.

(c) If the department notifies the applicant that a copy of the officer's accident report required to be submitted to the department by the reporting law enforcement agency under Transportation Code, §550.062, is not on file with the department, the applicant must submit a copy of that report.

(d) The applicant may provide to the department additional government documents relating to the crash if necessary to establish that a driver was impaired.

§25.955. Sign Description.

[~~(a) The department is unable to accommodate the name of more than one victim on a sign, except that, if more than one victim shares the same family name, a sign may display the family name of the victims.~~]

(a) [~~(b)~~] A sign will have a blue background with a white legend and include the following elements:

(1) the phrase "Please Don't Drink and Drive";

(2) the phrase "In Memory of";

(3) one line of text denoting the name of the victim, [~~or, if the family name of the~~] victims, or [~~is to be displayed,~~] the phrase "The (family name) Family"; and

(4) the date of the crash.

(b) The name of more than one victim may appear on a sign only if the length of the victims' names does not exceed one line of text. If the length of the names exceeds one line of text, or if requested by the applicant, a sign may display the family name of the victims.

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 October 30, 2009.

TRD-200904946
Bob Jackson
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: December 13, 2009
For further information, please call: (512) 463-8683

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 81. ELECTIONS

SUBCHAPTER B. EARLY VOTING

1 TAC §81.40

The Office of the Secretary of State, Elections Division, adopts new §81.40, concerning a Federal Postcard Application (FPCA) as an application for permanent registration and FPCA eligibility for electronic transmission of an image. The new rule is adopted with minor changes to the text as proposed in the September 18, 2009, issue of the *Texas Register* (34 TexReg 6393).

The Secretary of State received comments to the effect that Texas Election Code §101.004, as amended by House Bill 551, permits submission of the FPCA by mail or electronic transmission of an image exclusively, and therefore does not authorize submission by common or contract carrier. The Secretary of State recognizes the interpretive problem presented by the amendments; however, in the office's opinion, the 2009 amendments were intended to add electronic transmission of an image of the FPCA to the options available to FPCA voters, and not to change the interpretation under previous law. The proposed and adopted rule reflects this opinion.

A clarifying reference to §101.006 has been added to emphasize that voters who are residing outside the United States indefinitely are not eligible for permanent registration.

The language concerning the jury lists has been modified to clarify that the FPCA voters will be placed on the jury list when the FPCA ceases to function as a ballot by mail request.

The new rule is adopted under the Texas Election Code, §13.002, which provides the Office of the Secretary of State with the authority to prescribe rules to implement the new rule pursuant to §13.002, §101.006, Texas Election Code; and §101.004, Texas Election Code, which provides the Office of the Secretary of State with the authority to prescribe rules to implement the new rule pursuant to §101.004, Texas Election Code.

Statutory Authority: Election Code §13.002, §101.004.

Cross Reference to Statute: Election Code, Chapters 13 and 101 are affected by this rule.

§81.40. Federal Postcard Application as Application for Permanent Registration and FPCA Eligibility for Electronic Transmission of Image.

(a) Eligibility. Pursuant to §101.001 and §101.006 of the Texas Election Code, a person is eligible to submit a Federal Postcard Application (an "FPCA") as an application for permanent registration if:

(1) the person is qualified to vote in this state or, if not registered to vote in this state, would be qualified if registered; and

(2) the person is:

(A) a member of the armed forces of the United States, or the spouse or a dependent of a member;

(B) a member of the merchant marine of the United States, or the spouse or a dependent of a member; or

(C) domiciled in this state but temporarily living outside the territorial limits of the United States and the District of Columbia who is qualified to submit an FPCA.

(b) General Conduct of Voting. The FPCA serves simultaneously:

(1) as a request for a mail ballot from the early voting clerk for a period of two federal elections; and

(2) as a request for permanent registration in the county in which the voter resides, unless the voter states that he or she resides indefinitely outside the United States.

(c) Action on original FPCA by early voting clerk.

(1) The FPCA must be submitted to the early voting clerk for the election who serves the election precinct of the applicant's residence. The FPCA may be submitted by mail, telephonic facsimile (fax), or an electronic transmission of the image to an authorized recipient (for example, scanning and attaching to an email) to the address of the early voting clerk.

(2) The early voting clerk shall make a notation of the name of the office and date and time of receipt, then make a complete copy (front and back, and any accompanying envelopes or fax cover sheets) of the FPCA to retain for mail balloting purposes. The early voting clerk shall then forward the original FPCA (and any accompanying envelopes or fax cover sheets) to the county voter registrar for the county, in which the applicant's Texas residence address is located, as soon as practicable, but no later than within five days, so that the FPCA may be processed as an application for permanent voter registration, even if the FPCA is insufficient as a mail ballot request. This deadline does not supersede the deadlines to mail out ballots pursuant to §86.004, Election Code. The early voting clerk's copy functions as the official FPCA for all mail balloting purposes for elections, including purposes necessary during the early voting ballot board meeting, and the copy shall be maintained as an election record for 22 months after the last election in which the FPCA is processed for mail balloting purposes, pursuant to §66.058, Election Code. Once the early voting clerk makes a copy for early voting purposes, that copy is considered the "original" for purposes of public information requests made of the early voting clerk, including the rules concerning originals at §86.014, Election Code.

(3) The authorized recipient will notate the name of the office receiving the FPCA and the date and time of receipt on the face of the FPCA, before taking any action on the original FPCA. Failure to make these notations will not affect the overall validity of the FPCA, even if the calculation of the date of receipt is affected.

(4) Processing defective FPCAs.

(A) Incorrect territory. If the Texas residence address provided on the FPCA indicates an address outside the early voting clerk's territory, the clerk shall make a copy for his or her records, and immediately forward the original FPCA to the correct jurisdiction's early voting clerk not later than the day after it is received, pursuant to §101.004(d), Election Code. The (incorrect) early voting clerk shall send the voter a notice of rejection on behalf of his or her jurisdiction pursuant to §86.001(f), Election Code, and include a statement that the FPCA has been forwarded to the correct early voting clerk. If the early voting clerk cannot determine the correct jurisdiction based on the residence address, the early voting clerk shall seek assistance from the office of the county voter registrar or the secretary of state. Regardless of whether the early voting clerk's territory is incorrect, the early voting clerk shall forward a courtesy copy of the FPCA to the voter registrar for that clerk's territory (so that the voter registrar may provide a second review of the voter's address).

(B) Mail balloting errors other than voter registration. For any other voter errors resulting in an insufficient mail ballot request, the early voting clerk shall send the voter a notice of rejection pursuant to §86.001, Election Code, even though the FPCA is still forwarded to the voter registrar for purposes of an application for permanent voter registration.

(d) Action on FPCA by county voter registrar.

(1) Upon receipt of the original FPCA from the early voting clerk, the county voter registrar shall immediately review the FPCA to see if the voter's permanent residence address places the voter in their Texas county. The voter registrar shall process the FPCA in the same manner as a regular voter registration application. For any errors that make the FPCA insufficient for voter registration, the voter registrar shall send the voter a notice of rejection or notice of incomplete, whichever is appropriate in accordance to §13.073, Election Code. The original shall be kept by the county voter registrar for the retention period applicable to applications for permanent voter registration.

(2) If the applicant states on the FPCA that he or she resides outside the United States indefinitely, the voter registrar shall not treat any such FPCA (which was incorrectly forwarded to the registrar) as an application for permanent voter registration and shall notify the early voting clerk that the FPCA was forwarded to the voter registration office in error.

(3) If the FPCA was sent to the wrong Texas county, the registrar shall make a notation of the date received by his or her office, notify immediately the early voting clerk in their county of the error so that a ballot is not sent for their county, then immediately forward the original FPCA to the correct early voting clerk so that the clerk can process the FPCA in accordance with subsection (c) of this section (unless the early voting clerk has already determined that his or her county is incorrect in accordance with subsection (c)(4)(A) of this section).

(4) Request for Return of Original FPCA. A voter registrar who records voter registration data for storage purposes on optical disk or other computer storage medium, shall, upon request of the early voting clerk, deliver the original FPCA to the early voting clerk before destroying the original FPCA.

(5) If the voter registrar receives a courtesy copy of an FPCA from an early voting clerk (based on initial determination of incorrect territory by the clerk), and the voter registrar has information that confirms that their county is the correct county, the voter registrar shall contact the original early voting clerk immediately to begin the processing of the FPCA in subsection (c) of this section. The early voting clerk shall notify the early voting clerk to whom the FPCA was forwarded of the mistake.

(e) Timeliness of FPCA for mail ballot request purposes.

(1) The FPCA is considered received for mail ballot request purposes on the date of actual receipt by the early voting clerk, pursuant to §§101.002, 101.004, 84.007(d), Election Code.

(2) If the FPCA is first received by the county voter registrar's office, the FPCA is considered received as a request for mail ballot for purposes of an election when the county voter registrar receives the FPCA on behalf of the county.

(3) Pursuant to §101.004(d), Election Code, a timely FPCA addressed to the wrong early voting clerk shall be forwarded to the correct early voting clerk not later than the day after it is received by the wrong early voting clerk.

(4) Pursuant to §101.004, Election Code, if an otherwise compliant FPCA is postmarked, or received without postmark within the prescribed dates, the applicant, who:

(A) is not otherwise permanently registered; and

(B) has not stated that he or she is residing outside the United States indefinitely, will receive a full ballot based on the temporary registration status obtained by using the FPCA; otherwise, the applicant will only receive a "federal ballot" (federal offices only) pursuant to §101.004(f), Election Code. If the applicant states that he or she is residing outside the United States indefinitely, the early voting clerk does not forward the FPCA to the voter registrar since the FPCA will not constitute a permanent voter registration application, and the FPCA will be treated as a temporary registration and request for mail ballot for a period of two federal elections in accordance with §101.005 and §101.006(a), Election Code.

(5) The statutes governing the method of transmission of a mail ballot request shall govern the method of transmission of an FPCA generally as provided by §101.002, Election Code and additionally as provided by §101.004, Election Code as amended.

(A) A scanned FPCA may be submitted to an early voting clerk whose office has e-mail available via an electronic transmission of an image, pursuant to §101.004, Election Code. The date of submission of the scanned FPCA is determined by the date and time the electronic transmission of an image (e.g., e-mail) was sent by the applicant.

(B) If the FPCA is submitted by telephonic facsimile (fax) pursuant to §84.007, Election Code, the date of submission is determined by the date and time of receipt as reflected by the time of receipt on the faxed document (unless the authorized recipient can verify that the fax machine is in error and the receipt is personally witnessed as being timely).

(f) Timeliness of FPCA for voter registration purposes.

(1) The FPCA is considered submitted for purposes of an application for permanent voter registration for any FPCA received by an authorized recipient on or after September 1, 2009, pursuant to §13.002, Election Code as amended by House Bill 536 (2009).

(2) The FPCA is considered submitted for purposes of an application for permanent voter registration based on the "date of submission" to the first authorized recipient (e.g., an early voting clerk or

county voter registrar), regardless of whether the FPCA was received in the correct county, pursuant to §13.072, Election Code.

(3) The date of submission of the FPCA for purposes of an application for permanent voter registration is defined as:

(A) the date of the postmark, if any, in accordance with §13.143(d), Election Code; or

(B) indicia of the time and date the voter deposited the FPCA with the common or contract carrier; or

(C) if the FPCA submitted by mail or common or contract carrier has no postmark or other indicia of the time and date the voter deposited the FPCA with the common or contract carrier, the date of submission is then determined by the date of actual receipt by the first authorized recipient; or

(D) if the FPCA is submitted by electronic transmission of an image (e.g., e-mail), the date of submission of the scanned signed FPCA is determined by the date and time the electronic transmission of an image (e.g., e-mail) was sent by the applicant; or

(E) if the FPCA is submitted by telefacsimile (fax), the date of receipt as reflected by the time of receipt on the faxed document (unless the authorized recipient can verify that the fax machine is in error and the receipt is personally witnessed as being timely).

(4) This rule does not authorize the e-mailing, faxing, or other electronic transmission of an image of a regular (non-FPCA) voter registration application.

(g) Jury Lists. Voters whose temporary registrations are based on an FPCA will not form the basis for the jury lists. Voters whose permanent registrations are based on an FPCA will not form the basis for the jury lists until the FPCA ceases to function as a basis for sending the voter a ballot by mail (either because of expiration or cancellation of the mail ballot request by the voter). When an FPCA voter later renews or otherwise creates a registration status based on a regular voter registration application, that registration status will be the basis for the jury lists.

(h) Petition Signatures. The FPCA voters with temporary or permanent registration status are not included in the number of registered voters of a territory when calculating the number of signatures needed for a petition. This does not bar an FPCA voter with permanent registration status (who is otherwise eligible to sign a petition) from signing a petition.

(i) Definitions.

(1) ABBM--Application for Ballot by Mail.

(2) Authorized recipient--An early voting clerk or county voter registrar. A volunteer deputy registrar is not an authorized recipient of a Federal Postcard Application.

(3) Early voting clerk--The early voting clerk for a county election or a non-county election in which the county early voting clerk is the early voting clerk by joint election agreement or election services contract; or, the early voting clerk for a local political subdivision election (Example: city, school district, water district).

(4) E-mail--For purposes of these rules refers to a signed hardcopy FPCA which is scanned and attached to an e-mail.

(5) FPCA--Federal Postcard Application.

(6) Permanent voter registration--The registration status equivalent to a voter who applies with a regular application for voter registration.

(7) Temporary voter registration--The type or types of registration status based on the FPCA alone under the Texas Election Code and Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), before the permanent voter registration is effective.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 2, 2009.

TRD-200904977
John Sepehri
General Counsel
Office of the Secretary of State
Effective date: November 22, 2009
Proposal publication date: September 18, 2009
For further information, please call: (512) 463-5650

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PART 10. DEPARTMENT OF INFORMATION RESOURCES

CHAPTER 213. ELECTRONIC AND INFORMATION RESOURCES

The Texas Department of Information Resources (department) adopts the amendments to 1 TAC Chapter 213, §§213.17, 213.18, and 213.38, concerning Electronic and Information Resources, without changes to the proposed text as published in the September 11, 2009, issue of the *Texas Register* (34 TexReg 6219) and will not be republished.

The amended rule adds content to standardize language within §213.17. Changes to §213.18 and §213.38, concerning certain procurements, replace in one instance, and delete in another, a reference to a non-functioning URL.

The department received no comments during the 30-day comment period.

SUBCHAPTER B. ACCESSIBILITY STANDARDS FOR STATE AGENCIES

1 TAC §213.17, §213.18

The amendments are adopted under §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act, and §2054.453, Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities for the development, procurement, maintenance, and use of electronic and information resources by state agencies to provide access to individuals with disabilities.

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 October 28, 2009.

TRD-200904911

Renee Mauzy
General Counsel
Department of Information Resources
Effective date: November 17, 2009
Proposal publication date: September 11, 2009
For further information, please call: (512) 475-4700

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SUBCHAPTER C. ACCESSIBILITY STANDARDS FOR INSTITUTIONS OF HIGHER EDUCATION

1 TAC §213.38

The amendments are adopted under §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act, and §2054.453, Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities for the development, procurement, maintenance, and use of electronic and information resources by state agencies to provide access to individuals with disabilities.

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 October 28, 2009.

TRD-200904912
Renee Mauzy
General Counsel
Department of Information Resources
Effective date: November 17, 2009
Proposal publication date: September 11, 2009
For further information, please call: (512) 475-4700

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CHAPTER 216. PROJECT MANAGEMENT PRACTICES
SUBCHAPTER A. DEFINITIONS

1 TAC §216.1

The Texas Department of Information Resources (department) adopts the amendments to 1 TAC Chapter 216, §216.1, concerning Project Management Practices without changes to the proposed text as published in the September 11, 2009, issue of the *Texas Register* (34 TexReg 6220) and will not be republished.

The department received no comments during the 30-day comment period.

The amendments are adopted under §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act, and the amendments in House Bill 1705, §2.01 to §2054.003(12) and §2054.095(b), Texas Government Code, which modify the definitions for "project" and "project management practices."

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200904913
Renee Mauzy
General Counsel
Department of Information Resources
Effective date: November 17, 2009
Proposal publication date: September 11, 2009
For further information, please call: (512) 475-4700

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS
SUBCHAPTER A. GENERAL QUARANTINE PROVISIONS

4 TAC §19.3

The Texas Department of Agriculture (the department) adopts amendments to §19.3, concerning an increase of fees for the issuance of federal phytosanitary certificates, without changes to the proposal published in the September 18, 2009, issue of the *Texas Register* (34 TexReg 6396). The department collaborates with the U.S. Department of Agriculture (USDA) to issue federal phytosanitary certificates under the provision of the United States Plant Protection Act, §431. The department will continue to collect the same amount of certification and administrative fees as established by the U.S. Department of Agriculture to issue the federal phytosanitary certificates. The amendments to §19.3 are adopted to increase the federal phytosanitary certification fee to correspond with the fee increase adopted by USDA, as published in the Federal Register on July 8, 2009 (Volume 74, pages 32391 - 32399). The increase will also bring the department into compliance with cost recovery provisions in state law by allowing the department to collect the new administrative fee adopted by USDA, as well as by recovering current losses in costs of issuance of phytosanitary certificates and the additional administrative costs due to use of the USDA-developed Phytosanitary Certificate Issuance and Tracking System (PCIT) system for processing of phytosanitary certificates. Information on the phytosanitary certification fees can be obtained by contacting the department at 1-800 TELL-TDA (1-800-835-5832) or a local USDA office. At present, phytosanitary certificates are issued either manually using the printed phytosanitary application and certificate or electronically by using the PCIT. The exporter has a choice of selecting a PCIT or manually-issued certificate. USDA has adopted a two-tierd approach in the fee increase due to the manual and electronic issuance of phytosanitary certificates. In addition to a $77 fee charged for each phytosanitary certificate, USDA is assessing an additional $3 if PCIT is used, and an additional $6 if PCIT is not used by the state, as an administrative fee per certificate effective October 1, 2009 until September 30,

2010. USDA will further increase the phytosanitary certification fee after September 30, 2010.

There were no comments received on the proposal.

The amendments are adopted under the Texas Agriculture Code (Code) §12.021 which authorizes the department to collect fees for phytosanitary inspection and export certification activities; the Code, §12.0144 and Senate Bill 1, Appropriations Act, 81st Legislative Session, 2009, Art. IV-4, Rider 3, which provide that the department shall set fees in an amount which offsets, when feasible, the direct and indirect state costs of administering its regulatory activities; and the Code, §71.056, which allows the department to charge fees for inspection of plant products as required by other countries or states for export certification.

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 October 27, 2009.

TRD-200904873
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: November 16, 2009
Proposal publication date: September 18, 2009
For further information, please call: (512) 463-4075

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TITLE 13. CULTURAL RESOURCES

PART 8. TEXAS FILM COMMISSION

CHAPTER 121. TEXAS MOVING IMAGE INDUSTRY INCENTIVE PROGRAM

The Texas Film Commission, Office of the Governor (Commission) adopts amendments to §§121.1 - 121.12 and §121.14; and the repeal of §121.13, concerning the Texas Moving Image Industry Incentive Program. Sections 121.1 - 121.4 are adopted with changes to the proposed text as published in the October 2, 2009, issue of the *Texas Register* (34 TexReg 6725) and will be republished. Sections 121.5 - 121.12 and §121.14; and the repeal of §121.13 are adopted without changes to the proposal and will not be republished.

The amendments and repeal are adopted due to passage of House Bill 873 by the 81st Legislature.

The following sections were changed to correct grammar and punctuation:

§121.2(1)(B), (10)(A) - (D), (28)(A) - (C), (29)(A) - (C) and §121.3(g), (g)(1), (h)(1), and (h)(1)(C)

The following changes were also made to the rules:

§121.1(b)(3) - added language for clarification

§121.2(1) - eliminated inaccurate language

§121.2(30) - added language for clarification

§121.2(31) - added a new paragraph to clarify meaning in §121.3(d) and renumbered the remaining paragraphs accordingly

§121.3(b)(2)(E) - added language for clarification

§121.3(b)(2)(F) - added language for clarification and to be less restrictive

§121.3(c)(2)(E) - added language for clarification

§121.3(c)(2)(F) - added language for clarification and to be less restrictive

§121.3(d)(1)(A)(i) - changed language for clarification

§121.3(d)(1)(A)(ii) and (iii) - added language for clarification

§121.3(d)(1)(B) - changed language for clarification

§121.3(d)(2)(D) - added language for clarification and to be less restrictive

§121.3(d)(2)(D)(iii) - changed language to match previous clarification

§121.3(g)(1)(C) - reordered words to be consistent with other subsections

§121.3(h)(1)(C) - reordered words and added language to be consistent with other subsections

§121.4(a)(2) - added language to clarify restrictions

One Comment was received in writing from the Electronic Software Association requesting that incentive levels for video game projects be on par with those proposed for film and television. Two other comments were received in the Public Hearing on October 26, 2009 that were from video game developers requesting a similar change. The Commission does not agree with these comments, the program as proposed takes into consideration the levels of competition from other states. They have impacted the film and television industry at a much greater level as compared to the video game industry. With the limited resources of the appropriation it would in effect diminish the desired effectiveness of the program to award grants at the same level of value to industries that have been disproportionately impacted.

One comment was made in the hearing in favor of the proposed rules creating a tiered system. The Commission concurs with this comment.

13 TAC §§121.1 - 121.12, 121.14

The amendments are adopted pursuant to the Texas Government Code, §485.022, which directs the Commission to develop a procedure for the submission of grant applications and the awarding of grants, and Texas Government Code, Chapter 2001, Subchapter B, which prescribes the standards for rulemaking by state agencies.

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

§121.1. Background and Purpose.

(a) Background.

(1) The Texas Moving Image Industry Incentive Program offers grants based upon eligible expenditures within the state.

(A) Feature Films, Television Programs and Visual Effects Projects for Feature Films and Television Programs that choose the Texas Spend Option are eligible to receive grants of up to 15% of total eligible in-state spending.

(B) Feature Films, Television Programs and Visual Effects Projects for Feature Films and Television Programs that choose the Texas Wage Option are eligible to receive grants of up to 25% of eligible wages paid to Texas residents.

(C) Digital Interactive Media Productions (Video Games), Commercials, Educational or Instructional Videos, Reality Television Projects and Visual Effects Projects for Commercials and Educational or Instructional Videos are eligible to receive grants equal to 5% of total eligible in-state spending.

(2) Grants are available upon project completion. Both live-action and animated projects are eligible. These grants are in addition to the state's existing Sales Tax Exemptions.

(3) The State of Texas has allocated $30,000,000 for fiscal year 2010 (September 1, 2009 to August 31, 2010) and $30,000,000 for fiscal year 2011 (September 1, 2010 to August 31, 2011) for the Incentive Program. Applicants will not be able to receive funding until after September 1, 2009.

(b) Purpose.

(1) The Texas Moving Image Industry Incentive Program was implemented to increase employment opportunities for Texas industry professionals, as well as boost economic activity in Texas cities and the overall Texas economy. Rather than Texas being an exporter of talent, Texas can now attract a wide range of projects from traditional film and commercial productions to the technology driven animation, visual effects and video game productions.

(2) This program allows for growth of the indigenous segments of production. It is an important goal of this program to have Texas' talented workforce stay in Texas and realize real professional growth in the industry. The incentive program increases the value of the Texas workforce and the viability of the small businesses that rely on production activity, increasing Texas' capacity to take on more production activity and increasing Texas competitive edge.

(3) This program is not intended for on-going events or productions that are permanently located in the State of Texas. This includes, but is not limited to, news productions, sports productions and religious service productions.

§121.2. Definitions.

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

(1) Applicant--

(A) For feature films, television programs, reality television projects, educational or instructional videos, or visual effects projects for feature films, television programs, or educational or instructional videos, either the production company producing the project or the owner of the copyright.

(B) For commercials and visual effects projects for commercials, the production company, advertising agency, or client.

(C) For video games, the game developer or game publisher.

(2) Assignee--A third party designated by the applicant as the recipient of the grant.

(3) Business day--A day other than Saturday, Sunday or a legal Federal holiday.

(4) Cast--An actor paid by the applicant or production company for performing a role in Texas, including but not limited to, featured actors, extras, stunt performers, voice-over talent, hosts, judges, announcers and roles or performers that appear on a recurring basis.

(5) Crew--An individual worker paid by the applicant or production company for work performed in Texas that is directly contracted and credited for a specific position. An individual may work in more than one position on a production.

(6) Digital interactive media production--A video game.

(7) Eligible projects--Feature films, television programs, reality television projects, commercials, educational or instructional videos, visual effects projects and video games that meet the qualifying requirements described in §121.3 of this chapter.

(8) Episodic television series--A television program consisting of multiple episodes of a single season.

(9) Expended budget--The final verifying documentation submitted by an applicant at the completion of a project that shows the total eligible in-state spending and includes all documentation considered necessary to show compliance with the requirements of the incentive program.

(10) Filmed--The creation or digital manipulation of a moving image project; the actual production activity for various industry segments:

(A) For a live action feature film, television program, reality television, educational or instructional video, or commercial project, the production of the project involving the capture of images by a camera.

(B) For an animated feature film, television program, commercial, or educational or instructional video project, the creation of computer generated digital images or the use of a camera to film with stop motion or time lapse photography.

(C) For a video game, the use of computers and software to create interactive digital images and visual effects.

(D) For a visual effects project, the finishing of a feature film, television program, commercial, or educational or instructional video with the creation of visual effects including, but not limited to, editing, visual effects, sound effects, music or animation.

(11) Filming day--A day of production as defined in paragraph (29) of this section.

(12) Game console--An electronic device or machine used by consumers primarily for the purpose of playing video games, including, but not limited to, the Nintendo Wii, the Sony PlayStation 3, the Sony PlayStation 2 and the Microsoft Xbox360.

(13) Goods and services--Physical products and services domiciled and used in Texas that are directly attributable to the production of a project including, but not limited to, contractors, subcontractors and service providers, and product or equipment purchases, rentals and leases.

(14) Handheld console--A portable electronic device used by a consumer primarily for the purpose of playing video games, including, but not limited to, the Sony PlayStation Portable, the Nintendo DS, the Nintendo DSi, the Nintendo Game Boy Advanced and the Nintendo Game Boy Color.

(15) Ineligible projects--Projects that do not qualify for the grant, as stated in §121.4 of this chapter.

(16) In-state spending (Texas spend)--The eligible amount of money spent in Texas during pre-production, production and post-production of the project.

(17) Interstitial television program--Short television programming shown between regularly scheduled programs or events.

(18) Loan-out company--A company controlled by the loaned-out employee.

(19) Mobile electronic--A portable electronic device used by a consumer for the purpose of mobile computing and communication, including, but not limited to, personal digital assistants (PDAs) and mobile phones.

(20) Moving image project--An eligible project as defined in §121.3 of this chapter.

(21) Music performance production--Productions featuring musical performances that are more than 30 minutes in length.

(22) Music video--Productions featuring musical performances that are less than 30 minutes in length.

(23) Pass through company--A company or person that acts as an agent or broker for companies or persons outside of Texas to provide goods, services or labor for the purpose of taking advantage of the Texas Moving Image Industry Incentive Program.

(24) Personal computer--An electronic device or machine used by a consumer for a variety of applications, including playing games. Games for this platform include those which play on the computer's CPU, as well as web and online game applications that are played using the personal computer.

(25) Physical production--The period encompassing preproduction, production, and postproduction.

(26) Postproduction--The period of physical production that occurs after the end of production, as defined in paragraph (29) of this section; including but not limited to, editing, music, sound, visual effects and animation.

(27) Pre-production--The period of physical production that occurs before the start of production as defined in paragraph (29) of this section.

(28) Principal start date--

(A) For a live action feature film, television program, reality television, educational or instructional video or commercial project, this is the first day of principal photography.

(B) For a video game or animated project, this is the first day of production.

(C) For a visual effects project, this is the first day of the stand alone finishing process including, but not limited to, the editing, visual effects, sound, music or animation created for feature films, television programs, commercials or educational or instructional videos.

(29) Production--

(A) For a live action feature film, television program, reality television, educational or instructional video or commercial project, this is the period of physical production between the first and last days of principal photography, inclusive.

(B) For a video game or animated project, this is the period of physical production between the end of pre-production and the creation of the gold master or completion of the project.

(C) For a visual effects project, this is the stand alone finishing process including, but not limited to, the editing, visual effects, sound, music or animation created for a feature film, television program, commercial, or educational or instructional video project.

(30) Production company--A film production company, television production company, video game developer, commercial production company, animation production company, visual effects production company or postproduction company.

(31) Reality series--A reality television project consisting of multiple episodes of a single season.

(32) Series of commercials--More than one commercial created in a contiguous production period for the same client.

(33) Series of educational or instructional videos--More than one educational or instructional video created in a contiguous production period for the same client.

(34) Stand-alone arcade machine--An electronic device used by a business or consumer solely for bona fide amusement purposes that reward the player exclusively with non-cash merchandise prizes or a representation of value redeemable for those items, as outlined in Texas Penal Code, §47.01.

(35) Texas resident--An individual who is permanently domiciled in Texas for at least 120 days prior to the principal start date of the project, unless enrolled as a full-time student at a Texas Institution of Higher Education, as defined by Texas Education Code, §61.003; and has completed a Declaration of Texas Residency Form.

(36) Texas spend option--Feature films, television programs and visual effects projects for feature films and television programs may choose a total spending provision to determine their grant amount that will include all eligible in-state spending (including eligible wages paid to Texas residents).

(37) Texas wage option--Feature films, television programs and visual effects projects for feature films and television programs may choose a wages only provision to determine their grant amount that will only include eligible wages paid to Texas residents.

(38) Underutilized and economically distressed area--

(A) Underutilized area--An area or municipality of the state that receives less than 15 percent of the total film and television production in the state during a fiscal year as determined by the Texas Film Commission. Areas or municipalities that receive in excess of 15 percent of the total film and television production in the state will be determined to include the area within a thirty mile radius from that area's largest municipality's city hall.

(B) Economically distressed area--An area within the above-determined thirty mile radius where the median household income does not exceed 75 percent of the median household income as determined by the Texas State Data Center, University of Texas San Antonio.

(39) Wages--Compensation paid to an individual for work performed. Payment methods may include, but are not limited to, direct payments, payments through an agent or agency, payments through a loan-out company or payments through a payroll service. Wages may include, but are not limited to, gross wages, per diems, employer paid Social Security (Old Age, Survivors, and Disability Insurance (OASDI)) payments, employer paid Medicare (MEDI) payments, employer paid Federal Unemployment Insurance (FUI) payments, employer paid State Unemployment Insurance (SUI) payments, employer paid Pension, Health and Welfare payments and employer paid Vacation and Holiday payments.

(40) Webisode--A short episode or series of episodes, either narrative or documentary, that is distributed initially as an Internet download or stream.

§121.3. Eligible Projects.

(a) A project may be eligible for a grant under the Texas Moving Image Industry Incentive Program if it is a permitted project listed in subsections (b) - (h) of this section that meets the minimum requirements.

(b) Feature Films.

(1) A feature film is defined as any:

(A) live-action or animated for-profit production, narrative or documentary;

(B) that is more than 30 minutes in length; and

(C) that is produced for distribution in theaters or via any digital format, including, but not limited to DVD, internet, or mobile electronic device.

(2) Minimum Requirements:

(A) Feature films must have minimum in-state spending of $250,000.

(B) 60% of the filming days must be completed in Texas.

(C) 70% of the total number of paid crew must be Texas residents unless it is determined and certified by the Texas Film Commission that qualified crew are not available and every effort has been made by the production to meet the requirement by the principal start date.

(D) 70% of the total number of paid cast, including extras, must be Texas residents.

(E) Animated or documentary feature films must have 70% of the combined total of paid crew and cast, including extras, be Texas residents unless it is determined and certified by the Texas Film Commission that qualified crew are not available and every effort has been made by the production to meet the requirement by the principal start date.

(F) For the purpose of calculating the 70% Texas resident ratio needed to qualify, certain individuals will be excluded from the Cast or Crew calculation. This includes, but is not limited to, individuals participating or appearing in the following manner:

(i) Documentary subjects or interviewees; or

(ii) Musicians performing as part of a music performance production.

(c) Television Programs.

(1) A television program is defined as any:

(A) live-action or animated for-profit production, narrative or documentary, including, but not limited to:

(i) an episodic television series;

(ii) a miniseries;

(iii) a television movie ("MOW");

(iv) a television pilot;

(v) a television episode;

(vi) an interstitial television program;

(vii) a music performance production; or

(viii) a webisode;

(B) that is produced for distribution via broadcast, cable or any digital format, including, but not limited, to cable, satellite, internet, or mobile electronic device.

(2) Minimum Requirements:

(A) Television programs must have minimum in-state spending of $250,000.

(B) 60% of the filming days must be completed in Texas.

(C) 70% of the total number of paid crew must be Texas residents unless it is determined and certified by the Texas Film Commission that qualified crew are not available and every effort has been made by the production to meet the requirement by the principal start date.

(D) 70% of the total number of paid cast, including extras, must be Texas residents.

(E) Animated or documentary television programs must have 70% of the combined total of paid crew and cast, including extras, be Texas residents unless it is determined and certified by the Texas Film Commission that qualified crew are not available and every effort has been made by the production to meet the requirement by the principal start date.

(F) For the purpose of calculating the 70% Texas resident ratio needed to qualify, certain individuals will be excluded from the Cast or Crew calculation. This includes, but is not limited to, individuals participating or appearing in the following manner:

(i) Documentary subjects or interviewees;

(ii) Musicians performing as part of a music performance production; or

(iii) Litigants and witnesses in court room programs.

(d) Reality Television Projects.

(1) A reality television project is defined as any:

(A) live action for-profit production using unscripted content including, but not limited to:

(i) a reality series;

(ii) a contest or game show, to include individual episodes; or

(iii) a talk show, to include individual episodes;

(B) that is produced for nationally syndicated distribution via broadcast, cable or any digital format, including, but not limited, to cable, satellite, internet, or mobile electronic device.

(2) Minimum Requirements:

(A) Reality television projects must have minimum in-state spending of $250,000.

(B) 60% of filming days must be completed in Texas.

(C) 70% of the combined total of crew and cast, including extras, must be Texas residents.

(D) For the purpose of calculating the 70% Texas resident ratio needed to qualify, certain individuals will be excluded from the Cast or Crew calculation. This includes, but is not limited to, individuals participating or appearing in the following manner:

(i) Talk show guests;

(ii) Game or contest show contestants;

(iii) Reality series participants;

(iv) Documentary subjects or interviewees; or

(v) Litigants and witnesses in court room reality programs.

(e) Commercials.

(1) A commercial is defined as any:

(A) live-action or animated production;

(B) that is an individual commercial, series of commercials, music video, infomercial, or interstitial advertisement;

(C) that is made for the purpose of entertaining or promoting a product, service, or idea; and

(D) that is produced for distribution via broadcast, cable or any digital format including but not limited to cable, satellite, internet, or mobile electronic device.

(2) Minimum Requirements:

(A) Commercials must have minimum in-state spending of $100,000.

(B) 60% of the filming days must be completed in Texas.

(C) 70% of the combined total of paid crew and cast, including extras, which are paid by the incentive applicant or production company, must be Texas residents.

(f) Video Games.

(1) A video game is defined as any:

(A) piece of software that provides a user or users with a game to play for the purpose of entertainment or education, such as for military or medical simulation training; and

(B) that is created for a game console, personal computer, handheld console, mobile electronic or stand-alone arcade machine.

(2) Minimum Requirements:

(A) Video games must have minimum in-state spending of $100,000.

(B) 60% of the filming days must be completed in Texas.

(C) 70% of the combined total of paid crew and cast which are paid by the incentive applicant or production company, must be Texas residents unless it is determined and certified by the Texas Film Commission that qualified crew are not available and every effort has been made by the production to meet the requirement by the principal start date.

(g) Educational or Instructional Videos.

(1) An educational or instructional video is defined as any:

(A) live action or animated production;

(B) that is an educational or instructional video or a series of educational or instructional videos; and

(C) that is produced for distribution in an educational or instructional setting.

(2) Minimum Requirements:

(A) Educational or instructional videos must have minimum in-state spending of $100,000.

(B) 60% of the filming days must be completed in Texas.

(C) 70% of the combined total of paid crew and cast, including extras, which are paid by the incentive applicant or production company, must be Texas residents.

(h) Visual Effects Projects.

(1) A visual effects project is defined as the stand alone finishing of:

(A) a live-action or animated feature film, television program, educational or instructional video, or commercial;

(B) that is completed with the inclusion of visual effects including, but not limited to, editing, visual effects, sound effects, music or animation; and

(C) that is produced for distribution in theaters, in educational or instructional settings, via broadcast, cable or any digital format, including but not limited to, cable, satellite, DVD, internet, or mobile electronic device.

(2) Minimum Requirements:

(A) Feature film and television program visual effects projects must have minimum in-state spending of $250,000.

(B) Commercial and educational or instructional video visual effects projects must have minimum in-state spending of $100,000.

(C) 60% of filming days must be completed in Texas.

(D) 70% of the combined total of paid crew and cast which are paid by the incentive applicant or production company must be Texas residents unless it is determined and certified by the Texas Film Commission that qualified crew are not available and every effort has been made by the production to meet the requirement by the principal start date.

§121.4. Ineligible Projects.

(a) The following types of projects are not eligible for grants under this program:

(1) pornography or obscene material, as defined by Texas Penal Code, §43.21;

(2) news, current event or public access programming, political advertising or programs that include weather or market reports;

(3) local events or religious services;

(4) productions not intended for commercial, educational or instructional distribution;

(5) sporting events or activities;

(6) awards shows, galas or telethons or programs that solicit funds;

(7) projects intended for undergraduate or graduate course credit;

(8) application software, system software, or middleware;

(9) casino-type video games directly used in a gambling device, as pursuant to Texas Penal Code, §47.01; or

(10) commercials or advertising for the State of Texas or any Texas state agency or department.

(b) Not every project will qualify for a grant. The State of Texas is not required to make grants to projects that include inappropriate content or content that portrays Texas or Texans in a negative fashion. As part of the preliminary application process, the Texas Film Commission will review the content document, and will advise the potential applicant on whether the content will exclude the project from receiving a grant.

(c) Once an approved project has been completed, the Texas Film Commission will review the final content before issuing the grant, to ensure that revisions made during production have not created an extreme difference from the content as initially approved.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 2, 2009.

TRD-200904978
Michael Bryant
Assistant General Counsel
Texas Film Commission
Effective date: November 22, 2009
Proposal publication date: October 2, 2009
For further information, please call: (512) 463-9200

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13 TAC §121.13

The repeal is adopted pursuant to the Texas Government Code, §485.022, which directs the Commission to develop a procedure for the submission of grant applications and the awarding of grants, and Texas Government Code, Chapter 2001, Subchapter B, which prescribes the standards for rulemaking by state agencies.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 2, 2009.

TRD-200904979
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Effective date: November 22, 2009
Proposal publication date: October 2, 2009
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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER FF. COMMISSIONER'S RULES CONCERNING THE JOB CORPS DIPLOMA PROGRAM

19 TAC §97.2001

The Texas Education Agency (TEA) adopts the amendment to §97.2001, concerning the Job Corps diploma program. The amendment is adopted without changes to the proposed text as published in the July 31, 2009, issue of the *Texas Register* (34 TexReg 4993) and will not be republished. The section implements the requirements of the Texas Education Code (TEC), §18.006, that the commissioner develop and implement a system of accountability to rate the annual performance of the Job Corps diploma program. The section also adopts the most recently published Job Corps diploma program accountability procedures manual. The amendment adopts the *Job Corps Diploma Program Accountability Procedures Manual,* dated August 2008, and incorporates other applicable updates to the rule.

Effective December 10, 2006, the commissioner adopted 19 TAC §97.2001, exercising rulemaking authority over developing and implementing a system of accountability consistent with the TEC, Chapter 39, where appropriate, to be used in assigning an annual performance rating to Job Corps diploma programs consistent with the ratings assigned to school districts under the TEC, §39.072. Section 97.2001 includes the *Job Corps Diploma Program Accountability Procedures Manual,* dated August 2007, in rule as a figure. The intention is to annually update 19 TAC §97.2001 to refer to the most recently published *Job Corps Diploma Program Accountability Procedures Manual.*

The adopted amendment to 19 TAC §97.2001 updates the rule to adopt the *Job Corps Diploma Program Accountability Procedures Manual,* dated August 2008, as a figure. The new manual prescribes the specific procedures, standards, and performance indicators by which Job Corps diploma programs were evaluated and rated in 2009.

Revisions in the new manual include: (1) updates to year references to make the document current; (2) a change in the manner by which the TEA will release data and rating reports; and (3) other applicable clarifications such as updating the name of the TEA office to which program information must be submitted.

The adopted amendment to 19 TAC §97.2001 also updates rule text, as follows.

Technical edits were made in subsections (c) and (f)(1)(A) to clarify the student performance assessment requirements for the Job Corps diploma program. Corresponding technical edits were also made in the *Job Corps Diploma Program Accountability Procedures Manual.*

Subsection (d) was updated to reference the *2008 Job Corps Diploma Program Accountability Procedures Manual,* dated August 2008, and ratings issued in 2009. Additionally, subsection (d) was updated to specify that the manual adopted for each year prior to 2009 will remain in effect for the applicable school year.

Technical edits were made in subsection (g) to clarify reference to statute.

The adopted amendment to 19 TAC §97.2001 will continue the reporting requirements to address the characteristics of the students served by the Job Corps diploma program. Alternative collection methods were considered; however, based on the number and frequency of data submissions to the TEA, it was determined that electronic submission via the TEA Secure Environment (TEASE) would incur higher costs to the TEA than simple paper submission. The adopted amendment will not require additional paperwork beyond that already maintained.

The TEA determined that there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal began July 31, 2009, and ended August 31, 2009. No public comments were received.

The amendment is adopted under the Texas Education Code, §18.006, which requires the commissioner to develop and implement a system of accountability consistent with the TEC, Chapter 39, where appropriate, to be used in assigning an annual performance rating to Job Corps diploma programs consistent with the ratings assigned to school districts.

The amendment implements the Texas Education Code, §18.006.

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 October 26, 2009.

TRD-200904856
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Effective date: November 15, 2009
Proposal publication date: July 31, 2009
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 571. LICENSING

SUBCHAPTER C. LICENSE RENEWALS

22 TAC §571.56

The Texas Board of Veterinary Medical Examiners adopts an amendment to §571.56, concerning Military Service Fee Waiver, without changes to the proposed text as published in the July 3, 2009, issue of the *Texas Register* (34 TexReg 4483) and will not be republished.

The amendment sets forth the procedure for waiver of the active license renewal fee for licensees discharged from active military duty. The amendment describes the status of the individual's license following the Board's receipt of documentation reflecting separation from military service. The amendment provides that upon receipt of form DD214 (separation documentation), the licensee's active license renewal fee is waived for the remainder of the calendar year in which the licensee is discharged from military service. The license is thereafter placed in "active" status, allowing the licensee to practice veterinary medicine in Texas, or renew the license in "inactive status" the year following military separation. This amendment provides a clarification of the procedure for the waiver of licensing fees for military veterans.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 2, 2009.

TRD-200904970
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Effective date: November 22, 2009
Proposal publication date: July 3, 2009
For further information, please call: (512) 305-7563

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CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER B. SUPERVISION OF PERSONNEL

22 TAC §573.10

The Texas Board of Veterinary Medical Examiners adopts an amendment to §573.10, concerning Supervision of Non-Licensed Employees, without changes to the proposed text as published in the July 3, 2009, issue of the *Texas Register* (34 TexReg 4484) and will not be republished.

Under the amendment a licensee shall personally sign any official health documents issued by the licensee, or any official health document for which the licensee has received compensation. Under the amendment, the licensee is directly responsible for all actions of non-licensed employees for which the licensee receives compensation, in addition to all actions of non-licensed employees acting under the licensee's directions or authorization. This amendment provides a clarification to licensees that they are responsible for the actions of non-licensed employees for which the licensee receives compensation and ensures that the licensees will provide adequate supervision to non-licensed employees. This amendment provides greater protection to the general public that they are receiving a valid health certificate and protects the public from persons engaged in the unauthorized practice of veterinary medicine. This amendment ensures a healthier population of livestock for human consumption, and aid in the prevention of the spread of disease in the nation's commercial livestock and equine herds.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter, as well as §801.151(b) which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession and §801.151(d) which states the Board may adopt rules regarding the work of a person who: (1) works under the supervision of a veterinarian; and (2) fulfills the requirements established by a board-approved organization for registered veterinary technicians.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 2, 2009.

TRD-200904971
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Effective date: November 22, 2009
Proposal publication date: July 3, 2009
For further information, please call: (512) 305-7563

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CHAPTER 575. PRACTICE AND PROCEDURE

22 TAC §575.25

The Texas Board of Veterinary Medical Examiners adopts an amendment to §575.25, concerning Recommended Schedule of Sanctions, with a minor change to the proposed text as published in the July 3, 2009, issue of the *Texas Register* (34 TexReg 4485). The text of the rule will be republished.

In subsection (a)(3)(E) a minor change was made. In the proposed version, a parenthesis was inadvertently included after "SBE". The parenthesis has been removed.

The amendment concerns the schedule of sanctions available to the Board with regard to licensees who have committed Class A, B or C violations of the Veterinary Licensing Act and/or Board rules. The amendment allows the Board to impose, as a sanction for a licensee's commission of a Class A, B or C violation of the Veterinary Licensing Act and/or Board rules, that the licensee sit for, and pass, the Texas State Board Licensing Exam, otherwise known as the SBE. This is to conform the rule to the current practice of the Board.

One commenter opposed adoption as the new proposed penalties have no value other than to intimidate veterinarians. The Board respectfully disagrees and has and continues to use the requirement a licensee sit for and pass the SBE as an educational tool for licensees so that violations to the Act and/or the Board's rules are not repeated.

One commenter opposed adoption as the new proposed penalties are too strict for Class B and especially Class C violations. The commenter suggested just continuing education in the regulations as being sufficient for those violations. The Board respectfully disagrees and feels that sitting for and passing the SBE is a useful educational tool even for Class C violations in the hope of preventing any further violations of the Act and/or Board rules by the licensee as deemed necessary for individual cases presented to the Board.

The amendment is adopted under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter, as well as §801.151(b) which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession.

§575.25. Recommended Schedule of Sanctions.

(a) Class A violations. Licensees considered as presenting imminent peril to the public will be considered Class A violators. In determining whether a violation is a Class A, consideration will be given to the disposition of any previously docketed cases, and to the combination of charges which might involve Class B and/or C violations.

(1) Class A violations may include, but are not limited to:

(A) conviction of a felony, including a felony conviction under the Health and Safety code, §485.032 (formerly numbered; §485.033) relating to Delivery of an Abusable Volatile Chemical to a Minor, or Chapters 481 relating to Controlled Substances, or Chapter 483 relating to Dangerous Drugs;

(B) gross malpractice with a pattern of acts indicating consistent malpractice, negligence, or incompetence in the practice of veterinary medicine;

(C) revocation of a veterinary license in another jurisdiction;

(D) mental incompetence found by a court of competent jurisdiction;

(E) chronic or habitual intoxication or chemical dependency, or addiction to drugs;

(F) issuance of a false certificate relating to the sale for human consumption of animal products;

(G) presentation of dishonest or fraudulent evidence of qualifications or a determination of fraud or deception in the process of examination, or for the purpose of securing a license;

(H) engaging in veterinary practices which are violative of the Rules of Professional Conduct; or

(I) fraudulent issuance of health certificates, vaccination certificates, test charts, or other blank forms used in the practice of veterinary medicine that relate to the presence or absence of animal disease.

(2) In assessing sanctions and/or penalties, consideration shall be given to the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the potential hazard created to the health, safety, or economic welfare of the public; the economic harm to property or the environment caused by the violation; history of previous violations; what is necessary to deter future violations; and any other matters that justice may require.

(3) Maximum penalties:

(A) revocation of the license;

(B) a penalty not exceeding $5,000 for each violation per day;

(C) continuing education in a specified field related to the practice of veterinary medicine that the board deems relevant to the violation(s). The total number of hours mandated are in addition to the number of hours required to renew the veterinary license;

(D) quarterly reporting certifying compliance with board orders; and/or

(E) Licensee sit for, and pass, the SBE.

(b) Class B violations. Involves licensees who have violated rules and/or statutes or have committed a Class C violation within the last 36-month period. In determining whether a violation is a Class B, consideration will be given to the disposition of the previously docketed cases, and to the combination of charges which might invoke Class A and/or C violations.

(1) Class B violations may include, but are not limited to:

(A) engaging in dishonest or illegal practices in or connected with the practice of veterinary medicine;

(B) engaging in veterinary practices which are violative of the Rules of Professional Conduct;

(C) permitting or allowing another to use his/her license or certificate to practice veterinary medicine;

(D) committing fraud in application or reporting of any test of animal disease;

(E) paying or receiving any kickback, rebate, bonus, or other remuneration for treating an animal or for referring a client to another provider of veterinary services or goods;

(F) fraudulent issuance of health certificates, vaccination certificates, test charts, or other blank forms used in the practice of veterinary medicine that relate to the presence or absence of animal disease;

(G) performing or prescribing unnecessary or unauthorized treatment;

(H) ordering prescription drugs or controlled substances for the treatment of an animal without first establishing a valid veterinarian-patient-client relationship;

(I) failure to maintain equipment and business premises in a sanitary condition; or

(J) refusal to admit a representative of the board to inspect the client and patient records and business premises of the licensee during regular business hours.

(2) In assessing sanctions and/or penalties, consideration shall be given to: the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts; the hazard or potential hazard created to the health, safety, or economic welfare of the public; the economic harm to property or the environment caused by the violation; the history of previous violations; what is necessary to deter future violations; and any other matters that justice may require.

(3) Maximum penalties:

(A) one to 10-year license suspension with none, all, or part probated;

(B) a penalty not exceeding $5,000 for each violation per day;

(C) continuing education in a specified field related to the practice of veterinary medicine that the board deems relevant to the violation(s). The total number of hours mandated are in addition to the number of hours required to renew the veterinary license;

(D) quarterly reporting certifying compliance with board orders; and/or

(E) Licensee sit for, and pass, the SBE.

(c) Class C violations. Involve licensees who have violated the rules and/or statutes, but do not have a history of previous violations. Consideration should be given to the nature and severity of the violation(s).

(1) Class C violations may include, but are not limited to, minor violations included in Class A and/or B in which there is no hazard or potential hazard created to the health, safety, or economic welfare of the public and no economic harm to property or to the environment.

(2) In assessing sanctions, consideration should be given to the good or bad faith exhibited by the cited person; evidence that the violation was willful; extent to which the cited individual has cooperated with the investigation; and the extent to which the cited person has mitigated or attempted to mitigate any damage or injury caused.

(3) Maximum penalties:

(A) six months to one-year suspension with the entire period probated;

(B) an administrative penalty not to exceed $500 for each violation per day; and/or

(C) Licensee sit for, and pass, the SBE.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200904972
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
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For further information, please call: (512) 305-7563

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22 TAC §575.28

The Texas Board of Veterinary Medical Examiners adopts an amendment to §575.28, concerning Complaints--Investigations, without changes to the proposed text as published in the July 3, 2009, issue of the *Texas Register* (34 TexReg 4486) and will not be republished.

The amendment concerns the Board's procedure for requesting patient records from a licensee who is the subject of a complaint initiated pursuant to Chapter 575. The amendment streamlines the procedure for requesting patient records from a licensee following the Board's receipt of a complaint and assignment of an investigator to the matter. Currently, the rule provides that, upon receipt of a complaint, the Board requests patient records from the licensee related to the subject animal. Upon the receipt of said patient records, the Board furnishes the licensee with a copy of the complaint and requests a written response within 21 days. The amendment combines these steps and provides the licensee with a copy of the complaint at the same time as the request for patient records. The amendment provides a more efficient complaint process, by virtue of less correspondence exchanged between the Board and the licensee during the initial investigation, and an abbreviated time period for completing the investigation process.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 2, 2009.

TRD-200904973
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Effective date: November 22, 2009
Proposal publication date: July 3, 2009
For further information, please call: (512) 305-7563

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CHAPTER 577. GENERAL ADMINISTRATIVE DUTIES

SUBCHAPTER B. STAFF

22 TAC §577.15

The Texas Board of Veterinary Medical Examiners adopts an amendment to §577.15, concerning Fee Schedule, without changes to the proposed text as published in the July 3, 2009, issue of the *Texas Register* (34 TexReg 4487) and will not be republished.

The amendment concerns the Board's fee schedule for examinations, application processing, renewals, provisional licenses, open records and returned check fees. The amendment increases by $25.00 the required fees for current license renewals, inactive renewals, and special licenses. Proportional increases are also made in delinquent renewal fees. The fee increases are required to cover the costs of the Board's legislative appropriation for FY 2010. No changes are made to fees for the State Board Examination or Special License Examination, and the provisional license fee remains $255.00.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 2, 2009.

TRD-200904974
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Effective date: November 22, 2009
Proposal publication date: July 3, 2009
For further information, please call: (512) 305-7563

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 419. MENTAL HEALTH SERVICES--MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES

SUBCHAPTER A. YOUTH EMPOWERMENT SERVICES (YES)

25 TAC §§419.1 - 419.8

The Executive Commissioner of the Health and Human Services Commission (commission) on behalf of the Department of State Health Services (department) adopts new §§419.1 - 419.8, concerning the youth empowerment services (YES) Medicaid waiver program, without changes to the proposed text as published in the July 17, 2009, issue of the *Texas Register* (34 TexReg 4717) and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The new rules are necessary to implement the pilot program, approved by the federal government under the waiver provisions of the federal Social Security Act, §1915(c), which is designed to prevent or reduce institutionalization of children and adolescents with severe emotional disturbance (SED), enable more flexibility in providing intensive community-based services for children and adolescents with SED, and provide support for their families by improving access to services. The YES Medicaid waiver program will provide services to children and adolescents that reside in Bexar and Travis Counties.

SECTION-BY-SECTION SUMMARY

New §419.1 sets forth the purpose and application of the subchapter; §419.2 defines a number of terms used throughout the subchapter; §419.3 describes the eligibility criteria that children or adolescents must meet to participate in the waiver program; §419.4 states that receipt of waiver program services may be dependent upon the child's or adolescent's and/or legally authorized representative's ability to make a co-payment; §419.5 requires that each waiver participant have an individual plan of care (IPC) and describes the elements that must be addressed in the IPC; §419.6 requires a transition plan for adolescents who will become 19 years of age while receiving waiver program services; §419.7 describes the requirements and application process to be a provider of waiver program services; and §419.8 requires that the waiver program participant and legally authorized representative be notified of the right to a fair hearing when services are denied, reduced, suspended, or terminated.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed rules during the comment period, which the commission has reviewed and accepts. The department received comments from a licensed psychologist located in Edinburg, TX; Advocacy, Inc., Austin, TX; Mental Health America of Greater Houston, Houston, TX; Texas Chapter of the National Association of Social Workers, Austin, TX; and Texas Council for Developmental Disabilities, Austin, TX. The commenters were generally in favor of the program and rules but expressed some concerns.

Comment: One commenter advised that a major weakness of most pilot programs in Texas is that they generally start in the Travis, Tarrant, Dallas, and Bexar counties and slowly expand to under-served areas, which is when it is realized that the program does not fit the needs of under-served counties. The commenter expressed an opinion that although these urban counties have

under-served populations within them, the data collected from the pilot program would not accurately reflect the outcome of a truly under-served area.

Response: In November 2007, the department published a request for information (RFI) titled, "1915(c) Medicaid Waiver for Children's Mental Health," regarding the pilot program on the Electronic State Business Daily Bulletin. The responses to the RFI expressing interest in being a pilot site were all from urban counties: Bexar, Travis, Tarrant, and Harris counties. No rural sites expressed interest. When the waiver program is expanded to additional service areas, the department will give due consideration to addressing potential barriers and challenges to successful implementation of the program in under-served areas. No change was made as a result of the comment.

Comment: Four commenters expressed support for the YES Waiver Program, but also expressed concern regarding §419.4, which states that waiver program services may be dependent upon a co-payment.

Response: The commenters' support for the waiver program is appreciated. However, all the commenters appeared to believe that a co-payment is a requirement to receive services. The waiver approved by the Centers for Medicare and Medicaid Services (CMS) does not authorize a co-payment. The commission disagrees with the commenters because §419.4 does not require a co-payment; however, the rule includes the potential for a possible co-payment in the future. A co-payment could not be implemented without a waiver amendment and approval from CMS. No changes were made as a result of the comments.

LEGAL CERTIFICATION

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

STATUTORY AUTHORITY

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

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 October 30, 2009.

TRD-200904969
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: November 19, 2009
Proposal publication date: July 17, 2009
For further information, please call: (512) 458-7111 x6972

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER S. MOTOR FUEL TAX

34 TAC §3.432

The Comptroller of Public Accounts (comptroller) adopts an amendment to §3.432, concerning refunds on gasoline and diesel fuel tax, without changes to the proposed text as published in the September 18, 2009, issue of the *Texas Register* (34 TexReg 6441). This amendment incorporates legislative changes in Senate Bill 254, 81st Legislature, 2009, which amended Tax Code, Chapter 162. Senate Bill 254 authorizes the refund of taxes paid on gasoline and sold to and exclusively used by a Texas volunteer fire department. Subsection (i)(1)(E) is being added. Subsection (i)(2) is amended to correct references.

No comments were received regarding adoption of the amendment.

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

The amendment implements Tax Code, §§162.104, 162.125, 162.204, and 162.227.

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 October 27, 2009.

TRD-200904866
Ashley Harden
General Counsel
Comptroller of Public Accounts
Effective date: November 16, 2009
Proposal publication date: September 18, 2009
For further information, please call: (512) 475-0387

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34 TAC §3.442

The Comptroller of Public Accounts adopts an amendment to §3.442, concerning bad debts or accelerated credit for non-payment of taxes, without changes to the proposed text as published in the September 18, 2009, issue of the *Texas Register* (34 TexReg 6442). This amendment incorporates legislative changes in Senate Bill 1782, 81st Legislature, 2009, which amended Tax Code, Chapter 162. Senate Bill 1782 provides that a supplier or permissive supplier will no longer be required to ratably apply payments or credits in the reduction of a customer's account between motor fuels, tax and other goods sold when the credit claimed is due to a distributor's or importer's failure to make a deferred payment of tax. The supplier or permissive supplier must claim the credit within 15 days of the payment default. The amendment requires the supplier or permissive supplier to terminate the distributor's or importer's ability to defer tax payment for one year after the credit is claimed. Subsection (c) is being amended to add the notification process for accelerated

credits claimed on or after June 19, 2009, and to renumber the remaining subsections. Subsection (c)(7) is being added to address the suspension of a distributor's or importer's right to defer tax payments to a supplier or permissive supplier. Subsection (d) is being amended to clarify credit card sales eligible to the bad debit credit.

No comments were received regarding adoption of the amendment.

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

The amendment implements Tax Code, §§162.113, 162.116, 162.214, and 162.217.

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 October 27, 2009.

TRD-200904867
Ashley Harden
General Counsel
Comptroller of Public Accounts
Effective date: November 16, 2009
Proposal publication date: September 18, 2009
For further information, please call: (512) 475-0387

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SUBCHAPTER II. TELECOMMUNICATIONS INFRASTRUCTURE FUND ASSESSMENT

34 TAC §3.1101

The Comptroller of Public Accounts (comptroller) adopts the repeal of §3.1101, concerning telecommunications receipts, assessment determination, due date for assessment report and payment, auditing, records, and assessments, without changes to the proposed text as published in the September 11, 2009, issue of the *Texas Register* (34 TexReg 6288). The existing §3.1101 is being repealed pursuant to House Bill 735, 80th Legislature, 2007, which repealed the telecommunications infrastructure fund assessment as effective September 1, 2008.

No comments were received regarding adoption of the repeal.

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

The repeal implements the repeal of Utilities Code, §57.048.

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 October 27, 2009.

TRD-200904865
Ashley Harden
General Counsel
Comptroller of Public Accounts
Effective date: November 16, 2009
Proposal publication date: September 11, 2009
For further information, please call: (512) 475-0387

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 5. TEXAS BOARD OF PARDONS AND PAROLES

CHAPTER 150. MEMORANDUM OF UNDERSTANDING AND BOARD POLICY STATEMENTS

SUBCHAPTER A. PUBLISHED POLICIES OF THE BOARD

37 TAC §150.55

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC §150.55, concerning conflict of interest policy. The amendment is adopted without change to the proposed text as published in the September 18, 2009, issue of the *Texas Register* (34 TexReg 6443). The text of the rule will not be republished.

The amended rule is adopted to include parole commissioners and to clearly define circumstances under which board members and parole commissioners should disqualify themselves from voting on a clemency matter or parole decision or a decision to continue, modify, or revoke parole or mandatory supervision.

No public comments were received regarding adoption of these amendments.

The amended rule is adopted under Subtitle B, Ethics, Chapter 572, Government Code. Subtitle B, Ethics, Chapter 572, is the ethics policy of this state for state officers or state employees.

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 October 30, 2009.

TRD-200904941
Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
Effective date: November 19, 2009
Proposal publication date: September 18, 2009
For further information, please call: (512) 406-5388

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PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 421. STANDARDS FOR CERTIFICATION

37 TAC §421.9

The Texas Commission on Fire Protection (Commission) adopts an amendment to §421.9, concerning Designation of Fire Protection Duties. This amendment is adopted without changes to the proposed text published in the July 31, 2009, issue of the *Texas Register* (34 TexReg 5046) and will not be republished.

This amendment is being adopted to make grammatical corrections and to capitalize the word "Commission." This adopted amendment also reflects the name change of a form required to be filed when an individual is no longer appointed to fire suppression duties. Employees hired by a fire department are required to submit a Notice of Appointment prior to being assigned to fire suppression duties. When the employee is no longer assigned fire suppression duties for that jurisdiction the employee must submit a Removal from Appointment form showing they are no longer with that fire department.

This rule will aid the administrative staff of a fire department as to what must be reported to the Commission when an individual leaves their department and what form must be filled out in order to track a fire fighter if that fire fighter is transferred to another department, retires or passes on.

No comments were received from the public regarding the proposed amendment.

This amendment is adopted under Texas Government Code §419.0322(b), Categories and Designation of Persons Performing Fire Protection Duties.

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 October 29, 2009.

TRD-200904931
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: November 18, 2009
Proposal publication date: July 31, 2009
For further information, please call: (512) 936-3838

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CHAPTER 429. MINIMUM STANDARDS FOR FIRE INSPECTORS
SUBCHAPTER B. MINIMUM STANDARDS FOR FIRE INSPECTOR CERTIFICATION

37 TAC §429.203

The Texas Commission on Fire Protection (the Commission) adopts an amendment to §429.203, concerning Minimum Standards for Basic Fire Inspector Certification--New Track. This amendment is adopted without changes to the proposed text as published in the July 31, 2009, issue of the *Texas Register* (34 TexReg 5047) and will not be republished.

The reason for the adoption of this amendment to this rule is to correct a typographical error. The word "Investigations" was inadvertently typed in the original submission. It should read "Inspections."

The purpose of adopting this rule is for Basic Fire Inspector Certification programs to understand they need three semester hours of Fire Prevention Codes and Inspections, not Fire Prevention Codes and Investigations as originally stated in the Commission manual.

No comments were received from the public regarding the proposed amendment.

This amendment is being adopted under the Texas Government Code, §419.028, Training Programs and Instructors.

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 October 29, 2009.

TRD-200904932
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: November 18, 2009
Proposal publication date: July 31, 2009
For further information, please call: (512) 936-3838

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CHAPTER 445. ADMINISTRATIVE INSPECTIONS AND PENALTIES

37 TAC §§445.1, 445.9, 445.11, 445.13, 445.15

The Texas Commission on Fire Protection (the Commission) adopts amendments to §445.1, concerning Entity Inspections, §445.9, concerning Minor Violations, §445.11, concerning Major Violations, §445.13, concerning Disciplinary Hearings, and §445.15, concerning Judicial Enforcement. These amendments are adopted without changes to the proposed text as published in the July 31, 2009, issue of the *Texas Register* (34 TexReg 5047) and will not be republished.

These amendments are being adopted to develop rule changes that allow the Commission to establish a risk-based approach to conducting inspections; establish a reasonable time frame for opening a complaint case after finding inspection violations and adopt an enforcement matrix for assessing penalty amounts or disciplinary amounts relating for violations to agency statutes and rules. These recommendations are from the Sunset Review process and have been incorporated into the Commission's enabling legislation.

The purpose of these adopted amendments is to allow the Commission to conduct inspections, establish time frames and assess penalties for violations to agency statutes and rules recommended by the Sunset Commission.

No comments were received from the public regarding these proposed amendments.

These amendments are adopted under Texas Government Code, §419.027, Biennial Inspections.

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 October 29, 2009.

TRD-200904930
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: November 18, 2009
Proposal publication date: July 31, 2009
For further information, please call: (512) 936-3838

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 17. VEHICLE TITLES AND REGISTRATION

SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

43 TAC §17.40

The Texas Department of Transportation (department) adopts amendments to §17.40, concerning Marketing of Specialty License Plates through a Private Vendor. The amendments are adopted with changes to the proposed text as published in the September 11, 2009, issue of the *Texas Register* (34 TexReg 6302).

EXPLANATION OF ADOPTED AMENDMENTS

The amendments are necessary to update existing rules regarding specialty license plates that will be marketed by the department's new private vendor. The joint venture of Etech, Inc., and Pinnacle Technical Resources, Inc., was competitively awarded a five-year contract on August 3, 2009.

The bid by Etech, Inc., and Pinnacle Technical Resources, Inc., included a proposal to increase the array of specialty license plate designs available to the general public and to generate additional revenue for the state by creating new types of specialty plates, classified as "Freedom license plates," "Background only license plates," and "Vendor souvenir license plates." Fees for these new plate categories must be established by rule.

Senate Bill 1616, 81st Legislature, Regular Session, 2009 repealed Transportation Code, §504.101 authorizing the department to issue personalized non-specialty license plates. Under the new law, only specialty license plates will be eligible for personalization. The amendments do not alter the fee for a personalized specialty plate issued by the department. The fees for "Custom license plates," "T-Plates (Premium) license plates," formerly referred to as "Premium license plates," and "Luxury license plates," which provide for personalization, are being reduced by these amendments. The reduction of fees is a result of the selection of the new specialty license plate vendor.

Amendments to §17.40(e) make minor technical corrections. The amendment to §17.40(e)(2) replaces "designee" for "designees" as the executive director is only authorized to designate one person to make the final decision on the specialty license plate application. The amendment to §17.40(e)(3) corrects the reference to the vendor to clarify that it is the vendor that is responsible to the department for the specialty license plate start up fee.

Amendments to §17.40(h) revise the fees for "T-Plates (Premium) license plates," and "Luxury license plates," amend the fees and add a new type of license plate under "Custom license plates," and add paragraphs establishing new vendor specialty license plate types: "Freedom license plates," "Background only license plates," and "Vendor souvenir license plates." The amendments replace the term "customized" with the term "personalized" to be consistent with the statutory terminology in Transportation Code, §504.003, §504.102, §504.851, and §504.853 indicating specific alpha and numeric patterns.

"Custom license plates," "T-Plates (Premium) license plates," and "Luxury license plates," and the new "Freedom license plates," and "Vendor souvenir license plates" may be personalized with a unique alphanumeric pattern. "Custom license plates" may be personalized with either three alpha and two or three numeric characters or two or three numeric and three alpha characters or with up to six alphanumeric characters on a generic white background license plate. "T-Plates (Premium) license plates" will be made available to coincide with extraordinary events of public interest and may be personalized with up to seven alphanumeric characters. "Luxury license plates" may be personalized with up to six alphanumeric characters. "Freedom license plates" may be personalized with up to seven alphanumeric characters. "Vendor souvenir license plates" may be personalized with up to twenty-four alphanumeric characters.

"Custom license plates," "T-Plates (Premium) license plates," "Luxury license plates," "Freedom license plates," and "Background only license plates" will be available for the following vehicle registration classes: passenger car less than or equal to 6,000 pounds; passenger car or motor home more than 6,000 pounds; light truck less than or equal to one ton; truck more than one ton; trailer; travel trailer; motorcycle; private bus less than or equal to 6,000 pounds; and private bus more than 6,000 pounds. "Vendor souvenir license plates" are replica plates and are not eligible for display on a registered vehicle.

The fees reflect the vendor's recommendation. The fee structure developed by the vendor will enable the department to recoup costs associated with implementation of the program, compensate the vendor for start up costs and the risk incurred by this venture, and allow the vendor to make a profit if enough vendor-marketed plates are purchased.

The amendments to §17.40(h)(1) adopt a fee for "Custom license plates" of $85 for one year, $225 for five years, and $325 for ten years. This represents a reduction in the fee of $10 for the one year plates and $70 for the five and ten year plates. The amendment also expands the types of plates offered under this category. As proposed, §17.40(h)(1) allowed for the issuance of a generic license plate with a white background and the Texas silhouette to be personalized with up to six alphanumeric characters. However, the adopted language eliminates the requirement for the Texas silhouette on the plate as this restricts the design of the plate. The adopted fee for "T-Plates (Premium) license plates" under §17.40(h)(2) is $95 for one year, $395 for five years, and $495 for ten years. This is a reduction of $100 for each of these plates. The adopted fee for "Luxury license plates" under §17.40(h)(3) is $195 for one year, $495 for five years, and

$595 for ten years. This is a reduction of $200 for each of these plates. The department has changed the proposed language to language clarifying that the "Luxury license plates" fees do not apply to the generic license plates that can also be personalized with up to six characters. The lower fees for custom license plates apply to the personalized generic plates.

The new language in §17.40(h)(4) creates the "Freedom license plates" category and sets the fees at $395 for one year, $695 for five years, and $795 for ten years. The new language in §17.40(h)(5) creates the "Background only license plates" category and sets the fees at $55 for one year, $195 for five years, and $295 for ten years. New §17.40(h)(6) establishes a "Vendor souvenir license plates" category and sets the fee at $40.

Subsection 17.40(n) is amended to reduce the fee for each restyled plate to $55 for all categories. This represents a reduction in the fee of $40 for custom plates, $70 for premium plates, and $95 for luxury plates and is a result of the selection of a new specialty plate vendor.

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §502.0021, which authorizes the department to adopt rules governing the issuance of motor vehicle registration and Transportation Code, §504.851, which authorizes the commission to adopt rules to establish fees for the issuance or renewal of vendor-marketed license plates.

CROSS REFERENCE TO STATUTE

Transportation Code, §§504.851 - 504.852.

§17.40. 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 §17.28(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 web site 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 web site.

(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 Assistant Executive Director, will make the final decision on the vendor's specialty license plate application based on the committee's recommen-

dation and on all comments received during the period prescribed by subsection (d)(2) of this section.

(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 subsection (h)(1)(B) of this section 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.

(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.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Bob Jackson
General Counsel
Texas Department of Transportation
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For further information, please call: (512) 463-8683

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CHAPTER 25. TRAFFIC OPERATIONS

SUBCHAPTER O. CRASH RECORDS INFORMATION SYSTEM

43 TAC §25.977

The Texas Department of Transportation (department) adopts amendments to §25.977, concerning reporting of motor vehicle crashes by investigating officers. The amendments are adopted without changes to the proposed text, as published in the June 12, 2009, issue of the *Texas Register* (34 TexReg 3920), however, the Form CR-3, as adopted by reference, is adopted with changes to the proposal.

EXPLANATION OF ADOPTED AMENDMENTS

Law enforcement officers who investigate motor vehicle crashes are required by Transportation Code, §550.062 to submit a crash report to the department within 10 days of such an accident on a form prescribed by the department if the crash resulted in injury to or death of a person or $1,000 or more of property damage. The form used for the report is referred to as the Texas Peace Officer's Crash Report, or more commonly as the Form CR-3.

Under the adopted revisions to §25.977, Reporting by Investigating Officers, the Texas Transportation Commission (commission) adopts Form CR-3 by reference. The revisions remove the reference to the supplemental commercial motor vehicle report. The information needed for a commercial motor vehicle accident report is now included on Form CR-3 and therefore, a separate, supplemental report is unnecessary.

The department became the office of record for state crash data in October of 2007 when this function was transferred to the department from the Department of Public Safety (DPS) in accordance with Transportation Code, Chapter 550. The Department of Public Safety had adopted rule 37 TAC §3.9 regarding crash reporting, which adopted Form CR-3 by reference. This rule, along with the other rules regarding the state crash data program, was transferred to the department in October 2007 when the crash records function became part of the department.

Amendments to §25.977(c) return the rule to the earlier format of 37 TAC §3.9 by adopting the CR-3 form by reference. This change adheres to the previous rule adopted by DPS and requires the department to propose and adopt changes to the form through the administrative rulemaking process.

Form CR-3 provides for the collection of specific information about a motor vehicle crash, information about the vehicles involved in the crash, and information about the people who were involved in the crash. The form includes various items such as, the date of the crash; location of the crash; type of highway where the crash occurred; whether the crash occurred on public or private property; driver and passenger names; injury severity; factors that contributed to the crash; commercial vehicle information such as, vehicle type, configuration, and carrier name; driver's license information; vehicle information, including the model, make, year, and vehicle identification number; citation information; emergency response information; and information about safety belt usage. The information collected is necessary to utilize the report for its intended purpose of meeting state and federal reporting requirements and identifying safety issues.

In 2007, the department and DPS received a request from the Department of Insurance and the Texas insurance industry to remove driver's telephone numbers from Form CR-3 because of their belief that insurance fraud was being perpetrated on crash victims who were being contacted at the telephone numbers

listed on the form. The DPS consulted with various law enforcement agencies concerning the removal of the driver's telephone number from the CR-3 form. Since neither the department nor law enforcement agencies were able to identify a business need for a driver's telephone number the form, as proposed for adoption, did not include driver's telephone numbers.

Amendments to §25.977(e) strike the requirement of a supplemental commercial motor vehicle report. Form CR-3 now includes the necessary commercial motor vehicle information; therefore, there is no need for a supplemental form. This change will benefit law enforcement by eliminating the completion of a second form.

The form may be completed by a law enforcement agency in one of three ways: printing out the form and completing it manually; completing the electronic version of the form on a computer; or entering and submitting the data via a web based data entry system. The information requested and submitted by a law enforcement officer remains the same regardless of the method used to complete the form.

COMMENTS

The proposed amendment was published in the June 12, 2009, issue of the *Texas Register.* The department received written comments from the National Insurance Crime Bureau, the Texas Chapters of the International Association of Special Investigation Units, the Coalition Against Insurance Fraud, Department of Public Safety, the Insurance Council of Texas, the Texas Department of Insurance, and Liberty Mutual Insurance Company. The department also received written comments from 218 individuals regarding the proposed amendment. The comment period closed on August 7, 2009.

The department conducted one public hearing in Austin regarding the proposed amendment. The department received sixteen comments during the public hearing from concerned citizens, individual chiropractors, the Texas Chiropractic Association, the Texas Committee on Insurance Fraud, the Texas Chapters of the International Association of Special Investigation Units, the National Insurance Crime Bureau, the Texas Weekly Advocate, and the Texas Department of Insurance.

Comment: Major David L. Palmer of DPS provided written comment requesting that the hazardous materials identification table on the CR-3 form should be revised to contain six characters (two alpha characters for "UN" or "NA" and four numeric characters) from the proposed four characters to conform to federal hazardous material reporting regulations.

Response: The department concurs with this comment and has revised Form CR-3 to expand the field for the hazardous materials identification table. The department believes that this revision will ensure that the CR-3 form continues to meet all federal reporting requirements for commercial motor vehicle crashes.

All other comments received regarding these amendments addressed the deletion of the phone number from the CR-3 form. The department received comments both in favor and opposed to removal of the driver's phone number from the CR-3 form.

Comment: The department received 13 identical written comments from various individuals noting that the commenter works in the legal field and the inclusion of the driver's phone number was an important factor in resolving issues related to individual crashes.

Response: Under Transportation Code, §550.064 the officer's accident report must include: 1) detailed information to disclose the cause and condition of the persons and vehicles involved in the accident; 2) a way to designate and identify emergency personnel involved in an accident while performing the person's official duties including the nature of the emergency; and 3) include a way for a person involved to designate if they want to receive solicitations from persons seeking employment regarding the accident. The statute does not require that the form include any contact information of the parties involved. Other similar statutes regarding the exchange of information by parties involved in a vehicle accident require the name and address. The telephone number is not required under Transportation Code, §550.023, regarding providing information to another party present at the accident scene, nor is the phone number required under Transportation Code, §550.024, regarding the information that is required if an individual strikes an unattended vehicle. In both of these statutes the Legislature has determined that the address is sufficient information to provide contact information.

Without specific statutory language to require the phone number the department is able to delete it from Form CR-3 as unnecessary. The purpose of the crash record report form is not to provide the information necessary for the solicitation of crash victims for medical treatment options but to provide law enforcement agencies, transportation agencies, and other governmental entities valid statistical information about motor vehicle crashes to plan and implement programs to improve public safety. The Department of Public Safety has determined that, although the phone number can be helpful for follow up crash investigation issues, it is not vital to the form. The need for and uses of the phone number do not outweigh the privacy concerns that the collection, storage, and release of the phone number creates. In addition to DPS, the department consulted with several law enforcement agencies concerning the creation of the form and none indicate that the removal of the phone number would impede its law enforcement duties.

Comment: The department received 177 identical form letters from various individuals stating that inclusion of the driver's phone number had been instrumental in resolving issues related to their own motor vehicle crash, that the phone number was more reliable than the address for contacting the individual, and that the person was more likely to lie about the address and the insurance information.

Response: The department disagrees with this comment. The department did not find evidence that supported the anecdotal evidence that a person is more likely to provide a false address and insurance information than a false phone number.

As stated previously, the phone number is not statutorily required nor does it serve a governmental need that outweighs the privacy concerns the collection creates. Under similar statutes the name and address are sufficient to identify and locate the parties involved in the accident.

Comment: Ms. Adriene Anderson, a private investigator representing herself, spoke at the public hearing against removal of the driver's phone number. She noted that removal will have a negative impact on her small business. Although the court has ordered the phone number to be placed on the form, many police departments are still not using the correct form. Ms. Anderson noted that removal of the phone number makes it very difficult for her to contact the owners of the vehicle involved in motor vehicle crashes to gain their permission to take pictures of a vehicle in a storage yard or collision center. Ms. Anderson noted that some

people involved in motor vehicle crashes provide false address information on the crash reports. She also noted that the driver's phone number is very important in resolving legal and investigative issues related to cases involving motor vehicle crashes. Ms. Anderson noted that she considers this an issue related to local economies and employment and believes that the department should have noted the loss to small businesses.

Response: The department does not agree with Ms. Anderson's statements. The purpose of the form is to record the accident. The department has no obligation to continue to collect information that is not needed to fulfill a government purpose. Other comparative statutes indicate that the name and address is sufficient for contact information. The department's position is consistent with these other statutes. The factors favoring collection of the phone number do not outweigh the privacy concerns that collecting the information would create.

The department notes that it has no regulatory authority over hospitals, chiropractors, private investigators, records retrieval services, or other medical professionals and the department is not required under Government Code, §2006.002, to provide a detailed analysis of fiscal impact on those entities relating to the adoption of these rules. There is no requirement that anyone other than law enforcement officers comply with the changes to the Form CR-3. A small business study is not required.

Comment: Mr. Doug Becker, representing himself, provided comment during the public hearing requesting the phone number remain on the Form CR-3. Mr. Becker noted that to his knowledge any allegations of fraud resulting from inclusion of the driver's phone number are untested in any courtroom. Mr. Becker stated that inclusion of the driver's phone number on the form allows people injured in the crash to be approached by telemarketers to get needed medical care at a chiropractic clinic at no charge. The removal of the phone number is based on insurance companies' desire to increase their profits. Mr. Becker also stated that the department and DPS are not working toward the best interests of the public by their actions and that we need to take a closer look at the issue before giving the insurance companies what they want.

Response: The department disagrees with Mr. Becker's comments. The CR-3 form is not created nor intended to provide contact information for chiropractic clinics, legal professionals, and telemarketers. The form is created to provide law enforcement a consistent mechanism for gathering and reporting vehicle crashes and for use by the department to tabulate and analyze vehicle crashes. The form details the events and circumstances surrounding the crash. Identification information collected on the form is sufficient to identify the parties involved and to identify the specific crash. The phone number is not necessary.

Comment: Mr. Douglas Friedman, representing himself, provided written comment on a variety of issues related to the collection of crash data and removal of the phone number from the CR-3 form. Mr. Friedman noted that removal of the driver's phone number would have broad financial repercussions and many unintended consequences, that the department has unfairly acceded to the wishes of the insurance industry, and that the assertion that inclusion of the phone number fosters insurance fraud is unsupported by fact. He questions the inclusion of a $1,000 damage limit on property damage regarding the reporting by a law enforcement officer of a motor vehicle crash; why the vehicle model is included in the form; questions why the owner's name is included in the form; and why the name of a driver's insurance company is included on the form. He notes that removal of the form will adversely impact a motor vehicle crash victim's right to know their options regarding medical care thereby adversely impacting the operations of hospitals. Finally, he stated that the department has tried to hide its actions regarding revisions to the CR-3 and that the department is beholden to the insurance industry.

Response: The department disagrees with Mr. Friedman's comments. The department has not tried to hide the revisions to the CR-3 form. The department and DPS were requested by another agency to evaluate the need of the phone number on the CR-3 form. At the time, neither agency determined that they had a need for the phone number, therefore, there was no reason to include the phone number on the form.

As to comments regarding information that is included on the form, vehicle information is needed to collect accurate information regarding the accident and to address future safety concerns and owner and insurance information is needed by law enforcement to conduct the investigation for possible traffic law violations. The $1000 reporting threshold is set by statute.

The form's purpose is not to provide crash victims with information about medical options. The removal of the phone number from the CR-3 form does not eliminate the opportunities to educate the public on its medical options that do not conflict with privacy rights.

Comment: Dr. Paul Grindstaff provided comments during the public hearing noting that the phone number is critical for crash victims in order to find the other individual involved in the crash. Dr. Grindstaff noted that the driver's phone number is helpful in determining if the other driver had insurance and is very important for out-of-state individuals involved in a crash. He claimed that fraud as it relates to car accidents is less than 1 percent of all fraud compared to 15 percent committed by insurance companies. He noted that the phone number on the form for crash victims is no more relevant to a car crash or medical fraud than the phone number listed on a voter registration. Dr. Grindstaff stated that statistics do not show a correlation between fraud and the phone number. He also complained that the form was less conspicuous with the placement of the driver's name and contact information.

Response: The department does not agree that the phone number is critical to be able to contact the parties involved in an accident. As stated previously, comparable statutes relating to vehicle accidents that are not investigated by a peace officer do not require the phone number. The department has concluded that the phone number is not vital contact information. In addition, nothing prevents the parties from exchanging information and is often encouraged to ensure that the parties do not have to wait for the officer to complete the accident report before initiating contact.

The department worked with DPS and numerous other law enforcement agencies on the redesign of the CR-3 form. The form is being modified to aid law enforcement efforts to gather the information. More than 300 peace officers reviewed and made suggestions on the form. The format makes the form less burdensome for the officer investigating the crash.

Comment: Mr. Javier Guajardo, representing himself, provided comment at the public hearing against removal of the driver's phone number. He stated that removal of the driver's phone number violates the principals of open government and the American system of representative government. He noted that the proposed amendment gives the government the right to

determine what is good for people to know and what is not. Mr. Guajardo noted that removal of the phone number would have negative implications for investigators trying to resolve legal issues associated with traffic crashes. Mr. Guajardo noted that there is no evidence that inclusion of the driver's phone number enables insurance fraud. He noted that he believes it is not ethical to remove the number based on the request of the insurance industry and the Texas Department of Insurance. Mr. Guajardo stated that the form allows the most disadvantaged members of society an opportunity to be educated about their rights regarding treatment and representation.

Response: The department disagrees with these comments. The information is collected for law enforcement and department purposes. It is not collected to provide a means to educate people on their rights to medical treatment and legal representation. The department has the authority to review the collection of any information on its forms at the request of any person or entity including another state agency. On request of the Texas Department of Insurance, the department and DPS determined that the phone number was not needed for governmental purposes and therefore, not needed on the form. By eliminating the collection of the phone number, the department is not violating the principal of open government. The department has determined that collecting and storing personal information about citizens are not necessary for the purposes of the crash report.

Comment: Dr. Valerie G. Monteiro, representing Medical Clinic, provided comment during the public hearing against removal of the driver's phone number from the form. Dr. Monteiro stated that 15% of all healthcare fraud comes from within the insurance industry and that only 1% of fraud comes from actual healthcare providers. She noted that crash victims often experience health care impacts much later than immediately after the crash. She stated that often the insurance companies have already settled with the victim leaving them no recourse for later treatment. Dr. Monteiro stated that insurance companies already have a tremendous amount of information regarding crash victims. She noted that insurance premiums are rising not because of actions of the public, but due to the abuse of the insurance industry. She stated that removal of the number will unlevel the playing field in the advantage of the insurance industry and that there will be no positive aspects of removal of the driver's phone number.

Response: The department disagrees with Dr. Monteiro's comments. The form contains adequate information for its required purpose. The legislature did not intend for the form to be used in favor of or against insurance companies or for providing or withholding medical treatment information.

Comment: Dr. Jorge Luis Nieto, representing the Ultimate Function Chiropractor, provided comment during the public hearing against removal of the driver's phone number from the CR-3 form. Dr. Nieto stated that he believes it is important to retain the driver's phone number so the victims of crashes know their options for medical evaluation and treatment. He noted that insurance companies have access to crash victims and target lower income individuals for low settlement offers. He noted that these victims do not understand their rights to treatment or a fair settlement.

Response: The department does not agree with these comments. The CR-3 is not intended to provide educational materials to crash victims. There are alternatives available to educate the public that do not require a government entity to gather and obtain personal information.

Comment: Mr. John Roaf, representing the Texas Weekly Advocate, provided comment during the public hearing against the proposed amendment and removal of the driver's phone number. Mr. Roaf stated that the department is only going through the motions on this issue and trying to sneak it through while the issue is on appeal. He claimed that the only change to the form was the phone number. Mr. Roaf noted that fraud is also committed by licensed insurance agents and police officers. He stated that no cases of this type of purported insurance fraud related to the driver's phone number exist. Mr. Roaf submitted 179 identical signed form letters stating that inclusion of the phone number on the CR-3 was helpful in resolving issues related to their own motor vehicle crash.

Response: The department disagrees with Mr. Roaf's comments. On February 20, 2009, the 419 District Court ruled in *Texas Weekly v. TxDOT* that the department had not followed proper procedure in modifying the form to remove the phone number. The order required that the department go through the rule process to make any changes to the form. The department appealed the order; however, due to upcoming changes to the Crash Record Information System (CRIS) the department needs to modify the format of the form and initiated this rule process. The department has been working with DPS and various other law enforcement agencies for the past two years to revise the CR-3 form. The department would like to use the new report format at the start of 2010 to ensure a full year of consistent reporting and statistical information. Changing the accident information mid year could alter the statistics from the reports. The collection of the phone number is a minor part of the form changes and can be added or subtracted from the form without substantial programming. The decision regarding the deletion of the phone number was not decided until after review of all comments received during the rulemaking process.

The department determined not to include the phone number because there is no governmental need for the collection of the number. The department believes that protecting a person's privacy is an important concern that is not outweighed by the arguments presented for the inclusion of a person's phone number on the form.

Comment: Dr. Wes Stucki, representing himself, provided public comment at the public hearing against removal of the driver's phone number. Dr. Stucki noted that he would prefer that regulation of unethical solicitation practices related to motor vehicle crash victims be done by the state Chiropractic Board rather through the proposed amendment. Dr. Stucki noted the proposed revisions impacted his First Amendment rights. Dr. Stucki also noted he was a member of the Texas Chiropractic Association and that many of the members of that association oppose removal of the driver's phone number from the form.

Response: The department agrees that regulating unethical chiropractors should be handled by an entity other than TxDOT; however, the department does not believe the phone number was removed to prevent unethical behavior by chiropractors. The phone number was removed because there is not a government purpose for its collection that outweighs the privacy concerns.

Comment: Mr. Lynndy Thauberger, representing himself, provided both written and spoken comments during the public hearing against the removal of the driver's phone number from the form. Mr. Thauberger noted that he personally welcomes solicitation for these types of medical issues to insure that he and his family receive the medical care and treatment they need. He

stated that removing the phone number will allow the insurance companies to be the sole source of information for crash victims. Mr. Thauberger stated that insurance companies are only concerned about their profits and that removal of the driver's phone number limits the treatment options for injured persons.

Response: The department disagrees with these comments. The removal of the phone number does not limit a person's medical treatment options. The services provided by the medical and legal service providers are available to a person who seeks these services. Deletion of the phone number does not prevent these professionals from providing educational materials to anyone they believe needs the information. The phone number is removed because it does not serve a governmental purpose.

Comment: Ms. Truide Torres, representing the Injury Medical Clinic, provided public comment at the public hearing against removal of the driver's phone number. Ms. Torres noted that she objects to removal of the phone number because most people are happy to be contacted by solicitors. Ms. Torres inserted 5,000 customer surveys from the clinic at which she is the office manager indicating that its patients were happy to be contacted regarding treatment options. She noted that this is especially true for Spanish-language only persons who may only be contacted by the insurance companies. Ms. Torres noted that the proposed removal of the driver's phone number will only benefit the insurance companies.

Response: The department disagrees with these comments. The surveys were collected over a four year period from 2005 to 2009 of people that availed themselves of the services provided. The department does not agree that the survey participants are a definitive representation that most people like being contacted by solicitors.

Comments: Mr. Yran Carlos and Ms. Edith Flores provided written comments opposed to removal of the driver's phone number. They believe that removal of the number was not justified.

Response: The department disagrees with these comments. The removal of the phone number is justified as it is not needed for a governmental purpose.

Comments: Dr. Steve Casey, D.C., Ms. Cristina Guerra, and Ms. Brittany Martinez provided written comments opposing the removal of driver's phone number from the CR-3 form noting that they believed that this would be a disservice to accident victims.

Response: The department disagrees with these comments. Accident victims are served by the department collecting the information required for the department and for DPS and other law enforcement to carry out their functions.

Comments: Mr. Ismael Castillo, III, provided written comment opposing the removal of the driver's phone number from the CR-3 form. Mr. Castillo noted that crash victims do not understand how insurance companies work and that these companies do not operate in the best interest of the victims. Mr. Castillo noted that just allowing insurance companies to contact crash victims would have a negative impact on small businesses.

Response: The department disagrees with these comments. The removal of the phone number does not mean that only the insurance companies have contact with accident victims. Service providers have other avenues of educating the public of their services. As previously stated, a small business study is not required.

Comments: Mr. Santos Luan Lopez Quiroz, Dr. Chris Devens, D.C., and Dr. Heath Lenox, D.C., and Ms. Vanezia Portilla provided written comment opposed to the removal of the driver's phone number. They noted removal would only be beneficial to insurance companies and that removal of the phone number would have a negative impact on small businesses. Dr. Lenox also noted that there was no evidence of fraud due to the use of the numbers. Mr. Quiroz noted that they appreciated being contacted regarding his own traffic accident.

Response: The department disagrees with these comments. The department has determined that the intended purpose of the form and the privacy concerns outweigh the reasons provided for collecting the phone number. As stated previously, the department is not required to do a small business study as the rules do not require compliance nor regulate private entities.

Comments: Ms. Melinda Foster, Dr. Stephen Fuller, D.C., Dr. Brian Schtupak, D.C., Ms. Carla M. Thauberger, and Mr. Lorenzo Ambriz, LMRT provided written comment noting that the inclusion of the driver's phone number on the CR-3 form is vital for crash victims to obtain the necessary information regarding how to obtain the healthcare to which they are entitled. Ms. Foster noted that many victims are unaware of their rights to request healthcare assistance after a traffic accident. Ms. Foster noted that she believes that removal of the phone number would be an injustice to the community. Dr. Fuller noted that he and other chiropractors performed a community service by educating motor vehicle crash victims on the potential long-term health impacts that may occur as a result of these crashes. Dr. Schtupak noted that the phone number was important to educate people living in his region of the state regarding their rights in relation to a fair insurance settlement. Ms. Thauberger noted that removal of the phone number allows insurance companies to take advantage of these individuals and forces them to settle for much smaller sums of money than that to which they may be entitled. Mr. Ambriz noted that removal of the phone number from the CR-3 form would make it virtually impossible for victims of motor vehicle crashes to be educated on their rights to be treated for injury.

Response: The department disagrees with these comments. As stated previously, the inclusion of the phone number on the CR-3 form is not the only way for individuals to be educated regarding information of their right to obtain health care. The removal of the phone number does not eliminate the chiropractor's ability to continue to educate his or her community on long-term health issues that may result from traffic accidents.

Comment: Commissioner Mike Geeslin of the Department of Insurance provided written comment supporting removal of the driver's phone number from the CR-3 form. Commissioner Geeslin noted that the distribution of crash report forms provides an opportunity for criminal fraud under Penal Code, §35.02. He noted that insurance fraud costs Texas consumers several hundred dollars per year, although estimates of these costs vary. Commissioner Geeslin noted that many of the insurance fraud claims investigated by the Department of Insurance give details on how drivers and crash victims, whose telephone numbers appear on the crash reports, were solicited by strangers via telephone with offers from medical providers offering free examinations and transportation.

Comment: Ms. Lee Ann Alexander, representing Liberty Mutual Insurance, provided written comment strongly supporting the removal of crash victim's phone numbers from the form as a way to protect insurance customers from unwarranted solicitation and

identify theft. Ms. Alexander noted that in her experience crash victims are contacted multiple times just days after a crash and offered free medical and legal services, whether they were injured or not. She stated that often telemarketers tell victims that the telemarketers represent the victims' insurance companies and that the victims are required to seek treatment to settle their insurance claims. Ms. Alexander stated that House Bill 148, 81st Legislature, 2009 makes it illegal for lawyers, chiropractors, and other health care professionals to solicit crash victims for the first 30 days after an accident.

Comment: Mr. Howard Goldblatt, representing the Coalition Against Insurance Fraud, provided comment during the public hearing supporting the removal of the driver's phone number. Mr. Goldblatt noted that automobile crash fraud rings in Texas and other states have used crash reports to solicit victims to commit automobile insurance fraud, which increases insurance costs for all consumers.

Comment: Mr. Alan Haskins, representing the National Insurance Crime Bureau, provided both written and oral comment during the public hearing and expressed his organization's strong support for the removal of accident victim's telephone numbers as a way to protect insurance consumers from unwanted solicitation and identity theft. Mr. Haskins noted that this change will stop the problem of solicitation and harassment of accident victims and protect individuals from telemarketers who mislead and misrepresent to get victims into their offices. Mr. Haskins noted that House Bill 148 makes it illegal for lawyers, chiropractors, and other health care professionals to solicit crash victims for the first 30 days after an accident.

Comment: Dr. Kevin Kanz, representing the Texas Chiropractic Association, provided comment during the public hearing in favor of removal of the driver's phone number from the form. Dr. Kanz stated that his association believes that individuals need to be protected from unethical solicitation by the third-party cottage industry of runners and individuals who tell crash victims that they represent insurance carriers or doctors. He noted that the association believes that this solicitation is unethical and needs to be curtailed. He stated that although his association would like individuals to see their doctors, it does not want these individuals to be hounded by numerous phone calls regardless of the source. Individuals even in the lowest socioeconomic classes have access to healthcare. Dr. Kanz noted that elimination of the cottage industry that has emerged related to the solicitation of crash victims could help curtail fraud and the ethical concerns of the healthcare industry that chiropractors are ambulance chasers. He stated that his association's primary concern was to insure that the healthcare needs of individuals was taken care of and that it is much preferred that those injured in motor vehicle crashes contact health care providers instead of third parties contacting the injured.

Comment: Mr. Dennis Pompa, representing the Texas Department of Insurance Fraud Unit, provided comment during the public hearing supporting removal of the phone number. Mr. Pompa noted that insurance crime is one of opportunity and that the Department of Insurance seeks to minimize that opportunity. He stated that the Department of Insurance expects to handle approximately 10,000 reports of insurance fraud in fiscal year 2009; many of the reports detail information pertaining to crash victims who were contacted soon after their motor vehicle crash. Mr. Pompa noted that during the first 10 months of fiscal year 2009 the Department of Insurance investigators have identified and referred for prosecution approximately $16.4 million in insurance fraud cases.

Comment: The Texas Committee on Insurance Fraud provided both written and oral comments supporting removal of the driver's phone number from the CR-3 form. Mark Hanna provided public comment at the public hearing noting that a traffic crash victim can turn to a chiropractor or lawyer for assistance after a motor vehicle crash report. He stated that the individual does not need to be solicited. Mr. Hanna noted that telemarketers go through each and every crash report purchased from local police departments and profile who they want to contact. He stated that crash victims may receive 12 to 15 calls in one day soliciting them to come for chiropractic help and are told whatever it will take to get them into the office, even if the victim says they are not injured. He stated that once there, crash victims receive free medical treatment and sometimes free legal advice. Mr. Hanna noted that this treatment is free because someone else is paying for it; we are all paying for it through our insurance premiums. He noted that his organization was just trying to take the ambulance chasing out of this process and further stated that there is nothing in the proposed revision to the CR-3 form that would prevent an injured person from seeking medical care.

Comment: Mr. Brent Walker and Ms. Aimee Young, representing the Texas Chapters of the International Association of Special Investigation Units, provided both written and oral comment during the public hearing in favor of removal of the driver's phone number from the CR-3 form. They noted that retention of the driver's phone number on the CR-3 form will only enable possible violations of the law as amended by House Bill 148. They also noted that removal of the driver's phone number will help fight insurance fraud, prevent unnecessary medical and chiropractic treatment, and reduce the cost Texans pay for insurance.

Response: The department has determined that the phone number is not needed for a governmental purpose and that the privacy concerns outweigh the collection of the phone number on the CR-3 form. The department has not altered the form from that proposed under these rule proceedings.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically Transportation Code, §550.064, which authorizes the department to prescribe the form of motor vehicle crash reports.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 550.

§25.977. Reporting by Investigating Officers.

(a) A law enforcement officer who investigates a motor vehicle crash shall submit a crash record report within 10 days of the accident on a form prescribed by the department if the crash resulted in:

(1) injury to or death of a person;

(2) $1000 or more of property damage to the property of any one person.

(b) The crash record report form must include:

(1) information about the crash;

(2) information about all vehicles involved in the crash;

(3) information about each person involved in the crash; and

(4) other factors necessary for the department to comply with state and federal reporting requirements.

(c) The department has developed Form CR-3, Texas Peace Officer's Crash Report, to satisfy the requirements of subsection (b) of this section. The commission adopts Form CR-3 by reference. The form is available through the department's website at *www.txdot.gov.*

(d) Incomplete or inaccurate crash reports, with the exception of location information as described in §25.974(b) of this subchapter, will be returned to the originating law enforcement agency for correction.

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 October 30, 2009.

TRD-200904948
Bob Jackson
General Counsel
Texas Department of Transportation
Effective date: November 19, 2009
Proposal publication date: June 12, 2009
For further information, please call: (512) 463-8683

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CHAPTER 30. AVIATION
SUBCHAPTER B. AIR CARRIERS

43 TAC §§30.101 - 30.104

The Texas Department of Transportation (department) adopts the repeal of §30.101, Scheduled Intrastate Air Passenger Carriers, §30.102, United States Certificated Air Carriers, §30.103, Nonscheduled Air Carriers, and §30.104, All-Cargo Air Carriers, all concerning air carriers. The repeals are adopted without changes to the proposed text as published in the August 14, 2009, issue of the *Texas Register* (34 TexReg 5492) and will not be republished.

EXPLANATION OF ADOPTED REPEALS

Article 46c-6, Vernon's Texas Civil Statutes purports to authorize the department to regulate air carriers and requires the department to adopt rules providing for the safety of air carriers. Under that article, an air carrier may not operate in the state unless the carrier has obtained a certificate of public convenience and necessity or a certificate of operating authority from the department.

Federal law preempts a state's economic regulation of air carriers. Senate Bill 334, Acts of the 81st Legislature, Regular Session, 2009, repealed Article 46c-6.

The repeal of §30.101, Scheduled Intrastate Air Passenger Carriers, §30.102, United States Certificated Air Carriers, §30.103, Nonscheduled Air Carriers, and §30.104, All-Cargo Air Carriers, removes the rules that were previously adopted under Article 46c-6 and for which, after the repeal of that article, there is no statutory authority.

COMMENTS

No comments on the proposed repeals were received.

STATUTORY AUTHORITY

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

CROSS REFERENCE TO STATUTE

None.

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 October 30, 2009.

TRD-200904949
Bob Jackson
General Counsel
Texas Department of Transportation
Effective date: November 19, 2009
Proposal publication date: August 14, 2009
For further information, please call: (512) 463-8683

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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: 40 TAC §700.825(a)

Adoption Assistance Agreement entered into during the Federal Fiscal Year listed below	Child attains applicable age	By September 30 of the year listed below
October 1, 2009 - September 30, 2010	16 years of age	2010
October 1, 2010 - September 30, 2011	14 years of age	2011
October 1, 2011 - September 30, 2012	12 years of age	2012
October 1, 2012 - September 30, 2013	10 years of age	2013
October 1, 2013 - September 30, 2014	8 years of age	2014
October 1, 2014 - September 30, 2015	6 years of age	2015
October 1, 2015 - September 30, 2016	4 years of age	2016
October 1, 2016 - September 30, 2017	2 years of age	2017
October 1, 2017 and thereafter	Any age	Every child is now an applicable child

Figure: 40 TAC §746.5607

If the child is...	Then the child must be secured in...
(1) Younger than one year old and weighs less than 20 pounds	an infant only safety seat or a rear-facing convertible safety seat according to the manufacturer's instructions that come with the seat;
(2) Younger than one year old and weighs more than 20 pounds	a rear-facing convertible safety seat according to the manufacturer's instructions that come with the seat;
(3) At least one year old and weighs between 20 and 40 pounds	a safety seat according to the manufacturer's instructions that come with the seat;
(4) Younger than eight years old and less than four feet, nine inches in height	a safety seat or booster seat according to the manufacturer's instructions that come with the seat;
(5) Younger than eight years old and at least four feet, nine inches in height	a booster seat according to the manufacturer's instructions that come with the seat or a properly fitting seat belt; and
(6) At least eight years old	a properly fitting seat belt.

Figure: 40 TAC §747.5407

If the child is...	Then the child must be secured in...
(1) Younger than one year old and weighs less than 20 pounds	an infant only safety seat or a rear-facing convertible safety seat according to the manufacturer's instructions that come with the seat;
(2) Younger than one year old and weighs more than 20 pounds	a rear-facing convertible safety seat according to the manufacturer's instructions that come with the seat;
(3) At least one year old and weighs between 20 and 40 pounds	a safety seat according to the manufacturer's instructions that come with the seat;
(4) Younger than eight years old and less than four feet, nine inches in height	a safety seat or booster seat according to manufacturer's instructions that come with the seat;
(5) Younger than eight years old and at least four feet, nine inches in height	a booster seat according to manufacturer's instructions that comes with the seat or a properly fitting seat belt; and
(6) At least eight years old	a properly fitting seat belt.

Figure: 40 TAC §748.931

Who is required to receive the annual training?	How many hours of annual training are needed?
(1) Caregivers where an operation has less than 25 children in care that are receiving treatment services and less than 30% of their total population of children in care are receiving treatment services	(A) 20 hours. (B) Of the 20 hours, every six months a caregiver must complete at least four hours of training specifically related to the emergency behavior intervention techniques that you allow. The caregiver must have this training within 180 days from the date that he last received such training. (C) The 20 hours must include two hours of transportation safety training if the caregiver transports a child in care whose chronological or developmental age is younger than nine years old.
(2) Caregivers where an operation has 25 or more children in care that are receiving treatment services or 30% or more of their total population of children in care are receiving treatment services	(A) 50 hours. (B) Of the 50 hours, every six months a caregiver must complete at least four hours of training specifically related to the emergency behavior intervention techniques that you allow. The caregiver must have this training within 180 days from the date that he last received such training. (C) The 50 hours must include two hours of transportation safety training if the caregiver transports a child in care whose chronological or developmental age is younger than nine years old.
(3) Child-care administrators, professional level service providers, treatment directors, and case managers who hold a relevant professional license	15 hours, however, annual training hours used to maintain a person's relevant professional license may be used to complete these hours. The 15 hours must include two hours of transportation safety training if the person transports a child in care whose chronological or developmental age is younger than nine years old.
(4) Child-care administrators, professional level service providers, treatment directors, and case managers who do not hold a relevant professional license	20 hours, which must include two hours of transportation safety training if the person transports a child in care whose chronological or developmental age is younger than nine years old.

Figure: 40 TAC §748.4041(d)

If the child is...	Then the child must be secured in...
(1) Younger than one year old and weighs less than 20 pounds	an infant only safety seat or a rear-facing convertible safety seat according to the manufacturer's instructions that come with the seat.
(2) Younger than one year old and weighs more than 20 pounds	a rear-facing convertible safety seat according to the manufacturer's instructions that come with the seat.
(3) At least one year old and weighs between 20 and 40 pounds	a safety seat according to the manufacturer's instructions that come with the seat.
(4) Younger than eight years old and less than four feet, nine inches in height	a safety seat or booster seat according to the manufacturer's instructions that come with the seat.
(5) Younger than eight years old and at least four feet, nine inches in height	a booster seat according to the manufacturer's instructions that come with the seat or a properly fitting seat belt.
(6) At least eight years old	a properly fitting seat belt.

Figure: 40 TAC §749.931

Who is required to receive the annual training?	How many hours of annual training are needed?
(1) Caregivers caring for children receiving only child-care services, programmatic services, and/or treatment services for primary medical needs	(A) For homes with two foster parents, the foster parents must receive a total of 20 hours of annual training, of which four hours must be on training specific to the emergency behavior interventions allowed by your agency. (B) For all other caregivers, each caregiver must receive 20 hours of annual training, of which four hours must be on training specific to the emergency behavior interventions allowed by your agency. (C) For foster group homes only, each person's annual training must include two hours of transportation safety training if the person transports a child in care whose chronological or developmental age is younger than nine years old.
(2) Caregivers caring for children receiving treatment services for emotional disorders, mental retardation, or pervasive developmental disorders	(A) For homes with two foster parents, the foster parents must receive a total of 50 hours of annual training, of which eight hours for each foster parent must be on training specific to the emergency behavior interventions allowed by your agency. These 50 hours must be distributed appropriately, and each foster parent must receive some amount of training. (B) For homes with one foster parent, 30 hours, of which eight hours must be on training specific to the emergency behavior interventions allowed by your agency. (C) All other caregivers, 30 hours, of which eight hours must be on training specific to the emergency behavior interventions allowed by your agency. (D) For foster group homes only, each person's annual training must include two hours of transportation safety training if the person transports a child in care whose chronological or developmental age is younger than nine years old.
(3) Child placement staff with less than one year of child-placing experience	(A) 30 hours for the initial year; (B) 20 hours after the initial year; and (C) There are no annual training requirements for emergency behavior interventions. However, if there is a substantial change in techniques, types of intervention, or agency policies regarding emergency behavior intervention, then the staff must be re-trained. (D) Annual training must include two hours of transportation safety training if the person transports a child placed in a foster group home whose chronological or developmental age is younger than nine years old.
(4) Child placement staff with at least one year of child-placing experience	20 hours. Annual training must include two hours of transportation safety training if the person transports a child placed in a foster group home whose chronological or developmental age is younger than nine years old. There are no annual training requirements for emergency behavior interventions. However, if there is a substantial change in techniques, types of intervention, or agency policies regarding emergency behavior intervention, then the staff must be re-trained.

(5) Child placement management staff	20 hours. Annual training must include two hours of transportation safety training if the person transports a child placed in a foster group home whose chronological or developmental age is younger than nine years old. There are no annual training requirements for emergency behavior interventions. However, if there is a substantial change in techniques, types of intervention, or agency policies regarding emergency behavior intervention, then the staff must be re-trained.
(6) Child-placing agency administrators, executive directors, treatment directors, and full-time professional service providers who hold a relevant professional license	(A) 15 hours, however, annual training hours used to maintain a person's relevant professional license may be used to complete these hours. (B) There are no annual training requirements for emergency behavior interventions. However, if there is a substantial change in techniques, types of intervention, or agency policies regarding emergency behavior intervention, then the staff must be re-trained. (C) Annual training must include two hours of transportation safety training if the person transports a child placed in a foster group home whose chronological or developmental age is younger than nine years old.
(7) Child-placing agency administrators, executive directors, treatment directors, and full-time professional service providers who do not hold a relevant professional license	20 hours. Annual training must include two hours of transportation safety training if the person transports a child placed in a foster group home whose chronological or developmental age is younger than nine years old. There are no annual training requirements for emergency behavior interventions. However, if there is a substantial change in techniques, types of intervention, or agency policies regarding emergency behavior intervention, then the staff must be re-trained.

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.

Texas State Affordable Housing Corporation

Notice of Public Hearing Regarding the Issuance of Bonds

Notice is hereby given of a public hearing to be held by the Texas State Affordable Housing Corporation (the "Issuer") at 12:00 p.m. on November 30, 2009 at 2200 East Martin Luther King Jr. Boulevard (Conference Room), Austin, Texas 78702, on the proposed issuance by the Issuer of one or more series of revenue bonds (the "Bonds") to provide financing for the acquisition of single family mortgages in the State of Texas, pursuant to: (i) its professional educators home loan program; (ii) its fire fighter, law enforcement or security officer, and emergency medical services personnel home loan program; and (iii) its low income home loan program (the "Projects"). The maximum aggregate face amount of the Bonds to be issued with respect to the Projects is $140,000,000. All interested persons are invited to attend the public hearing to express orally, or in writing, their views on the Projects and the issuance of the Bonds. The Bonds shall not constitute or create an indebtedness, general or specific, or liability of the State of Texas, or any political subdivision thereof. The Bonds shall never constitute or create a charge against the credit or taxing power of the State of Texas, or any political subdivision thereof. Neither the State of Texas, nor any political subdivision thereof shall in any manner be liable for the payment of the principal of or interest on the Bonds or for the performance of any agreement or pledge of any kind which may be undertaken by the Issuer and no breach by the Issuer of any agreements will create any obligation upon the State of Texas, or any political subdivision thereof. Further information with respect to the proposed Bonds will be available at the hearing or upon written request prior thereto addressed to Paige McGilloway at the Texas State Affordable Housing Corporation, 2200 East Martin Luther King Jr. Boulevard, Austin, Texas 78702; 1-888-638-3555, extension 3561.

Individuals who require auxiliary aids in order to attend this meeting should contact Laura Ross, ADA Responsible Employee, at 1-888-638-3555, extension 3560 through Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Individuals may transmit written testimony or comments regarding the subject matter of this public hearing to Paige McGilloway at pmcgilloway@tsahc.org.

TRD-200905007
David Long
President
Texas State Affordable Housing Corporation
Filed: November 3, 2009

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Cancer Prevention and Research Institute of Texas

Request for Applications R-10-MIRA1, Multi-Investigator Research Awards

The Cancer Prevention and Research Institute of Texas (CPRIT) seeks grant applications from qualified organizations located in the State of Texas for integrated programs of collaborative and cross-disciplinary research among multiple investigators for projects in critical areas of cancer research that cannot be effectively addressed by an individual researcher or a group of researchers within the same discipline. The equivalent of program projects, centers, NCI SPOREs, shared instrumentation, core laboratories, clinical trials, or other types of collaborative interaction is appropriate. The maximum performance period is 5 years, with no set maximum award amount.

Investigators who anticipate requesting $3 million or more per year in any given year are required to submit a pre-application. Investigators who will be requesting less than $3 million per year in every given year must submit a letter of intent indicating that they will be submitting an application in response to this RFA.

A detailed Request for Applications (RFA) is available online at www.cprit.state.tx.us. Pre-applications and letters of intent will be accepted beginning at 7:00 a.m. Central Time on Friday, November 13, 2009 through 3:00 p.m. Central Time on Tuesday, January 5, 2010, and must be submitted via the CPRIT Application Receipt System (www.CPRITGrants.org). Applications will be accepted beginning at 7:00 a.m. Central Time on Friday, February 12, 2010 through 3:00 p.m. Central Time on Monday, March 1, 2010, and must be submitted via the CPRIT Application Receipt System (www.CPRITGrants.org). CPRIT will not accept pre-applications, letters of intent, or applications that are not submitted via the portal.

TRD-200905019
William "Bill" Gimson
Executive Director
Cancer Prevention and Research Institute of Texas
Filed: November 4, 2009

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Request for Applications Texans Conquer Cancer Program Patient Support Services

The Cancer Prevention and Research Institute of Texas (CPRIT) seeks grant applications from qualified non-profit organizations located in the State of Texas that would provide support services for cancer patients such as transportation to and from treatment, wigs, food, and lodging. Successful applicants are eligible for a grant award of up to $3,000 to be used by August 31, 2010.

A detailed Request for Applications (RFA) and the application form are available online at www.cprit.state.tx.us. Applications will be accepted beginning on Friday, November 13, 2009, and can be submitted in writing to: Cancer Prevention and Research Institute of Texas, P.O. Box 12097, Austin, Texas 78711, or through e-mail to: applications@cprit.state.tx.us. Applications are due on or before 5:00 p.m. Central Time on Wednesday, December 30, 2009. CPRIT will not accept late applications.

Funds for this program are available from sales of the *Texans Conquer Cancer* license plate. To learn more about the license plate program, visit www.texansconquercancer.org.

TRD-200905017

William "Bill" Gimson
Executive Director
Cancer Prevention and Research Institute of Texas
Filed: November 4, 2009

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 14, 2009.** Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on December 14, 2009.** Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing.**

(1) COMPANY: AL-NAZ INC. dba Get N Go Food Mart; DOCKET NUMBER: 2009-1183-PST-E; IDENTIFIER: RN101745065; LOCATION: Cuero, Dewitt County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 Texas Administrative Code (TAC) §334.49(a) and the Code, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank (UST) system; PENALTY: $2,800; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(2) COMPANY: ANCIRA ENTERPRISES INCORPORATED dba Ancira Winton Chevrolet; DOCKET NUMBER: 2009-1375-PST-E; IDENTIFIER: RN100646678; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: vehicle maintenance and repair service center; RULE VIOLATED: 30 TAC §334.7(d)(3), by failing to provide an amended UST registration form; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to ensure that the UST is monitored in a manner which will detect a release; 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediately area of the fill tube for each regulated UST; and 30 TAC §334.48(g), by failing to maintain records relating to the operation and maintenance of the UST system; PENALTY: $4,950; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: B. T. Rand Oil Company dba Conoco Food Mart; DOCKET NUMBER: 2009-1216-PST-E; IDENTIFIER: RN102252699; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.244(1) and (3) and Texas Health and Safety Code (THSC), §382.085(b), by failing to conduct daily and monthly inspections of the Stage II vapor recovery system (VRS); and 30 TAC §115.242(9) and THSC, §382.085(b), by failing to post operating instructions conspicuously on the front of each gasoline dispensing pump equipped with a Stage II VRS; PENALTY: $1,968; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(4) COMPANY: BABWANI ASSOCIATES, INC. dba McCart Food Store; DOCKET NUMBER: 2009-1087-PST-E; IDENTIFIER: RN101537082; LOCATION: Fort Worth, Tarrant 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 Stage II equipment; PENALTY: $2,715; ENFORCEMENT COORDINATOR: Mike Meyer, (512) 239-4492; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Barranca Corporation; DOCKET NUMBER: 2009-0369-PWS-E; IDENTIFIER: RN101268043; LOCATION: Anthony, El Paso County; TYPE OF FACILITY: restaurant with public water supply (PWS); RULE VIOLATED: 30 TAC §290.46(f)(3)(A)(i)(III) and (D)(i), by failing to maintain a record of the amount of chemicals used each week and the results of monthly microbiological analyses and make them available for review during inspections; 30 TAC §290.39(j), by failing to notify the executive director prior to making any significant change or addition to the facility's production, treatment, storage, pressure maintenance, or distribution facilities; 30 TAC §290.41(c)(1)(F), by failing to secure a sanitary control easement covering all property within 150 feet of the facility's water well; 30 TAC §290.42(b)(1), by failing to provide disinfection facilities for microbiological control and distribution protection; 30 TAC §290.43(d)(2), by failing to provide all pressure tanks with a pressure release device; 30 TAC §290.43(c)(6), by failing to maintain all water storage tanks thoroughly tight against leakage; 30 TAC §290.44(h)(1)(A), by failing to provide a backflow prevention assembly or an air gap at any residence or establishment where an actual or potential contamination hazard was identified; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices that shall ensure the good working condition and general appearance of the respondent's facilities and its equipment; 30 TAC §290.121(a), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan; 30 TAC §290.47(e), by failing to issue a boil water notification to the customers of the facility within 24 hours; 30 TAC §290.46(m)(1)(A), by failing to inspect the facility's ground storage tanks annually; 30 TAC §290.46(m)(1)(B), by failing to inspect the facility's pressure tanks annually; and 30 TAC §290.46(e)(4)(A) and THSC, §341.033(a), by failing to operate the system under the direct supervision of a water works operator who holds a Class D or higher license; PENALTY: $4,673; ENFORCEMENT COORDINATOR: Andrea Linson-Mgbeoduru, (512) 239-1482; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(6) COMPANY: City of Bridgeport; DOCKET NUMBER: 2009-1034-MWD-E; IDENTIFIER: RN102740230; LOCATION:

Wise County; TYPE OF FACILITY: municipal wastewater treatment; RULE VIOLATED: 30 TAC §305.65 and §305.125(2) and the Code, §26.121, by failing to maintain authorization for the discharge of wastewater and continuing to operate the facility; PENALTY: $12,000; Supplemental Environmental Project (SEP) offset amount of $9,600 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Water or Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Roy Smalley dba Buck Sanitation; DOCKET NUMBER: 2009-0163-MLM-E; IDENTIFIER: RN104795265; LOCATION: Clarksville, Red River County; TYPE OF FACILITY: rural garbage collection service; RULE VIOLATED: 30 TAC §111.201 and §330.15(c) and THSC, §382.085(b), by failing to comply with the general prohibition on outdoor burning and to prevent the unauthorized disposal of municipal solid waste (MSW); 30 TAC §330.103(b) and (c), by failing to maintain records for three years to document and ensure waste was disposed of at an authorized MSW facility; 30 TAC §330.9(a), by failing to register the site as a MSW transfer station; and 30 TAC §330.105(a), by failing to maintain collection vehicles in a manner to prevent the loss of MSW during transportation; PENALTY: $7,850; ENFORCEMENT COORDINATOR: Ross Fife, (512) 239-2541; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(8) COMPANY: Chevron Phillips Chemical Company, LP; DOCKET NUMBER: 2009-1023-AIR-E; IDENTIFIER: RN100825249; LOCATION: Old Ocean, Brazoria County; TYPE OF FACILITY: industrial organic chemicals manufacturing plant; RULE VIOLATED: 30 TAC §101.20(3) and §116.715(a), New Source Review (NSR) Flexible Air Permit Number 22690/PSD-TX-751M1, Special Condition (SC) Number 1, and THSC, §382.085(b), by failing to comply with permitted emissions limits; PENALTY: $20,700; SEP offset amount of $8,280 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Martina Kusniadi, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: City Public Service of San Antonio; DOCKET NUMBER: 2009-0968-MWD-E; IDENTIFIER: RN100217975; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0001514000, Interim Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permitted effluent limitations for total suspended solids; PENALTY: $5,350; SEP offset amount of $4,280 applied to Texas State University River Systems Institute - *Continuous Water Quality Monitoring Network;* ENFORCEMENT COORDINATOR: Carlie Konkol, (512) 239-0735; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(10) COMPANY: E. I. du Pont de Nemours and Company; DOCKET NUMBER: 2009-1011-AIR-E; IDENTIFIER: RN100542711; LOCATION: Orange, Orange County; TYPE OF FACILITY: chemical plant; RULE VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), Air Permit Number 9176, SC Number 1, Federal Operating Permit (FOP) Number 2001, General Terms and Conditions (GTC) and SC Number 8, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $9,300; SEP offset amount of $3,720 applied to Texas Parent Teacher Association (PTA) - *Clean School Bus Program;* ENFORCEMENT COORDINATOR: Raymond Marlow, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(11) COMPANY: E Z SPEEDY, INC. dba Speedy Mart; DOCKET NUMBER: 2009-0956-PST-E; IDENTIFIER: RN102271152; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to provide release detection for the UST 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 the UST; 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the UST within 30 days of the change or addition; 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form; 30 TAC §334.8(c)(5)(A)(i) and the Code, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate; and 30 TAC §115.248(1) and THSC, §382.085(b), by failing to ensure that at least one station representative received training in the operation and maintenance of the Stage II VRS, and each current employee receives in-house Stage II vapor recovery training regarding the purpose and operation of the VRS; PENALTY: $6,375; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(12) COMPANY: City of Elkhart; DOCKET NUMBER: 2009-1025-MWD-E; IDENTIFIER: RN102844610; LOCATION: Anderson County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010735001, Permit Conditions Numbers 2.g, and the Code, §26.121(a), by failing to prevent the unauthorized discharge of wastewater; PENALTY: $2,790; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(13) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2007-1315-AIR-E; IDENTIFIER: RN100210574; LOCATION: Liverpool, Brazoria County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 4634B, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $51,600; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(14) COMPANY: Exxon Mobil Corporation; DOCKET NUMBER: 2009-0986-AIR-E; IDENTIFIER: RN102212925; LOCATION: Baytown, Harris County; TYPE OF FACILITY: olefins plant; RULE VIOLATED: 30 TAC §101.20(3) and §116.715(a), NSR Flexible Permit Number 3452/PSD-TX-302M2, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $7,800; SEP offset amount of $3,120 applied to Barbers Hill Independent School District-Alternative Fueled Vehicle and Equipment Program; ENFORCEMENT COORDINATOR: Kirk Schoppe, (512) 239-0489; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(15) COMPANY: Flagstone Estates; DOCKET NUMBER: 2009-1657-WQ-E; IDENTIFIER: RN105584668; LOCATION: Rockwall, Rockwall County; TYPE OF FACILITY: construction; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: $700; ENFORCEMENT COORDINA-

TOR: Jordan Jones, (512) 239-2569; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: Gulf Marine Fabricators, L.P. (formerly known as G.M. Fabricators, L.P. dba Gulf Marine Fabricators); DOCKET NUMBER: 2009-1534-IWD-E; IDENTIFIER: RN102203445; LOCATION: Aransas Pass, San Patricio County; TYPE OF FACILITY: offshore structure fabrication; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0003012000, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations; and 30 TAC §305.125(17) and TPDES Permit Number WQ0003012000, Monitoring and Reporting Requirements Number 1, by failing to timely submit effluent monitoring results at intervals specified in the permit; PENALTY: $4,766; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 425-6010; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(17) COMPANY: KDG, INC. dba Pit Pros of Round Rock; DOCKET NUMBER: 2009-1055-PST-E; IDENTIFIER: RN100532092; LOCATION: Round Rock, Williamson County; TYPE OF FACILITY: oil change and lube; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; and 30 TAC §334.50(b)(2)(B) and the Code, §26.3475(b), by failing to provide proper release detection for the gravity piping associated with the UST; PENALTY: $4,504; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(18) COMPANY: City of Kemp; DOCKET NUMBER: 2009-1309-PWS-E; IDENTIFIER: RN101244457; LOCATION: Kaufman County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.46(m)(1), by failing to inspect the facility's ground and elevated storage tanks annually; and 30 TAC §290.44(h)(1)(B)(ii), by failing to maintain and keep on file all records of the facility's internal cross-connection and control program, including copies of all inspection and test reports; PENALTY: $630; ENFORCEMENT COORDINATOR: Andrea Linson-Mgbeoduru; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: Kinder Morgan Texas Pipeline, LLC; DOCKET NUMBER: 2009-0967-AIR-E; IDENTIFIER: RN102735081; LOCATION: Tulsita, Bee County; TYPE OF FACILITY: gas processing plant; RULE VIOLATED: 30 TAC §§122.121, 122.241(b), 122.143(4), 122.501(f), and 122.505(c) and THSC, §382.054 and §382.085(b), by failing to submit a renewal application at least six months prior to the expiration of Air Permit Number O-0861 and obtain authorization to operate the emissions sources at the plant after the permit expired on December 1, 2008; and 30 TAC §§122.143(4), 122.145(2)(A) - (C), and 122.146(5)(D) and THSC, §382.085(b), by failing to report permit deviations; PENALTY: $8,000; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(20) COMPANY: La Fontana Springs, LLC; DOCKET NUMBER: 2009-1324-EAQ-E; IDENTIFIER: RN105699060; LOCATION: Garden Ridge, Comal County; TYPE OF FACILITY: event hall; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of a Water Pollution Abatement Plan (WPAP); PENALTY: $13,000; SEP offset amount of $5,200 applied to RC&D - Abandoned Tire Clean-UP; ENFORCEMENT COORDINATOR: Carlie Konkol, (512) 239-0735; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(21) COMPANY: Louis Cook dba Log Cabin Plaza; DOCKET NUMBER: 2009-1198-EAQ-E; IDENTIFIER: RN102724259; LOCATION: Hays County; TYPE OF FACILITY: commercial land development site; RULE VIOLATED: 30 TAC §213.4(j)(3) and WPAP Number 11-98090101 Standard Conditions Number 2, by failing to obtain approval of a modification of a WPAP prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(22) COMPANY: Millennium Petrochemicals Inc.; DOCKET NUMBER: 2009-0133-AIR-E; IDENTIFIER: RN100224450; LOCATION: La Porte, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §101.20(2) and §116.115(c), 40 Code of Federal Regulations §63.113(a)(2), NSR Permit Number 4751, SC Number 14, and THSC, §382.085(b), by failing to meet the minimum requirement of 98% destruction removal efficiency or the 20 parts per million volumetric dry concentration limit for hazardous air pollutants; PENALTY: $12,450; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(23) COMPANY: ONEOK, Inc. dba Texas Gas Service Company; DOCKET NUMBER: 2009-1100-AIR-E; IDENTIFIER: RN100812486; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: maintenance with gasoline dispensers; RULE VIOLATED: 30 TAC §115.252(2) and THSC, §382.085(b), by failing to comply with the maximum Reid vapor pressure requirement of seven pounds per square inch absolute; PENALTY: $1,020; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(24) COMPANY: Pioneer Natural Resources USA, Inc.; DOCKET NUMBER: 2009-1321-AIR-E; IDENTIFIER: RN100229673; LOCATION: Potter County; TYPE OF FACILITY: natural gas compression plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(2), FOP Number O-2995, GTC, and THSC, §382.085(b), by failing to submit an annual compliance certification; PENALTY: $1,875; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(25) COMPANY: Shannon Medical Center; DOCKET NUMBER: 2009-1298-PST-E; IDENTIFIER: RN100688829; LOCATION: San Angelo, Tom Green County; TYPE OF FACILITY: hospital; RULE VIOLATED: 30 TAC §334.50(b)(2)(B)(i)(I) and the Code, §26.3475(b), by failing to provide proper release detection for the suction piping associated with the USTs; PENALTY: $2,425; ENFORCEMENT COORDINATOR: John Shelton, (512) 239-2563; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(26) COMPANY: Shintech Incorporated; DOCKET NUMBER: 2009-1133-AIR-E; IDENTIFIER: RN100213198; LOCATION: Freeport, Brazoria County; TYPE OF FACILITY: resin manufacturing plant; RULE VIOLATED: 30 TAC §115.144(3)(F) and THSC, §382.085(b), by failing to continuously monitor and record the condenser vapor outlet temperature of steam stripper equipment; PENALTY: $546; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(27) COMPANY: City of Snyder; DOCKET NUMBER: 2009-1364-AIR-E; IDENTIFIER: RN102290987; LOCATION: Snyder, Scurry County; TYPE OF FACILITY: landfill; RULE VIOLATED: 30 TAC

§122.143(4) and §122.145(2)(C), FOP Number O-2383/General Operating Permit Number 517, Site-Wide Requirements (b)(2), and THSC, §382.085(b), by failing to submit a timely permit deviation report; PENALTY: $2,050; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(28) COMPANY: Southern Tank Transport, Inc.; DOCKET NUMBER: 2009-1159-PST-E; IDENTIFIER: RN100853555; LOCATION: New Braunfels, Comal County; TYPE OF FACILITY: trucking company; RULE VIOLATED: 30 TAC §334.74 and §334.76, by failing to perform initial response actions, including reporting to the TCEQ within 24 hours of confirmation of a release from an above ground storage tank, conduct a release investigation, or identify and mitigate fire, explosive, and vapor hazards; PENALTY: $7,500; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(29) COMPANY: Texas Municipal Power Agency; DOCKET NUMBER: 2009-1290-AIR-E; IDENTIFIER: RN100214550; LOCATION: Carlos, Grimes County; TYPE OF FACILITY: electrical power plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(2), FOP Number O-83, GTC, and THSC, §382.085(b), by failing to timely submit the permit compliance certification report; PENALTY: $2,750; ENFORCEMENT COORDINATOR: Kirk Schoppe, (512) 239-0489; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(30) COMPANY: Vopak Terminal Deer Park, Inc.; DOCKET NUMBER: 2009-1181-AIR-E; IDENTIFIER: RN100225093; LOCATION: Deer Park, Harris County; TYPE OF FACILITY: warehousing and storage; RULE VIOLATED: 30 TAC §116.115(c), NSR Permit 466A, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §101.201(c) and THSC, §382.085(b), by failing to submit a timely final report for a reportable emissions event; PENALTY: $10,160; SEP offset amount of $5,080 applied to Houston Regional Monitoring Corporation - Houston Area Monitoring; ENFORCEMENT COORDINATOR: Martina Kusniadi, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-200905002

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: November 3, 2009

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Enforcement Orders

An agreed order was entered regarding Tommy Rutledge, Docket No. 2007-0859-MLM-E on October 26, 2009 assessing $12,500 in administrative penalties with $8,900 deferred.

Information concerning any aspect of this order may be obtained by contacting Tracy Chandler, Staff Attorney at (512) 239-0629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Valero Refining-Texas, L.P., Docket No. 2007-1413-AIR-E on October 26, 2009 assessing $60,125 in administrative penalties with $12,025 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (713) 422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ronnie Vance, Docket No. 2007-1779-PST-E on October 26, 2009 assessing $5,250 in administrative with $1,650 deferred.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, Staff Attorney at (512) 239-0205, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TOTAL PETROCHEMICALS USA, INC., Docket No. 2008-0413-AIR-E on October 26, 2009 assessing $41,432 in administrative penalties with $8,286 deferred.

Information concerning any aspect of this order may be obtained by contacting Raymond Marlow, Enforcement Coordinator at (409) 899-8785, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sammy El-Hamed, aka Sammy K. Elhamed, aka Sammy Elhammed, aka Saeb El-Hamed dba Saveway FS, Docket No. 2008-0544-PST-E on October 26, 2009 assessing $18,188 in administrative penalties with $14,588 deferred.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at (713) 422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Houston Refining LP, Docket No. 2008-0790-AIR-E on October 26, 2009 assessing $37,950 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at (713) 422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding George Ted Devries dba Devries Dairy, Docket No. 2008-0854-AGR-E on October 26, 2009 assessing $4,350 in administrative penalties with $870 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Total Land Development Corp., Docket No. 2008-1151-WQ-E on October 26, 2009 assessing $2,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting James Sallans, Staff Attorney at (512) 239-2053, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TCS #1 MANAGEMENT COMPANY, L.L.C., Docket No. 2008-1327-PST-E on October 26, 2009 assessing $7,650 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip Goodwin, Staff Attorney at (512) 239-0675, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mervin Snyder, Docket No. 2008-1628-WOC-E on October 26, 2009 assessing $1,992 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, Staff Attorney at (512) 239-0205, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aguado Stone Incorporated, Docket No. 2008-1713-MLM-E on October 26, 2009 assessing $41,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting James Sallans, Staff Attorney at (512) 239-2053, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Seymour, Docket No. 2008-1717-MWD-E on October 26, 2009 assessing $15,875 in administrative penalties with $3,175 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Raymond Windham dba Deer Run Water System, Docket No. 2009-0039-PWS-E on October 26, 2009 assessing $2,030 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mike Fishburn, Staff Attorney at (512) 239-0635, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Kara Leah Petty dba Country Inn Victoria, Docket No. 2009-0148-PWS-E on October 26, 2009 assessing $850 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at (713) 422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Larry West dba W 3 Dairy, Docket No. 2009-0150-AGR-E on October 26, 2009 assessing $2,369 in administrative penalties with $473 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Jecha, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Nelson King, Docket No. 2009-0218-AIR-E on October 26, 2009 assessing $1,712 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mike Fishburn, Staff Attorney at (512) 239-0635, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KSS ENTERPRISES, INC. dba Best Stop 2, Docket No. 2009-0307-PST-E on October 26, 2009 assessing $2,736 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna Treadwell, Staff Attorney at (512) 239-0974, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Clinton D. McCue dba GM Landscape & Irrigation, Docket No. 2009-0358-LII-E on October 26, 2009 assessing $787 in administrative penalties with $157 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Mardonio Flores dba Flores Landscaping, Docket No. 2009-0395-LII-E on October 26, 2009 assessing $525 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Barham A. Richard, Staff Attorney at (512) 239-0107, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Foster Consolidated Investments, LLC dba Chaparral III, Docket No. 2009-0406-PWS-E on October 26, 2009 assessing $168 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mike Fishburn, Staff Attorney at (512) 239-0635, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rita Karbalai dba Sundown Mobile Home Park, Docket No. 2009-0460-MWD-E on October 26, 2009 assessing $10,835 in administrative penalties with $2,167 deferred.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (512) 239-1460, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shell Chemical LP, Docket No. 2009-0465-AIR-E on October 26, 2009 assessing $20,000 in administrative penalties with $4,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Danny J. Dolen dba Green Lake Estates Water Supply, Docket No. 2009-0516-PWS-E on October 26, 2009 assessing $1,600 in administrative penalties with $332 deferred.

Information concerning any aspect of this order may be obtained by contacting Amanda Henry, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lake Lavon Baptist Encampment, Docket No. 2009-0576-MWD-E on October 26, 2009 assessing $4,950 in administrative penalties with $990 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Sabinal, Docket No. 2009-0577-MWD-E on October 26, 2009 assessing $5,540 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Carlie Konkol, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tenet Hospitals Limited, Docket No. 2009-0582-AIR-E on October 26, 2009 assessing $19,331 in administrative penalties with $3,866 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding E. I. du Pont de Nemours and Company, Docket No. 2009-0600-AIR-E on October 26, 2009 assessing $26,975 in administrative penalties with $5,395 deferred.

Information concerning any aspect of this order may be obtained by contacting Raymond Marlow, Enforcement Coordinator at (409) 899-8785, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ConocoPhillips Company, Docket No. 2009-0602-AIR-E on October 26, 2009 assessing $4,900 in administrative penalties with $980 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kinder Morgan Tejas Pipeline LLC, Docket No. 2009-0613-AIR-E on October 26, 2009 assessing $3,750 in administrative penalties with $750 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Servando De La Garza dba UTW Tire Collection Services, Docket No. 2009-0616-MSW-E on October 26, 2009 assessing $14,000 in administrative penalties with $2,800 deferred.

Information concerning any aspect of this order may be obtained by contacting Clinton Sims, Enforcement Coordinator at (512) 239-6933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Enterprise Products Operating LLC, Docket No. 2009-0621-AIR-E on October 26, 2009 assessing $19,000 in administrative penalties with $3,800 deferred.

Information concerning any aspect of this order may be obtained by contacting Roshondra Lowe, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DCP Midstream, LP, Docket No. 2009-0636-AIR-E on October 26, 2009 assessing $1,500 in administrative penalties with $300 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tapia Dairy, Inc., Docket No. 2009-0651-AGR-E on October 26, 2009 assessing $1,290 in administrative penalties with $258 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Exxon Mobil Corporation, Docket No. 2009-0654-AIR-E on October 26, 2009 assessing $9,325 in administrative penalties with $1,865 deferred.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Casita Enterprises, Inc., Docket No. 2009-0657-AIR-E on October 26, 2009 assessing $2,375 in administrative penalties with $475 deferred.

Information concerning any aspect of this order may be obtained by contacting Raymond Marlow, Enforcement Coordinator at (409) 899-8785, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Leander Independent School District, Docket No. 2009-0658-EAQ-E on October 26, 2009 assessing $1,500 in administrative penalties with $300 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Reno, Docket No. 2009-0669-MWD-E on October 26, 2009 assessing $12,015 in administrative penalties with $2,403 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding INEOS USA LLC, Docket No. 2009-0715-AIR-E on October 26, 2009 assessing $6,900 in administrative penalties with $1,380 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Inayat's, Inc. dba Stop & Shop, Docket No. 2009-0729-PST-E on October 26, 2009 assessing $4,796 in administrative penalties with $959 deferred.

Information concerning any aspect of this order may be obtained by contacting Ross Fife, Enforcement Coordinator at (512) 239-2541, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mike Arena dba Buckhorn Soil and Stone, Docket No. 2009-0739-EAQ-E on October 26, 2009 assessing $2,700 in administrative penalties with $540 deferred.

Information concerning any aspect of this order may be obtained by contacting Carlie Konkol, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Michael Paddack, Docket No. 2009-0740-LII-E on October 26, 2009 assessing $399 in administrative penalties with $79 deferred.

Information concerning any aspect of this order may be obtained by contacting John Shelton, Enforcement Coordinator at (512) 239-2563, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BASF FINA Petrochemicals Limited Partnership, Docket No. 2009-0750-AIR-E on October 26, 2009 assessing $8,200 in administrative penalties with $1,640 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Benoit, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ed Matlock, Jr., Docket No. 2009-0780-LII-E on October 26, 2009 assessing $250 in administrative penalties with $50 deferred.

Information concerning any aspect of this order may be obtained by contacting John Shelton, Enforcement Coordinator at (512) 239-2563, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HPT TA Properties Trust dba Terrell TravelCenter, Docket No. 2009-0786-PST-E on October 26, 2009 assessing $22,598 in administrative penalties with $4,519 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LCG Enterprise, Inc. 3-Amigos Food Mart, Docket No. 2009-0798-PST-E on October 26, 2009 assessing $3,794 in administrative penalties with $758 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Webb County, Docket No. 2009-0818-PWS-E on October 26, 2009 assessing $965 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gary Humphreys, Docket No. 2009-0824-MSW-E on October 26, 2009 assessing $1,875 in administrative penalties with $375 deferred.

Information concerning any aspect of this order may be obtained by contacting John Shelton, Enforcement Coordinator at (512) 239-2563, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Quick Deal Enterprises Inc. dba JRS Minute Maid, Docket No. 2009-0827-PWS-E on October 26, 2009 assessing $2,502 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Amanda Henry, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Biomedical Waste Solutions, LLC, Docket No. 2009-0856-MSW-E on October 26, 2009 assessing $3,000 in administrative penalties with $600 deferred.

Information concerning any aspect of this order may be obtained by contacting Ross Fife, Enforcement Coordinator at (512) 239-2541, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Enbridge Pipelines (Texas Gathering) L.P., Docket No. 2009-0920-AIR-E on October 26, 2009 assessing $5,295 in administrative penalties with $1,059 deferred.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Michael Ury dba K & M Landscape, Docket No. 2009-0924-LII-E on October 26, 2009 assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Myer, Enforcement Coordinator at (512) 239-1387, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Matagorda County Water Control and Improvement District No. 6, Docket No. 2009-0944-MWD-E on October 26, 2009 assessing $2,400 in administrative penalties with $480 deferred.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (512) 239-1460, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Farwell, Docket No. 2009-0948-MWD-E on October 26, 2009 assessing $4,500 in administrative penalties with $900 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Jecha, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Woodlawn Water Supply Corporation, Docket No. 2009-0966-PWS-E on October 26, 2009 assessing $354 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stephen Thompson, Enforcement Coordinator at (512) 239-2558, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Fruitvale Independent School District, Docket No. 2009-0983-MWD-E on October 26, 2009 assessing $5,520 in administrative penalties with $1,104 deferred.

Information concerning any aspect of this order may be obtained by contacting Pam Campbell, Enforcement Coordinator at (512) 239-4493, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Centerville, Docket No. 2009-0997-MWD-E on October 26, 2009 assessing $6,150 in administrative penalties with $1,230 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Alcoa World Alumina LLC, Docket No. 2009-1012-AIR-E on October 26, 2009 assessing $6,250 in administrative penalties with $1,250 deferred.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding North Runnels Water Supply Corporation, Docket No. 2009-1031-PWS-E on October 26, 2009 assessing $267 in administrative penalties with $53 deferred.

Information concerning any aspect of this order may be obtained by contacting Stephen Thompson, Enforcement Coordinator at (512) 239-2558, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hayward Baker, Inc., Docket No. 2009-1042-AIR-E on October 26, 2009 assessing $750 in administrative penalties with $150 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Benoit, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lindsey Contractors, Inc., Docket No. 2009-1071-AIR-E on October 26, 2009 assessing $1,250 in administrative penalties with $250 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Republic Plastics, Ltd., Docket No. 2009-1107-AIR-E on October 26, 2009 assessing $3,100 in administrative penalties with $620 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding East Cedar Creek Fresh Water Supply District, Docket No. 2009-1164-PWS-E on October 26, 2009 assessing $1,320 in administrative penalties with $264 deferred.

Information concerning any aspect of this order may be obtained by contacting Amanda Henry, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Springfield Custom Homes, Inc., Docket No. 2009-1037-WQ-E on October 26, 2009 assessing $700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Springfield Townhomes, Inc., Docket No. 2009-1038-WQ-E on October 26, 2009 assessing $700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Springfield Custom Homes, Inc., Docket No. 2009-1039-WQ-E on October 26, 2009 assessing $700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Springfield Custom Homes, Inc., Docket No. 2009-1168-WQ-E on October 26, 2009 assessing $700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Springfield Custom Homes, Inc., Docket No. 2009-1169-WQ-E on October 26, 2009 assessing $700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Gilbert O. Reyes, Jr. dba Party Time II, Docket No. 2009-1205-PST-E on October 26, 2009 assessing $875 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Joseph M. Meyers, Docket No. 2009-1217-OSI-E on October 26, 2009 assessing $210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding EBAA Iron, Inc., Docket No. 2004-0505-WQ-E on October 21, 2009 assessing $6,405 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tom Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding B & M Unclaimed Freight, Inc., Docket No. 2007-0859-MLM-E on October 26, 2009 assessing $12,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200905026
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 4, 2009

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Notice of Opportunity to Request a Public Meeting for a New Municipal Solid Waste Transfer Station Registration Application

APPLICATION. Ms. Karen Rodewald, P.O. Box 142028, Austin, Texas 78714-2028, has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Registration No. 40243, to construct and operate a Type V municipal solid waste transfer station. The proposed facility, River City Recycles, will be located 8000 Daffan Lane, Austin, Texas 78724, in Travis County. This facility is requesting authorization to recycle and transfer municipal solid waste which includes construction and demolition waste. The registration application is available for viewing and copying at the TCEQ Region 11 Office, 2800 S IH 35, Suite 100, Austin, Travis County, Texas 78704-5712 and may be viewed online at http://fcnaustin.com/rivercityrolloffs/RCRRegistrationApplication.pdf.

PUBLIC COMMENT/PUBLIC MEETING. Written public comments or written requests for a public meeting must be submitted to the Office of Chief Clerk at the address included in the information section below. Comments may also be received if a public meeting is held on the facility. A public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the development is to be located, or if there is a substantial public interest in the proposed development. The purpose of the public meeting is for the public to provide input for consideration by the commission, and for the applicant and the commission staff to provide information to the public. A public meeting is not a contested case hearing. The executive director will review and consider public comments and written requests for a public meeting submitted prior to the notice of final determination. The executive director is not required to file a response to comments.

EXECUTIVE DIRECTOR ACTION. The executive director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. If the executive director acts on an application, the chief clerk shall mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion to reconsider the executive director's decision. The chief clerk shall mail this notice to the owner and operator, the public interest counsel, to adjacent landowners as shown on the required land ownership map and landowners list, and to other persons who timely filed public comment in response to public notice. Not all persons on the mailing list for this notice will receive the notice letter from the Office of the Chief Clerk.

INFORMATION. Written public comments or requests to be placed on the permanent mailing list for this application should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-30887 or electronically submitted to http://www5.tceq.state.tx.us/ecmnts/index.cfm. Individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us. Further information may also be obtained from Ms. Karen Rodewald, President at the address stated above or by calling (512) 832-8300. Additionally, information may be obtained from Mr. James F. Neyens, P.E. of TRC Environmental Corporation at (512) 329-6080.

TRD-200905025
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 4, 2009

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Notice of Receipt of Application and Intent to Obtain a Municipal Solid Waste Permit Major Amendment

PERMIT NO. 2069A

APPLICATION Liquid Environmental Solutions of Texas, LLC, 1801 Royal Lane, Suite 500, Dallas, Dallas County, Texas 75229, has applied to the Texas Commission on Environmental Quality (TCEQ) for an amendment to their current Type V permit. The applicant is requesting a major amendment to increase the monthly grease trap/food-related waste permitted capacity from 2.4 million gallons per month to 4.8 million gallons per month; to add a second shaker screen to the grease trap treatment process; to add a grinder pump with a capacity up to 350 gpm to facilitate the processing of grease trap and food-related waste; to remove special provisions that have historically been associated with the permit and to request the authorization to accept food related waste which are Class 2 industrial solid wastes. The facility is located at 11115 Goodnight Lane, Dallas, Dallas County, Texas 75229. The TCEQ received the application on September 1, 2009. The permit amendment application is available for viewing and copying at the J. Erik Jonsson Central Library, 1515 Young Street, Dallas, Dallas County, Texas 75201.

ADDITIONAL NOTICE. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; and, the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

The Commission will only grant a contested case hearing on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised in timely filed comments that were not subsequently withdrawn.

MAILING LIST. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's de-

cision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

AGENCY CONTACTS AND INFORMATION. All written public comments and requests must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at www.tceq.state.tx.us/about/comments.html. If you need more information about this permit application or the permitting process, please call TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. Si desea información en Español, puede llamar al 1-800-687-4040. General information about TCEQ can be found at our web site at www.tceq.state.tx.us.

Further information may also be obtained from Liquid Environmental Solutions of Texas, LLC at the address stated above or by calling Ms. Tekla L. Taylor, R.G., Consultant, Brown and Caldwell at (303) 239-5400.

TRD-200905024
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 4, 2009

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Notice of Water Quality Applications

The following notices were issued on October 19, 2009 through October 29, 2009.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

NRG TEXAS POWER LLC which operates the W. A. Parish Steam Electric Generating Station, a steam electric generating facility has applied for a renewal of TPDES Permit No. WQ0001038000, which authorizes the discharge of blowdown and overflow from the cooling pond (Smithers Lake) at a daily average flow not to exceed 37,000,000 gallons per day via Outfall 001, treated coal pile runoff, non-chemical metal cleaning wastes (Units 5-8), low volume waste sources, and storm water on an intermittent and flow variable basis via Outfall 002; condenser cooling water, storm water, line flush waters, low volume waste sources and previously monitored effluent (chemical and non-chemical metal cleaning wastes, low volume waste sources, bottom ash transport water, storm water, cooling tower blowdown, treated sanitary wastewater, and air conditioning condensate) at a daily average flow not to exceed 2,121,000,000 gallons per day via Outfall 003; treated storm water from ash disposal cells at a daily average flow not to exceed 1,296,000 gallons per day via Outfall 004; storm water runoff from Units 1-4 and low volume wastewaters on an intermittent and flow variable basis via Outfall 005, and Units 1-4 auxiliary cooling tower blowdown and low volume waste sources on an intermittent and flow variable basis via Outfall 006. The facility is located at 2500 Y. U. Jones Road, south of and adjacent to Smithers Lake and Dry Creek, southwest of the Town of Thompsons, Fort Bend County, Texas 77481.

DOUBLE DIAMOND UTILITIES CO. which operates The Cliffs WWTP, has applied for a major amendment to TPDES Permit No. WQ0002789000 to authorize a reduction in monitoring frequency for flow at Outfalls 001 and internal 101 from once a day to five times a week; a reduction in monitoring frequency for total dissolved solids (for both ambient lake water feed and the effluent) and pH at Outfall 001 from once a day to once a week; an increase in daily average and daily maximum reverse osmosis reject water flow limitations at internal Outfall 101 from 0.06 million gallons per day (MGD) and 0.110 MGD to 0.180 MGD and 0.360 MGD respectively; an increase in daily average and daily maximum treated domestic wastewater flow limits at internal Outfall 201 from 0.025 MGD and 0.050 MGD to 0.050 MGD and 0.100 MGD respectively; a reduction in monitoring frequency for total suspended solids at internal Outfall 201 from five times a week to once a week; and change in sample type for total dissolved solids and chloride at Outfalls 001 and 301 and total dissolved solids at Outfall 101 from 'composite' to 'grab'. The current permit authorizes discharge of previously monitored effluents (reverse osmosis reject water via Outfall 101 and treated domestic wastewater via Outfall 201) via Outfall 001 on an intermittent and flow variable basis. The facility is located adjacent to Possum Kingdom Lake immediately west of State Highway 16 and south of the Brazos River, Palo Pinto County, Texas.

PRASEK'S HILLJE SMOKEHOUSE, INC. which operates Prasek's Hillie Smokehouse, a bakery and sausage manufacturing plant, as well as a grocery/service station and restaurant, has applied for a renewal of TPDES Permit No. WQ0004697000, which authorizes to discharge treated process wastewater and domestic wastewater subject to the following limitations. The Executive Director has reviewed this action and has found that the action is consistent with the applicable Texas Coastal Management Program (CMP) goals and policies and will not adversely affect any applicable coastal natural resource areas (CNRA) identified in the CMP. The facility is located on the east side of County Road 357, approximately 4,00 feet north of the intersection of U.S. Highway 59 and County Road 357.

CITY OF ROCKPORT has applied for a renewal of TPDES Permit No. WQ0010054001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,500,000 gallons per day. The current permit also authorizes the disposal of treated domestic wastewater via irrigation of 200 acres. The facility is located on the west side of Farm-to-Market Road 2165, approximately 1,200 feet south of the intersection of Farm-to-Market Road 2165 and Enterprise Boulevard in Aransas County, Texas 78732.

CITY OF ELDORADO has applied for a renewal of TPDES Permit No. WQ0010165001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 385,000 gallons per day. The facility is located approximately 5000 feet northeast of the intersection of U.S. Highway 277 and U.S. Highway 915 in Schleicher County, Texas 76936.

GUADALUPE-BLANCO RIVER AUTHORITY has applied for a renewal of TPDES Permit No. WQ0010210002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,500,000 gallons per day. The facility is located 4435 FM 20 East, on the south side of Farm-to-Market Road 20, approximately 2.5 miles east of the intersection of Farm-to-Market Road 20 and U.S. Highway 183 in Caldwell County, Texas 78644.

CITY OF LUBBOCK has applied for a major amendment to TPDES Permit No. WQ0010353002 to authorize the addition of an Outfall 007 to discharge treated domestic wastewater (effluent) at a volume not to exceed an annual average flow of 14,500,000 gallons per day and change the method of disinfection at all outfalls from chlorination to ultraviolet light. The current permit authorizes the discharge of ef-

fluent at a volume not to exceed an annual average flow of 9,000,000 gallons per day via Outfall 001; the disposal of effluent at a volume not to exceed an annual average flow of 14,500,000 gallons per day from Outfall 002 via irrigation of 5900 acres at the Lubbock Land Application Site (LLAS); the disposal of effluent not to exceed an annual average flow of 12,000,000 gallons per day from Outfall 003 via irrigation to the 3400 acres at the Hancock Land Application Site (HLAS); the disposal of effluent from Outfall 004 via contract with Southwestern Public Service Co. to supply industrial reuse water (cooling make-up water) for the Jones Power Plant; and from Outfall 005 via irrigation by reclaimed water users under the city's 30 Texas Administrative Code Chapter 210 authorization. The total volume of treated domestic wastewater shall not exceed an annual average flow of 31,500,000 gallons per day which is reported as Outfall 006. The facility is located the eastern terminus of East 38th Street, south of the Fort Worth and Denver Railroad bridge crossing of the North Fork Double Mountain Fork Brazos River, approximately one mile northwest of the intersection of State Highway-Loop 289 and Farm-to-Market Road 835 (Buffalo Springs Lake Road), in the southeastern portion of the City of Lubbock in Lubbock County, Texas. The LLAS is located primarily east of State Highway-Loop 289. The eastern boundary of the main site extends along Farm-to-Market Road 835 and its intersection of Yellow House Canyon to its intersection with Trotter Road and extending north of East 19th Street. The main site has a southern boundary along the north rim of Yellow House Canyon and a northern boundary south and north of East 19th Street. In addition, there are three non-contiguous effluent application areas described as follows: 815 acres located 0.75 mile north of the Village of Ransom Canyon and east of the main site, 300 acres located east of Farm-to-Market Road 1729, 0.5 mile south of East 19th Street and 0.5 mile north of 50th Street and approximately 150 acres located north of the Southeast Water Reclamation plant (SEWRP) and west of Loop 289. The LLAS is located in Lubbock County, Texas. The HLAS has an approximate southern boundary 0.6 miles north of the intersection of Farm-to-Market Road 400 and Farm-to-Market Road 211 (in the City of Wilson), and is bounded by a county road approximately 4.0 miles to the north; the east and west sides of the irrigation site are bounded by parallel county roads two miles apart in Lynn County, Texas. The HLAS is located in Lynn County, Texas.

SAN ANTONIO RIVER AUTHORITY has applied for a renewal of TPDES Permit No. WQ0010749006 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day. The facility will be located 1,900 feet southeast of the intersection of U.S. Highway 181 South and Richter Road in Bexar County, Texas 78112.

JEFFERSON COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 10 has applied for a renewal of TPDES Permit No. WQ0010838003, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 750,000 gallons per day. The facility is located to the northwest of Nederland in the area bounded by Spurlock Road, U.S. Highway 69/96/287 and State Highway 347, and on the northwest side of Rhodair Gully, approximately 3,500 feet upstream from the point where Rhodair Gully passes beneath U.S. Highway 69/96/287 in Jefferson County, Texas 77627-3225.

THE CITIES OF WACO, WOODWAY, BELLMEAD, LACY-LAKEVIEW, ROBINSON, HEWITT AND LORENA have applied for a major amendment of TPDES Permit No. WQ0011071001, to authorize an increase in the discharge of treated domestic wastewater from an annual average flow not to exceed 37,800,000 gallons per day to an annual average flow not to exceed 45,000,000 gallons per day. The facility is located on the southwest bank of the Brazos River, approximately 4.5 miles downstream from the crossing of Interstate Highway 35 and the Brazos River in McLennan County, Texas.

BCD SERVICES, INC. has applied for a renewal of TPDES Permit No. WQ0012344001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 360,000 gallons per day. The facility will be located approximately 1,500 feet south of U.S. Highway 90, on the eastern bank of Cedar Bayou in Liberty County, Texas 77535.

NEW HORIZONS RANCH AND CENTER, INC. has applied for a major amendment to Texas Commission on Environmental Quality (TCEQ) Permit No. WQ0012759001, to authorize a reduction in the effluent monitoring frequency for biochemical oxygen demand (BOD). The current permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 18,000 gallons per day via surface irrigation of 15 acres of non-public access pastureland. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located one mile west-northwest of the intersection of Farm-to-Market Road 574 (Mills County Road) and Pecan Bayou in Mills County, Texas 76844.

THE CITY OF MANOR has applied for a major amendment to TPDES Permit No. WQ0012900001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 840,000 gallons per day to an annual average flow not to exceed 2,000,000 gallons per day. The facility is located at 547 Llano Street, approximately 0.25 mile south of U.S. Highway 290 in Travis County, Texas 78653.

8 MILE PARK, L.P. has applied for a renewal of TPDES Permit No. WQ0013796001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 7,200 gallons per day. The facility is located in the Autumn Shadows Subdivision on the south side of State Highway 35 approximately 570 feet east of the intersection of State Highway 35 and Farm-to-Market Road 1459 in Brazoria County, Texas 77480.

TERRA VERDE UTILITY COMPANY, LLC has applied for a renewal of TPDES Permit No. WQ0014624001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The facility is located at 22602 Hegar Road, two miles north and 120 feet east of the intersection of Farm-to-Market Road 2920 and Hegar Road in Waller County, Texas 77447

The following do not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided above, WITHIN 30 DAYS OF THE ISSUED DATE OF THE NOTICE.

TRS ENVIROGANICS INC. has applied for a renewal of Permit No. 04460, which authorizes the land application of wastewater treatment plant sewage sludge and water treatment plant sludge for beneficial use. The land application site is located approximately 4 miles east of the intersection of Farm-to-Market Road 1410 and Farm-to-Market Road 61 at the intersection of Devers Road and Farm-to-Market Road 1410 in Liberty County, Texas.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200905023
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 4, 2009

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Texas Facilities Commission

Request for Proposals #303-0-10454

The Texas Facilities Commission (TFC), on behalf of the Office of the Attorney General, announces the issuance of Request for Proposals (RFP) #303-0-10454. TFC seeks a five or ten year lease of approximately 10,957 square feet of office space in Tyler, Smith County, Texas.

The deadline for questions is November 20, 2009 and the deadline for proposals is December 4, 2009 at 3:00 p.m. The award date is January 20, 2010. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Purchaser Sandy Williams at (512) 475-0453. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=85864.*

TRD-200905021
Kay Molina
General Counsel
Texas Facilities Commission
Filed: November 4, 2009

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Request for Proposals #303-0-10461

The Texas Facilities Commission (TFC), on behalf of the Office of the Attorney General, announces the issuance of Request for Proposals (RFP) #303-0-10461. TFC seeks a five or ten year lease of approximately 9,439 square feet of office space in Tyler, Smith County, Texas.

The deadline for questions is November 20, 2009 and the deadline for proposals is December 4, 2009 at 3:00 p.m. The award date is January 20, 2010. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Purchaser Sandy Williams at (512) 475-0453. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=85863.*

TRD-200905020
Kay Molina
General Counsel
Texas Facilities Commission
Filed: November 4, 2009

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Request for Proposals #303-0-10547

The Texas Facilities Commission (TFC), on behalf of the Department of Assistive and Rehabilitative Services (DARS), announces the issuance of Request for Proposals (RFP) #303-0-10547. TFC seeks a sixty-four (64) month lease of approximately 5,364 square feet of office space in Fort Worth, Tarrant County, Texas.

The deadline for questions is November 20, 2009 and the deadline for proposals is December 4, 2009 at 3:00 p.m. The award date is January 20, 2010. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Purchaser Sandy Williams at (512) 475-0453. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=85820.*

TRD-200905012
Kay Molina
General Counsel
Texas Facilities Commission
Filed: November 3, 2009

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Request for Proposals #303-0-10608

The Texas Facilities Commission (TFC), on behalf of the Health and Human Services Commission and the Department of Aging and Disability, announces the issuance of Request for Proposals (RFP) #303-0-10608. TFC seeks a five or ten year lease of approximately 16,840 square feet of office space within the city limits of Temple, Bell County, Texas.

The deadline for questions is November 23, 2009 and the deadline for proposals is December 1, 2009 at 3:00 p.m. The award date is January 20, 2010. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Purchaser Sandy Williams at (512) 475-0453. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=85842.*

TRD-200905016
Kay Molina
General Counsel
Texas Facilities Commission
Filed: November 4, 2009

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Request for Proposals #303-0-10629

The Texas Facilities Commission (TFC), on behalf of the Health and Human Services Commission, Department of Family and Protective Services, Department of State Health Services, Department of Aging and Disability Services and Department of Assistive and Rehabilitative Services, announces the issuance of Request for Proposals (RFP) #303-0-10629. TFC seeks a ten year lease of approximately 13,849 square feet of office space in Del Rio, Val Verde County, Texas.

The deadline for questions is November 20, 2009 and the deadline for proposals is December 1, 2009 at 3:00 p.m. The anticipated award date is January 20, 2010. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Purchaser Sandy Williams at (512) 475-0453. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=85822.*

TRD-200905015
Kay Molina
General Counsel
Texas Facilities Commission
Filed: November 4, 2009

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Department of Family and Protective Services

Request for Proposals for Consulting Services - Foster Care System Remodeling

The Texas Department of Family and Protective Services (DFPS or the Department) has expanded the Child Protective Services (CPS) Reform Initiative to include a redesign of the Texas foster care system. The redesign project (the Project) will create needed sustainable placement resources in communities in order to meet the service needs of children and youth in foster care using the least restrictive placement settings available. The existing system places too many children and youth outside of their local communities and away from their families, siblings, schools, and social support networks because a significant number of communities do not have appropriate and least restrictive placement options locally available. DFPS has determined that distal placements increase the risk of poor child and family outcomes.

In accordance with Texas Government Code, Chapter 2254, DFPS is issuing a Request for Proposals (RFP) for the Department to enter into contract(s) with one (or more) consultant(s) with the competence, knowledge, and qualifications to advise and assist in the implementation of remodeling the DFPS foster care system. The consultant(s) awarded the contract(s) shall assist and advise DFPS in the project outlined in this notice.

This is not the complete bid package. The complete bid package will be available on or after November 13, 2009 and will be posted on the Electronic State Business Daily (ESBD) found at **http://esbd.cpa.state.tx.us/.** Search under Agency Name "Dept of Family & Protective Svcs - 530" and select "Search Bid/ Procurement Opportunities." DFPS will use the RFP posted on the ESBD to solicit and evaluate consultant proposals from which to award one or more contracts.

Point of Contact: David Whiteside, CPS Director of Purchased Client Services, Department of Family and Protective Services (email: David.Whiteside@dfps.state.tx.us).

TRD-200905011
Gerry Williams
General Counsel
Department of Family and Protective Services
Filed: November 3, 2009

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Department of State Health Services

Notice of Public Hearing Concerning Milk and Dairy Rules, Particularly New Rules for the Manufacture of Non-Grade A Milk Products and the Licenses and Fees Applicable to Such Dairy Manufacturers

The Department of State Health Services (department) proposes to repeal Subchapters A, C, D, and E of those rules found in Title 25, Chapter 217, of the Texas Administrative Code, titled "Milk and Dairy" and replace these Subchapters with updated language as well as add an entirely new Subchapter concerning the Manufacture of Non-Grade A Milk Products. The proposed rules were published in the October 30, 2009, issue of the *Texas Register* (34 TexReg 7510).

Specifically, the proposed new rules update language for Grade Specifications and Requirements for Milk (proposed new Subchapter A); Rules for the Manufacture of Frozen Desserts (proposed new Subchapter C); Bulk Milk Regulations (proposed new Subchapter D); and Permits, Fees, and Enforcement (proposed new Subchapter F). The entirely new Subchapter being added, titled Dairy Products and Milk for Manufacturing Purposes (proposed new Subchapter E), implements Senate Bill 1714, 80th Legislature, Regular Session, 2007, which amended §§435.003, 435.004, and 435.009 of the Health and Safety Code, to include the regulation and inspection of all non-Grade A dairy products, such as cheese, butter and milk powder. The proposed rules require that these non-Grade A dairy products be handled and produced in accordance with those laws and rules that apply to Grade A dairy products and provides for the licenses and fees associated with these activities.

Subchapter B, §§217.21 - 217.33 of Chapter 217, relating to Grade A Raw for Retail Milk and Milk Products, is not being revised at this time and will remain in effect as it is currently published in the Texas Administrative Code.

The department will hold a public hearing on Monday, November 23, 2009, from 1:00 p.m. - 4:00 p.m. at the Department of State Health Services, 1100 West 49th Street, in Austin, Texas 78756, in Room K-100.

This hearing allows stakeholders the opportunity to provide any comments or concerns - either orally or in writing - regarding the proposed rules to the department. Please note that because Subchapter B is not being revised, comments relating to the sale and distribution of Grade A Retail Raw Milk are not pertinent. To view the proposed rules, please visit the department's website at: www.dshs.state.tx.us/milk/rules.shtm.

The department will accept comments for these proposed rules through 5:00 p.m. on December 1, 2009. For further information or questions concerning these proposed rules or to submit written comments, please contact Gene Wright, Environmental and Consumer Safety Section, Division of Regulatory Services, Department of State Health Services, MC 1987, P.O. Box 149347, Austin, Texas 78714-9347; phone number (512) 834-6770, extension 2570; fax number (512) 834-6702; and email address: MilkRules@dshs.state.tx.us.

TRD-200905000
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: November 2, 2009

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Panhandle Regional Planning Commission

Legal Notice

Panhandle Regional Planning Commission (PRPC) has issued two Requests for Information as specified below. Training and items to be purchased will be funded with American Recovery and Reinvestment Act (ARRA) Child Care Quality Improvement grants.

Child Care Provider Trainer List

PRPC seeks to develop a list of pre-qualified trainers who may be engaged to provide training in the Texas Panhandle for child care provider staff in various child care-related topics. Topics may include but are not limited to child development, health and safety, detection/prevention of child abuse, classroom management, and providing care for children with physical or mental disabilities.

Child Care Quality Improvement Vendor List

PRPC seeks to develop a list of pre-qualified vendors from which may be purchased items of furniture, equipment and developmentally appropriate learning materials to be used by local child care providers. The purpose of this solicitation is to compile information from vendors about their related offerings, associated services, including item costs, shipping and handling fees, assembly fees, discounts, warranties, return policies, inside delivery fees, and availability of pre-loaded purchase cards.

PRPC makes no guarantees of purchases from the Trainer and Vendor lists.

Interested trainers and vendors may obtain a copy of the applicable solicitation by contacting Pam Zenick, at (806) 372-3381, (800) 477-4562 or pzenick@theprpc.org. The solicitations may also be picked up at PRPC's offices located at 415 West Eighth in Amarillo, Texas. The required information should be submitted to PRPC no later than November 16, 2009.

TRD-200905001
Pam Zenick
Workforce Development Planning, Information and Evaluation Manager
Panhandle Regional Planning Commission
Filed: November 2, 2009

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Public Utility Commission of Texas

Notice of Application for Designation as an Eligible Telecommunications Provider

Notice is given to the public of an application filed with the Public Utility Commission of Texas on October 28, 2009, for designation as an eligible telecommunications provider (ETP) pursuant to P.U.C. Substantive Rule §26.417.

Docket Title and Number: Application of W.T. Services, Inc. for Designation as an Eligible Telecommunications Provider Pursuant to P.U.C. Substantive Rule §26.417. Docket Number 37608.

The Application: The company is requesting ETP designation in the Vega exchange in order to be eligible to receive state universal service funding to assist it in providing universal service in Texas. Pursuant to 47 U.S.C. §214(e) and P.U.C. Substantive Rule §26.417, the commission, either upon its own motion or upon request, shall designate qualifying common carriers as ETPs for service areas set forth by the commission. W.T. Services seeks ETP designation in the Vega exchange in the service area of Windstream Communications Southwest. The company holds Certificate of Operating Authority Number 50013.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. The deadline for intervention in this proceeding is December 3, 2009. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 37608.

TRD-200904999
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 2, 2009

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Notice of Application for Waiver of Denial of Request for Numbering Resources

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on November 2, 2009, for waiver of denial by the Pooling Administrator (PA) of Southwestern Bell Telephone Company d/b/a AT&T Texas' (AT&T Texas) request for assignment of ten (10) one thousand-block of numbers in the Dallas rate center.

Docket Title and Number: Petition of Southwestern Bell Telephone Company d/b/a AT&T Texas for Waiver of Denial of Numbering Resources, Docket Number 37626.

The Application: AT&T Texas submitted an application to the PA for the requested blocks in accordance with the current guidelines. The PA denied the request because AT&T Texas did not meet the months-to-exhaust and utilization criteria established by the Federal Communications Commission.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than November 20, 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 37626.

TRD-200905022
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 4, 2009

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Notice of Application to Amend a Certificate of Convenience and Necessity for Proposed CREZ Priority Transmission Line

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on October 28, 2009, to amend a certificate of convenience and necessity (CCN) for a proposed Competitive Renewable Energy Zone (CREZ) priority transmission line in Nolan, Taylor, and Runnels Counties, Texas.

Docket Style and Number: Application of Oncor Electric Delivery Company LLC to Amend its Certificate of Convenience and Necessity for the Central Bluff - Bluff Creek 345-kV CREZ Transmission Line in Nolan, Taylor, and Runnels Counties. SOAH Docket Number 473-10-1089; PUC Docket Number 37529.

The Application: Oncor Electric Delivery Company LLC (Oncor) requests to amend its CCN for a proposed CREZ priority transmission line designated the Central Bluff - Bluff Creek Transmission Project (project). The proposed project consists of constructing a new double-circuit 345-kV transmission line, which will extend from the new Oncor Central Bluff Switching Station, located in Nolan County, Texas, to the existing American Electric Power Texas North Company's (AEP TNC) Bluff Creek Switching Station, located in Taylor County, Texas. The new 345-kV double-circuit line is approximately 9.5 miles in length and will be constructed on double-circuit lattice steel towers. The estimated cost of the project is $12,210,000.

Oncor noted that the Electric Reliability Council of Texas (ERCOT) CREZ Transmission Optimization (CTO) Study identified both circuits of this project for termination at AEP TNC's Bluff Creek Switching Station. However, AEP has indicated that termination of both circuits into the Bluff Creek Switching Station is not feasible due to space limitations and electrical constraints and has instead proposed to terminate one circuit of the proposed project at Bluff Creek and have one circuit fly-by en route to the new Brown Switching Station. According to On-

cor, ERCOT has reviewed this AEP proposal and recommended this change.

In 2008 the commission determined that the transmission facilities identified in the final order were necessary to deliver to customers renewable energy generated in the CREZ. *Commission Staff's Petition for Designation of Competitive Renewable Energy Zones,* Docket Number 33672, Order on Rehearing (October 7, 2008). The Central Bluff - Bluff Creek 345-kV transmission line project, the subject of this application, was specifically identified in that order as necessary facilities. In Docket Number 36801, Oncor was ordered to complete the project identified as the Central Bluff - Bluff Creek CREZ Priority Project. *Proceeding to Sequence Certificate of Convenience and Necessity Applications for the Priority Projects for the Competitive Renewable Energy Zones,* Docket Number 36801 (July 8, 2009). The estimated date to energize facilities for the Central Bluff - Bluff Creek line is December 2011. Pursuant to the Public Utility Regulatory Act §39.203(e), the commission must issue a final order in this docket before the 181st day after the date the application is filed with the commission.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. The deadline for intervention in this proceeding is November 30, 2009. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference SOAH Docket Number 473-10-1089 and PUC Docket Number 37529.

TRD-200905004
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 3, 2009

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Notice of Application to Amend a Certificate of Convenience and Necessity for Proposed CREZ Priority Transmission Line

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on October 28, 2009, to amend a certificate of convenience and necessity (CCN) for a proposed Competitive Renewable Energy Zone (CREZ) priority transmission line in Taylor, Runnels, Coleman, and Brown Counties, Texas.

Docket Style and Number: Application of Oncor Electric Delivery Company LLC to Amend its Certificate of Convenience and Necessity for the Bluff Creek - Brown 345-kV CREZ Transmission Line in Taylor, Runnels, Coleman, and Brown Counties. SOAH Docket Number 473-10-1088; PUC Docket Number 37530.

The Application: Oncor Electric Delivery Company LLC (Oncor) requests to amend its CCN for a proposed CREZ priority transmission line designated the Bluff Creek - Brown Transmission Project (project). The proposed project consists of constructing a new double-circuit 345-kV transmission line, which will extend from the existing AEP Texas North Company's (AEP TNC) Bluff Creek Switching Station, located in Taylor County, Texas; to the new Oncor Brown Switching Station, located southwest of Brownwood, Texas in Brown County. The new 345-kV double-circuit line is approximately 80.9 miles in length and will be constructed on double-circuit lattice steel towers. The estimated cost of the project is $98,870,000.

Oncor noted that the Electric Reliability Council of Texas (ERCOT) CREZ Transmission Optimization (CTO) Study identified both circuits of this project for termination at AEP TNC's Bluff Creek Switching Station. However, AEP has proposed to ERCOT to only terminate one of the two circuits of the project at the Bluff Creek Station. According to Oncor, ERCOT has recommended this change as both cost effective and consistent with the CTO. Based on this recommendation, one circuit of the proposed line will terminate at AEP TNC's Bluff Creek Station and the other circuit from Central Bluff will fly-by en route to the new Brown Switching Station.

In 2008 the commission determined that the transmission facilities identified in the final order were necessary to deliver to customers renewable energy generated in the CREZ. *Commission Staff's Petition for Designation of Competitive Renewable Energy Zones,* Docket Number 33672, Order on Rehearing (October 7, 2008). The Bluff Creek - Brown 345-kV transmission line project, the subject of this application, was specifically identified in that order as necessary facilities. In Docket Number 36801, Oncor was ordered to complete the project identified as the Bluff Creek - Brown CREZ Priority Project. *Proceeding to Sequence Certificate of Convenience and Necessity Applications for the Priority Projects for the Competitive Renewable Energy Zones,* Docket Number 36801 (July 8, 2009). The estimated date to energize facilities for the Bluff Creek - Brown line is July 2012. Pursuant to the Public Utility Regulatory Act §39.203(e), the commission must issue a final order in this docket before the 181st day after the date the application is filed with the commission.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. The deadline for intervention in this proceeding is November 30, 2009. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference SOAH Docket Number 473-10-1088 and PUC Docket Number 37530.

TRD-200905005
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 3, 2009

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Notice of Application to Amend a Certificate of Convenience and Necessity for Proposed CREZ Priority Transmission Line

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on October 28, 2009, to amend a certificate of convenience and necessity (CCN) for a proposed Competitive Renewable Energy Zone (CREZ) priority transmission line in Gillespie, Llano, San Saba, Burnet, and Lampasas Counties, Texas.

Docket Style and Number: Application of LCRA Transmission Services Corporation to Amend its Certificate of Convenience and Necessity for the Gillespie - Newton 345-kV CREZ Transmission Line in Gillespie, Llano, San Saba, Burnet, and Lampasas Counties, Texas. SOAH Docket Number 473-10-1097; PUC Docket Number 37448.

The Application: LCRA Transmission Services Corporation (LCRA TSC) requests to amend its CCN for a proposed CREZ priority transmission line designated the Gillespie to Newton Transmission Project (project). The proposed project consists of constructing a new double-circuit 345-kV transmission line, which will connect the expanded Gillespie Station, located in central Gillespie County, to the designated Oncor Electric Delivery Newton Station, located in southeastern Lampasas County. LCRA TSC will initially install one 345-kV circuit on

the transmission line, which will accommodate a second 345-kV circuit. The preferred route for the new 345-kV double-circuit line is approximately 85.47 miles in length and will be constructed on double-circuit lattice steel towers. The estimated cost of the project is $163,300,000.

In 2008 the commission determined that the transmission facilities identified in the final order were necessary to deliver to customers renewable energy generated in the CREZ. *Commission Staff's Petition for Designation of Competitive Renewable Energy Zones,* Docket Number 33672, Order on Rehearing (October 7, 2008). The Gillespie to Newton 345-kV transmission line project, the subject of this application, was specifically identified in that order as necessary facilities. In Docket Number 36801, LCRA TSC was ordered to complete the project identified as the Gillespie to Newton CREZ Priority Project. *Proceeding to Sequence Certificate of Convenience and Necessity Applications for the Priority Projects for the Competitive Renewable Energy Zones,* Docket Number 36801 (July 8, 2009). The estimated date to energize facilities for the Gillespie to Newton 345-kV line is November 2012. Pursuant to the Public Utility Regulatory Act §39.203(e), the commission must issue a final order in this docket before the 181st day after the date the application is filed with the commission.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. The deadline for intervention in this proceeding is November 30, 2009. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference SOAH Docket Number 473-10-1097 and PUC Docket Number 37448.

TRD-200905006
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 3, 2009

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Texas Department of Transportation

Aviation Division - Request for Proposal for Aviation Engineering Services

Lipscomb County, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below.

The following is a listing of proposed projects at the Higgins-Lipscomb County Airport during the course of the next five years through multiple grants.

Current Project: Lipscomb County Airport. TxDOT CSJ No.: 1004HIGNS. Current Scope: Reconstruct apron, install segmented circle, and reconstruct stub taxiway.

The HUB Participation Goal is 12%. TxDOT Project Manager is Stephanie Kleiber.

Future scope work items for engineering/design services within the next five years may include but are not necessarily limited to the following:

1. Install lighted windcone
2. Rehabilitate and mark Runway 18-36
3. Replace LIRL with MIRL
4. Install PAPI-2 Runway 18-36

Lipscomb County reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your proposal preparation the criteria, 5010 drawing, project narrative, and most recent Airport Layout Plan are available online at

www.txdot.gov/avn/avninfo/notice/consult/index.htm

by selecting "Higgins-Lipscomb County Airport". The proposal should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal". The form may be requested from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at

http://www.txdot.gov/business/projects/aviation.htm.

The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. A prime provider may only submit one proposal. If a prime provider submits more than one proposal, that provider will be disqualified. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

Five completed, unfolded copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than **December 8, 2009, 4:00 p.m.** Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Edie Stimach.

The consultant selection committee will be composed of Aviation Division staff members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluation of engineering proposals can be found at

http://www.txdot.gov/business/projects/aviation.htm.

All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please

contact Edie Stimach, Grant Manager. For technical questions, please contact Stephanie Kleiber, Project Manager.

TRD-200905003
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: November 3, 2009

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The University of Texas System

Invitation for Consultants to Provide Offers of Consulting Services

The University of Texas Health Science Center at San Antonio

Invitation No.: IFO # 745-10-01

Background:

The University of Texas Health Science Center at San Antonio (University), one of the 15 institutions composing The University of Texas System, is a national and international leader in the biosciences. University is the only tier one research university in South Texas and is ranked among the top 10% of all research universities in the nation. University also has provided more than 100 active license agreements and 10 new spin-out companies, consistent with the Governor's vision of making Texas a powerhouse in biotechnology. Discoveries coming from University include the Palmaz Stent (one of the top ten patents that have changed the world), which is used to treat over 2 million patients per year worldwide, and the Titanium Rib, the first new FDA-approved pediatric device in the past 40 years. University's annual expenditures of $500 million contribute in excess of $2 billion in positive economic impact to Texas yearly.

Pursuant to the provisions of Texas Government Code, Chapter 2254, University previously procured the consulting services of The Atkins Group (Atkins), to, among other things, provide branding: (1) research and assessment; (2) planning and development; and (3) implementation services for University. Atkins is providing those services to University pursuant to a contract with University.

To remain competitive in the marketplace, including attracting new donors, attracting outstanding faculty and staff, new patients and students, it is important that University continue the implementation of its branding strategy, including a communication and marketing plan to support the University's missions. This branding strategy is integral to the University's future success and especially important to accomplishing increased philanthropy and community awareness. Therefore, it is necessary to amend, extend or renew the contract between University and Atkins.

As required by the provisions of Chapter 2254, Texas Government Code, prior to amending and extending its contract with Atkins, University extends this invitation (Invitation) to qualified and experienced consultants interested in providing the consulting services described in this Invitation to University. Unless a better offer (as determined by University) is received in response to this Invitation, University intends to enter into negotiations with Atkins to amend and extend University's contract with Atkins.

Scope of Work:

The successful consultant will perform the following services: (1) continue the development of the branding architecture as it is to be seen throughout the University's Internet presence, from the University's home page, through all of the landing pages of the schools and departments, as well as all internal pages of University's Web site; (2) continue the development of the branding architecture as it is communicated within a style and usage guide, that will become an essential graphics manual to shepherd the implementation of the branding program throughout all University schools, departments, campuses and components, insuring the unified and cohesive representation of the new brand across University's internal and external audiences; (3) continue the development of the branding architecture as it is conveyed within print pieces (such as magazines, annual reports, brochures and other communications and marketing collateral); and (4) continue the development of the brand program, in various media, that will promote community education and awareness of the University's missions, programs, clinical care and services to the public, with special emphasis on supporting the practice-plan enterprises of the University's Cancer Therapy and Research Center and UT Medicine San Antonio.

Historically Underutilized Businesses:

All agencies of the State of Texas are required to make a good faith effort to assist historically underutilized businesses (HUB) in receiving contract awards. The goal of the HUB program is to promote full and equal business opportunity for all businesses in contracting with state agencies. Pursuant to the HUB program, if under the terms of any agreement or contractual arrangement resulting from this Invitation, the successful consultant subcontracts any of the services, then the successful consultant must make a good faith effort to utilize HUBs certified by the Texas Procurement and Support Services Division of the Texas Comptroller of Public Accounts or any successor agency. Offers that fail to comply with the requirements contained in this Section and Exhibit A, HUB Subcontracting Plan, will constitute a material failure to comply with advertised specifications and will be rejected by the University as non-responsive. Additionally, compliance with good faith effort guidelines is a condition precedent to awarding any agreement or contractual arrangement resulting from this Invitation. Consultant acknowledges that, if selected by University, its obligation to make a good faith effort to utilize HUBs when subcontracting any of the services will continue throughout the term of all agreements and contractual arrangements resulting from this Invitation. Furthermore, any subcontracting of the services by the successful consultant is subject to review by University to ensure compliance with the HUB program.

University has reviewed this Invitation in accordance with 34 Texas Administrative Code §20.13(a), and has determined that subcontracting opportunities are probable under this Invitation. A HUB Subcontracting Plan (HSP), in the form Exhibit A, HUB Subcontracting Plan, is required as part of consultant's offer. The HSP will be developed and administered in accordance with University's Policy on Utilization of Historically Underutilized Businesses. Each consultant must complete and return the HSP in accordance with the terms and conditions of this Invitation. Consultants that fail to do so will be considered non-responsive to this Invitation in accordance with §2161.252, Texas Government Code.

The successful consultant will not be permitted to change its HSP unless: (1) the consultant completes a newly modified version of the HSP in accordance with the terms of the HSP that sets forth all changes requested by the consultant, (2) the consultant provides University with such a modified version of the HSP, (3) University approves the modified HSP in writing, and (4) all agreements or contractual arrangements resulting from this Invitation are amended in writing by University and the consultant to conform to the modified HSP.

Consultant must submit one (1) original of the HSP to University at the same time it submits its offer to University. The one (1) original of the HSP must be submitted under separate cover and in a separate envelope (the HSP Envelope). Consultant must ensure that the top outside surface of its HSP Envelope clearly shows and makes visible: the In-

vitation No. and the Submittal Deadline, both located in the lower left hand corner of the top surface of the envelope, the name and the return address of consultant, and the phrase "HUB Subcontracting Plan".

Specifications:

Any consultant submitting an offer in response to this Invitation must provide the following: (1) consultant's legal name, including type of entity (individual, partnership, corporation, etc.), address, telephone number, fax number and email; (2) background information regarding the consultant, including the number of years in business and the number of employees; (3) information regarding the qualifications, education, and experience of the team members proposed to conduct the requested services; (4) the hourly rate to be charged for each team member providing services; (5) the earliest date by which the consultant could begin providing the services; (6) a list of five (5) client references, including any complex institutions or systems of higher education for which consultant has provided consulting services; (7) a statement of consultant's approach to the project (i.e., the services described in the Scope of Work section of this Invitation), any unique benefits consultant offers University, and any other information consultant desires University to consider in connection with consultant's offer; (8) information to assist University in assessing consultant's demonstrated competence and experience providing consulting services similar to the services requested in this Invitation; (9) information to assist University in assessing the consultant's knowledge of the requested services; (10) information to assist University in assessing the consultant's awareness of the requested services; (11) information to assist University in assessing the consultant's experience performing the requested services for other complex institutions or systems of higher education; (12) information to assist University in assessing whether the consultant will be impartial in the performance of the requested services; (13) information to assist University in assessing whether the consultant will have any conflicts of interest in performing the requested services; (14) information to assist University in assessing the overall cost to University for the requested services to be performed; (15) information regarding any prompt payment discount offered by consultant (University's standard payment terms for services are "Net 30 days."); (16) information to assist University in assessing consultant's capability and financial resources to perform the requested services; (17) information to assist University in assessing consultant's communication skills using all relevant media; (18) a signed and completed original of Exhibit A, HUB Subcontracting Plan (for questions contact: Christelle Farias, Assistant Director of Purchasing, University of Texas Health Science Center at San Antonio (UTHSCSA), Purchasing Department, 8431 Fredericksburg Road, Suite 200, San Antonio, Texas 78229, (210) 562-6202, fariasc@uthscsa.edu); and (19) a signed original of Exhibit B, Execution of Offer.

Selection Process:

Selection of the Successful Offer (defined below) submitted in response to this Invitation by the Submittal Deadline (defined below) will be made using the competitive sealed proposal process described in this section. After opening of the offers and upon completion of the initial review and evaluation of the offers, University may invite one or more selected consultants to participate in oral presentations. University will use commercially reasonable efforts to avoid public disclosure of the contents of an offer prior to selection of the Successful Offer. University may make the selection of the Successful Offer on the basis of the offers initially submitted, without discussion, clarification or modification. In the alternative, University may make the selection of the Successful Offer on the basis of negotiation with any of the consultants. In conducting such negotiations, University will avoid disclosing the contents of competing offers.

At University's sole option and discretion, University may discuss and negotiate all elements of the offers submitted by selected consultants within a specified competitive range. For purposes of negotiation, University may establish, after an initial review of the offers, a competitive range of acceptable or potentially acceptable offers composed of the highest rated offer(s). In that event, University will defer further action on offers not included within the competitive range pending the selection of the Successful Offer; provided, however, University reserves the right to include additional offers in the competitive range if deemed to be in the best interests of University. After submission of an offer but before final selection of the Successful Offer is made, University may permit a consultant to revise its offer in order to obtain the consultant's best and final offer. In that event, representations made by consultant in its revised offer, including price and fee quotes, will be binding on consultant. University will provide each consultant within the competitive range with an equal opportunity for discussion and revision of its offer. University is not obligated to select the consultant offering the most attractive economic terms if that consultant is not the most advantageous to University overall, as determined by University.

University reserves the right to: (a) enter into a contract for all or any portion of the requirements and specifications set forth in this Invitation with one or more consultants; (b) reject any and all offers and re-solicit offers; or (c) reject any and all offers and temporarily or permanently abandon this selection process, if deemed to be in the best interests of University. Consultant is hereby notified that University will maintain in its files concerning this Invitation a written record of the basis upon which a selection, if any, is made by University. University reserves the right to accept or reject any or all offers, waive any formalities, procedural requirements, or minor technical inconsistencies, and delete any requirement or specification from this Invitation when deemed to be in University's best interest.

Criteria for Selection:

The successful offer (Successful Offer), if any, will be the offer submitted in response to this Invitation by the Submittal Deadline that is the most advantageous to University. The criteria to be considered by University in evaluating offers will be those factors listed below:

1. the consultant's demonstrated competence, knowledge, and qualifications; and

2. the reasonableness of the consultant's fee.

In accordance with §2254.027, Texas Government Code, if other considerations are equal, University will give preference to a consultant whose principal place of business is in the State of Texas or who will manage the contract wholly from an office in the State of Texas. Offers will be evaluated by University personnel. The selection of the Successful Offer, if any, will be based on the information provided by consultant in its offer. University may give consideration to any additional information if University deems such information relevant. The consultant submitting the Successful Offer will be required to enter into a contract acceptable to University.

Consultant's Acceptance of Offer Evaluation Methodology:

Submission of an offer by a consultant indicates: (1) consultant's acceptance of: (a) the Selection Process, (b) the Criteria for Selection, and (c) all other requirements and specifications set forth in this Invitation; and (2) consultant's recognition that some subjective judgments must be made by University during this Invitation process.

Public Information:

Consultant is hereby notified that University strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information. University may

seek to protect from disclosure all information submitted in response to this Invitation until such time as a final contract is executed. Upon execution of a final contract, University will consider all information, documentation, and other materials requested to be submitted in response to this Invitation, to be of a non-confidential and non-proprietary nature and, therefore, subject to public disclosure under the Texas Public Information Act (Texas Government Code, §552.001, et seq.). Consultant will be advised of a request for public information that implicates their materials and will have the opportunity to raise any objections to disclosure to the Texas Attorney General. Certain information may be protected from release under §§552.101, 552.110, 552.113, and 552.131, Texas Government Code.

How to Respond; Submittal Deadline:

To respond to this Invitation, consultants must submit the information requested in the Specifications section of this Invitation and any other relevant information, in a clear and concise written format to: Christelle Farias, Assistant Director of Purchasing, UTHSCSA, Purchasing Department, 8431 Fredericksburg Road, Suite 200, San Antonio, Texas 78229.

Offers must be submitted in an envelope or other appropriate container. "Invitation No. IFO 745-10-01" and the Submittal Deadline must be clearly shown in the lower left-hand corner on the top surface of such envelope or container. In addition, the name and return address of the consultant must be clearly visible.

All offers must be received at the above address no later than 3:00 p.m., CDST, Thursday, December 10, 2009 (Submittal Deadline). Submissions received after the Submittal Deadline will not be considered.

Questions:

Questions concerning this Invitation should be directed to Christelle Farias, Assistant Director of Purchasing, UTHSCSA, Purchasing Department, 8431 Fredericksburg Road, Suite 200, San Antonio, Texas 78229, (210) 562-6202, fariasc@uthscsa.edu. University may in its sole discretion respond in writing to questions concerning this Invitation. Only University's responses made by formal written addenda to this Invitation will be binding. Verbal and other written interpretations or clarifications will be without legal effect.

TRD-200905013
Francie A. Frederick
General Counsel to the Board of Regents
The University of Texas System
Filed: November 3, 2009

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Request for Information

The University of Texas System (System) requests information from companies regarding service as trustee of a charitable lead trust (CLT) or an administrator for the trustee of a CLT. This Request for Information (RFI) is issued for the purpose of gathering a list of companies which may be made available to potential donors interested in establishing a CLT for the benefit of the System or one of its institutions.

Description of System

The System was established pursuant to the Texas Constitution of 1876. The System includes academic campuses in Arlington, Austin, Brownsville, Dallas, Edinburg, El Paso, the Permian Basin (Odessa), San Antonio, and Tyler. Health institutions for medical education and research include the M. D. Anderson Cancer Center (Houston), the Southwestern Medical Center at Dallas, the Medical Branch at Galveston, and the Health Science Centers at Houston, San Antonio, and Tyler. The fifteen institutions of the System have emerged among the nation's premier educational enterprises.

More information about the System and the 15 institutions of The University of Texas System may be found at http://www.utsystem.edu/.

Background to RFI

Because of the current low interest rate environment, the System has received increased inquiries from prospective donors who may be interested in establishing a CLT with the lead interest for the benefit of one of the System institutions.

Although the Board of Regents of the System has trust powers which would allow it to serve as trustee of a CLT just as it has served for many years as trustee of charitable remainder trusts, the Board of Regents has determined that it will not serve as trustee of CLTs because of its lack of experience with regard to the peculiar aspects of such trusts and for other reasons.

Some prospective donors who may wish to establish a CLT for the benefit of the System or one of its institutions do not know an entity qualified to serve as trustee of a CLT. Others wish to name an individual trustee but seek an entity to serve as an administrator to render assistance to the trustee in performing fiduciary duties as trustee of a CLT. To be of assistance to these donors seeking a trustee or administrator, the System is seeking to establish a list to be made available to prospective donors, of entities experienced and knowledgeable with the operation of CLTs which may serve as trustee and/or administrator of a CLT. The submission of a complete response does not mean that such respondent will be included by the System on the list.

Selection of a respondent to this request for inclusion on the list maintained by the System does not constitute an endorsement of such respondent by the System. Each grantor will be, and is, encouraged to do his or her due diligence in selecting a trustee or administrator. Decisions are made solely by the prospective grantor. There will be no contractual relationship between the System and any respondent to this request. Any contract or arrangement will be between the prospective grantor and the respondent.

THE SYSTEM DOES NOT REPRESENT OR WARRANT THAT A PROSPECTIVE GRANTOR OF A CLT WILL SEEK SERVICES FROM A RESPONDENT INCLUDED ON THE SYSTEM'S LIST ESTABLISHED BY THIS REQUEST AND THE SYSTEM SPECIFICALLY DISCLAIMS ANY SUCH REPRESENTATIONS AND WARRANTIES.

The System will not provide compensation to any respondent to this RFI for any expenses incurred by respondent for response preparation. Respondent submits its response at its own risk and expense. All responses to this RFI and any supporting documentation will become the property of the System.

The System considers all information, documentation and other materials requested to be submitted in response to this RFI, to be of a non-confidential and/or non-proprietary nature and, therefore, may be subject to public disclosure under the Texas Public Information Act Texas Government Code, §552.001, et seq. Respondent is hereby notified that the System strictly adheres to all statutes, court decisions and opinions of the Texas Attorney General with respect to disclosure of public information.

In response to this RFI, please provide information regarding the following matters:

1. Please indicate the name, telephone number and e-mail address of the individual who will be your company's primary point of contact regarding any questions the System may have pertaining to your RFI response.

2. Please state the number of years your company has been serving as trustee or administrator of CLTs.

3. Please describe any CLT services for which you will use non-employee contract professionals (e.g., accounting services).

4. Please submit current fee schedules (including minimum fees) and any expense pass through for serving as trustee or administrator for a CLT - percentage, hourly, cost, etc.

5. Please state the following:

a) The number of CLTs for which you are currently serving or have in the past served as administrator or trustee;

b) Current number of CLTs for which you are serving as trustee; and

c) Current number of CLTs for which you are serving as administrator.

6. What is the aggregate value of CLT assets for which you are currently serving as an administrator or trustee?

7. Please state any minimum asset value requirements for the CLT.

8. Do you accept for retention in the CLT non-marketable assets? Check all that apply.

a. ____ Closely held stock

b. ____ Real estate

c. ____ Limited liability companies

d. ____ Limited liability partnerships

e. ____ Other, please describe _____

9. If CLT assets are marketable, as trustee what are your typical investment strategies including asset types and allocations?

10. Please provide a copy of financial statements for the past two years for which statements are available.

11. Is respondent currently for sale or involved in any transaction to expand or become acquired? If so, please explain.

12. Describe pending litigation or any litigation in the past five years involving the respondent with regards to breach of fiduciary or administrative duties, if any.

13. Please state the total number of employees in your company who have performed services for CLTs.

14. If available, please provide a listing of references of customers for whom you have furnished CLT services.

15. Identify the key personnel who administer CLTs for your company. Your response should include each individual's role and a resume or professional bio for each individual.

Two (2) copies of each response are requested. The response should be typed on 8 1/2 x 11 inch paper with all pages sequentially numbered, and either stapled or bound together. Mail responses to the following address:

The University of Texas System

Office of External Relations

210 West 6th Street, Suite. 1.200

Austin, Texas 78701

Attention: Jan Hopson

If you have further questions regarding this RFI, please email Jan Hopson at jhopson@utsystem.edu.

All responses to this RFI should be received by the System no later than December 15, 2009.

TRD-200905014
Francie A. Frederick
General Counsel to the Board of Regents
The University of Texas System
Filed: November 3, 2009

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How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 34 (2009) is cited as follows: 34 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "34 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 34 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Index of Rules***. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register***. If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with the ***Texas Register*** page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
40 TAC §3.704.....950 *(P)*

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).