TEXAS REGISTER

IN THIS ISSUE

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Part I - Volume 20, Number 78

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a section of the
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How to Use the Texas Register

Information Available: The 11 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Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.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 a 30-day public comment period.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Open Meetings - notices of open meetings.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 20 (1995) is cited as follows: 20 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 "20 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 20 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.

Texas Administrative Code

The ***Texas Administrative Code*** (***TAC***) is the official 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***. West Publishing Company, the official publisher of the ***TAC***, publishes on an annual basis.

The ***TAC*** volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman 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 ***Official TAC*** also is available on WESTLAW, West's computerized legal research service, in the TX-ADC database.

To purchase printed volumes of the ***TAC*** or to inquire about WESTLAW access to the ***TAC*** call West: **1-800-328-9352.**

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15:

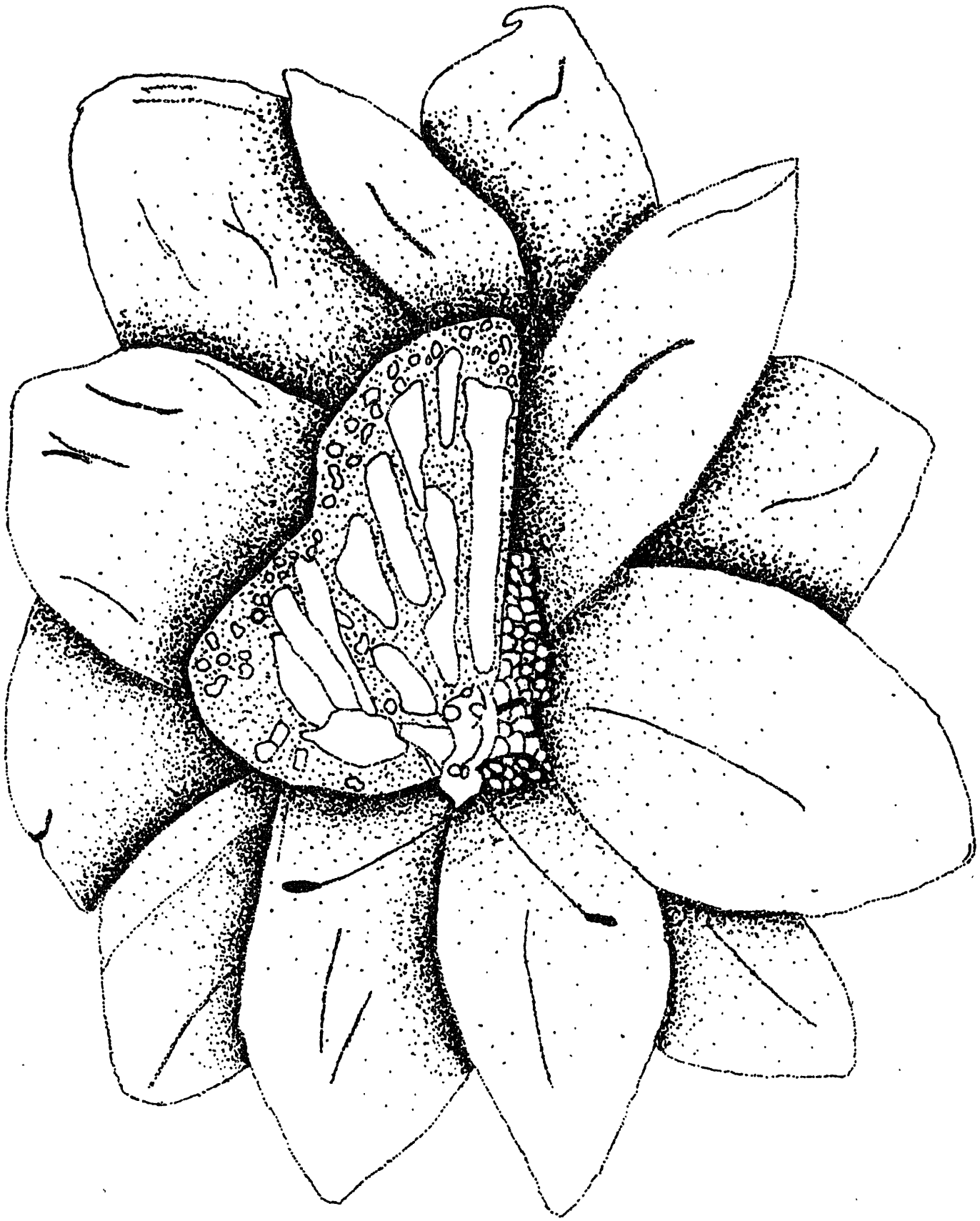
1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 21, April 15, July 12, and October 11, 1994). In its second issue each month the ***Texas Register*** contains a cumulative ***Table of TAC Titles Affected*** for the preceding month. If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).

Update by FAX: An up-to-date ***Table of TAC Titles Affected*** is available by FAX upon request. Please specify the state agency and the TAC number(s) you wish to update. This service is free to ***Texas Register*** subscribers. Please have your subscription number ready when you make your request. For non-subscribers there will be a fee of $2.00 per page (VISA, MasterCard). (512) 463-5561.



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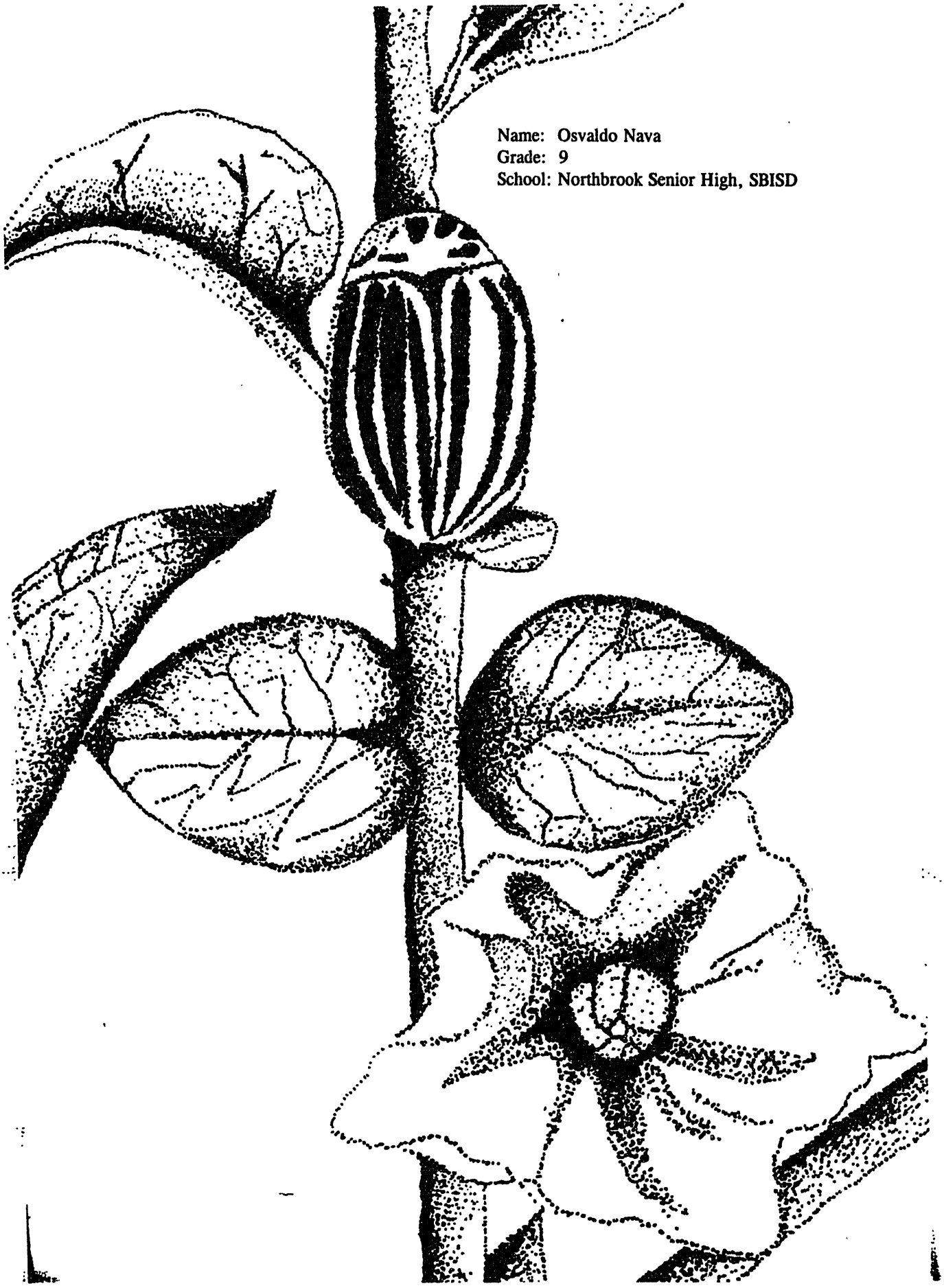

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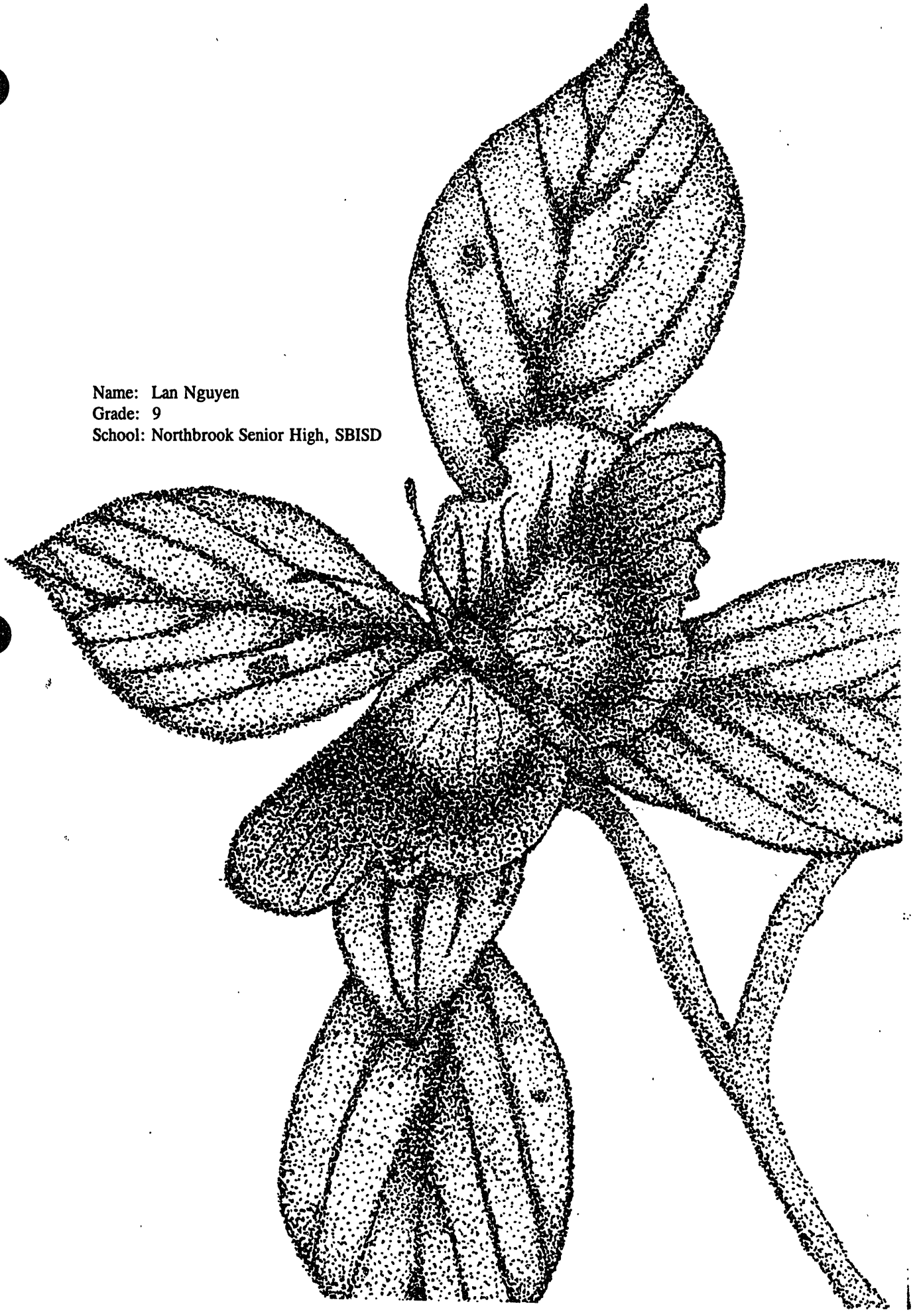

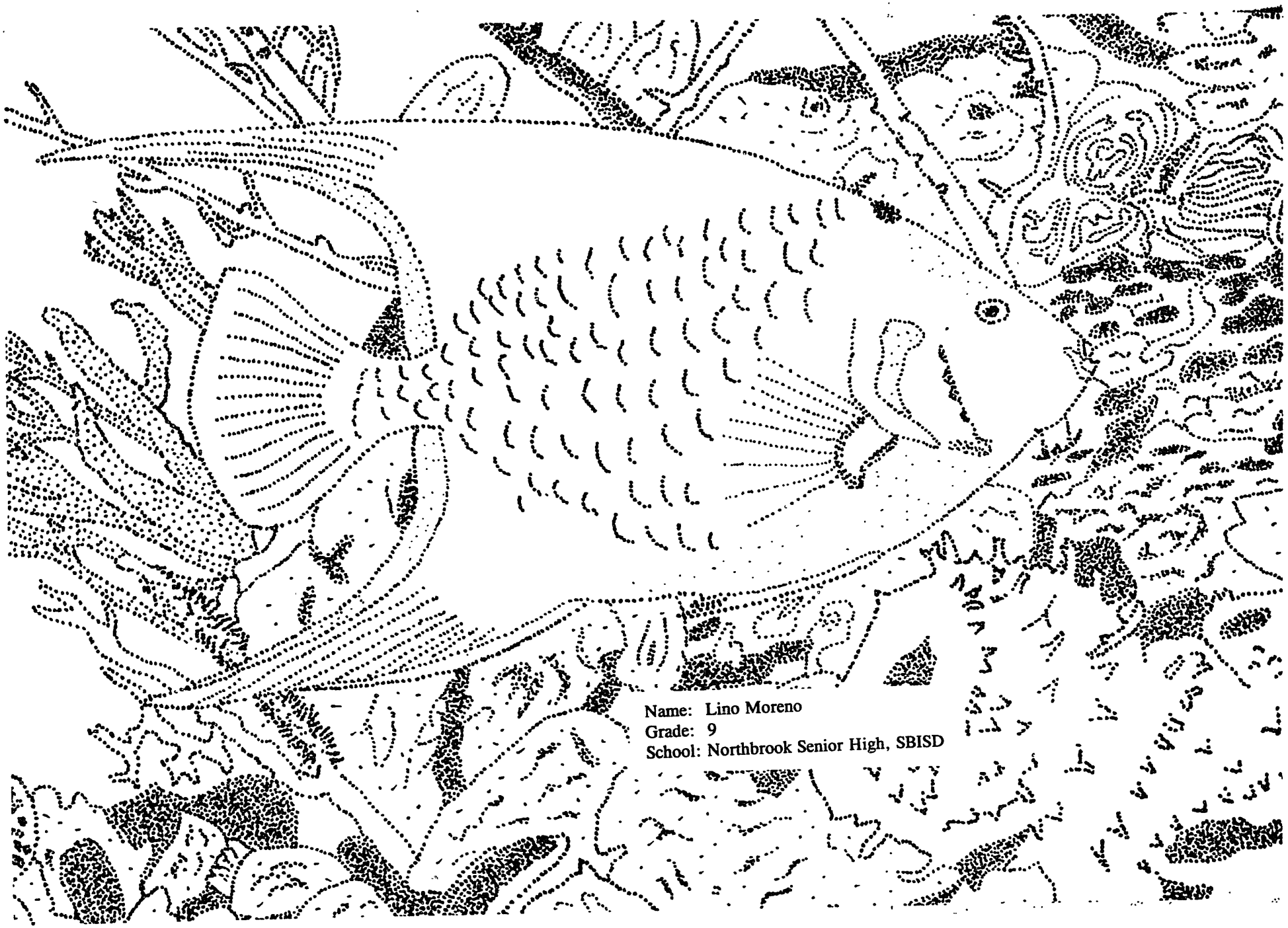

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ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042 and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open record decisions are summarized for publication in the ***Texas Register***. The Attorney General responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the Attorney General unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. To request copies of opinions, phone (512) 462-0011. To inquire about pending requests for opinions, phone (512) 463-2110.

Open Records Decisions

ORD-1 (ID# 35523). Request from G. Todd Stewart, Olson & Olson, 333 Clay Street, Suite 3485, Houston, Texas 77002, concerning whether numbers called by individuals with specific law enforcement responsibilities on cellular telephones provided to the individual by a governmental body are subject to disclosure under the Open Records Act.

ORD-2 (ID# 32030). Request from Laura Reardon, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087 concerning whether Health and Safety Code §382.041 supplants common law trade secret protection for certain information filed with the commission and related questions.

TRD-9512777

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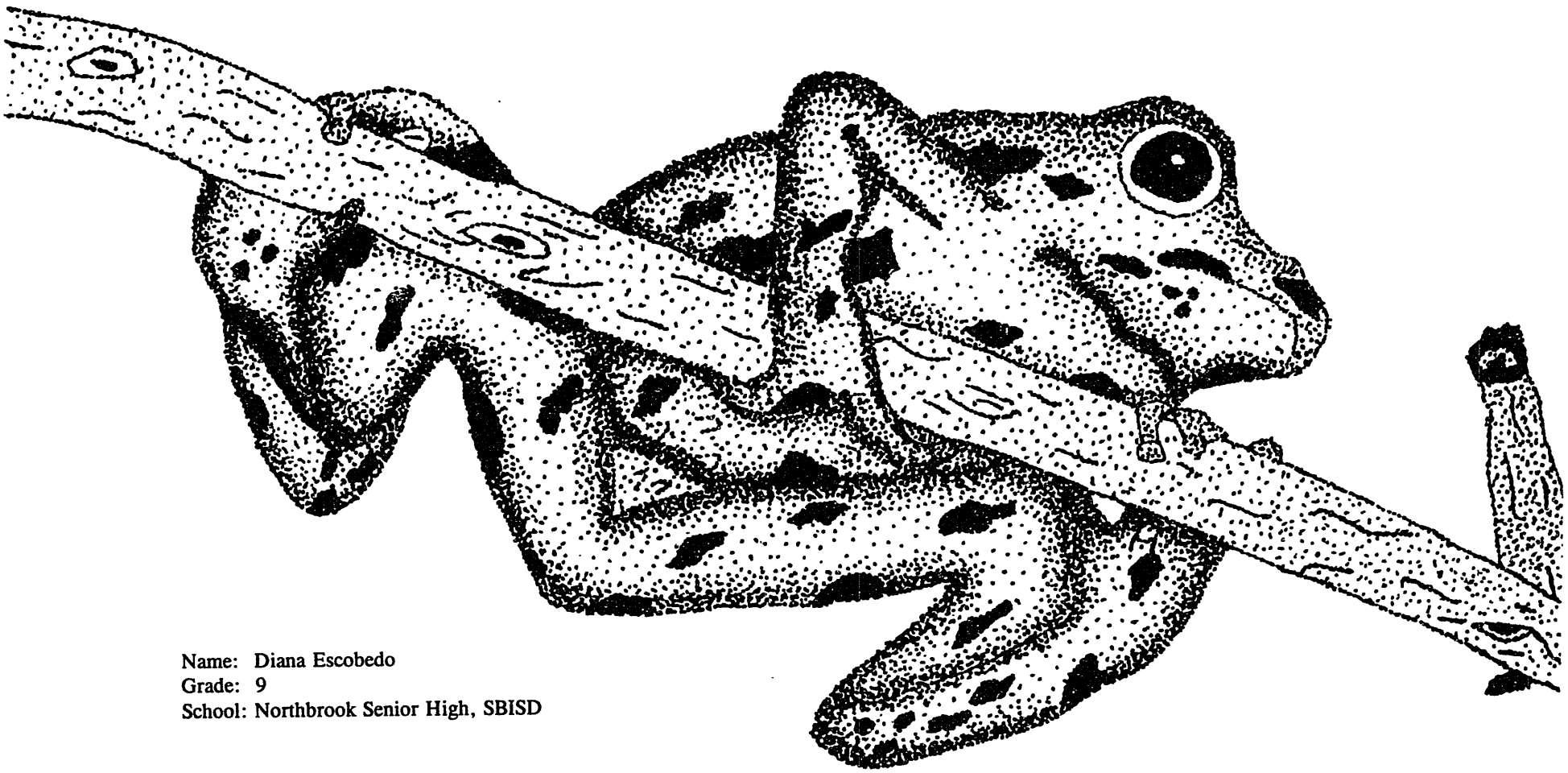

Name: Diana Escobedo
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TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39.

Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Advisory Opinion Requests

AOR-320. The Texas Ethics Commission has been asked to consider whether surplus funds from a race for Speaker of the House of Representatives may be used to make contributions to 501(c)(3) organizations, high school or collegiate scholarship funds, or organizations such as the Boy Scouts or Junior Achievement.

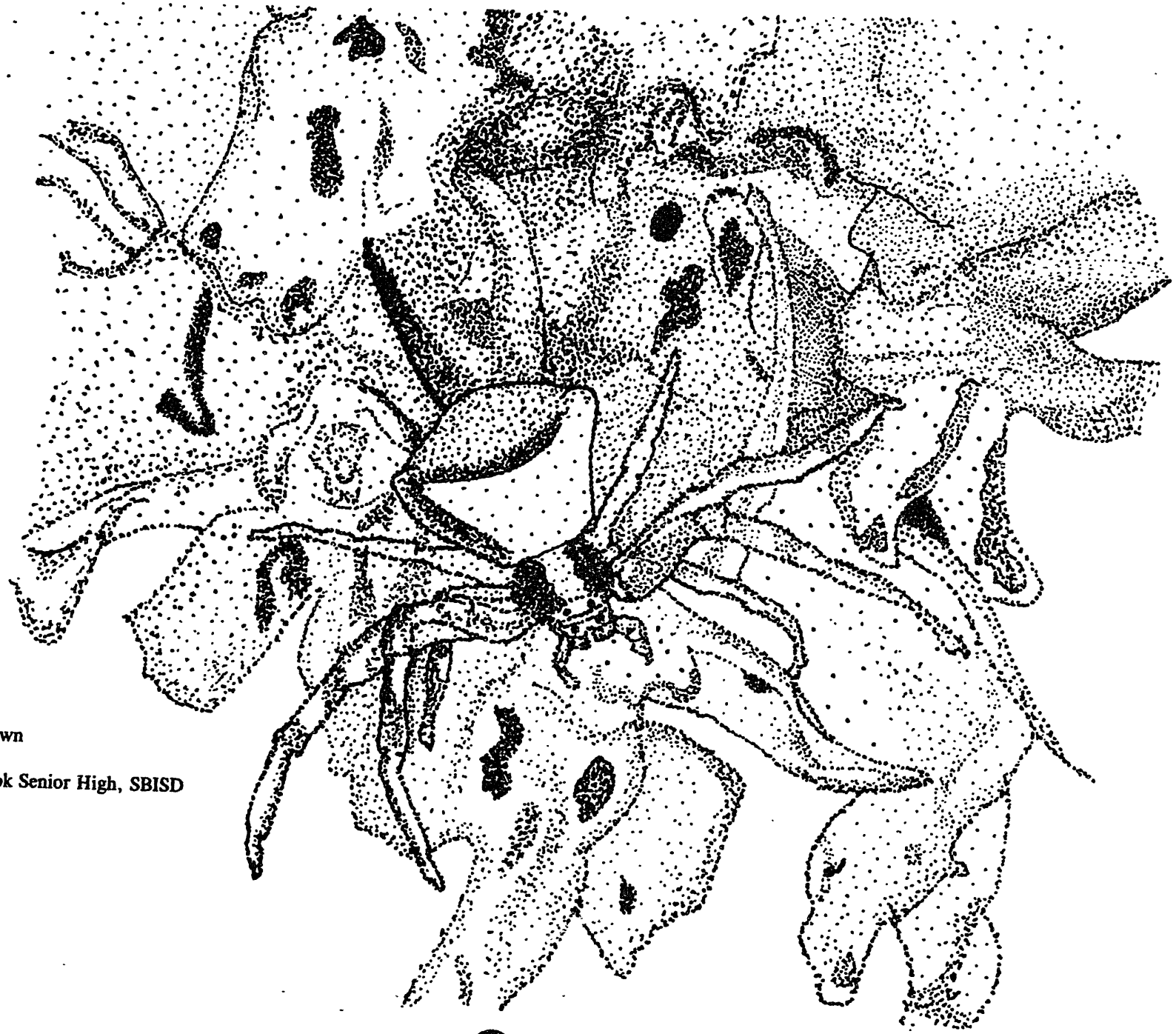
AOR-321. The Texas Ethics Commission has been asked to consider whether members of a legislative committee may accept meals, lodging, and transportation (in vans) from public universities and community colleges in connection with a committee visit to the universities and colleges.

Issued in Austin, Texas, on October 9, 1995.

TRD-9512903 Lucia Dodson
Executive Assistant
Texas Ethics Commission

Filed: October 9, 1995

♦ ♦ ♦



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EMERGENCY RULES

An agency may adopt a new or amended section or repeal an existing section on an emergency basis if it determines that such action is necessary for the public health, safety, or welfare of this state. The section may become effective immediately upon filing with the ***Texas Register***, or on a stated date less than 20 days after filing and remaining in effect no more than 120 days. The emergency action is renewable once for no more than 60 additional days.

Symbology in amended emergency sections. New language added to an existing section is indicated by the use of **bold text.** [Brackets] indicate deletion of existing material within a section.

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

Chapter 3. Traffic Law Enforcement

Traffic Supervision

• **37 TAC §3.59, §3.62**

The Texas Department of Public Safety adopts on an emergency basis an amendment to §3.59 and new §3.62, concerning traffic supervision. The adoptions are necessary to implement the provisions of Senate Bill 3, 74th Legislature, 1995, effective September 1, 1995, (Chapter 705, Acts of 74th Legislature, Regular Session, 1995) which created Texas Civil Statutes, Article 6675d, which requires the director of the Texas Department of Public Safety to adopt, by reference, rules regulating the safe transportation of hazardous materials and to regulate the operations of commercial motor vehicles in the state. The authority section for the adoption of the hazardous material regulations was previously in Texas Civil Statutes, Article 6701d, §139. Section 31(a)(13) of Senate Bill 3 repealed Article 6701d, §139 effective September 1, 1995. Thus Article 6675d, §3 becomes new authorizing statute for the adoption of the Federal Hazardous Material Regulations. The department finds that adoption of these rules on fewer than 30 days notice is required by state law.

The amendment to §3.59 implements the provisions of Senate Bill 3, 74th Legislature, 1995, which changed the statute authorizing the director to adopt all or part of the Federal Hazardous Material Regulations (Title 49, Code of Federal Regulations), and assess administrative penalties.

In new §3.62, the director adopts, by reference Parts 382, 385, 386, 390-393, and 395-397 of Title 49, Code of Federal Regulations (Federal Motor Carrier Safety Regulations). The director further establishes the provisions for the Safety Audit Program, the assessment of administrative penalties, the issuance of safety ratings to motor carriers, and expands the requirements for municipal peace officers that could be trained and certified to enforce the Federal Safety Regulations. Section 3.62 also incorporates the provisions of Chapter 767, Acts of the 74th Legislature, Regular Session, 1995, relating to the waiver of the visual standards for a commercial driver's license to operate a commercial motor vehicle only in this state.

The amendment and new section are adopted on an emergency basis under Texas Civil Statutes, Article 6675d and Article 6687b-2, which provide the director of the Texas Department of Public Safety with the authority to establish rules for the conduct of the work of the Texas Department of Public Safety, and which authorizes the director to adopt rules regulating the safe operation of commercial motor vehicles.

§3.59. Regulations Governing Transportation of Hazardous Materials.

(a) Federal regulations adopted. On September 28, 1973, the director of the Texas Department of Public Safety adopted the Federal Hazardous Materials Regulations, Parts 171-173, 177, and 178, by reference including all amendments and interpretations thereto **when operated intrastate**. The department further adopts Part 180 by reference including all amendments and interpretations thereto.

(b) Explanations and exceptions.

(1) Certain terms when used in the federal regulations as adopted in subsection (a) of this section will be defined as follows:

(A) the definition of motor carrier will be the same as that given in Texas Civil Statutes, Article **6675c, §1(2), Revised Statutes** [6701d, §2(0)];

(B) [the definition of] hazardous material shipper **means a consignor, consignee, or beneficial owner of a shipment of hazardous materials** [will be the same as that given in Texas Civil Statutes, Article 6701d, §2(p)];

(C)-(G) (No change.)

(2) (No change.)

(3) All references in **Title 49,** Code of Federal Regulations, Chapter 1, Parts 171-173, 177, 178, and 180 made to other modes of transportation, other than by motor vehicles operated on streets and highways of this state, will be excluded and not adopted by this department.

(4) (No change.)

(5) The reporting of hazardous material incidents as required by federal regulations has not been adopted, and, therefore, is not required by the Texas Department of Public Safety; however, reporting requirements required by Texas **Transportation Code** [Civil Statutes] will be applicable.

(6) Regulations adopted by this department, other than placarding, shipping papers, fire extinguisher, and the federal motor carrier safety regulations requirements do not apply to cargo tanks having a capacity of 3, 000 gallons or less and used to transport flammable liquids, provided the tank was manufactured or assembled prior to January 1, 1982. All cargo tanks having a 3,000 gallon capacity or less and used to transport flammable liquids manufactured or assembled on or after January 1, 1982, will be required to meet all specifications and regulations for such tanks as required in **Title** 49, Code of Federal Regulations, Chapter 1, Parts 171-173, 177, 178, and 180.

(7) Regulations and exceptions adopted herein are applicable to intrastate drivers and vehicles. All regulations contained in **Title** 49, Code of Federal Regulations, Parts **382, 385, 386,** 390-393, and 395-397 and all amendments thereto pertaining to interstate drivers and vehicles are adopted.

(8) (No change.)

(9) Penalties assessed for violations of the regulations adopted herein will be based upon the provisions of Texas Civil Statutes, Article **6675d, Revised Statutes and §3.62 of this title (relating to Regulations Governing Transportation Safety)** [6701d, §139(h) and (j), and not those stated in 49 Code of Federal Regulations].

§3.62. Regulations Governing Transportation Safety.

(a) General. The director of the Texas Department of Public Safety incorporates, by reference, the Federal Motor Carrier Safety Regulations, Title 49, Code of Federal Regulations, Parts 382, 385, 386, 390-393, and 395-397 including amendments and interpretations thereto. The rules adopted herein are to ensure that:

(1) a commercial motor vehicle is safely maintained, equipped, loaded, and operated;

(2) the responsibilities imposed on a motor vehicle's operator do not impair the operator's ability to operate the vehicle safely; and

(3) the physical condition of a commercial motor vehicle's operator enables the operator to operate the vehicle safely.

(b) Terms. Certain terms, when used in the federal regulations as adopted in subsection (a) of this section, will be defined as follows:

(1) the definition of motor carrier will be the same as that given in Texas Civil Statutes, Article 6675c, §1;

(2) hazardous material shipper means a consignor, consignee, or beneficial owner of a shipment of hazardous materials;

(3) interstate or foreign commerce will include all movements by motor vehicle, both interstate and intrastate, over the streets and highways of this state;

(4) department means the Texas Department of Public Safety;

(5) regional highway administrator means the director of the Texas Department of Public Safety;

(6) farm vehicle means any vehicle or combination of vehicles controlled and/or operated by a farmer or rancher being used to transport agriculture products, farm machinery, and farm supplies to or from a farm or ranch; and

(7) commercial motor vehicle has the meaning assigned by Texas Transportation Code, §548.001(1).

(c) Applicability.

(1) The regulations shall be applicable to the following vehicles:

(A) vehicles with an actual gross weight, a registered gross weight, or a gross weight rating in excess of 26,000 pounds when operating intrastate;

(B) farm vehicles with an actual gross weight, a registered gross weight, or vehicles with a gross weight rating of 48,000 pounds or more when operating intrastate;

(C) vehicles designed to transport 15 or more passengers, including the driver; and

(D) all vehicles transporting hazardous material requiring a placard.

(2) All regulations contained in Title 49, Code of Federal Regulations, Parts 382, 385, 386, 390-393, and 395-397, and all amendments thereto pertaining to interstate drivers and vehicles are also adopted.

(3) Nothing in this section shall be construed to prohibit an employer from requiring and enforcing more stringent requirements relating to safety of operation and employee health and safety.

(d) Exemptions. Exemptions to the adoption in subsection (a) of this section were made pursuant to Texas Civil Statutes, Article 6675d, §4 and §5 and are adopted as follows.

(1) Such regulations shall not apply to the following vehicles when operated intrastate:

(A) a machine consisting in general of a mast, an engine for power, a draw works, and a chassis permanently constructed or assembled to be used in oil or water well servicing or drilling;

(B) a mobile crane which is an unladen, self-propelled vehicle constructed as a machine used to raise, shift, or lower weights;

(C) a vehicle transporting a seed cotton module; or

(D) concrete pumps.

(2) Drivers in intrastate commerce will be permitted to drive 12 hours following eight consecutive hours off duty.

(3) Drivers who are not transporting hazardous materials and were regularly employed in Texas as a commercial vehicle driver prior to August 28, 1989, are not required to meet the medical standards contained in the federal regulations.

(A) For the purpose of enforcement of this regulation, those drivers who reached their 18th birthday after August 28, 1989, shall be required to meet all medical standards.

(B) The exceptions contained in this paragraph shall not be deemed as exemption from drug testing requirements contained in Title 49, Code of Federal Regulations, Part 382.

(4) The maintenance of any type of government form, separate company form, driver's record of duty status, or a driver's daily log is not required if the vehicle is operated within a 150 air-mile radius of the driver's normal work reporting location if:

(A) the owner has another method by which he keeps, as a business record, date and time of delivery of product or service, and location or delivery of product or service so that a general record of the driver's hours of service may be compiled; or

(B) another law requires or specifies the maintenance of delivery tickets, sales invoices, or other documents which show the date of delivery and quantity of merchandise delivered, so that a general record of the driver's hours of service may be compiled; and

(C) the business records generally include the following information:

(i) the time the driver reports for duty each day;

(ii) the total number of hours the driver is on duty each day;

(iii) the time the driver is released from duty each day; and

(iv) the total time for the preceding seven days in accordance with Title 49, Code of Federal Regulations, Part 395.8(j)(2) for drivers used for the first time or intermittently.

(e) Exceptions. Exceptions adopted by the director of the Texas Department of Public Safety not specified in Texas Civil Statutes, Article 6675d, §5, are as follows:

(1) Title 49, Code of Federal Regulations, Part 393.86, requiring rear-end protection shall not be applicable provided the vehicle was manufactured prior to September 1, 1991.

(2) Drivers of vehicles under this section operating in intrastate transportation shall not be permitted to drive after having worked and/or driven for 70 hours in any consecutive seven-day period.

(3) Drivers of vehicles operating in intrastate transportation claiming the 150-mile radius exemption in subsection (d)(4) of this section must return to the work reporting location and be released from work within 12 consecutive hours.

(4) Title 49, Code of Federal Regulations, Part 391.11b(1), is not adopted

for intrastate drivers. The minimum age for an intrastate driver shall be 18 years of age.

(5) Title 49, Code of Federal Regulations, Part 391.11b(2), is not adopted for intrastate drivers. An intrastate driver must have successfully passed the examination for a Texas Commercial Driver's License and be a minimum age of 18 years old.

(6) The Alcohol Testing Regulations of Title 49, Code of Federal Regulations, Part 382 will become effective January 1, 1996, for intrastate drivers.

(7) The Drug Testing Regulations of Title 49, Code of Federal Regulations, Part 382, as in effect on December 21, 1990, under Part 391.81, remain in effect under this adoption of Part 382.

(8) Texas Transportation Code, §547.401 and §547.404, concerning brakes on trailers weighing 15,000 pounds gross weight or less take precedence over the brake requirements in the federal regulations for trailers of this gross weight specification.

(9) Texas Transportation Code, Chapter 642, concerning identifying markings on commercial motor vehicles shall take precedence over Title 49, Code of Federal Regulations, Part 390.21, for vehicles operated in intrastate commerce.

(10) Title 49, Code of Federal Regulations, Part 390.23 (Relief from Regulations), is adopted for intrastate motor carriers with the following exceptions:

(A) Title 49, Code of Federal Regulations, Part 390.23(a)(2)(i) is not applicable to intrastate motor carriers making residential deliveries of heating fuels, public utilities as defined in the Public Utility Regulatory Act, the Gas Utility Regulatory Act, and the Texas Water Code and charged with the responsibility for maintaining essential services to the public to protect health and safety provided:

(i) the carrier documents the type of emergency, the duration of the emergency, and the drivers utilized; and

(ii) maintains the documentation on file for a minimum of six months.

(B) The requirements of Title 49, Code of Federal Regulations, Parts 390.23(c)(1) and (2), for intrastate motor carriers shall be:

(i) the driver has met the requirements of Texas Civil Statutes, Article 6675d, Revised Statutes; and

(ii) the driver has had at least eight consecutive hours off-duty when the driver has been on duty for 15 or more consecutive hours, or the driver has been on duty for more than 70 hours in seven days.

(f) Vision Waiver. Under this section the Texas Department of Public Safety may provide a waiver for a person who is otherwise disqualified under Title 49, Code of Federal Regulations, Part 391.41(b)10 provided that intrastate state drivers meet the vision standards specified in §16.9 of this title (relating to Qualifications to Drive in Intrastate Commerce).

(1) Applications for a waiver shall be accepted by the Texas Department of Public Safety's Motor Carrier Bureau.

(2) Waivers will be approved by the director or his designee and issued in conjunction with the medical examiner's certificate required by Title 49, Code of Federal Regulations, Part 391.43(c).

(3) Waivers granted under this paragraph expire two years after issuance of the medical examiner's certificate.

(4) Applications for renewals will be granted provided the applicant continues to meet the vision standards adopted by the Texas Department of Public Safety (intrastate drivers must meet vision standards specified in §16.9 of this title (relating to Qualifications to Drive in Intrastate Commerce)) and all other requirements of Title 49, Code of Federal Regulations, Part 391.43;

(5) Applicants denied a waiver may appeal the decision of the department by contacting the director, in writing, within 20 days after receiving notification of the denial. The director may stay the denial pending the findings of the Medical Review Board. The decision of the Medical Review Board is final.

(g) Authority to Enforce.

(1) An officer of the department may enter or detain on a highway a motor vehicle that is subject to Texas Civil Statutes, Article 6675d, Revised Statutes.

(2) Peace officers from any of the following Texas cities certified by the department may enter or detain on a highway within the municipality a motor vehicle subject to Texas Civil Statutes, Article 6675d, Revised Statutes:

(A) a municipality with a population of 100,000 or more;

(B) a municipality with a population of 25,000 or more; any part of which is located in a county with a population of 2.4 million or more; or

(C) a municipality any part of which is located in a county bordering the United Mexican States.

(h) Training and Certification Requirements.

(1) Minimum standards. Peace officers certified to enforce this article must meet as a minimum the following standards:

(A) successfully complete the North American Standard Roadside Inspection Course;

(B) participate in an on-the-job training program following each course with a certified officer and perform a minimum of 30 level one inspections; and

(C) successfully complete an annual recertification examination.

(2) Hazardous materials. Peace officers desiring to enforce the Hazardous Materials Regulations must:

(A) successfully complete the North American Standard Roadside Inspection Course; and

(B) successfully complete a Basic Hazardous Materials Course;

(i) participate in an on-the-job training program following each course with a certified officer and perform a minimum of 30 level one inspections; and

(ii) successfully complete an annual recertification examination.

(3) Cargo Tank Specification. Peace officers desiring to enforce the Cargo Tank Specification requirements must:

(A) successfully complete the North American Standard Roadside Inspection Course;

(B) successfully complete a Basic Hazardous Materials Course; and

(C) successfully complete a Cargo Tank Inspection Course:

(i) participate in an on-the-job training program following each course with a certified officer and perform a minimum of 30 level one inspections; and

(ii) successfully complete an annual recertification examination.

(4) Training provided by the department. When the training is provided by the Texas Department of Public Safety:

(A) The department shall collect fees in an amount sufficient to recover from municipalities the cost of certifying its peace officers.

(B) The fees shall include:

(i) the per diem costs of the instructors established in accordance with the Appropriations Act regarding in-state travel;

(ii) all course fees charged to the department;

(iii) all costs of supplies; and

(iv) the cost of the training facility, if applicable.

(5) Training provided by other training entities. A public or private entity desiring to train peace officers in the enforcement of the Federal Motor Carrier Safety Regulation must:

(A) submit a schedule of the courses to be instructed;

(B) submit an outline of the subject matter in each course;

(C) submit a list of the instructors and their qualifications to be used in the training course;

(D) submit a copy of the examination;

(E) submit an estimate of the cost of the course;

(F) receive approval from the director prior to providing the training cost;

(G) provide a list of all peace officers attending the training course. The list shall include the peace officer's name, rank, agency, social security number, dates of the course, and the examination score.

(H) receive from each peace officer or municipality, the cost of providing the training course(s).

(i) Safety Audit Program. The rules in this subsection, as authorized by Article 6675d, §15, Revised Statutes, establish procedures to determine the safety fitness of motor carriers, assign safety ratings, take remedial actions when required, and prohibit motor carriers receiving a safety rating of "unsatisfactory" from operating a commercial motor vehicle.

(1) Definitions specific to the Safety Audit Program are as follows.

(A) Compliance Review means an on-site examination of motor carrier operations to determine whether a motor carrier meets the safety fitness standard.

(B) Culpability means an evaluation of the blame worthiness of the violator's conduct or actions.

(C) Imminent Hazard means any condition of vehicle, employees, or commercial vehicle operations which is likely to result in serious injury or death if not discontinued immediately.

(D) Satisfactory Safety Rating means that a motor carrier has in place and functioning adequate safety management controls to meet the safety fitness standard prescribed in Title 49, Code of Federal Regulation, Part 385.5. Safety management controls are adequate if they are appropriate for the size and type of operation of the particular motor carrier.

(E) Conditional Safety Rating means a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard that could result in the occurrences listed in Title 49, Code of Federal Regulations Part 385.5(a)-(h).

(F) Unsatisfactory Safety Rating means a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard which has resulted in occurrences listed in Title 49, Code of Federal Regulations, Part 385.5(a)-(h).

(2) Safety Fitness Determination.

(A) The department will use the Compliance Review Audit to determine the safety fitness of motor carriers and to assign safety ratings. The safety fitness determination will be assessed on intrastate motor carriers and the intrastate operations of interstate motor carriers based in Texas.

(B) An officer or employee of the department who has been certified for this purpose by the director may enter a motor carrier's premises to inspect lands, buildings, and equipment and copy or verify the correctness of any records, reports or other documents required to be kept or made pursuant to the regulations adopted by the director in accordance with Article 6675d, §9, Revised Statutes.

(C) The officer or employee of the department may conduct the inspection:

(i) at a reasonable time;

(ii) on stating the purpose of the inspection; and

(iii) must present to the motor carrier:

(I) appropriate credentials; and

(II) a written statement from the department to the motor carrier indicating the officer's or employee's authority to inspect.

(3) Refusal to allow inspection of records.

(A) A person who does not permit an inspection authorized under Article 6675d, §9, Revised Statutes is liable to the state for a civil penalty not to exceed $1,000.

(B) The director may request the Attorney General to sue to collect the penalty in:

(i) the county in which the violation is alleged to have occurred; or

(ii) Travis County.

(C) The civil penalty is in addition to the criminal penalty provided by §9, Article 6675d, Revised Statutes.

(D) Each day a person refuses to permit an inspection as provided in §9, Article 6675d, Revised Statutes constitutes a separate violation for purposes of imposing a penalty.

(4) Compliance Review Audits. A Compliance Review will be conducted based upon the following priority schedule:

(A) involvement in a fatality accident;

(B) written complaints alleging violations of the Federal Safety Regulations which are substantiated by valid documentation;

(C) follow-up investigations of motor carriers assessed an unsatisfactory safety rating;

(D) violations of the Federal Safety Regulations;

(E) requests from the Texas Department of Transportation concerning violations of Article 6675c, Texas Revised Statutes;

(F) requests from the state legislature and other state or federal agencies;

(G) requests for changes in safety rating assessed by the department; and

(H) request for a safety rating determination.

(5) Safety Fitness Rating.

(A) A safety fitness rating is based on the degree of compliance with the safety fitness standard for motor carriers.

(B) A safety rating will be determined following a compliance review using the factors prescribed in Title 49, Code of Federal Regulations, Part 385.7. The following safety ratings will be assessed:

(i) Satisfactory Safety Rating;

(ii) Conditional Safety Rating;

(iii) Unsatisfactory Safety Rating.

(C) The department will provide written notification to the motor carrier of the assigned safety rating within 15 days of the completion of the compliance review.

(i) Notification of a "conditional" or "unsatisfactory" rating will include a list of those items for which immediate corrective action must be taken.

(ii) A notification of an "unsatisfactory" safety rating will also include a notice that the motor carrier will be subject to the provisions of Title 49, Code of Federal Regulations, Part 385.13 which prohibit motor carriers rated "unsatisfactory" from transporting:

(I) hazardous materials requiring placarding under Part 172, Subpart F, of Title 49, Code of Federal Regulations; or

(II) 15 or more passengers, including the driver.

(iii) The provisions of Title 49, Code of Federal Regulations, Part 385.13, relating to "Unsatisfactory safety rating-Prohibition on transportation of hazardous materials and passengers" is hereby adopted by the department and is applicable to intrastate motor carriers.

(iv) In addition to any criminal penalties provided by statute, a motor carrier assessed an unsatisfactory safety rating who continues to operate in violation of the notifications to cease operations under Title 49, Code of Federal Regulations, Part 385.13 will be subject to a civil suit filed by the Attorney General from a request from the director of the Texas Department of Public Safety.

(v) Each day of operation constitutes a separate violation.

(D) Request for a change in a safety rating. A request for a change in a safety rating must be submitted to the Manager of the Motor Carrier Bureau within the time scheduled provided in Parts 385.15 and 385.17 of Title 49, Code of Federal Regulations.

(E) Safety Fitness Information. The safety rating assigned to a motor carrier will be made available to the public upon request.

(i) Written requests should be addressed to the Texas Department of Public Safety, Motor Carrier Bureau, Box 4087, Austin, Texas 78773-0001.

(ii) Oral request by telephone will be given an oral response.

(j) Administrative Penalties.

(1) The compliance review may result in the initiation of an enforcement action based upon the number and degree of seriousness of the violations discovered during the review as well as those factors listed in Title 49, Code of Federal Regulations, Part 385.7. As a result of the enforcement action, the department may impose an administrative penalty against a motor carrier who violates a provision of Texas Civil Statutes, Article 6675d or a provision of the Texas Transportation Code, Chapters 541-600 (relating to the Uniform Traffic Laws), including any amendments to Texas Civil Statutes, Article 6701d not codified in the Texas Transportation Code.

(2) The department shall have discretion in determining the appropriate amount of the administrative penalty assessed for each violation.

(A) A penalty under this section may not exceed the maximum penalty provided for violations of similar federal safety regulations.

(B) A penalty under this section must relate to the safe operation of a commercial motor vehicle.

(3) A penalty under this section may not exceed the maximum penalty provided for violations of a similar federal safety regulation.

(4) The administrative penalty shall be determined based upon the following.

(A) Record keeping violations. These are violations of the administrative requirements of the Federal Safety Regulations.

(B) Serious pattern of safety violations. These violations are considered the middle range of violations between those of record keeping noncompliance and a willful case of negligence. These violations are not an isolated event but rather a tolerated pattern of noncompliance.

(C) Substantial health or safety violations. These are violations which could reasonably lead to or have resulted in serious personal injury or death.

(D) Employee non-record keeping violations. These are acts committed by a driver of a non-record keeping nature that are considered to be of gross negligence or a reckless disregard for safety.

(5) The amount of the administrative penalty shall be determined by taking into account the following factors:

(A) nature of the violation;

(B) circumstances of the violation;

(C) extent of the violation;

(D) gravity of the violation;

(E) degree of culpability;

(F) history of prior offenses;

(G) any hazard to the health or safety of the public caused by the violation or violations;

(H) the economic benefit gained by the violation(s);

(I) ability to pay;

(J) the amount necessary to deter future violations;

(K) effect on ability to continue to do business;

(L) the demonstrated good faith of the violator; and

(M) such other matters as justice and public safety may require.

(k) Notification.

(1) The department will notify a motor carrier of an enforcement action by the issuance of a claim letter. The notification will consist of the requirements of Title 49, Code of Federal Regulations, Part 386.11.

(2) The notification may be submitted to the motor carrier's principal place of business by certified mail, first class mail, or personal delivery. A notification sent by mail shall be presumed to have been received by the motor carrier five days after the date of the mailing.

(3) The motor carrier must reply within 20 days of receipt of a claim letter. The reply must contain:

(A) an admission or denial of each allegation of the claim and a concise statement of facts constituting each defense;

(B) a statement of whether the motor carrier requests an administrative hearing concerning the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty;

(C) a statement of whether the motor carrier requests an informal hearing under subsection (l) of this section;

(D) a statement of whether the motor carrier accepts the determination and recommended penalty;

(E) a statement of whether the motor carrier wishes to negotiate the terms of payment or settlement of the amount of the penalty, or the terms and conditions of the order; and

(F) certification that the reply has been served in accordance with Title 49, Code of Federal Regulations, Part 386.31.

(l) Informal hearing.

(1) Request. If requested in writing by the motor carrier within 20 days of the date of the claim issued under subsection (k)(3) of this section, the department will hold an informal hearing to discuss a penalty recommended under this section. Such hearing will be scheduled and conducted by the manager of the Motor Carrier Bureau or the manager's designee.

(2) Procedure. An informal hearing shall not be subject to rules of evidence and civil procedure except to the extent necessary for the orderly conduct of the hearing. The department will summarize the nature of the violation and the penalty, and discuss the factual basis for such. The motor carrier will be afforded an opportunity to respond to the allegations verbally and/or in writing.

(3) Resolution. In the event matters are resolved in the motor carrier's favor, the manager will send that carrier written notification that the proposed penalty is withdrawn.

(4) Modified penalty. If matters are resolved resulting in a modified penalty, the manager may prepare a settlement agreement as provided by subsection (m)(2)(E)(iii) of this section.

(5) Failure to resolve. If matters are not resolved in the informal hearing, the department will initiate a formal enforcement action as provided by subsection (m) of this section.

(m) Administrative hearing.

(1) If the motor carrier requests a hearing, fails to respond in a timely manner to the claim letter as identified in subsection (k) of this section, or does not negotiate a settlement under paragraph (2)(E)(iii) of this subsection, the department will initiate a contested case. The department will provide written notice of such action to the motor carrier.

(2) A contested case under this subsection will be governed by Title 49, Code of Federal Regulations, Parts 386.31-386.51, and Texas Government Code, Chapter 2001, Subchapters C and D, subject to the following exceptions.

(A) Attorney's fees. If the administrative law judge finds that a violation has occurred, he or she shall include in the proposal for decision, in addition to the proposed penalty, a finding setting out costs, fees, expenses, and reasonable and necessary attorney's fees incurred by the state in bringing the proceeding. If, under paragraph (2)(B) of this subsection, the director finds that a violation has occurred, the director may adopt the finding, setting out the costs, fees and expenses, and make it a part of the final order.

(B) Action of director. An administrative law judge's proposal for decision shall be submitted to the director, who may find that a violation has occurred and impose a penalty or may find that no violation has occurred. The director may increase or decrease the amount of the penalty recommended by the administrative law judge within the limits prescribed by subsection (j)(2)(A) of this section.

(C) Default judgment.

(i) If a motor carrier fails to appear in person or by legal representative on the day and at the time set for hearing in a contested case the administrative law judge, upon motion by the department, shall enter a default judgment in the matter adverse to the motor carrier who has failed to attend the hearing.

(ii) For purposes of this subparagraph, default judgment shall mean the issuance of a proposal for decision against the motor carrier in which the factual allegations in the notice of hearing are deemed admitted as true, without any requirement for additional proof to be submitted by the department.

(iii) Any default judgment granted under this subparagraph will be entered on the basis of the factual allegations contained in the notice of hearing, and upon the proof of proper notice to the defaulting party opponent. For purposes of this subparagraph, proper notice means notice sufficient to meet the provisions of the Texas Government Code, §§2001.051, 2001.052, and 2001.054; such notice also shall include the following language in capital letters in 12-point boldface type: FAILURE TO APPEAR AT THE HEARING WILL RESULT IN THE ALLEGATIONS AGAINST YOU SET OUT IN THIS NOTICE BEING ADMITTED AS TRUE.

(iv) After the granting of a motion for default judgment, a motion by the respondent to reopen the record shall be granted if the respondent establishes that the failure to attend the hearing was neither intentional nor the result of a conscious indifference, and that the failure to attend was due to a mistake or accident. A motion to reopen the record shall be filed prior to he time that the order of the department becomes final pursuant to the provisions of the Texas Government Code, Chapter 2001. The department will notify the motor carrier of the director's order, as provided by Texas Government Code, Chapter 2001. Such notice will include a statement of the right of the carrier to judicial review of the order.

(D) Action of motor carrier.

(i) Within 30 days after the date the director's order becomes final as provided by Texas Government Code, §2001.144, the motor carrier shall:

(I) pay the department the amount of the penalty;

(II) pay the department the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(III) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(ii) Within the 30-day period, a motor carrier who acts under paragraph (2)(D)(i)(III) of this subsection may:

(I) stay enforcement of the penalty by:

(-a-) paying the amount of the penalty into the registry of the court for placement in an escrow account; or

(-b-) providing to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the director's order is final;

(II) request the court to stay enforcement of the penalty by:

(-a-) filing with the court a sworn affidavit of a representative of the carrier stating that the carrier is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(-b-) serving a copy of the affidavit on the director by certified mail;

(iii) if the department receives a copy of an affidavit under paragraph (2)(D)(ii)(II) of this subsection, it may file with the court within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The motor carrier who files an affidavit has the burden of proving that the carrier is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(E) Collection.

(i) If the motor carrier does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the director may refer the matter to the attorney general for collection of the amount of the penalty.

(ii) Judicial review of the order of the director is instituted by filing a petition as provided by the Texas Government Code, Chapter 2001, Subchapter G, and is under the substantial evidence rule, and shall proceed in accordance with Texas Civil Statutes, Article 6675c, §6.

(iii) At any time prior to the date on which a final order is issued by the director under paragraph (2)(B) of this section, the department and the motor carrier may agree to enter into a compromise settlement agreement. The agreement shall not constitute an admission by the motor carrier of any violation. The compromise settlement agreement shall be signed by the motor carrier and the director, and will reflect that the motor carrier consents to the assessment of a specific administrative penalty or other action by the department against the motor carrier.

(iv) Simultaneously with the filing of a compromise settlement agreement, the motor carrier shall remit a cashier's check or money order to the Texas Department of Transportation, payable to the "State Treasurer of Texas." These funds shall be held in an escrow account pending the issuance of a final order.

(v) Upon the issuance by the director of a final order, the administrative penalty proceeding shall cease.

(n) Suspension and revocation by the Texas Department of Transportation.

(1) The director will determine whether the department will request the Texas Department of Transportation to suspend or revoke a registration issued by the Texas Department of Transportation based upon the department's compliance review.

(2) This determination may be based upon the following:

(A) an unsatisfactory safety rating under Title 49, Code of Federal Regulations, Part 385;

(B) multiple violations of Article 6675d;

(C) multiple violations of one of these rules; and/or

(D) multiple violations of the Uniform Traffic Act.

(3) Once the determination has been made the director will forward a letter to the Executive Director of the Texas Department of Transportation requesting said department initiate a suspension/revocation proceeding against the motor carrier.

(4) Any suspension/revocation action initiated by the Texas Department of Transportation, pursuant to this section, shall be administered in the manner specified by the rules of the Texas Department of Transportation.

Issued in Austin, Texas, on October 5, 1995.

TRD-9512739 James R. Wilson
Director
Texas Department of Public Safety

Effective date: October 5, 1995

Expiration date: February 2, 1996

For further information, please call: (512) 465-2890

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• 37 TAC §3.62

The Texas Department of Public Safety adopts on an emergency basis the repeal of §3.62, concerning regulations governing transportation safety. The repeal is necessary in order for the department to adopt new §3.62, which will implement the provisions of Senate Bill 3, 74th Legislature, 1995, (Chapter 705, Acts of the 74th Legislature, Regular Session, 1995). effective September 1, 1995, which requires the director to adopt by reference, rules regulating the safe transportation of hazardous materials and to regulate the operations of commercial motor vehicles in the state. The department finds that adoption of this repeal on fewer than 30 days notice is required by state law.

The repeal is adopted on an emergency basis under Texas Civil Statutes, Article 6675d and Article 6687b-2, which provide the director of the Texas Department of Public Safety with the authority to establish rules for the conduct of the work of the Texas Department of Public Safety, and more specifically which authorizes the director to adopt rules regulating the safe operation of commercial motor vehicles.

§3.62. Regulations Governing Transportation Safety.

Issued in Austin, Texas, on October 5, 1995.

TRD-9512740 James R. Wilson
Director
Texas Department of Public Safety

Effective date: October 5, 1995

Expiration date: February 2, 1996

For further information, please call: (512) 465-2890

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Chapter 6. License To Carry Concealed Handgun

The Texas Department of Public Safety adopts on an emergency basis new §§6.1-6.5, 6.11-6.21, 6.31, 6.32, 6.41-6.47, 6.51-6.54, 6.61-6.63, 6.71-6.96, and 6.111-6.119, concerning eligibility and procedures for licensing persons to carry concealed handguns, enforcement, suspension and revocation procedures, and for certification of qualified handgun instructors.

These adoptions are necessary to implement the provisions of Senate Bill 60, 74th Legislature, 1995, to be codified as Texas Civil Statutes, Article 4413(29ee) "the Act." The Act requires the Texas Department of Public Safety to adopt necessary procedures by which qualified handgun instructors may become certified to instruct applicants for a license to carry a concealed handgun. These rules set forth procedures for issuance, denial, suspension, and revocation of the license to carry a concealed handgun, and similarly, procedures for instructor certification.

Pursuant to Texas Government Code, §2001.034, the department finds that state law creates an immediate necessity for adoption of rules on fewer than 30 days notice.

Subchapter A. General Provisions

• 37 TAC §§6.1-6.5

The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 4413(29ee), §22, which authorize the department to adopt rules to administer this article. Authority to adopt by rule specific forms, fees and procedures, is provided under Article 4413(29ee) as follows: application request form, §6(a); form of license, §6(e); application for modified license, §10(b); renewal application form and renewal fee, §11(b); procedure for renewal by mail, §11(d); minimum standards for handgun proficiency, §16(a); establishment of continuing education course, §16(c); recordkeeping responsibilities of certified handgun instructors, §16(i); fee for handgun proficiency certificate, §17(a); and retraining course for certified handgun instructors, §17(d). Authority for the department to adopt rules for local law enforcement to report concealed handgun incidents is provided by Texas Government Code, §411.047(b).

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

Act–Texas Civil Statutes, Article 4413(29ee).

Active judicial officer–A person serving as a judge or justice of the supreme court, the court of criminal appeals, a court of appeals, a district court, a criminal district court, a constitutional county court, a statutory county court, a justice court, or a municipal court.

Applicant–A license applicant or an instructor applicant.

Certified handgun instructor–A qualified handgun instructor.

Chemically dependent person–A person who:

(A) frequently or repeatedly becomes intoxicated by excessive indulgence in alcohol or uses controlled substances or dangerous drugs so as to acquire a fixed habit and an involuntary tendency to become intoxicated or use those substances as often as the opportunity is presented;

(B) has been convicted two times within the ten-year period preceding the date on which the person applies for a license of an offense of the grade of Class B misdemeanor or greater that involves the use of alcohol or a controlled substance as a statutory element of the offense;

(C) is an unlawful user of or addicted to any controlled substance; or

(D) is an addict, as defined by United States Code, §802.

Concealed handgun–A handgun, the presence of which is not openly discernible to the ordinary observation of a reasonable person.

Controlled substance–Has the meaning assigned by 21 United States Code, §802.

Convicted–An adjudication of guilt or an order of deferred adjudication entered against a person by a court of competent jurisdiction for an offense under the laws of this state, another state, or the United States, whether or not:

(A) the imposition of the sentence is subsequently probated and the person is discharged from community supervision; or

(B) the person is pardoned for the offense, unless the pardon is expressly granted for subsequent proof of innocence.

Department–The Texas Department of Public Safety, including employees of the department.

Director–The Director of the Texas Department of Public Safety or the Director's designee.

Director's designee–For purposes of conducting background investigations under this chapter, refers to an employee of the department, unless otherwise specified by the Director.

Handgun–Has the meaning assigned by Texas Penal Code, §46.01.

Instructor applicant–A person who applies for certification, either original or renewed, as a qualified handgun instructor.

Intoxicated–Has the meaning assigned by Texas Penal Code, §49.01.

License applicant–An applicant for a license, either original or renewed, to carry a concealed handgun under Texas Civil Statutes, Article 4413(29ee).

License holder–A person licensed to carry a concealed handgun under Texas Civil Statutes, Article 4413(29ee).

Qualified handgun instructor–A person who is certified by the department to instruct in the use of handguns.

Residence–Domicile; that is, one's home and fixed place of habitation to which he intends to return after any temporary absence. The term "residence" has the meaning assigned in §15.25 of this title (relating to Address).

Retired judicial officer–A special judge appointed under Texas Government Code, §26.023 or §26.024; or a senior judge designated under Texas Government Code, §75.001; or a judicial officer as designated or defined by Texas Government Code, §§75.001, 831.001, or 836.001.

Unsound mind–The mental condition of a person who:

(A) has been adjudicated mentally incompetent, mentally ill, or not guilty of a criminal offense by reason of insanity;

(B) has been diagnosed by a licensed physician as being characterized by a mental disorder or infirmity that renders the person incapable of managing the person's self or the person's affairs, unless the person furnishes a certificate from a licensed physician stating that the person is no longer disabled or under any medication for the treatment of a mental or psychiatric disorder. Provided, that a person who refuses against medical advice to take medication prescribed by a licensed physician for a mental disorder or infirmity shall be considered to be "under medication"; or

(C) has been diagnosed by a licensed physician as suffering from depression, manic depression, or post-traumatic stress syndrome, unless the person furnishes a certificate from a licensed physician stating that the person is no longer disabled or under any medication for the treatment of a mental or psychiatric disorder.

§6.2. Method of Payment.

(a) Payment to the department of any fee required by this chapter or by the Act may be made only by cashier's check, money order, or by check issued by a federal, state, or local government agency, made payable to the Texas Department of Public Safety.

(b) A fee received by the department under this chapter or the Act is nonrefundable.

§6.3. Correspondence.

(a) Addressed to the department. Except as otherwise provided, applications and other correspondence should be mailed to the department at the following address: Texas Department of Public Safety, Concealed Handgun Licensing Unit, Post Office Box 15888, Austin, Texas 78761-5888.

(b) Addressed to applicant, license holder, or certified instructor. Notice will be mailed to the address currently reported to the department by an applicant, license holder, or certified instructor as the correct address. For the purpose of any notice required by the Act, the department will assume that the address currently reported to the department by the applicant or license holder is the correct address.

(c) Notice. Written notice meets the requirements under this Act if the notice is sent by certified mail to the current address reported by the applicant or license holder to the department. If a notice is returned to the department because the notice is not deliverable, the department may give notice by publication once in a newspaper of general interest in the county of the applicant's or license holder's last reported address. On the 31st day after the date the notice is published, the department may take the action proposed in the notice.

§6.4. Notice Required on Certain Premises.

(a) Notice. The following establishments shall prominently display an appropriate notice at each entrance to the premises, to state that it is unlawful to carry a handgun on the premises:

(1) a business that has a permit or license issued under Alcoholic Beverage Code, Chapter 25, 28, 32, or 69, and that derives 51% or more of its income from the sale of alcoholic beverages for on-premises consumption.

(2) a hospital licensed under the Health and Safety Code, Chapter 241.

(3) a nursing home licensed under the Health and Safety Code, Chapter 242.

(b) Text. The sign must state that it is unlawful to carry a handgun on the premises. The following text may be used: "State law prohibits carrying a handgun on these premises." A citation to statute may be included as follows: "Texas Civil Statutes, Article 4413(29ee)." The notice must also be posted in Spanish. The following text may be used: "La ley del estado prohibe cargar arma de fuego en este sitio."

(c) Visibility. The sign must appear in contrasting colors with block letters at least one inch in height. The sign shall be displayed in a conspicuous manner clearly visible to the public from outside or immediately inside each public, service, and employee entrance. Signs required by this section are not required to be posted by fire exits, interior entrances, or entrances to individual resident rooms.

§6.5. Notice Optional on Other Premises.

(a) Notice. A public or private employer may prohibit persons who are licensed to carry from carrying a concealed handgun on the premises of the business.

(b) Text. The sign may state that it is prohibited to carry a handgun on the premises. The following are samples of text which may be used:

(1) "Possession of a handgun under authority of Texas Concealed Handgun Permit Law, Texas Civil Statutes, Article 4413(29ee), is prohibited in this building."

(2) "Possession of a handgun under authority of Texas Concealed Handgun Permit Law, Texas Civil Statutes, Article 4413(29ee), is prohibited beyond this point."

(c) Spanish Text. The notice may also be posted in Spanish as follows: "Se prohibe portar arams de fuego en este edificio con a sin autoridad de la Ley de Permisos para Portar Armas en Texas, Texas Civil Statutes, Article 4413(29ee)." "De este lugar en adelante, no se permite poseer armas de fuego bajo autoridad de la Ley de Permisos para Portar Armas de Fuego en el Estado de Texas, Texas Civil Statutes, Article 4413(29ee)."

Issued in Austin, Texas, on October 3, 1995.

TRD-9512683 James R. Wilson
Director
Texas Department of Public Safety

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Expiration date: February 2, 1996

For further information, please call: (512) 465-2890

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Subchapter B. Eligibility and Application Procedures

• 37 TAC §§6.11-6.21

The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 4413(29ee). Authority to adopt by rule specific forms, fees and procedures, is provided under Article 4413 (29ee) as follows: application request form, §6(a); form of license, §6(e); application for modified license, §10(b); renewal application form and renewal fee, §11(b); procedure for renewal by mail, §11(d); minimum standards for handgun proficiency, §16(a); and application fee for active or retired judicial officer, §30(d)(4).

§6.11. Eligibility for License to Carry a Concealed Handgun. To be eligible for a license to carry a concealed handgun, a person must meet the following requirements:

(1) an applicant must have been a resident of this state for the six-month period preceding the date of application;

(2) the applicant must be at least 21 years of age;

(3) the applicant must not have been convicted of a felony. An offense is considered a felony if the offense is so designated by law or if confinement for one year or more in a penitentiary is affixed to the offense as a possible punishment;

(4) the applicant must not be currently charged with the commission of a Class A or Class B misdemeanor or an offense under Texas Penal Code, §42. 01, or of a felony under an information or indictment;

(5) the applicant must not be a fugitive from justice for a felony or a Class A or Class B misdemeanor;

(6) the applicant must not be chemically dependent;

(7) the applicant must not be of unsound mind;

(8) the applicant must not, in the five years preceding the date of application, have been convicted of a Class A or Class B misdemeanor or an offense under Texas Penal Code, §42.01. An offense is considered a Class A or Class B misdemeanor if the offense is not a felony and confinement in a jail other than a state jail felony facility is affixed as a possible punishment;

(9) the applicant must be fully qualified under applicable federal and state law to purchase a handgun;

(10) the applicant must not have been finally determined to be delinquent in making a child support payment administered or collected by the attorney general, unless the applicant has since discharged the outstanding delinquency;

(11) the applicant must not have been finally determined to be delinquent in the payment of a tax or other money collected by the comptroller, state treasurer, tax collector of a political subdivision of the state, Texas Alcoholic Beverage Commission, or any other agency or subdivision of the state, unless the applicant has since discharged the outstanding delinquency;

(12) the applicant must not have been finally determined to be in default on a loan made under the Education Code, Chapter 57, unless the applicant has since discharged the outstanding delinquency;

(13) the applicant must not be currently restricted by or subject to a court order that restrains the applicant from injuring, harassing, stalking, or threatening the applicants' spouse or intimate partner, or the child of the applicant, the applicant's spouse, or intimate partner. This paragraph includes a protective order issued under the Family Code, §3.58 or §3.581, or Family Code, Chapter 71. This paragraph does not include any restraining order or protective order solely affecting property interests;

(14) the applicant must not, in the ten years preceding the date of application, have been adjudicated as having engaged in delinquent conduct violating a penal law of the grade of felony; and

(15) the applicant must not have been made any material misrepresentation, or failed to disclose any material fact, in a request for application materials or in an application for a license to carry a concealed handgun.

§6.12. Preliminary Application Procedure· Application Request Card.

(a) A person who wishes to apply for a license to carry a concealed handgun must first file an application request on Form CR-80, which is adopted for that purpose. On request, the department shall provide an application request form and a copy of the Act directly to interested persons. Application request cards will also be made available through handgun dealers and other persons or entities approved by the department. No fee is required to obtain or submit an application request card.

(b) An individual who desires to receive application materials shall complete the application request card and mail it to the department at the address specified in §6.3 of this title (relating to Correspondence).

(c) The application request card will require the following applicant information:

(1) full name, in accordance with §15.23 of this title (relating to Names);

(2) address, in accordance with §15.25 of this title (relating to Address);

(3) race;

(4) sex;

(5) height;

(6) date of birth;

(7) state and county of birth;

(8) driver's license number. If the applicant has no driver's license, then the applicant's personal identification card is required. The driver's license or personal identification card must have been issued by the Texas Department of Public Safety;

(9) home and business telephone numbers; and

(10) other identifying information required by the department.

§6.13. Preliminary Review and Determination by the Department.

(a) The department shall review the application request card and shall make a preliminary determination as to whether the individual is eligible to receive a handgun license.

(b) If an individual is not disqualified to receive a handgun license, then the department shall forward the appropriate application materials to the individual.

(c) Notice of disqualification and preliminary denial. In the event that the preliminary review indicates that an individual is disqualified or ineligible to obtain a handgun license, then the department shall send written notice to that individual. The notice shall state that preliminary review indicates that the individual is not eligible to receive a handgun license and shall state the reason for the disqualification.

(d) Informal resolution. An individual who receives notice of disqualification shall be given an opportunity to confer, either in person or by telephone, with a representative of the department on an informal basis concerning the grounds for disqualification. If the applicant contests the validity of a warrant or criminal history record, then the applicant may submit the applicant's fingerprints to the department through a law enforcement agency. The department may verify criminal records by conducting a comparison of the applicant's fingerprints against those of the person identified in judgment or other source document. If fingerprints are not available from the source document, then the applicant may submit other documents or proof of innocence to the department for its review. The informal resolution procedure in this subsection is separate from and in addition to other remedies provided by law.

§6.14. Proficiency Requirements.

(a) A person who wishes to obtain or renew a license to carry a concealed handgun shall apply in person to a certified handgun instructor to take the appropriate course in handgun proficiency, demonstrate handgun proficiency, and obtain a handgun proficiency certificate. An applicant will be required to demonstrate the applicant's ability to safely and proficiently use the category of handgun for which the applicant seeks certification.

(b) A proficiency examination to obtain or to renew a license must be administered by a certified handgun instructor. The proficiency examination must include:

(1) a written section on required subjects; and

(2) a physical demonstration of proficiency in the use of one or more handguns of specific categories and in handgun safety procedures.

(c) The department shall distribute the standards, course requirements, and examinations on request to any certified handgun instructor.

(d) The proficiency demonstration course will be the same for both the instructors and license applications. The course of fire will be at distances of three, seven, and 15 yards, for a total of 50 rounds.

(1) Twenty rounds will be fired from three yards, as follows:

(A) five rounds will be fired "One Shot Exercise"; two seconds allowed for each shot;

(B) ten rounds will be fired "Two Shot Exercise"; three seconds allowed for each two shots; and

(C) five rounds will be fired; ten seconds allowed for five shots.

(2) Twenty rounds will be fired from seven yards, fired in four five-shot strings as follows:

(A) the first five shots will be fired in ten seconds;

(B) the next five shots will be fired in two stages:

(i) two shots will be fired in four seconds; and

(ii) three shots will be fired in six seconds.

(C) the next five shots at seven yards will be fired "One Shot Exercise"; three seconds will be allowed for each shot; and

(D) the last five shots fired at the seven-yard line, the time will be 15 seconds to shoot five rounds.

(3) Ten rounds will be fired from 15 yards, fired in two five-shot strings as follows:

(A) the first five shots will be fired in two stages:

(i) two shots will be fired in six seconds; and

(ii) three shots will be fired in nine seconds.

(B) the last five shots will be fired in 15 seconds.

(e) The department shall waive the proficiency requirements for a license applicant who has successfully completed the instructor training course and paid the training fee.

§6.15. Basic Application Materials Required. An applicant must complete the application materials required by this section and forward the completed materials to the department at its headquarters in Austin. Except as otherwise provided, an application must contain all the following items.

(1) Proficiency certificate. The applicant must submit a handgun proficiency certificate issued upon successful completion of a handgun proficiency course approved by the department and taught by a certified handgun instructor.

(2) Application form. The applicant must submit a completed application on Form CR-78, which is adopted for that purpose. The applicant must complete the unique application form provided to that individual by the department. An application form may not be transferred or exchanged, or submitted by another applicant. The application form will require a statement of the applicant's:

(A) full name and place and date of birth;

(B) race and sex;

(C) residence and business addresses for the preceding five years;

(D) hair and eye color;

(E) height and weight;

(F) driver's license number or identification certificate number issued by the department;

(G) criminal history record information, including a list of offenses for which the applicant has been arrested or charged under an information or indictment, and the disposition of each offense; and

(H) history during the preceding five years, if any, of treatment received by, commitment to, or residence in:

(i) a drug or alcohol treatment center licensed to provide drug or alcohol treatment under the laws of this state or another state; or

(ii) a psychiatric hospital.

(3) Proof of residency in this state. The applicant must provide proof of residence in this state for the six-month period preceding the date of application. Residency may be shown by the following types of documents:

(A) proof that the applicant has been issued and has maintained an unexpired Texas driver's license or personal identification card issued by the department for six months or longer; provided further, that possession by an applicant of a driver's license issued by another state constitutes prima facie evidence of residency in such other state;

(B) proof that the applicant has been registered to vote in this state for six months or longer;

(C) proof that the applicant has owned or leased a residence in this state for six months or longer. Deed records, rental contracts, rental receipts, or cancelled checks showing payment of rent may be used to support a claim of residency;

(D) records of utility payments; or

(E) other proof acceptable to the department.

(4) Two recent color passport photographs of the applicant. The applicant shall submit two identical photographs of the applicant to the person who fingerprints the applicant, as detailed in paragraph (5) of this section. The photographs must be unretouched color prints. Snapshots, vending machine prints, and full length photographs will not be accepted. The photographs must be two-by-two inches in size. The photographs must be taken in normal light, with white or off-white background. The photographs must present a good likeness of the applicant taken within the last six months. The photographs must present a clear, frontal image of the applicant, and include the full face from the bottom of the chin to the top of the head, including hair. The image of the applicant must be between one and 1-3/8 inches. Only the applicant may be portrayed.

(5) Two fingerprint cards. The applicant must be fingerprinted by a person employed by a law enforcement agency who is appropriately trained in recording fingerprints. The applicant must display a Texas driver's license or personal identification card issued by the department. The applicant must deliver two passport photographs as described in paragraph (4) of this section, two blank fingerprint cards supplied by the department, and an instruction page included in the application materials on Form CR-75, which is adopted for that purpose. An instructor applicant is not required to submit photographs. Two complete sets of legible and classifiable fingerprints of the applicant must be recorded on cards provided by the department. The person who records the applicant's fingerprints shall:

(A) verify that the passport photographs are of the person being fingerprinted (not required for instructor applicants);

(B) either complete or verify the accuracy of the non-fingerprint data being submitted on the card;

(C) record the individual's fingerprints on the card, in a manner consistent with that normally done for an arrest fingerprint card, including the simultaneous impressions;

(D) obtain the signature of the license applicant on both the fingerprint cards and on the back of one of the passport photographs; (not required for instructor applicants). The applicant's signature must comply with §15.21 of this title (relating to Signature);

(E) sign the fingerprint card and the back of the same passport photograph signed by the applicant; (not required for instructor applicants); and

(F) return all documents to the applicant to be forwarded to the department.

(6) Affidavits. The applicant must execute and submit affidavits which in substance state the following:

(A) the applicant has read and understood each provision of Texas Civil Statutes, Article 4413(29ee) that creates an offense under the laws of this state, and each provision of the laws of this state related to the use of deadly force. Form CR-86L is adopted for this purpose;

(B) the applicant fulfills all the eligibility requirements for a license to carry a concealed handgun. Form CR-87L is adopted for this purpose; and

(C) the applicant authorizes the director to make inquiry into any non-criminal history records that are necessary to determine the applicant's eligibility for a license. Form CR-85L is adopted for this purpose.

(7) Signature of applicant. The applicant must sign the passport photograph holder provided by the department. The applicant's signature must comply with §15.21 of this title (relating to Signature).

(8) Fee. Except as otherwise provided, the applicant must submit a nonrefundable fee of $140 with the application

for license. The fee must be in the form of a cashier's check, money order, or a check issued by a federal, state, or local government agency, made payable to the Texas Department of Public Safety.

(9) Proof of age. Proof of age may be established by a Texas driver's license or personal identification card issued by the department. If an applicant cannot show proof of age through a driver's license or personal identification card issued by the department, the applicant must submit alternative proof of age. The applicant may submit a certified copy of the applicant's birth certificate as prescribed in §15.24 of this title (relating to Birth Certificate Or Other Acceptable Evidence).

(10) Social Security number. An applicant must provide the applicant's Social Security number. This information is required to assist in the administration of laws relating to child support enforcement, as required and authorized by Family Code, §231.302.

§6.16. Special Application Procedures and Fees.

(a) Senior citizens. For purposes of this subsection, a person 60 years of age or older is considered a senior citizen and is entitled to a reduced fee. Senior citizens must submit the basic application materials required, except that the department shall reduce by 50% any fee required for the issuance of an original, duplicate, or modified license under the Act.

(b) Indigent persons.

(1) Eligibility. The department shall reduce by 50% any fee required for the issuance of an original, duplicate, modified, or renewed license under the Act if the department determines that the applicant or license holder is indigent. Indigency is determined by determining the size of the family unit and the yearly income level of the family unit. For purposes of this subsection, an applicant is indigent if the applicant's income is not more than 100% of the applicable income level established by the federal poverty guidelines according to Figure 1: 37 TAC §6.16(b)(1), Federal Poverty Guidelines.

Figure 1: 37 TAC §6.16(b)(1)

(2) Applicants who are indigent must submit the basic application required. In addition, persons applying under this subsection are required to submit proof of indigency. An applicant may demonstrate indigency by producing the applicant's most recent tax return, a recent application for government assistance, or by other means acceptable to the department.

(c) Honorably retired peace officer.

(1) Eligibility. A person who is licensed as a peace officer under Texas Government Code, Chapter 415, and who has been employed full-time as a peace officer by a law enforcement agency may apply for a license upon retirement. The application must be made not later than the first anniversary after the date of retirement. The department may issue a license to an applicant who is a retired peace officer if the applicant is:

(A) honorably retired. For purposes of this subsection, "honorably retired" means the applicant:

(i) did not retire in lieu of any disciplinary action;

(ii) was employed as a full-time peace officer for not less than ten years by one agency; and

(iii) is entitled to receive a pension or annuity for service as a law enforcement officer.

(B) is physically fit to possess a handgun; and

(C) is emotionally fit to possess a handgun.

(2) Proficiency. To obtain a license under this subsection, a retired peace officer must maintain, for the category of weapon licensed, the proficiency required for a peace officer under Texas Government Code, §415. 035. In lieu of a standard certificate of proficiency, an honorably retired peace officer may submit evidence of proficiency issued by a state or local law enforcement agency, or by the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE). The department or a local law enforcement agency shall allow a retired peace officer of the department or agency an opportunity to annually demonstrate the required proficiency. The proficiency shall be reported to the department on application and renewal. An applicant who submits evidence of proficiency under this paragraph is not required to apply for or attend a course of instruction with a certified handgun instructor.

(3) Application and fee.

(A) Evidence of proficiency. The applicant shall submit evidence of proficiency issued by a state or local law enforcement agency.

(B) Application materials.

(C) Letter ot good standing. In addition to the basic applications required, the applicant shall submit a sworn statement on agency letterhead from the head of the law enforcement agency employing the applicant to state the following:

(i) the name and rank of the applicant;

(ii) the status of the applicant before retirement;

(iii) whether or not the applicant was accused of misconduct at the time of the retirement;

(iv) the physical and mental condition of the applicant;

(v) the type of weapons the applicant had demonstrated proficiency with during the last year of employment;

(vi) whether the applicant would be eligible for reemployment with the agency, and if not, the reasons the applicant is not eligible; and

(vii) a recommendation from the agency head regarding the issuance of a license under the Act.

(D) Reduced fee. The fee for a license issued under this subsection shall be $25.

(d) Honorably retired special agent. A retired criminal investigator of the United States who is designated as a "special agent" may apply for a license as an honorably retired peace officer. Except as otherwise provided, the license fee and application procedure for an honorably retired special agent shall be the same as for an honorably retired peace officer. An applicant described by this subsection may submit the application at any time after retirement. The applicant shall submit with the application proper proof of retired status by presenting the following documents prepared by the agency from which the applicant retired:

(1) retirement credentials; and

(2) a letter from the agency head on agency letterhead stating that the applicant retired in good standing.

(e) Active judicial officer.

(1) Eligibility. An active judicial officer is eligible for a license to carry a concealed handgun. The department shall issue a license to an active judicial officer who meets the requirements of this subsection.

(2) Application and fee. An applicant for a license who is an active judicial officer must submit the basic application materials required, except that:

(A) the fee for a license issued under this subsection shall be $25;

(B) the classroom instruction part of the proficiency course required for an active judicial officer is not subject to a

minimum hour requirement. Applicants who are active judicial officers shall be required to take classroom instruction only on:

(i) handgun use, proficiency, and safety; and

(ii) proper storage practices for handguns with an emphasis on storage practices that eliminate the possibility of accidental injury to a child.

(3) Renewal. An active judicial officer is not required to attend the classroom instruction part of the continuing education proficiency course to renew a license.

(f) Retired judicial officer. The department shall issue a license to a retired judicial officer who meets the requirements of this subsection. An applicant for a license who is a retired judicial officer must submit the basic application materials required, except that:

(1) the fee for a license issued under this subsection shall be $25; and

(2) a retired judicial officer shall be required to take classroom instruction only on:

(A) handgun use, proficiency, and safety; and

(B) proper storage practices for handguns with an emphasis on storage practices that eliminate the possibility of accidental injury to a child.

(g) Felony prosecutor. An attorney who is elected or appointed to represent the state in the prosecution of felony cases is eligible for a license to carry a concealed handgun. The department shall issue a license to carry a concealed handgun under this subsection to an applicant who meets the requirements for an active judicial officer. No fee is required for an original, duplicate, or renewed license for an applicant who meets the requirements of this subsection.

(h) Reciprocal licenses for non-residents. On application by a person who has a valid license to carry a concealed handgun issued by another state, the department may issue to the non-resident license holder a reciprocal license without requiring that the person meet eligibility requirements or pay fees otherwise imposed by the Act. Before issuing a reciprocal license, the department must first determine that:

(1) the eligibility requirements imposed by the other state are at least as rigorous as the requirements imposed by the Act; and

(2) the other state provides reciprocal licensing privileges to a person who holds a license issued by the department under the Act and applies for a license in the other state.

(i) Instructor applicants.

(1) Eligibility. To be eligible to be a certified handgun instructor, a instructor applicant must be eligible to be licensed to carry a concealed handgun. A certified handgun instructor is not required to be licensed to carry a concealed handgun.

(2) Application and fee. Prior to being accepted for training by the department, an instructor applicant must complete the required application materials and submit these to the department at its headquarters in Austin. An instructor applicant must complete the basic application materials required, except that:

(A) photographs are not required;

(B) the fee for application and training is $100; and

(C) in addition to other required application materials, instructor applicants are required to submit certain additional information required by the department on Form CR-90T, which is adopted for this purpose.

§6.17. Application Review and Background Investigation.

(a) Applications must be complete and legible. If an application is not legible or is not complete, the department will notify the applicant of any apparent deficiency. The applicant will have 90 days from the date on which the department first received the original license application to amend the application. Upon request, the department may extend the period to amend the application for one additional 90-day period. After the period to amend has expired, then the application process will be terminated.

(b) Time to review application and complete background investigation. Between September 1, 1995 and December 31, 1996, the department shall conduct the application review and background investigation not later than the 90th day after the date on which the director's designee receives the completed application materials. After January 1, 1997, the department shall conduct the application review and background investigation not later than the 60th day after the date on which the director's designee receives the completed application materials. The department shall conduct the application review and background investigation within the required time period, as measured from the date when the application was received and complete. An application is not considered to have been received until it is complete. Failure of the department to either issue or deny a license for a period of more than 30 days after the time required constitutes denial.

(c) Central background investigation. On receipt of the completed application materials, the department shall review the application and conduct a background check of each applicant. The central background investigation will include a criminal history record check of each applicant for an original or renewal license or certification through the department's computerized criminal history system. The department shall send one set of the applicant's fingerprints to the Federal Bureau of Investigation for a national criminal history check of the applicant. The scope of the background investigation additional to the criminal history check is within the sole discretion of the department.

(d) Field background investigation. Not later than the 30th day after the date the department receives the application materials, the department shall send the application materials to the director's designee in the geographical area of the applicant's residence for a field background investigation. The director's designee is authorized to conduct a field background investigation. The scope of the field background investigation is within the sole discretion of the department. The director's designee is authorized to conduct an additional criminal history record check of the applicant and an investigation of locally maintained official records to verify the accuracy of the application materials. The director's designee is authorized to check local arrest records of law enforcement agencies in each city and county where the applicant has resided for the five years preceding the date of application. The director's designee is authorized to obtain copies of official records of arrests or convictions if necessary. On request of the director's designee, a juvenile court shall reopen and allow the department to inspect the files and records of the juvenile court relating to the license applicant. The director's designee is authorized to investigate other credible information received and to conduct appropriate follow-up investigation as necessary. Upon completion of the investigation, the director's designee shall return all application materials and investigation results to the appropriate division of the department at the address as specified in §6.3 of this title (relating to Correspondence). The investigation results shall include a written recommendation that the application either be approved or disapproved. The investigation results may include affidavits from other persons stating grounds for denial.

§6.18. License Issuance.

(a) The department shall issue a license to carry a concealed handgun to an applicant if the applicant meets all the eligibility requirements and submits all the required application materials. The department shall not issue a license or instructor certificate to any applicant for whom possession of a firearm would be in violation of state or federal law. This determination will be based on all information available to the department, including information provided to the department on the application, the background investigation, and other information provided to the department.

(b) Category. The department may issue a license to carry handguns only of the categories indicated on the applicant's certificate of proficiency issued.

(c) Effective date of license. A license issued before January 1, 1996, is not effective until January 1, 1996. A license issued before January 1, 1996, shall be clearly marked to reflect the date on which it becomes effective. The department shall inform each recipient of a license before that date that the license is not effective until that date. On or after January 1, 1996, a license issued under the Act is effective from the date of issuance.

(d) Form of license. A license to carry a concealed handgun shall include the following information:

(1) a number assigned to the license holder by the department;

(2) a statement of the period for which the license is effective;

(3) a statement of the category or categories of handguns the license holder may carry. The categories of handguns are as follows:

(A) SA: any handguns, whether semi-automatic or not; and

(B) NSA: handguns that are not semi-automatic;

(4) a color photograph of the license holder; and

(5) the license holder's full name, date of birth, residence address, hair and eye color, height, weight, signature, and the number of a driver's license or an identification certificate issued to the license holder by the department.

§6.19. Duplicate License; Notice of Change of Address or Name.

(a) A license holder may not own or possess more than one license to carry a concealed handgun issued by the department.

(b) If a license is lost, stolen, or destroyed, the license holder shall apply for a duplicate license not later than the 30th day after the date of the loss, theft, or destruction of the license. A license holder who moves from the address stated on the license or whose name is changed by marriage or otherwise, shall, not later than the 30th day after the date of the address or name change, apply for a duplicate license and shall notify the department and provide the department with the number of the person's license and the person's:

(1) former and new address; or

(2) former and new names.

(c) The department shall make the forms for duplicate license available on request.

(d) The department shall charge a license holder a fee of $25 for a duplicate license.

(e) If a license holder is required under this section to apply for a duplicate license and the license expires not later than the 60th day after the date of the loss, theft, or destruction of the license, the applicant may renew the license with the modified information included on the new license. The applicant shall pay only the nonrefundable renewal fee.

§6.20. Modified License.

(a) The department may modify the license of a license holder who meets all the eligibility requirements and submits all the modification materials. A license holder who wishes to modify a license to allow the license holder to carry a handgun of a different category than the license indicates shall apply in person to a certified handgun instructor. The license holder must demonstrate the required knowledge and proficiency to obtain a handgun proficiency certificate in that category as described by the Act, §17. To modify a license to allow a license holder to carry a handgun of a different category than the license indicates, the license holder must:

(1) complete a proficiency examination;

(2) obtain a handgun proficiency certificate not more than six months before the date of application for a modified license; and

(3) submit to the department:

(A) an application for a modified license on a form provided by the department;

(B) a copy of the handgun proficiency certificate;

(C) a modified license fee of $25; and

(D) two recent color passport photographs of the license holder.

(b) The department shall make the forms for modified license available on request. Not later than the 45th day after receipt of the modification materials, the department shall issue the modified license or notify the license holder in writing that the modified license application was denied.

(c) On receipt of a modified license, the license holder shall return the previously issued license to the department.

§6.21. Renewal of License.

(a) A license expires on the first birthday of the license holder occurring after the fourth anniversary of the date of issuance.

(b) A renewed license expires on the license holder's birth date, four years after the date of the expiration of the previous license.

(c) A duplicate license expires on the date the license that was duplicated would have expired.

(d) A modified license expires on the date the license that was modified would have expired.

(e) To renew a license, a license holder must:

(1) complete a continuing education course in handgun proficiency under the Act, §16(c) not more than six months before the date of application for renewal;

(2) obtain a handgun proficiency certificate not more than six months before the date of application for renewal; and

(3) submit to the department:

(A) an application for renewal on a form provided by the department;

(B) a copy of the handgun proficiency certificate;

(C) payment of a nonrefundable renewal fee as set by the department; and

(D) two recent color passport photographs of the applicant.

(f) Not later than the 60th day before the expiration date of the license, the department shall mail to each license holder a written notice of the expiration of the

license and a renewal form. The department shall renew the license of a license holder who meets all the eligibility requirements and submits all the renewal materials. Not later than the 45th day after receipt of the renewal materials, the department shall issue the renewal or notify the license holder in writing that the renewal application was denied.

Issued in Austin, Texas, on October 3, 1995.

TRD-9512685 James R. Wilson
Director
Texas Department of Public Safety

Effective date: October 5, 1995

Expiration date: February 2, 1996

For further information, please call: (512) 465-2890

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Subchapter C. Procedures on Denial of License

• 37 TAC §6.31, §6.32

The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 4413(29ee), §22, which authorize the department to adopt rules to administer this article.

§6.31. Notice of Denial; Grounds.

(a) After the time has elapsed for the department to conduct the application review and background investigation required, the department shall either issue the license or shall give the applicant written notice of denial. Notice of denial will be mailed to the address currently reported to the department by the applicant, as provided in §6.3 of this title (relating to Correspondence).

(b) A notice of denial shall state one or more of the following grounds for denial:

(1) that the applicant failed to qualify under the eligibility criteria listed in the Act, §2;

(2) that the director's designee has recommended denial by affidavit submitted to the department under the Act, §5(b); or

(3) that a certified instructor has recommended denial by affidavit submitted to the department under the Act, §17.

§6.32. Request for Hearing; Administrative Review of Denial.

(a) Not later than the 30th day after the notice of denial is received by the applicant, according to the records of the department, the license applicant may request a hearing on the denial. A hearing request:

(1) must be in writing;

(2) must be addressed to the department at the address specified in §6.3 of this title (relating to Correspondence); and

(3) must be received by the department in Austin prior to the 30th day after the date of receipt by the applicant of the written notice of denial.

(b) If an applicant or a license holder does not request a hearing, a denial becomes final on the 30th day after receipt of written notice.

(c) Petition for hearing. On receipt of a request for hearing from an applicant, within 30 days of receipt of such hearing request, the department shall file a petition and request a hearing in the appropriate justice court of the county of applicant's residence. The department shall send a copy of the petition to the applicant at the address specified in §6.3 of this title (relating to Correspondence). The justice court shall act as an administrative hearing officer and conduct a hearing to review the denial of license. The justice court shall schedule a hearing to be held not later than 60 days after the hearing request was received by the department. The hearing date may be reset on the motion of either party, by agreement of the parties, or by the court as necessary to accommodate the court's docket.

(d) Evidence and procedure. The department may be represented by a district attorney or county attorney, the attorney general, or a designated member of the department. The applicant may be represented by an attorney. Both the applicant and the department may present evidence. The department is specifically authorized to utilize and to introduce into evidence certified copies of governmental records to establish the existence of certain events which could result in the denial of a license under the Act, including but not limited to records regarding convictions, judicial findings regarding mental competency, judicial findings regarding chemical dependency, or other matters that may be established by governmental records which have been properly authenticated. A hearing under this section is not subject to Texas Government Code, Chapter 2001 (Administrative Procedure Act). The justice court shall determine if the denial is supported by a preponderance of the evidence. If the court determines that the denial is supported by a preponderance of the evidence, then the court shall affirm the denial. If the court determines that the denial is not supported by a preponderance of the evidence, then the court shall order the department to immediately issue the license to the applicant.

Issued in Austin, Texas, on October 3, 1995.

TRD-9512687 James R. Wilson
Director
Texas Department of Public Safety

Effective date: October 5, 1995

Expiration date: February 2, 1996

For further information, please call: (512) 465-2890

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Subchapter D. Time, Place, and Manner Restrictions on License Holders

• 37 TAC §§6.41-6.47

The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 4413(29ee), §22, which authorizes the department to adopt rules to administer this article.

§6.41. Carry While Intoxicated. A license holder may not carry a handgun while intoxicated. Violation is a Class A misdemeanor under Texas Penal Code, §46.035.

§6.42. Failure to Conceal Handgun. A license holder carrying a handgun must keep the handgun concealed. This restriction does not apply if the license holder displays the handgun under circumstances in which the actor would have been justified in the use of deadly force under Texas Penal Code, Chapter 9. Violation is a Class A misdemeanor under Texas Penal Code, §46.035.

§6.43. Failure To Display License On Demand. If a license holder is carrying a handgun on or about the license holder's person, then upon demand by a magistrate or a peace officer that the license holder display identification, the license holder shall display both the license holder's driver's license or identification certificate issued by the department and the license holder's handgun license. Violation is a Class B misdemeanor under the Act, §6(i).

§6.44. Places Prohibited: Felony Violations. A license holder may not carry a handgun on or about the license holder's person under authority of the Act in the following places:

(1) On the premises of a business that has a permit or license issued under Alcoholic Beverage Code, Chapters 25, 28, 32, or 69, if the business derives 51% or more of its income from the sale of alcoholic beverages for on-premises consumption. Posting is required by the Act, but an establishment's failure to post is not a statutory defense to the license holder. Violation is a third degree felony under Texas Penal Code, §46.035.

(2) On the premises of a correctional facility. No posting is required by the Act. Violation is a third degree felony under Texas Penal Code, §46. 035.

(3) On the physical premises of a school, an educational institution, or a passenger transportation vehicle of a school or an educational institution, whether the school or educational institution is public or private, unless pursuant to written regulations or written authorization of the institution. No posting is required by the Act. Violation is a third degree felony under Texas Penal Code, §46.03.

(4) On the premises of a polling place on the day of an election or while early voting is in progress. No posting is required by the Act. Violation is a third degree felony under Texas Penal Code, §46.03

(5) In any government court or offices utilized by the court, unless pursuant to written regulations or written authorization of the court. No posting is required by the Act. Violation is a third degree felony under Texas Penal Code, §46.03.

(6) On the premises of a racetrack. No posting is required by the Act. Violation is a third degree felony under Texas Penal Code, §46.03.

(7) Into a secured area of an airport. No posting is required by the Act. Violation is a third degree felony under Texas Penal Code, §46.03.

§6.45. Places Prohibited: Class A Misdemeanor Violations. A license holder may not carry a handgun on or about the license holder's person under authority of the Act in the following places:

(1) On the premises of a hospital licensed under the Health and Safety Code, Chapter 241, unless the license holder has written authorization of the hospital administration Posting is required by the Act, but an establishment's failure to post is not a statutory defense to the license holder Violation is a Class A misdemeanor under Texas Penal Code, §46.035.

(2) On the premises of a nursing home licensed under the Health and Safety Code, Chapter 242, unless the license holder has written authorization of the nursing home administration. Posting is required by the Act, but an establishment's failure to post is not a statutory defense to the license holder. Violation is a Class A misdemeanor under Texas Penal Code, §46.035.

(3) On the premises where a high school, collegiate, or professional sporting event is taking place, unless the license holder is a participant in the event and a handgun is used in the event. No posting is required by the Act. Violation is a Class A misdemeanor under Texas Penal Code, §46.035.

(4) In an amusement park. "Amusement park" means a permanent indoor or outdoor facility or park where amusement rides are available for use by the public that is located in a county with a population of more than one million, encompasses at least 75 acres in surface area, is enclosed with access only through controlled entries, is open for operation more than 120 days in each calendar year, and has security guards on the premises at all times. The term does not include any public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area. No posting is required by the Act. Violation is a Class A misdemeanor under Texas Penal Code, §46.035.

(5) On the premises of a church, synagogue, or other established place of religious worship. No posting is required by the Act. Violation is a Class A misdemeanor under Texas Penal Code, §46.035.

(6) At any meeting of a governmental entity. No posting is required by the Act. Violation is a Class A misdemeanor under Texas Penal Code, §46.035.

§6.46. Places Prohibited: Class C Misdemeanor Violation. A license holder may not carry a handgun on or about the license holder's person under authority of the Act on or across land of the Lower Colorado River Authority. No posting is required by the Act. Violation is a Class C misdemeanor under Parks and Wildlife Code, §62.081.

§6.47. Places Prohibited: Administrative Violation. A license holder may not carry a handgun on or about the license holder's person under authority of the Act on premises of the Department of Public Safety, unless the department is conducting a competition or training session involving the use of firearms and the license holder is a participant in the event and a handgun is used in the event. No posting is required.

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Director
Texas Department of Public Safety

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For further information, please call: (512) 465-2890

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Subchapter E. Enforcement Procedures

• 37 TAC §§6.51-6.54

The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 4413(29ee), §22, which authorize the department to adopt rules to administer rules this article. Authority for the department to adopt rules for local law enforcement to report concealed handgun incidents is provided by Texas Government Code, §411.047(b).

§6.51. Authority of Peace Officer to Disarm. A peace officer who is acting in the lawful discharge of the officer's official duties is authorized to disarm a license holder at any time when the peace officer reasonably believes it is necessary for the protection of the license holder, peace officer or other individuals. The peace officer shall return the handgun to the license holder before discharging the license holder from the scene when the peace officer has determined that the license holder is not a threat to the peace officer, license holder, or other individuals, and providing that the license holder has not violated any provision of the Act, or has not committed any other violation that results in the arrest of the license holder.

§6.52. Duties of Peace Officer on Arrest of License Holder. If a peace officer arrests and takes into custody a license holder who is carrying a handgun under the authority of the Act, the peace officer shall seize the license holder's handgun and license as evidence. If the license holder has committed a violation for which suspension or revocation would be required, then the officer shall submit the appropriate violation report as required by this chapter.

§6.53. Application of Code of Criminal Procedure to Seized Evidence. The provisions of the Code of Criminal Procedure, Article 18.19, relating to the disposition of weapons seized in connection with criminal offenses, apply to a handgun seized under this subsection.

§6.54. Duty of Court on Conviction of License Holder. Any judgment of conviction entered by any court for an offense under Texas Penal Code, §46.035, shall contain the handgun license number of the convicted license holder.

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Subchapter F. Suspension and Revocation Procedures

- **37 TAC §§6.61-6.63**

The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 4413(29ee), §22, which authorize the department to adopt rules to administer this article. Authority for the department to adopt rules for local law enforcement to report concealed handgun incidents is provided by Texas Government Code, §411.047(b).

§6.61. Suspension of License for Violation of the Act.

(a) Violation report; suspension of license. If any peace officer believes that grounds for suspension exist, the officer shall prepare an affidavit on a form provided by the department stating the reason for the suspension of the license. The officer shall send the department all of the information available to the officer at the time of the preparation of the violation report. The officer shall attach the officer's reports relating to the license holder to the form and send the form and the attachments to the appropriate division of the department at its Austin headquarters not later than the fifth working day after the date the form is prepared. The officer shall send a copy of the form and the attachments to the license holder.

(b) Notice of suspension; grounds. The department shall give written notice to each license holder of any suspension of that license. A license may be suspended under this section if the license holder:

(1) is convicted of disorderly conduct under Texas Penal Code, §42.01;

(2) fails to display a license as required by the Act, §6(h) and §6(i);

(3) fails to notify the department of a change of address or name as required by the Act, §8;

(4) carries a concealed handgun under the authority of the Act of a different category than the license holder is licensed to carry;

(5) has been charged by indictment with the commission of an offense that would make the license holder ineligible for a license on conviction; or

(6) fails to return a previously issued license after such license has been modified as required by the Act, §10(d).

(c) Surrender of license. If the license holder has not surrendered the license or the license was not seized as evidence, the license holder shall surrender the license to the appropriate division of the department not later than the tenth day after the date the license holder received the notice of suspension from the department unless the license holder requests a hearing from the department.

(d) Hearing request. The license holder may request that the justice court in the justice court precinct in which the license holder resides review the suspension as provided by §6.32 of this title (relating to Request for Hearing; Administrative Review of Denial). If a suspension hearing is held and the court order is ordered by the justice court, the license holder shall surrender the license on the date an order of suspension has been entered by the justice court.

(e) Procedure. Suspension hearings shall be conducted in the same manner as hearings on denial.

(f) Length of suspension. A license may be suspended for not less than one year and not more than three years.

§6.62. Family Code Suspension of License.

(a) On receipt of a final order suspending a license to carry a concealed handgun, issued pursuant to Family Code, §232.010 (relating to the enforcement of child support obligations), the department shall determine whether a license has been issued to the individual named in the order of suspension. If a license has been issued, the department shall:

(1) record the suspension of the license in the department records;

(2) report the suspension as appropriate; and

(3) demand surrender of the suspended license.

(b) No administrative review or hearing shall be provided by the department to the license holder to review a final order suspending license under this section.

(c) On receipt of an order vacating or staying an order suspending a license pursuant to Family Code, §232.013, the department may reissue the license to the license holder.

§6.63. Revocation of License.

(a) Violation report; revocation of license. If a peace officer believes that grounds for revocation exist, the peace officer shall prepare an affidavit on a form provided by the department stating the reason for the revocation of the license. The officer shall send the department all of the information available to the peace officer at the time of the preparation of the form. The officer shall attach the officer's reports relating to the license holder to the form and send the form and attachments to the department at its' headquarters in Austin not later than the fifth working day after the date the form is prepared. The officer shall send a copy of the form and the attachments to the license holder.

(b) Notice of revocation; grounds. The department shall give written notice to each license holder of any revocation of that license. A license may be revoked if the license holder:

(1) was not entitled to the license at the time it was issued;

(2) gave false information on the application;

(3) subsequently becomes ineligible for a license under the Act, §2; or

(4) is convicted of an offense under Texas Penal Code, §46.035.

(c) Surrender of license. If the license holder has not surrendered the license or the license was not seized as evidence, the license holder shall surrender the license to the appropriate division of the department not later than the tenth day after the date the license holder receives the notice of revocation from the department, unless the license holder requests a hearing from the department.

(d) Hearing request. The license holder may request that the justice court in the justice court precinct in which the license holder resides review the revocation as provided by §6.32 of this title (relating to Request for Hearing; Administrative Review of Denial). If a revocation hearing is held and the court order is ordered by the justice court, the license holder shall surrender the license on the date an order of revocation has been entered by the justice court.

(e) Procedure. Revocation hearings shall be conducted in the same manner as hearings on denial.

(f) Length of revocation; reapplication. A license holder whose license has been revoked for a reason listed in this section may reapply as a new applicant for the issuance of a license under the Act after the second anniversary of the date of the revocation if the cause for revocation no longer exists. If the cause of revocation still exists on the date of the second anniversary after the date of revocation, the licensee may not apply for a new license until the cause for the revocation no longer exists and has ceased to exist for a period of two years.

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Subchapter G. Certified Handgun Instructors

- **37 TAC §§6.71-6.96**

The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 4413(29ee), §22, which authorize the department to adopt rules to administer this article. Authority to adopt by rule specific procedures is provided under Article 4413(29ee) as follows: recordkeeping responsibilities of certified handgun instructors, §16(i); fee for handgun proficiency certificate, §17(a); and retraining course for certified handgun instructors, §17(d).

§6.71. Application and Background Investigation. An instructor applicant is subject to a background investigation substantially similar to the background investigation required for licensed applicants.

§6.72. Instructor Training. The department shall provide necessary training to eligible instructor applicants. To qualify for certification as a handgun instructor, an instructor applicant must apply for and successfully complete the instructor training course offered by the department. The instructor applicant must demonstrate handgun proficiency and knowledge and ability to instruct persons on all required subjects.

§6.73. Equipment. An instructor applicant must bring the following required equipment to training: one non semi-automatic handgun; one semi-automatic handgun; ammunition; ear and eye protection; other appropriate protective clothing; and other equipment as determined by the department. Handguns must be at least nine millimeter or .38 caliber.

§6.74. Inspection of Handguns. Each handgun must be in safe and working condition. No handgun may have any internal modification which compromises the safety of the weapon. Handguns are subject to inspection by the department's instructors prior to training and at any time during the training course. If the instructor finds that a weapon is unsafe, then the instructor will reject the weapon for use in training and qualifications. The instructor may require that any handgun be secured or removed from department premises.

§6.75. Ammunition. Only standard Sporting Arms Ammunition Manufacturing Institute (SAAMI) ammunition may be used during training and qualification. This section applies only to instructor training and qualification provided by the department.

§6.76. Curriculum for Instructor Applicants. The normal course of instruction for instructor applicants shall be 40 hours in length. Training will include instruction on the following subjects:

(1) the laws that relate to weapons and to the use of deadly force;

(2) handgun use, proficiency, and safety;

(3) nonviolent dispute resolution;

(4) proper storage practices for handguns, including storage practices that eliminate the possibility of accidental injury to a child;

(5) techniques of group instruction; and

(6) other subjects deemed necessary and appropriate by the department.

§6.77. Target. All courses of fire will be scored on a standard TX-PT target. The TX-PT is a blue silhouette target developed by the department. No modifications to the target or scoring will be allowed.

§6.78. Qualifying Scores.

(a) Shooting proficiency. An instructor applicant must qualify on both the semi-automatic and non semi-automatic handgun with minimum score of 90%. The instructor applicant will have three opportunities to demonstrate proficiency. The instructor applicant must show proficiency during the training course.

(b) Written exam. An instructor applicant must pass a written exam with a minimum score of 70%. The instructor applicant will be given one opportunity to pass the written exam during the training courses. If the instructor applicant fails the first written exam, then the test may be repeated twice at regularly scheduled training courses held by the department. The instructor applicant must pass the written exam by the third attempt and within six months of application. Failure to pass within six months will terminate the application process.

§6.79. Conduct During Training.

(a) Good order and discipline will be maintained during the training course. Conduct which is disruptive or unsafe shall be grounds for immediate ejection from the training course. Unsafe handling of a handgun shall constitute grounds for immediate ejection from the training course.

(b) No instructor applicant or other person present during training shall consume alcohol prior to or during training. Consumption of alcohol or illegal drugs shall constitute grounds for immediate removal from training. No alcohol shall be brought on department premises. No person who is impaired by any substance may be present during training. Instructor applicants who take prescription medication should consult privately with the department's instructor about potential impairment of mental and physical faculties. If good cause exists to believe that any person is impaired during training, then the department's instructor shall remove that person from training.

(c) Removal of a instructor applicant shall be at the sole discretion of the instructor.

§6.80. Reapplication. An instructor applicant who fails to qualify for certification will be given a preference for an opportunity to attend the normal course of instruction within six months.

§6.81. Abbreviated Instructor Training Course.

(a) An instructor applicant may apply for an abbreviated instructor training course which shall be 28 hours in length.

(b) An applicant for the abbreviated instructor training course must provide documentation or credentials in support of one of the following:

(1) that the individual has been certified by the Texas Board of Private Investigators and Private Security Agencies to instruct others in the use of handguns;

(2) that the individual has been certified by the National Rifle Association of America as a handgun instructor; or

(3) that the individual regularly instructs others in the use of handguns and has graduated from a handgun instructor school that uses a nationally accepted course designed to train persons as handgun instructors.

(c) An applicant for the abbreviated instructor training course may be required to produce course materials related to firearms courses previously attended.

(d) An applicant for the abbreviated instructor training course will be required to take a pretest to demonstrate both handgun knowledge and proficiency. The applicant will be given one opportunity to pass the pretest. To qualify for the abbreviated course, the instructor applicant must achieve the following score:

(1) a minimum score of 70% on written pretest; and

(2) a minimum score of 90% on proficiency with both a semi-automatic and non semi-automatic handgun.

(e) An applicant for the abbreviated instructor training course who fails to qual-

ify on either the written or proficiency pretest for the abbreviated course of instruction will not be permitted to attend the training course, but will be given preference for an opportunity to attend the normal course of instruction within six months.

§6.82. Instructor Certification. An instructor applicant who has submitted the required application material, successfully completed training by the department, and who meets the eligibility requirements, may be certified as a handgun instructor by the department. Upon certification, an instructor may conduct training and proficiency examination of license applicants. Provided, instructor certification is not effective before September 1, 1995, and provided that course training credit may not be extended to license applicants for training which occurs prior to September 1, 1995.

§6.83. No Authority to Carry. Certification as an instructor does not authorize a person to carry a concealed handgun.

§6.84. Curriculum for License Applicants.

(a) Certified handgun instructors must instruct license applicants on the basis of the curriculum developed and approved by the department. The department shall develop and distribute directions and materials for course instruction, test administration, and recordkeeping.

(b) Classroom instruction. The course must include at least ten hours and not more than 15 hours of instruction on:

(1) the laws that relate to weapons and to the use of deadly force;

(2) handgun use, proficiency, and safety;

(3) nonviolent dispute resolution; and

(4) proper storage practices for handguns with an emphasis on storage practices that eliminate the possibility of accidental injury to a child.

(c) Range instruction. The examination must include a physical demonstration of the proficiency in the use of one or more handguns of specific categories and in handgun safety procedures. An applicant may not be certified unless the applicant demonstrates, at a minimum, the degree of proficiency that is required to effectively operate a nine millimeter or a .38 caliber handgun.

§6.85. Continuing Education. A course in continuing education shall be administered by a certified handgun instructor and must include at least four hours of instruction on subjects required by the department.

§6.86. Shooting Range and Classroom Facilities.

(a) All classroom and range instruction for license applicants shall be conducted in this state. All classroom and range instruction facilities are subject to inspection and registration by the department, as provided by this chapter.

(b) A shooting range which is to be used for instruction or proficiency demonstration of license applicants must be registered by the owner with the department as provided by this chapter. By virtue of registration of the range with the department, the range owner consents:

(1) to cooperate with the department in instruction of license applicants;

(2) to permit entry of department personnel onto the range facilities during normal business hours and at any time while instruction of license applicants is being conducted;

(3) to permit inspection of range facilities by department personnel;

(4) to monitor instruction of license applicants by department personnel; and

(5) to abide by the rules of this chapter.

(c) A range owner may withdraw from registered status by mailing the department 30 days advance written notice. The notice should identify the range owner and range number. The notice must be mailed to the department at the address specified in §6.3 of this title (relating to correspondence).

(d) Range instruction and proficiency demonstration must be conducted at a shooting range facility registered with the department. A proficiency certificate must indicate the range on which the proficiency examination was given. If a proficiency examination is conducted at a range not registered with the department, then the certificate will be rejected.

(e) To be registered, each range must comply with applicable municipal, state, and federal law. The range must have the capability of shooting at a distance of 15 yards.

(f) No fee is required to register a shooting range with the department. To register a range, the range owner shall report the following information on a form provided by the department:

(1) the owner of the range;

(2) the physical address of the range; and

(3) the mailing address of the range owner.

(g) Each registered range will be assigned an identification number to facilitate monitoring by the department of instruction of license applicants. Information provided to the department about shooting ranges shall be available to the public in the same manner as information concerning certified instructors.

(h) A mobile shooting range may be registered with the department. The range owner must provide the department with a permanent mailing address in this state where the owner agrees to receive correspondence.

§6.87. Prior Notice of Training Required. For each training session, a certified instructor shall give prior notice to the department of the date, time, classroom location, range location, range number, and one or more certified instructors who are responsible for the training session. Notice required by this section may be faxed to the department, and may include multiple training sessions.

§6.88. Monitoring by the Department. Department personnel may monitor any class or training of license applicants by a certified handgun instructor. A certified handgun instructor shall cooperate with the department in its efforts to monitor the training of license applicants.

§6.89. Video and Guest Instruction; Approval. Video instruction may be used as a component of course instruction only with the prior written approval of the department. Guest instructors who are not certified may be used for course instruction only with the prior written approval of the department. Request for approval for video or guest instruction shall be submitted on Form TR-97, which is adopted for that purpose, and sent by mail or fax to the Texas Department of Public Safety Pistol Range, Post Office Box 4087, Austin, Texas 78773-0001.

§6.90. Instructor Record Retention.

(a) Records to be retained and available for inspection. A certified handgun instructor shall make available for inspection to the department any and all records maintained by a certified handgun instructor under the Act. A certified handgun instructor shall retain the following:

(1) a record of each proficiency certificate issued by the instructor;

(2) a record of each license applicant who has applied for instruction, whether accepted or rejected for instruction;

(3) pre-test scores;

(4) post-test scores;

(5) written critiques or notes made by the instructor;

(6) proficiency demonstrations;

(7) course materials; and

(8) copies of reports submitted to the department.

(b) Records must be retained for a period of three years after completion. Records must be stored in a safe and secure place and must be available for inspection by authorized officers of the department.

§6.91. Instructor Reports to the Department.

(a) Report on completion. On completion of a training course by a license applicant, a certified instructor who trained the applicant shall submit a report to the department indicating whether the applicant passed or failed only. All pretest and posttest results shall be sent to the department, but shall not identify the individual applicant.

(b) Accidental discharge report. If an accidental discharge occurs during training or proficiency examination, the certified handgun instructor shall submit a report to the department within five business days. An accidental discharge report shall be submitted on Form TR-98, which was adopted for that purpose.

(c) Time to submit reports. Reports must be submitted on forms approved by the department, and on the most recent version of the form adopted. Reports shall be submitted to the department within five business days.

§6.92. Proficiency Certificates. Proficiency certificates will be available for sale by the department to certified instructors for $5. 00 each. Proficiency certificates will be sold in lots of ten or more. Proficiency certificates may be ordered on Form CR-91T, which is adopted for that purpose. Proficiency certificates may be awarded by an instructor to a qualified license applicant, but may not otherwise be transferred to another certified instructor or to any other person. Proficiency certificates shall be kept locked and secure at all times to prevent theft. A certified instructor shall report the loss, theft, or destruction of proficiency certificates to the department within five business days.

§6.93. Compliance. Instructor applicants and certified handgun instructors are required to comply with all applicable municipal ordinances, state and federal statutes, and rules, regulations, policies and operational procedures of the Texas Department of Public Safety and the Texas Department of Public Safety Training Academy. Failure to comply may constitute grounds for removal from training, or denial, suspension, or revocation of instructor certification.

§6.94. Restrictions on Advertising and Promotional Material.

(a) Private Use of State Seal. Private use of the State Seal of Texas for advertising or commercial purposes is proscribed by Business and Commerce Code, §17.08. Violation is a misdemeanor and a deceptive trade practice as provided by that section.

(b) Department Name, Insignia, or Division Name. Use of the Department name or insignia or Division name is proscribed by Texas Government Code, §411.017. Violation is a criminal offense (Class A misdemeanor or third degree felony), as provided by that section.

§6.95. Expiration and Renewal of Instructor Certification. The certification of a qualified handgun instructor expires on the second anniversary after the date of certification. To renew certification, an instructor must pay a fee of $100 and take and successfully complete the retraining courses required by the department.

§6.96. Review of Denial, Suspension, or Revocation of Instructor Certification. The procedures for notice and review of denial, suspension, and revocation of a license to carry a concealed handgun apply to the review of a denial, suspension, and revocation of certification as a certified handgun instructor.

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Subchapter H. Information and Reports

• 37 TAC §§6.111-6.119

The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 4413(29ee), §22, which authorize the department to adopt rules to administer this article.

§6.111. List of Certified Instructors; Training Sessions; Ranges. A list of certified handgun instructors shall be available to the public. A certified instructor may request to be removed from the public list, but remains subject to disclosure under an Open Records request pursuant to Texas Government Code, Chapter 552. A list of upcoming training sessions offered by certified instructors and reported to the department shall also be available to the public. A list of registered ranges will be publicly available.

§6.112. Statistical Report. The department shall prepare a monthly statistical report that includes the number of licenses issued, denied, suspended, or revoked by the department during the preceding month, listed by age, gender, race, and zip code of the applicant or license holder. The department shall make the report available, on request and payment of a reasonable fee to cover costs of copying.

§6.113. Information Concerning Individual License Holder.

(a) On written request and payment of a reasonable fee to cover costs of copying, the department shall disclose to any person or agency whether a named individual or any individual whose full name is listed on a specified written list is licensed under the Act. Information concerning a license holder that is subject to disclosure under this section includes the license holder's name, date of birth, gender, race, and zip code.

(b) The department shall notify a license holder of any request for information made relating to the license holder under this section and provide the name of the person or agency making the request.

§6.114. Confidential Information. Except as otherwise provided by this subchapter and the Act, §21, all other records maintained under the Act are confidential and are not subject to required disclosure under the Open Records law, Texas Government Code, Chapter 552, except that an applicant or license holder may be furnished a copy of such disclosable records on request and the payment of a reasonable fee.

§6.115. Information and Reports Available to Criminal Justice Agencies. On written or verbal request of another criminal justice agency, the department shall disclose information contained in its records regarding whether a named individual or any individual named in a specified list is licensed under the Act.

§6.116. Reports by the Department to Law Enforcement Agencies.

(a) Reports to the County Sheriff. On a regular basis and on request, the department shall notify the sheriff of each

county of the names of license holders who reside in that sheriff's county. The department shall notify the sheriff of each county of changes of name or address made by a resident license holder and reported to the department.

(b) Reports to local law enforcement agencies. On request of a local law enforcement agency, the department shall notify such agency of the names of license holders residing in the county in which the agency is located. On request of a local law enforcement agency, the department shall notify the agency of changes of name or address made by resident license holders and reported to the department.

§6.117. Arrest Statistics. The department shall maintain statistics related to responses by law enforcement agencies to incidents in which a person licensed to carry a handgun is arrested for an offense under Texas Penal Code, §46.035, or discharges a handgun.

§6.118. Reports from Law Enforcement Agencies to the Department. Local law enforcement agencies in Texas shall maintain records necessary to prepare and submit the concealed handgun incident report form, which reports information regarding incidents in which a person licensed to carry a handgun under Texas Civil Statutes, Article 4413(29ee), has been arrested for an offense under Texas Penal Code, §46.035, or commits a reportable discharge of a handgun.

§6.119. Reportable Incident.

(a) Reportable incident defined. A reportable incident occurs, and a local law enforcement agency shall submit a report, under the following circumstances:

(1) when a license holder is arrested for a felony, a Class A or Class B misdemeanor, or disorderly conduct, or for any federal, state, or municipal offense involving unlawful possession, display, discharge, purchase, or transfer of a handgun, firearm, or weapon;

(2) when a license holder is responsible for a reportable discharge of a handgun or other firearm. A reportable discharge occurs when:

(A) a firearm is discharged accidentally;

(B) a firearm discharge results in injury to any person;

(C) a firearm discharge results in damage to property over $20; or

(D) any other discharge occurs other than during target practice, proficiency demonstration, ceremonial discharge, or weapon test.

(3) any other safety violation.

(b) Method of reporting. Data on the concealed handgun incident report form shall be submitted to the department on a monthly basis, along with such agency's Uniform Crime Reporting data.

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Chapter 16. Commercial Driver's License

Licensing Requirements, Qualifications, Restrictions, and Endorsements

• **37 TAC §16.9**

The Texas Department of Public Safety adopts on an emergency basis an amendment to §16.9, concerning licensing requirements, qualifications, restrictions, and endorsements. The amendment adds new paragraph (5), which states a driver who operates a commercial motor vehicle in intrastate commerce only may obtain a vision waiver from the department provided the person has 20/40 (Snellen) or better distant binocular acuity with or without corrective lenses.

The adoptions are necessary to implement the provisions of Chapter 767, Acts of the 74th Legislature, Regular Session, 1995, which requires the department to provide for a vision waiver for commercial motor vehicle drivers who operate intrastate commerce only. The department finds that adoption of these rules on fewer than 30 days notice is required by state law.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 6687b-2, §12B, as passed by 74th Legislature, 1995, which provides the Texas Department of Public Safety with the authority to adopt rules and regulations necessary to carry out the provisions of the Texas Commercial Driver's License Act and the Federal Commercial Motor Vehicle Safety Act of 1986 and Texas Transportation Code, §522.005.

§16.9. Qualifications to Drive in Intrastate Commerce.

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

(c) A person applying for a CDL which authorizes operation of a commercial motor vehicle (CMV) in intrastate commerce, must meet the same requirements as those for interstate driving, except for the following.

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

(5) Effective September 1, 1995, a driver who operates a CMV in intrastate commerce only may obtain a vision waiver from the department provided the person has 20/40 (Snellen) or better distant binocular acuity with or without corrective lenses. Applicants for a CDL must present a vision waiver certificate (Medical Examiner's Certificate, form MCS-5) which they obtain from the department's Motor Carrier Safety Bureau in Austin. Waivers will be issued in accordance with §3.62 of this title (relating to Regulations Governing Transportation Safety). In addition, this waiver may be used to obtain a Hazardous Materials Endorsement when applying for a CDL.

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Part III. Texas Youth Commission

Chapter 85. Admission and Placement

Placement Planning

• **37 TAC §85.47**

The Texas Youth Commission (TYC) adopts on an emergency basis new §85. 47, concerning sex offender registration. New §85.47 provides for sex offender registration of appropriate youth committed to TYC as required by law.

This section is adopted on an emergency basis to comply with the new sex offender registration law (Texas Civil Statutes, Article 6252-13c.1).

The new section is adopted on an emergency basis under the Human Resources Code, §61.034, which provides the Texas Youth Commission authority to make rules appropriate to the proper accomplishment of its functions.

§85.47. Sex Offender Registration.

(a) Policy. The Texas Youth Commission (TYC) complies with the requirements of the sex offender registration program (Texas Civil Statutes, Article 6252-13c.1).

(b) Rules.

(1) Any program releasing a youth who is subject to the sex offender registration program will confirm the requirements of the program which are applicable to the youth based on the youth's adjudication date, and complete any documentation for which the agency is responsible under those requirements.

(2) TYC intake facilities will ensure the availability of youth fingerprints for youth required to register under the sex offender registration program who are adjudicated on or after September 1, 1995.

Issued in Austin, Texas, on October 4, 1995.

TRD-9512668 Steve Robinson
Executive Director
Texas Youth Commission

Effective date: October 4, 1995

Expiration date: December 30, 1995

For further information, please call: (512) 483-5244

PROPOSED RULES

Before an agency may permanently adopt a new or amended section or repeal an existing section, a proposal detailing the action must be published in the ***Texas Register*** at least 30 days before action is taken. The 30-day time period gives interested persons an opportunity to review and make oral or written comments on the section. Also, in the case of substantive action, a public hearing must be granted if requested by at least 25 persons, a governmental subdivision or agency, or an association having at least 25 members.

Symbology in proposed amendments. New language added to an existing section is indicated by the use of **bold text.** [Brackets] indicate deletion of existing material within a section.

TITLE 1. ADMINISTRATION

Part VII. State Office of Administrative Hearings

Chapter 163. Arbitration Procedures for Certain Enforcement Actions of the Department of Human Resources

- **1 TAC §§163.1, 163.3, 163.5, 163.7, 163.9, 163.11, 163.13, 163.15, 163.17, 163.19, 163.21, 163.23, 163.25, 163.27, 163.29, 163.31, 163.33, 163.35, 163.37, 163.39, 163.41, 163.43, 163.45, 163.47, 163.49, 163.51, 163. 53, 163.55, 163.57, 163.59, 163.61, 163.63, 163.65, 163.67**

The State Office of Administrative Hearings (SOAH) proposes new §§163.1, 163.3, 163.5, 163.7, 163.9, 163.11, 163.13, 163.15, 163.17, 163.19, 163.21, 163.23, 163.25, 163.27, 163.29, 163.31, 163.33, 163.35, 163.37, 163.39, 163.41, 163.43, 163.45, 163.47, 163.49, 163.51, 163.53, 163.55, 163.57, 163.59, 163. 61, 163.63, 163.65, and 163.67, concerning the appointment of an arbitrator and the conduct of arbitration provided under Texas Health and Safety Code, Chapter 242. These rules, when adopted, will implement House Bill 2644 amending Texas Health and Safety Code, Chapter 242, and provide an alternative process, i.e. arbitration, by which certain Department of Human Services (department) enforcement actions may be resolved. The rules establish procedures for the parties to elect arbitration and for an arbitrator to be appointed. They prescribe streamlined procedures to be used in conducting the arbitration and establish minimum qualifications for arbitrators.

In §163.1, several terms that are used throughout the chapter are defined.

In §163.3, the occasions when the department or a facility may elect arbitration to resolve enforcement disputes are articulated. The manner in which arbitration may be elected and the information that is required in the election notice are also described.

In §163.5, the process by which the department notifies SOAH that arbitration has been elected and should be initiated is described. The information that must be included in an answering statement is prescribed.

In §163.7, the conditions for filing a change of claim are described.

In §163.9, requirements for filing and serving documents are articulated.

In §163.11, the maintenance of a master list of potential arbitrators by SOAH and the process for selecting the arbitrator in an individual case is set out. A system for challenging potential arbitrators for cause is established. This section also provides that each party can exercise one strike against the list of potential arbitrators.

In §163.13, the method of notifying the appointed arbitrator and receiving his or her acceptance of appointment is established.

In §163.15, the duty of potential arbitrators to disclose any potential conflicts of interest is established. If disclosed information leads to an objection by a party, the Chief Judge of SOAH will determine whether the arbitrator should be disqualified.

In §163.17, the Chief Judge of SOAH is authorized to declare the position of arbitrator vacant if an arbitrator is unable to perform the duties of the office.

In §163.19, the qualifications necessary for consideration to be on the master list of potential arbitrator are established.

In §163.21, the per day costs of arbitrator's fees and expenses are limited. Additional incidental expenses may be charged if the parties agree to such expenses.

In §163.23, any party that wants a stenographic record must make appropriate arrangements and pay the costs.

In §163.25, the department is directed to make an electronic recording of the arbitration proceeding.

The general duties of the arbitrator are articulated in §163.29.

Communications between the parties and the arbitrator are limited in §163. 31.

In §163.33, a time limit for the beginning of the arbitration hearing is established. The arbitrator is directed to set the date, time, and place of the hearing. The arbitrator is authorized to grant a continuance. The location of the hearing is described.

Any party may be represented by an attorney or other authorized representative, as provided in §163.35.

In §163.37, hearings under these rules are described as open to the public. The parties are charged with identifying and protecting confidential material that is used in these proceedings. Exhibits will be returned to the department at the conclusion of the process.

In §163.39, the arbitrator is authorized to hold a preliminary conference and to require parties to file a statement of position before that conference. The contents of that statement are described.

In §163.41, the parties are required to exchange and file described material by specified dates.

In §163.43, discovery processes are described, defined, and limited.

In §163.45, the arbitrator is directed to control the proceedings to determine the truth, as well as to also avoid needless consumption of time and to protect witnesses from harassment or undue embarrassment.

In §163.47, the evidence that will be admissible in these proceedings is described. The authority of the arbitrator to compel witnesses' attendance is described.

Witnesses may be required to testify under oath, but shall not have to strictly conform to a question and answer format, as provided in §163.49.

Witnesses may be excluded from the hearing unless they are testifying or are a party or a party representative, as provided in §163.51.

In §163.53, evidence may be submitted by affidavit but the other party may object or file controverting affidavits. The arbitrator shall determine the appropriate weight to give such evidence.

In §163.55, the order of the proceedings is articulated.

In §163.57, the parties may agree or the arbitrator may require evidence to be submitted after the hearing.

Although an arbitrator may proceed in the absence of a party that received proper notice, the other party must submit evidence as

required by the arbitrator before he or she can make an award, as provided in §163.59.

In §163.61, the arbitrator's time for making a decision and the type of order to be entered by the arbitrator is described. A copy of that order shall be filed with SOAH and sent to the parties.

In §163.63, the final and binding effect of the order is described

The arbitrator retains jurisdiction for 20 days after the award for the purpose of correcting clerical errors, as provided by §163.65.

Appeal rights are limited by law as described in §163.67.

Steven L. Martin, Chief Administrative Law Judge, has determined that for the first five-year period the rules as proposed are in effect, there will be no fiscal implications solely as a result of administering these rules. The fiscal implications of these rules are generally attributable to the provisions of House Bill 2644, 74th Legislature, 1995, and are not significantly affected by the provisions of the proposed rules

House Bill 2644 does require the department to pay the costs of any arbitration it requests and to pay half of the costs of arbitration if a facility requests arbitration. The Legislative Budget Board estimated those costs to be approximately $20,000 for the first year and $16,000 for the following four years out of general revenue; approximately $49,000 the first two years and $50,000 the following three years out of general revenue match for Medicaid; and approximately $49,000 the first two years and $50,000 the following three years out of federal funds. This analysis was based on an estimate of approximately 100 arbitrations in each of the five years. This estimate may be considerably higher than the number of cases that actually go to arbitration under this statute and these rules because the United States Health Care Financing Administration has asserted jurisdiction over a large number of these enforcement cases, requiring that they be resolved in a federal forum. This fiscal impact of the legislation is not increased in any respect through these proposed rules.

These rules do not have any fiscal implications for local governments.

The public will benefit from the administration of these rules because the cost of enforcement actions (both judicial and administrative) should be reduced by using the arbitration process articulated in these rules. Because arbitration processes are more streamlined than traditional enforcement methods, the costs associated with resolving these state enforcement actions should be less. This will have a direct and positive impact on regulated health care facilities against whom the department has initiated enforcement actions, when the department or the facility chooses to pursue the alternative of arbitration for the resolution of that action. Consumers of health care should also benefit from these rules because a more streamlined process should return facilities to compliance in a more expeditious manner.

These rules do not impose costs on small businesses, other than those imposed by the underlying legislation. If a small business is a regulated health care facility, is a respondent or defendant in an enforcement action brought by the department, and it or the department elects to participate in arbitration as an option to the traditional enforcement process, these rules articulate the procedure to follow. Choosing arbitration pursuant to these rules should reduce the overall costs of resolving an enforcement action for small businesses.

A public hearing on the proposal will be held on November 16, 1995, at 10: 00 a.m. in Room 410B of the William B. Clements State Office Building, 300 West 15th Street, Austin, Texas.

The training course described in §163.19(4) of this title (relating to Qualifications of Arbitrators) will be held January 9-11, 1996, at the Department of Human Services in Austin, Texas.

Comments may be submitted to Nancy N. Lynch, Administrative Law Judge, State Office of Administrative Hearings, P.O. Box 13025, Austin, Texas 78711-3025, (512) 475-4993. Written comments must be received by 5:00 p.m., on the 30th day after the date of publication of this proposal in the *Texas Register.*

The new sections are proposed under the Health and Safety Code, Subchapter H, Chapter 242, §242.253, which requires that the State Office of Administrative Hearings adopt rules governing the appointment of an arbitrator and the process of arbitration under that chapter; and under 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 following are the code sections affected by these new rules: Health and Safety Code, Chapter 242; the Government Code, Chapter 2003; and the Human Resources Code, Chapter 32, §32.021(k).

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

Authorized representative–An attorney authorized to practice law in the State of Texas or, where permitted by applicable law, a person designated by a party to represent the party.

Chief judge–The chief administrative law judge of the State Office of Administrative Hearings (SOAH) or his designee.

Department–The Texas Department of Human Services.

Facility–An institution which operates health care facilities as defined by the Health and Safety Code, §242.002(6).

Director of hearings–The person who is responsible for the hearings department of the department.

§163.3. Election of Arbitration. The department or any affected facility may elect binding arbitration as an alternative in any of the following disputes unless the United States Health Care Financing Administration requires that such dispute be resolved by the federal government.

(1) Disputes for which arbitration may be elected include:

(A) renewal of a license under Health and Safety Code, §242.033;

(B) suspension or revocation of a license under Health and Safety Code, §242.061;

(C) assessment of a civil penalty under Health and Safety Code, §242.065;

(D) assessment of a monetary penalty under Health and Safety Code, §242.066; or

(E) assessment of a penalty as described by Human Resources Code, §32.021(k).

(2) Arbitration cannot be elected in situations where the department is seeking an emergency suspension or a closing order issued under Health and Safety Code, §242.062.

(3) An affected facility may elect arbitration by filing a notice of election to arbitrate with the director of hearings no later than the tenth day after a notice of an administrative or judicial hearing relating to any of the above-listed disputes is received by the facility. A copy of this election shall be sent to the department's representative of record in the relevant action.

(4) The department may elect arbitration under this subchapter by filing the election with the director of hearings no later than the date that the facility may elect arbitration under paragraph (2) of this subsection. A copy of this election shall be sent to the facility's representative of record in the relevant action or to the owner or chief operating officer of the facility if no representative has made an appearance in the action.

(5) The date of receipt shall be the date affixed upon a notice of election by a date-stamp utilized by the hearings department of the department.

(6) The notice of election shall include a written statement that contains:

(A) the nature of the action that is being submitted to arbitration, as listed in paragraph (1) of this subsection;

(B) a brief description of the factual and/or legal controversy, including the amount in controversy, if any;

(C) an estimate of the length of the hearing and the extensiveness of the record necessary to determine the matter;

(D) the remedy sought; and

(E) the hearing locale requested, along with a explanation for that locale. If no request is made, the arbitrator may choose the locale in compliance with this chapter.

(7) An election to engage in arbitration under this subchapter is irrevocable and binding on the facility and the department.

§163.5. Initiation of Arbitration.

(a) Immediately upon receipt of a notice of election of arbitration, the director of hearings shall forward that election to the State Office of Administrative Hearings (SOAH) with a request that arbitration be initiated. The case shall be file stamped and given a SOAH docket number which identifies it as a case submitted for arbitration. The docket number will be used on all subsequent correspondence and documents filed with SOAH relating to this arbitration.

(b) The party that did not initiate the arbitration must file an answering statement with SOAH within ten days after receipt of the notice of election from the electing party. That answering statement shall include an indication of whether the party agrees or disagrees with the statements in the initial notice of election. If no answering statement is filed, it will be treated as a denial of the claim. Failure to file an answering statement shall not operate to delay the arbitration.

(c) Concurrent with sending a request to SOAH that the arbitration process be initiated, the department shall cause a motion to stay to be filed in any pending administrative or judicial enforcement actions listed in §163.3(1) of this title (relating to Election of Arbitration) until the arbitration process is completed.

§163.7. Changes of Claim. If either party desires to make any new or different claim, it shall be made in writing and filed with SOAH. The other party shall have ten days from the date of such mailing in which to file an answer with SOAH. After the arbitrator is appointed, however, no new or different claim may be submitted except with the arbitrator's consent.

§163.9. Filing and Service of Documents.

(a) All documents filed by either party with SOAH shall be simultaneously served on the other parties, using the same method of service if possible. Documents required to be filed with SOAH shall be delivered to the docket clerk before 5:30 p.m. local time. The time and date of filing shall be determined by the file stamp affixed by the SOAH docket clerk.

(b) After the arbitrator has been appointed in a case, materials may be filed directly with him/her, so long as the service requirements of this section are met.

(c) Service may be made by facsimile transmission (fax), overnight courier, or certified mail return receipt requested to the party or its representative at their last known address. All documents served on another party shall have a certificate of service signed by the party or its representative that certifies compliance with this rule. A proper certificate shall give rise to a presumption of service.

(d) If any document is sent to the SOAH clerk by certified mail in an envelope or wrapper properly addressed and stamped and is deposited in the mail on or before the last day for filing same, and it is received within three days of the filing date, it shall be deemed properly filed.

(e) Documents filed by fax that are received at SOAH after 5:30 p.m. shall be deemed filed the first day following that is not a Saturday, Sunday, or official state holiday.

§163.11. Selection of Arbitrator.

(a) A master list of potential arbitrators will be maintained by SOAH and updated at least once a year. The master list will be made up of individuals who have been determined by the chief judge to be qualified under §163.19 of this title (relating to Qualifications of Arbitrators).

(b) The list of potential arbitrators in each case will be created by selecting individuals on a rotating basis from the master list. In selecting these individuals, due regard will be given to the requests of the parties concerning the location of the hearing and to any potential conflicts revealed in disclosure statements on file with SOAH. Within ten days after receipt of the answering statement by SOAH, or in any event no later than 15 days after the initial claim is received by SOAH, SOAH shall send to each party an identical list of three persons qualified to serve as an arbitrator in the dispute.

(c) Any objections for cause pertaining to any name on the list shall be made in writing directed to the chief judge at SOAH within three days, with a copy served on all other parties. Such objections will be reviewed by the chief judge or his designee and acted upon within five days after the objection is received. If a name is removed from the list, the next appropriate individual from the master list shall be added to the list.

(d) Each party shall have ten days from the transmittal date to strike one name. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable. It is not necessary for the parties to exchange the name of the candidate that they are striking, nor will those names be disclosed to the candidates. Records of strikes will not be maintained.

(e) Alternatively, the parties may agree upon an arbitrator qualified under this chapter and submit that individual's name with their initial statements.

(f) SOAH will notify the parties of the selected arbitrator.

(g) SOAH may contract with a nationally recognized association that performs arbitrations to conduct arbitrations under this chapter.

§163.13. Notice to and Acceptance by Arbitrator of Appointment.

(a) Notice of the appointment of the arbitrator shall be sent to the arbitrator by SOAH, together with a copy of this chapter and an acceptance form for the arbitrator to sign and return. The signed acceptance of the arbitrator shall be filed with SOAH prior to the first pre-hearing conference or other meeting of the parties to the arbitration.

(b) The acceptance of the arbitrator shall state that she/he is qualified and willing to serve as arbitrator in accord with this chapter, and with the Code of Ethics for Arbitrators in Commercial Disputes issued by the American Bar Association and the American Arbitration Association in 1977. It shall also state that the arbitrator foresees no difficulty in completing the arbitration according to the schedule set out in this chapter.

§163.15. Disclosure and Challenge Procedure.

(a) Any person appointed to the master list of potential arbitrators shall file a disclosure statement with SOAH describing any circumstances likely to affect impartiality, including any bias or any financial or personal interest in or representation of health care facilities or the department, or any past or present relationship with a facility or with the department or its employees. This disclosure statement will be sent with the list of potential arbitrators to the parties. This disclosure statement must be updated as circumstances change, and in any event at least once annually in order to maintain eligibility for appointment as an arbitrator under this chapter.

(b) In any particular matter, a potential arbitrator must not enter or continue in any dispute if she/he believes or perceives that participation as an arbitrator would be a conflict of interest. A potential arbitrator also must disclose any circumstance that may create or give the appearance of a conflict of interest and any circumstance that may reasonably raise a question as to the arbitrator's impartiality.

(c) The duty to disclose is a continuing obligation throughout the arbitration process.

(d) Upon receipt of such information from the arbitrator or another source, SOAH shall communicate the information to the parties and, if appropriate, to the arbitrator and others. Upon objection of a party to the continued service of an arbitrator, the chief judge shall determine whether the arbitrator should be disqualified and shall inform the parties of his/her decision, which shall be conclusive.

§163.17. Vacancies. If for any reason an arbitrator is unable to perform the duties of the office, the chief judge may, on proof satisfactory to him/her, declare the office vacant. Vacancies shall be filled in accordance with the applicable provisions of this chapter for initial appointment of an arbitrator.

§163.19. Qualifications of Arbitrators. The chief judge shall designate persons qualified to serve as an arbitrator under this chapter and that designation shall be conclusive. Potential arbitrators shall meet the following minimum standards.

(1) Have at least five years of experience in health care and/or the legal profession and/or alternative dispute resolution with recognized expertise in his/her profession(s).

(2) Have a current resume on file with SOAH that shows experience and education as well as disclosure information, and a disclosure statement including current employer and other information as described in §163.15(a) of this title (relating to Disclosure and Challenge Procedure).

(3) Have the attributes necessary to be a successful arbitrator, as reflected by at least three letters of recommendation submitted to the chief judge of SOAH from persons who have attained a recognized position of respect in their professional community. The author should assess the candidate's general expertise, honesty, integrity, impartiality, and ability to manage the arbitration process. These letters should describe the author's standing and experience in the community as well as the applicant's, and should describe the nature of the relationship between the author and the applicant.

(4) Completion of a training course offered under the joint auspices of the department, SOAH, and representatives of the facilities.

(A) The course must address:

(i) the state and federal statutes, rules and regulations under which these enforcement actions are brought; and

(ii) geriatric issues with emphasis on the aging process, end of life, and emotional and psychosocial concerns.

(B) The course must:

(i) be offered at least once a year; and

(ii) be initially offered in January 1996.

(5) The chief judge can remove persons from the master list if he determines that they no longer meet the qualifications listed in this section. The determination of the chief judge in this matter is conclusive.

§163.21. Costs of Arbitration.

(a) An arbitrator's fees and expenses shall not exceed $500 per day for case preparation, pre-hearing conferences, hearing, preparation of the award, and any other required post-hearing work. Rates charges for less than one day must bear a reasonable relationship to the daily maximum.

(b) There may also be incidental expenses connected with an arbitration proceeding which may be charged in addition to the arbitrator's fees and expenses upon agreement by the parties. Examples of such expenses include renting a room for the hearing.

§163.23. Stenographic Record. Any party desiring a stenographic record shall make arrangements directly with a stenographer and shall notify the other parties of these arrangements in advance of the hearing. The requesting party or parties shall pay the cost of the record. If the transcript is agreed by the parties to be, or determined by the arbitrator to be, the official record of the proceeding, it must be made available to the arbitrator and to the other parties for inspection, at a date, time, and place to be determined by the arbitrator.

§163.25. Electronic Record. The department shall make an electronic recording of the proceeding.

§163.27. Interpreters. Any party wishing an interpreter shall make all arrangements directly with the interpreter and shall assume the costs of the service.

§163.29. Duties of the Arbitrator. The arbitrator shall:

(1) secure appropriate facilities for the hearing, giving preference to using state facilities;

(2) protect the interests of the department and the facility;

(3) ensure that all relevant evidence has been disclosed to the arbitrator, department, and facility, and

(4) render an order consistent with Health and Safety Code, Chapter 242, and this chapter.

§163.31. Communication of Parties with Arbitrator.

(a) The department and the facility shall not communicate with the arbitrator other than at an oral hearing, or through properly filed documents, unless the parties and the arbitrator agree otherwise.

(b) Any oral or written communication from the parties other than a communication authorized under subsection (a) of this section, shall be directed to SOAH for transmittal to the arbitrator.

§163.33. Date, Time, and Place of hearing.

(a) The arbitration hearing shall be scheduled to begin no later than the 90th day after the date that the arbitrator is selected.

(b) The arbitrator shall set the date, time, and place for each hearing. She/he shall send a notice of hearing to the parties at least 30 days in advance of the hearing date, unless otherwise agreed to by the parties. A copy of such notice shall be simultaneously filed with SOAH by the arbitrator.

(c) The arbitrator may grant a continuance of the arbitration at the request of the department or facility. The arbitrator may not unreasonably deny a request for a continuance.

(d) All hearings shall be held in Austin or in the region the facility is located in as determined by the arbitrator. Preference will be given to using government facilities.

§163.35. Representation. Any party may be represented by counsel or other authorized representative.

§163.37. Public Hearings and Confidential Material. Hearings held under this chapter shall be open to the public. The parties are responsible for identifying any material that

is confidential by law and for taking appropriate measures to ensure that such material remains confidential during the hearing. All exhibits shall be returned to the department following the issuance of the order by the arbitrator, where they shall be maintained in accordance with the department's rules.

§163.39. Preliminary Conference. The arbitrator may set a preliminary conference and may require parties to file a statement of position prior to that conference. The statement of position shall include:

(1) stipulations of the parties to uncontested facts and applicable law;

(2) citation to the statutory and regulatory law, both state and federal, that controls the controversy;

(3) a list of the issues of fact and law that are in dispute between the parties, including a citation to legal authorities that each party relies on for its legal positions;

(4) proposals designed to expedite the arbitration proceedings, including minimizing preparation and decision time required of the arbitrator;

(5) a list of documents that the parties have exchanged and a schedule for the delivery of any additional relevant documents, indicating the approximate length of each document;

(6) the identification of witnesses expected to be called during the arbitration proceeding, with a short summary of their expected testimony;

(7) other matters as specified by the arbitrator.

§163.41. Exchange and Filing of Information.

(a) By the 30th day after the date SOAH mailed notice to the parties of the name of the appointed arbitrator, the parties shall have exchanged the following information:

(1) list of witnesses with relevant facts with a short summary of their expected testimony;

(2) any and all documents or other tangible things that contain information relevant to the subject matter, including any documents that will be testified about at the hearing or that witnesses have reviewed in preparing for their testimony;

(3) not later than the seventh day before the first day of the arbitration hearing, and sooner if so directed by the arbitrator, the department and the facility shall exchange and file with the arbitrator:

(A) all documentary evidence not previously exchanged and filed that is relevant to the dispute, with the relevant portions clearly indicated; and

(B) information relating to a proposed resolution of the dispute.

§163.43. Discovery.

(a) Discovery Period. All discovery shall be conducted during the discovery period. The discovery period shall begin when the arbitrator accepts his or her appointment and shall continue until 30 days before the hearing.

(b) Interrogatories. Any party may serve on any other party no more than 15 written interrogatories, including discrete subparts. Interrogatories asking a party only to identify or authenticate specific documents, however, are unlimited in number. Interrogatories must be answered 30 days from the date received. This time period shall in no way serve to extend the discovery period.

(c) Depositions. Depositions shall not be a standard way of conducting discovery. They may only be taken in unusual circumstances, usually where the witness cannot attend the hearing. A party desiring to take a deposition must get consent from the other party or must file a request with the arbitrator and present good cause why it is necessary to take such deposition. No more than four hours of deposition testimony may be taken by either party. A summary of the deposition testimony must be presented to the arbitrator if a party seeks to have a deposition considered in the proceeding.

§163.45. Control of Proceedings. The arbitrator shall exercise reasonable control over the proceedings, including but not limited to the manner and order of interrogating witnesses and presenting evidence so as to:

(1) make the interrogation and presentation effective for the determination of the truth;

(2) avoid needless consumption of time; and

(3) protect witnesses from harassment or undue embarrassment.

§163.47. Evidence.

(a) The parties may offer evidence as they desire and shall produce additional evidence as the arbitrator considers necessary to understand and resolve the dispute. However, any documentary evidence not properly exchanged between the parties before the hearing will be excluded from consideration unless good cause is shown.

(b) The arbitrator is the judge of the relevance and materiality of the evidence offered. Strict conformity to the rules of judicial proceedings is not required. The Texas Rules of Civil Evidence are not binding on the arbitrator but may be used as a guideline.

(c) Individuals may be compelled by the arbitrator, as provided under the Texas General Arbitration Act, Texas Civil Statutes, Article 230, to attend and give testimony or to produce documents at the arbitration proceeding or at a deposition allowed under §163.43 of this title (relating to Discovery).

§163.49. Witnesses. The arbitrator may require witnesses to testify under oath and shall require testimony under oath if requested by any of the parties. Testimony may be presented in a narrative, without strict adherence to a "question and answer" format.

§163.51. Exclusion of Witnesses. Any party may request that the arbitrator exclude witnesses from the hearing except when they are testifying. If such a request is made, the arbitrator shall instruct the witnesses not to discuss the case outside the official hearing other than with the designated representatives or attorneys in the case. However, an individual who is a party or any other single party representative shall not be excluded under this rule. A witness or other person violating these instructions may be punished by the exclusion of evidence as the arbitrator deems appropriate.

§163.53. Evidence by Affidavit. The arbitrator may receive and consider evidence of witnesses by affidavit. Affidavit testimony must be filed with the arbitrator and served on the other party no later than 30 days before the hearing. The other party will have 15 days to file any objection to the admissibility of the affidavit or to file controverting affidavits. The arbitrator shall give such evidence only such weight as the arbitrator deems it entitled to after consideration of any objection made to its admission.

§163.55. Order of Proceedings.

(a) Opening statements. The arbitrator may ask each party to make an opening statement, clarifying the issues involved.

(b) The complaining party shall then present evidence to support its claim. The defending party shall then present evidence to support its claim. Witnesses for each party shall answer questions propounded by the other parties and the arbitrator.

(c) The arbitrator has the discretion to vary this procedure but shall afford a full and equal opportunity to all parties for the presentation of any material and relevant evidence within the time frames set by the arbitrator.

(d) Exhibits offered by either party may be received in evidence by the arbitrator.

(e) The parties may make closing statements as they desire, but the record may not remain open for written briefs unless requested by the arbitrator.

§163.57. Evidence Filed After the Hearing. If the parties agree or the arbitrator directs that documents or other evidence be submitted to the arbitrator after the hearing, all parties shall be afforded an opportunity to examine such documents or other evidence. Such materials shall be served as provided in §163.9 of this title (relating to Filing and Service of Documents).

§163.59. Attendance Required.

(a) The arbitrator may proceed in the absence of any party or representative of a party who, after notice of the proceeding, fails to be present or to obtain a continuance.

(b) An arbitrator may not make an order solely on the default of a party and shall require the party who is present to submit evidence, as required by the arbitrator, before making an award.

§163.61. Order.

(a) The arbitrator may enter any order that may be entered by the department, board, commissioner, or court in relation to a dispute described in §163.3 of this title (relating to Election of Arbitration).

(b) The order shall be entered no later than the 60th day after the last day of the arbitration hearing.

(c) The arbitrator shall base the order on the facts established in the arbitration proceeding, including stipulations of the parties; and on the state and federal statutes and formal rules and regulations, as properly applied to those facts.

(d) The order must:

(1) be in writing;

(2) be signed and dated by the arbitrator; and

(3) include a list of the department and the facility's stipulations on uncontested issues and a statement of the arbitrator's decisions on all contested issues. If requested by either of the parties, the decision shall contain findings of fact and conclusions of law on controverted issues.

(e) The arbitrator shall file a copy of the order with SOAH and the director of hearings and send a copy to the parties.

§163.63. Effect of Order. An order of an arbitrator under this chapter is final and binding on all parties, except it is appealable as described in §163.67 of this title (relating to Appeal).

§163.65. Clerical Error. For the purpose of correcting clerical errors, an arbitrator retains jurisdiction of the award for 20 days after the date of the award.

§163.67. Appeal. In arbitrations where the department has elected arbitration, the facility may appeal to district court as provided by Health and Safety Code, §242.267.

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

Issued in Austin, Texas, on October 6, 1995.

TRD-9512850 Shelia Bailey Taylor
Deputy Chief Administrative Law Judge
State Office of Administrative Hearings

Earliest possible date of adoption: November 17, 1995

For further information, please call: (512) 475-4993

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TITLE 22. EXAMINING BOARDS

Part XII. Board of Vocational Nurse Examiners

Chapter 239. Contested Case Procedure

Reinstatement Process

• 22 TAC §239.51, §239.53

The Board of Vocational Nurse Examiners proposes amendments to §239.51, relating to Application for Reinstatement of License and §239.53, relating to Procedure Upon Request for Reinstatement. Section 239.51 is being amended for consistency with other rules that have been amended.

Marjorie A. Bronk, Executive Director, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mrs. Bronk 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 consistency and clarity of the rules.There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposed amendments may be submitted to Marjorie A. Bronk, R.N., M.S.H.P., Executive Director, Board of Vocational Nurse Examiners, 9101 Burnet Road, Suite 105, Austin, Texas 78758, (512) 835-2071.

The amendments are proposed under Texas Civil Statutes, Article 4528c(h), which provide the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

No other statute, article or code will be affected by this proposal.

§239.51. Application for Reinstatement of License.

(a) At the expiration of **five years from the date of revocation, or at the expiration of** one year from the date of **voluntary surrender** revocation, [or suspension,] or upon the conclusion of any specified period of suspension, the board may consider a request for Reinstatement by the former licensee (applicant).

(b) (No change.)

(c) Upon denial of any application for reinstatement, the board may not consider a subsequent application until the **expiration of five years** [one year] from the date of denial of the prior application.

(d) (No change.)

§239.53. Procedure Upon Request for Reinstatement.

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

(d) **An applicant for reinstatement must submit a written psychiatric or psychological evaluation and a written medical evaluation prior to being scheduled for an appearance at a reinstatement hearing. [Where the applicant's license has been revoked, suspended, or voluntarily surrendered based on a finding, admission or allegation that the applicant was unfit to practice vocational nursing by reason of intemperate use of alcohol or drugs, misappropriation of controlled substances, an adjudication of mental incompetence, or the existence of any mental disorder, or a conviction of a crime of a violent or sexual nature; the applicant must submit a written psychiatric or psychological evaluation and a written medical evaluation.] Said evaluation shall be obtained at the applicant's expense, and forwarded directly to the agency by the examiner. The psychiatric or psychological evaluation must be prepared by a licensed psychiatrist or psychologist and the medical evaluation must be prepared by a licensed physi-**

cian. Said reports shall include such information as the agency may specifically require with notice to the applicant.

(e) (No change.)

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

Issued in Austin, Texas, on October 10, 1995.

TRD-9512980 Marjorie A. Bronk, R N., M.S.H P.
Executive Director
Board of Vocational Nurse Examiners

Earliest possible date of adoption: November 17, 1995

For further information, please call: (512) 835-2071

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Part XIV. Texas Optometry Board

Chapter 271. Examinations

• 22 TAC §271.6

The Texas Optometry Board proposes an amendment to §271.6 to clarify the terminology of the parts of the National Board of Examiners in Optometry (NBEO) examination, and to establish a mechanism whereby the Jurisprudence Examination can be administered on a quarterly basis rather than semi-annually.

Lois Ewald, executive director, Texas Optometry Board has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule.

Mrs. Ewald also has determined that for each of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be clarification of confusing terminology regarding the competence examination required of optometrists for licensure, assuring that only those qualified optometrists receive a license to practice. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

The amendment is proposed under the Texas Optometry Act, Texas Civil Statutes, Article 4552, §2.14, which provides the Texas Optometry Board with the authority to promulgate procedural and substantive rules.

The Texas Optometry Act, Texas Civil Statutes, Article 4552, §3.05 and §3.06 is affected by this proposed amendment.

§271.6. National Board Examination.

(a) The board determines that the written examination by the National Board of Examiners in Optometry (NBEO) **known as Part I and Part II** complies in all material respects with the **written examination** requirements of the Act, §3. 05 and §3.06. The passing score on each Part of the National Board written examination is determined by the criterion-referenced standard setting approach, in which the passing score is set at the scaled score of 300. The Texas Optometry Board will accept scores from an NBEO written examination if **Part I or II** [the final Part] was satisfactorily completed on or after January 1, 1984.

(b) The board determines that the practical examination known as Part III by the National Board of Examiners in Optometry (NBEO) complies in all material respects with the **practical examination** requirements of the Act, §3.05 and §3.06. The passing scores on Part III shall be determined by the NBEO. Beginning June 1, 1995, an applicant for licensure shall have the option to sit for the practical examination given by the Texas Optometry Board or Part III of the NBEO. It is the intent of the board to eliminate its practical examination after the administration of the June, 1996, Examination. The board will accept scores from an NBEO Part III examination if Part III was satisfactorily completed on or after June of 1994.

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

(e) In addition to the written and practical examinations referenced in subsections (a) and (b) of this section, all applicants shall take and pass a written jurisprudence examination given by the Texas Optometry Board in order to be eligible for licensure. **After the administration of the June, 1996, Examination, the board shall administer the jurisprudence written examination at least on a quarterly schedule.**

(f) (No change.)

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

Issued in Austin, Texas, on October 4, 1995.

TRD-9512699 Lois Ewald
Executive Director
Texas Optometry Board

Earliest possible date of adoption: November 17, 1995

For further information, please call: (512) 305-8500

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Chapter 280. Therapeutic Optometry

• 22 TAC §280.5

The Texas Optometry Board proposes an amendment to §280.5 to clarify the use of cocaine eye drops for diagnostic purposes by therapeutic optometrists. The amendment will clearly denote that cocaine eye drops may be possessed and administered for diagnostic purposes but not prescribed.

Lois Ewald, executive director, Texas Optometry Board has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule.

Mrs. Ewald also has determined that for each of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to obtain good eye health care by the therapeutic optometrist's ability to use the cocaine eye drops as a diagnostic agent. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Lois Ewald, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942.

The amendment is proposed under the Texas Optometry Act, Texas Civil Statutes, Article 4552, §2.14, which provides the Texas Optometry Board with the authority to promulgate procedural and substantive rules.

The Texas Optometry Act, Texas Civil Statutes, Article 4552, §1.03 is affected by this proposed amendment.

§280.5. Prescription and Diagnostic Drugs for Therapeutic Optometry. [Prescriptions Written for Pharmaceutical Agents by the Therapeutic Optometrists.]

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

(j) A therapeutic optometrist may possess and administer cocaine eye drops for diagnostic purposes. The possession and administration of cocaine eye drops shall comply with the regulations of the Texas Department of Public Safety and United States Drug Enforcement Agency.

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

Issued in Austin, Texas, on October 4, 1995.

TRD-9512700 Lois Ewald
Executive Director
Texas Optometry Board

Earliest possible date of adoption: November 17, 1995

For further information, please call: (512) 305-8500

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Part XXI. Texas State Board of Examiners of Psychologists

Chapter 461. General Rulings

• 22 TAC §461.17

The Texas State Board of Examiners of Psychologists proposes an amendment to §461.17, concerning Timeliness of Complaints. The amendment is being proposed in order to offer more protection to the consumers of psychological services.

Rebecca E. Forkner, executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section

Ms. Forkner 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 to permit the Board to address incidents of harm that consumers are more reluctant or unable to report as soon due to the nature of the harm. There will be no effect on small businesses. There will be no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Janice C. Alvarez, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, Texas 78701, (512) 305-7700.

The amendment is proposed under Texas Civil Statutes, Article 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it

The proposed amendment does not affect other statutes, articles, or codes.

§461.17. Timeliness of Complaints. [In the absence of unusual circumstances, as determined by the Board, a] **A** complaint is timely filed if it is received by the Board, in proper form, within five years of the date of the termination of professional services, **unless the complaint alleges sexual misconduct, as defined by the Board's rules, by a licensee and/or certificand or the infliction of physical harm upon a client or patient by a licensee and/or certificand, in which case the complaint is timely filed if received within ten years of the time that the allegations are alleged to have occurred.** [Untimely complaints shall be returned to the complainant without action by the Board.]

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

Issued in Austin, Texas, on October 10, 1995.

TRD-9512943 Rebecca E. Forkner
Executive Director
Texas State Board of
Examiners of
Psychologists

Earliest possible date of adoption: November 17, 1995

For further information, please call: (512) 305-7700

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Chapter 463. Applications

• 22 TAC §463.23

The Texas State Board of Examiners of Psychologists proposes an amendment to §463.23, concerning Oral Exam Requirement. The amendment is being proposed in order for the rule to conform with the Psychologists' Certification and Licensing Act by allowing the Board to waive the requirement of an oral exam for the purposes of licensure as a psychologist if the applicant is a Diplomate of the American Board of Examiners in Professional Psychology.

Rebecca E. Forkner, executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Forkner 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 to ensure that consumers will receive quality psychological services at the earliest possible date. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the section as proposed will be in direct proportion to those who are not exempt from the oral exam requirement.

Comments on the proposal may be submitted to Janice C. Alvarez, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, Texas 78701, (512) 305-7700.

The amendment is proposed under Texas Civil Statutes, Article 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

The proposed amendment does not affect other statutes, articles, or codes.

§463.23. Oral Exam Requirement. **To be eligible for licensure as a psychologist, all certified psychologists** [An oral examination] shall be required [of all certified psychologists prior to their being licensed] **to take and pass the oral exam administered by the Board. The Board may waive this requirement for Diplomates of the American Board of Examiners in Professional Psychology.**

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

Issued in Austin, Texas, on October 5, 1995

TRD-9512797 Rebecca E. Forkner
Executive Director
Texas State Board of
Examiners of
Psychologists

Earliest possible date of adoption: November 17, 1995

For further information, please call: (512) 305-7700

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Part XXX. Texas State Board of Examiners of Professional Counselors

Chapter 681. Professional Counselors

The Texas State Board of Examiners of Professional Counselors (the board) proposes amendments to existing §§681.2, 681.15, 681.17, 681.26, 681.32-681. 35, 681.39-681.41, 681.52, 681.61, 681.63, 681.64, 681.83, 681.84, 681.112, 681.121, 681.123, 681.125, 681.126, 681.171, 681.173, 681.174, 681.192, 681. 193, and 681.195; and new §681.114 and §681.128, concerning the licensing of professional counselors. Specifically, the amendments cover definitions, license certificates, fees, counseling methods and practices, general ethics requirements, sexual misconduct, testing, drug and alcohol use, consumer information, advertising and announcements, research and publications, required application materials, academic requirements, academic course content, supervisor requirements, other conditions for supervised experience, endorsement, license renewal, inactive status, retired status, purpose and hour requirements for continuing education, types of acceptable continuing education, disciplinary actions, violations by non-licensed persons and complaint procedures. The amendments define terms relating to art therapy; establish a fee for art therapy specialty designation; add language throughout the sections to incorporate legislative amendments to the definition of the practice of professional counseling and counseling treatment intervention; add language throughout the sections to include an art therapy specialty designation; and add new language concerning disciplinary action taken for violations relating to illegal remuneration. New §681.114 and §681.128 are necessary to implement legislation passed by the 74th Legislature, 1995. Section 681.114 establishes the academic and supervision requirements for an art therapy specialty designation. Section 681.128 establishes the procedures to suspend and reinstate a license for failure to pay child support under the Family Code, Chapter 232.

Kathy Craft, executive secretary of the board, has determined that for the first five-year period the sections are in effect, there will be fiscal implications for state government as a result of enforcing or administering the sections. There will be an increased revenue of an estimated $15,600 the first year and $6,500 per year for the next four years for state government. There will be no fiscal implications for local government.

Ms. Craft 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 to ensure that licensees specializing in art therapy are appropriately trained and to assist the attorney

general in requiring a licensee to meet his or her child support obligations. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the sections as proposed will be $60 to $90 per licensee. However, the board cannot estimate the amount of revenue that may be required or generated as a result of reinstating a license for failure to pay child support because, at the present time, we do not know how many licensees will be affected. There will be no effect on local employment.

Comments on the proposal may be submitted to Kathy Craft, Executive Secretary, Texas State Board of Examiners of Professional Counselors, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6658 and must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

Subchapter A. The Board

• 22 TAC §§681.2, 681.15, 681.17

The amendments are proposed under the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g, §6, which provide the Texas State Board of Examiners of Professional Counselors with the authority to adopt and revise rules that are necessary to administer the Licensed Professional Counselor Act; §14(s), relating to rules concerning temporary licenses; §16C(a), relating to rules concerning investigations; and §19(b), relating to rules on fees.

The amendments affect the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g.

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

Art therapy-The practice of professional counseling through services that use art media to promote perceptive, intuitive, affective, and expressive experiences that alleviate distress and emotional, behavioral, or social impairment.

Art therapy intern-An LPC or an LPC intern holding a temporary license with an art therapy specialty designation.

License-A regular, **regular with art therapy specialty designation,** provisional, or temporary license issued by the board unless the content of the rule indicates otherwise.

Licensee-A person who holds a regular, **regular with art therapy specialty designation,** provisional, or temporary license.

§681.15. License Certificate.

(a) (No change.)

(b) Regular licenses **and regular licenses with an art therapy specialty designation** shall be signed by the board members and be affixed with the seal of the board.

(c) (No change.)

(d) Provisional licenses **and provisional licenses with an art therapy specialty designation** shall be signed by the executive secretary.

(e) (No change.)

§681.17. Fees.

(a) Fees are as follows:

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

(10) license certificate or renewal card duplication or replacement fee-$10; [and]

(11) returned check fee-$25; and [.]

(12) art therapy specialty designation application fee-$30 (in addition to any necessary application fees listed in paragraphs (1)-(11) of this subsection).

(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 authority to adopt.

Issued in Austin, Texas, on October 6, 1995.

TRD-9512856 James O. Mathis, Ed.D.
Chair
Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: November 17, 1995

For further information, please call: (512) 458-7236

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Subchapter B. Authorized Counseling Methods and Practices

• 22 TAC §681.26

The amendment is proposed under the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g, §6, which provide the Texas State Board of Examiners of Professional Counselors with the authority to adopt and revise rules that are necessary to administer the Licensed Professional Counselor Act; §14(s), relating to rules concerning temporary licenses; §16C(a), relating to rules concerning investigations; and §19(b), relating to rules on fees.

The amendment affects the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g.

§681.26. Counseling Methods and Practices.

(a) Authorized counseling methods and practices may include but are not restricted to the following:

(1)-(17) (No change.)

(b) A licensee is required to hold the art therapy specialty designation in order to use the title "art therapist" or the initials "A.T.". A licensee who does not hold the designation may engage in the practice of counseling by using art therapy as a counseling method but may not use the title or initials.

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

Issued in Austin, Texas, on October 6, 1995.

TRD-9512857 James O. Mathis, Ed.D.
Chair
Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: November 17, 1995

For further information, please call: (512) 458-7236

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Subchapter C. Code of Ethics

• 22 TAC §§681.32-681.35, 681.39-681.41

The amendments are proposed under the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g, §6, which provide the Texas State Board of Examiners of Professional Counselors with the authority to adopt and revise rules that are necessary to administer the Licensed Professional Counselor Act; §14(s), relating to rules concerning temporary licenses; §16C(a), relating to rules concerning investigations; and §19(b), relating to rules on fees.

The amendments affect the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g.

§681.32. General Ethical Requirements.

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

(e) A licensee shall inform an individual before or at the time of the individual's initial **professional** counseling session with the licensee of the following:

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

(5) any intent of the licensee to use another individual to provide counseling **treatment intervention** [services] to the client; and

(6) (No change.)

(f) (No change.)

(g) A licensee shall provide counseling **treatment intervention** [services] only in the context of a professional relationship, and shall not provide counseling **treatment intervention** [services] by means of newspaper or magazine articles, radio or television programs, mail or means

of a similar nature, electronic media, or telephonic media when that is the primary vehicle for maintaining the **professional** counseling relationship.

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

(k) A licensee shall not provide counseling **treatment intervention** [services] to the licensee's current or previous family members, personal friends, or business associates.

(l) A licensee shall not knowingly offer or provide counseling **treatment intervention** [services] to an individual concurrently receiving counseling **treatment intervention** [services] from another mental health services provider except with that provider's knowledge. If a licensee learns of such concurrent therapy, the licensee shall take immediate and reasonable action to inform the other mental health services provider.

(m) (No change.)

(n) A licensee to whom a school district refers a student for counseling **treatment intervention** [services] shall comply with the rules adopted by the Texas Education Agency relating to the relationship between the district and the licensee. This requirement only applies to an outside counselor, not a licensee who is a school district employee.

(o) (No change.)

(p) For each client, a licensee shall keep accurate records of the dates of counseling **treatment intervention** [services], types of counseling **treatment intervention** [services], progress or case notes, and billing information. Records held by a licensee shall be kept for seven years for adult clients and seven years beyond the age of 18 for minor clients. Records held or owned by governmental agencies or educational institutions are not subject to this requirement.

(q) A licensee shall bill clients or third parties for only those services actually rendered or as agreed to by mutual understanding at the beginning of services or as later modified by mutual agreement.

(1) (No change.)

(2) On the written request of a client, a client's guardian, or a client's parent (managing or possessory conservator) if the client is a minor, a licensee shall provide, in plain language, a written explanation of the charges for counseling **treatment intervention** [services] previously made on a bill or statement for the client. This requirement applies even if the charges are to be paid by a third party.

(3) (No change.)

(4) A licensee may not submit to a client or a third payor a bill for counseling **treatment intervention** [services] that the licensee knows were not provided or knows were improper, unreasonable, or medically or clinically unnecessary.

(r) A licensee shall terminate a **professional** counseling relationship when it is reasonably clear that the client is not benefiting from the relationship. When **professional** counseling is still indicated, the licensee shall take reasonable steps to facilitate the transfer to an appropriate referral or source.

(s)-(u) (No change.)

(v) A licensee shall not aid and abet the unlicensed practice of **professional** counseling by a person required to be licensed under the Act.

§681.33. Sexual Misconduct.

(a) For the purpose of this section the following terms shall have the following meanings.

(1) (No change.)

(2) Mental health services provider means a licensee or any other licensed or unlicensed individual who performs or purports to perform **professional** counseling or mental health services, including a licensed social worker, a chemical dependency counselor, a licensed marriage and family therapist, a physician, a psychologist, or a member of the clergy.

(3)-(5) (No change.)

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

(f) It is not a defense under subsections (b)-(d) of this section, if the sexual contact, sexual exploitation, or therapeutic deception with the person occurred:

(1) (No change.)

(2) outside the **professional** counseling sessions of the person; or

(3) off the premises regularly used by the licensee for the **professional** counseling sessions of the person.

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

(i) A licensee shall report sexual misconduct as follows.

(1) If a licensee has reasonable cause to suspect that a client has been the victim of sexual exploitation, sexual contact, or therapeutic deception by another licensee or a mental health services provider during **professional** counseling or any other course of treatment, or if a client alleges sexual exploitation, sexual contact, or therapeutic deception by another licensee or a mental health services provider during **professional** counseling or any other course of treatment, the licensee shall report the alleged conduct not later than the 30th day after the date the licensee became aware of the conduct or the allegations to:

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

(2)-(3) (No change.)

§681.34. Testing.

(a) Prior to or following the administration of any testing, a licensee shall make known to clients the purposes and explicit use to be made of any testing does as a part of a **professional** counseling relationship.

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

§681.35. Drug and Alcohol Use. A licensee shall not:

(1) use alcohol or drugs in a manner which adversely affects the licensee's ability to provide counseling **treatment intervention** services;

(2)-(3) (No change.)

§681.39. Consumer Information.

(a) A licensee shall inform each client of the name, address, and telephone number of the Texas State Board of Examiners of Professional Counselors (board) for the purpose of reporting violations to the Licensed Professional Counselor Act (Act) or this chapter:

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

(3) on a bill for counseling **treatment intervention** [services] provided to a client or third party.

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

§681.40. Advertising and Announcements.

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

(d) The highest academic degree earned from an accredited college or university and relevant to the profession of counseling or a counseling-related field may be used when advertising or announcing counseling **treatment intervention** [services] to the public or in counseling-related professional representations. A degree received at a foreign university may be used if the degree could be accepted as a transfer degree by accredited universities as reported by the American Association of Collegiate Registrars and Admissions Officers. A licensee may advertise or announce his or her other degrees from accredited colleges or universities if the subject of the degree is specified.

(e) (No change.)

(f) All advertisements or announcements of counseling **treatment intervention** [services] including telephone directory listings by a person licensed by the board may clearly state the licensee's

licensure status by the use of a title such as "Licensed Counselor," or "Licensed Professional Counselor," **Licensed Professional Counselor-Art Therapist," Art Therapist,"** [or] "L.P.C.," **"L.P.C.-A.T.," "A.T."** or a statement such as "licensed by the Texas State Board of Examiners of Professional Counselors."

§681.41. Research and Publications.

(a) (No change.)

(b) A licensee shall confine the use of data obtained from a **professional** counseling relationship for the purposes of education or research to content that can be disguised to ensure full protection of the identity of the subject client.

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

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

Issued in Austin, Texas, on October 6, 1995.

TRD-9512858 James O. Mathis, Ed.D.
Chair
Texas State Board of
Examiners of
Professional Counselors

Earliest possible date of adoption: November 17, 1995

For further information, please call: (512) 458-7236

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Subchapter D. Application Procedures

• 22 TAC §681.52

The amendment is proposed under the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g, §6, which provide the Texas State Board of Examiners of Professional Counselors with the authority to adopt and revise rules that are necessary to administer the Licensed Professional Counselor Act; §14(s), relating to rules concerning temporary licenses; §16C(a), relating to rules concerning investigations; and §19(b), relating to rules on fees.

The amendment affects the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g.

§681.52. Required Application Materials.

(a) (No change.)

(b) Practicum documentation form if applying for a temporary, [or] regular license **or regular license with art therapy specialty designation.** The practicum documentation form shall contain:

(1)-(7) (No change.)

(c) Supervised experience documentation form if applying for a regular license **or a regular license with art therapy specialty designation.** The supervised experience documentation form must be completed by the applicant's supervisor and contain:

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

(10) a statement that the supervised experience complies with the rules set out in Subchapter F of this chapter (relating to Experience Requirements for Examination and Licensure) **and §681.114 of this title (relating to Art Therapy Specialty Designation).**

(d)-(e) (No change.)

(f) References.

(1) An applicant for a regular license **or a regular license with art therapy specialty designation** must have board reference forms submitted by three persons who can attest to the applicant's character, counseling skills and professional standards of practice, including at least one licensed professional counselor. The remaining two references must be from persons licensed or certified in the counseling profession or a mental health related profession.

(2)-(3) (No change.)

(g) Provisional license based on endorsement. Applicants for a provisional license based on endorsement must submit:

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

(3) official documentation that the applicant has passed a national examination relating to counseling **or art therapy** or an exam offered by another state or territory for licensure as a counselor **or art therapist;** and

(4) a letter of sponsorship from a person who holds a regular license in Texas to practice counseling.

(h) Art therapy specialty designation.

(1) An applicant for a temporary or regular license with an art therapy specialty designation must submit evidence of the successful completion of the Certification Examination in Art Therapy of the Art Therapy Credentials Board.

(2) An applicant for a temporary license with an art therapy specialty designation must submit:

(A) proof of current registration with the American Art Therapy Association; and

(B) proof that the applicant limits his or her scope of practice to art therapy at the time of application.

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

Issued in Austin, Texas, on October 6, 1995.

TRD-9512859 James O. Mathis, Ed.D
Chair
Texas State Board of
Examiners of
Professional Counselors

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For further information, please call: (512) 458-7236

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Subchapter E. Academic Requirements for Examination and Licensure

• 22 TAC §§681.61, 681.63, 681.64

The amendments are proposed under the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g, §6, which provide the Texas State Board of Examiners of Professional Counselors with the authority to adopt and revise rules that are necessary to administer the Licensed Professional Counselor Act; §14(s), relating to rules concerning temporary licenses; §16C(a), relating to rules concerning investigations; and §19(b), relating to rules on fees.

The amendments affect the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g.

§681.61. Purpose. The purpose of this subchapter is to set out the academic requirements for a temporary, [or] regular license, **or regular license with art therapy specialty designation** and the examination required for a regular license **or regular license with art therapy specialty designation.**

§681.63. Academic Requirements.

(a) (No change.)

(b) The 45 semester hours must be designed to train a person to provide direct services to assist individuals or groups in a **professional** counseling relationship using a combination of mental health and human development principles, methods, and techniques to achieve the mental, emotional, physical, social, moral, educational, spiritual, or career-related development and adjustment of the client throughout the client's life.

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

(c) Applicants must also have a supervised practicum experience that is primarily **professional** counseling in nature of at least 300 clock-hours which were a part of the required planned graduate program.

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

(d) For persons applying for a temporary **license,** [or] a regular license **or a regular license with art therapy specialty designation,** on or after September 1, 1996, a person must have a master's or doctorate degree in counseling or a related field and a 48 semester hour planned graduate program. A person who holds a temporary license on September 1, 1996, may obtain a regular license after September 1, 1996, without having a master's or doctorate degree in counseling or a related field and a 48 semester hour planned graduate program but must meet the applicant qualifications for a regular license in effect when the person applied for the temporary license.

§681.64. Academic Course Content.

(a) An applicant must have course work in each of the following specific areas:

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

(4) counseling theories-any course which surveys the major theories of **professional** counseling;

(5) counseling methods or techniques-any three courses in methods or techniques used to provide counseling **treatment intervention** [services] including:

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

(6) research-any course in the methods of research which may include the study of statistics or a thesis project in an area relevant to the practice of **professional** counseling;

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

(9) professional orientation-any course which deals primarily with the objectives of professional organizations, codes of ethics, legal aspects of practice, standards of preparation, and the role identity of persons providing direct counseling **treatment intervention** [services].

(b) The remaining courses needed to meet the 45 graduate-hour requirement shall be in areas directly supporting the development of an applicant's **professional** counseling skills such as practicum or internship credit and other courses related primarily to **professional** counseling. Persons who apply on or after September 1, 1996, will be required to obtain 48 graduate semester hours and to have two courses in social, cultural and family issues, unless the person holds a temporary license on September 1, 1996.

(c) (No change.)

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

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Subchapter F. Experience Requirements for Examination and Licensure

• 22 TAC §681.83, §681.84

The amendments are proposed under the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g, §6, which provide the Texas State Board of Examiners of Professional Counselors with the authority to adopt and revise rules that are necessary to administer the Licensed Professional Counselor Act; §14(s), relating to rules concerning temporary licenses; §16C(a), relating to rules concerning investigations; and §19(b), relating to rules on fees.

The amendments affect the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g.

§681.83. Supervisor Requirements.

(a) (No change.)

(b) A supervisor under subsection (a)(1) or (2) of this section must have met the following requirements.

(1) (No change.)

(2) A person who begins the supervision of an LPC intern on or after January 1, 1995, shall meet the requirements stated in paragraph (1) of this subsection and must have successfully completed one of the following:

(A) (No change.)

(B) 40 clock-hours of training in the supervision of **professional** counseling or mental health services through one or a combination of the following:

(i)-(iii) (No change.)

(C) a doctoral degree in **professional** counseling or a related field which was designed to train the person to provide direct services to individuals or groups in a **professional** counseling relationship in the resolution of personal-social, educational, or occupational problems. The degree must have been awarded before January 1, 1995, by a university described in the academic requirements for examination and licensure in §681. 62(a) or (b) of this title (relating to General); or

(D) provided at least three years of clinical supervision in **professional** counseling of another person(s) through a university described in §681.62(a) or (b) of this title or a mental health facility licensed, accredited, or otherwise credentialed by the federal, state, or local government or a nationally recognized organization in the field of mental health. The three years must have been completed before January 1, 1995.

(3)-(4) (No change.)

(c) (No change.)

§681.84. Other Conditions for Supervised Experience.

(a) A person who has commenced and is in the process of completing the 24 months or 2,000 hours of supervised experience may not practice within his or her own private independent practice of **professional** counseling as part of such months or hours and may not count the months or hours spent in the person's private independent practice of **professional** counseling as part of the supervised experience; however, the person may be employed in his or her supervisor's private practice of **professional** counseling as part of such months or hours.

(b)-(g) (No change.)

(h) If an LPC intern enters into contracts with both a supervisor and an organization with which the supervisor is employed or affiliated, the contract between the organization and intern will clearly indicate where counseling **treatment intervention** [services] will be performed, that no payment for services will be made directly by a client to the intern, clients records are not the property of the counseling intern, that the full responsibility for the counseling activities of an intern shall rest with the intern's official supervisor, that there are no financial arrangements with the intern that have been made that extend beyond the period of supervision, and all supervised experience shall be in accordance with this chapter.

(i)-(k) (No change.)

(l) At any time during the supervised experience and for any reason, if a supervisor determines that the LPC intern may not have the counseling skills or competence to practice **professional** counseling under a regular license, the supervisor shall develop and implement a written plan for remediation of the LPC intern.

(m)-(n) (No change.)

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

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Chair
Texas State Board of
Examiners of
Professional Counselors

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For further information, please call: (512) 458-7236

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Subchapter H. Licensing

• 22 TAC §681.112 §681.114

The amendment and new section are proposed under the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g, §6, which provide the Texas State Board of Examiners of Professional Counselors with the authority to adopt and revise rules that are necessary to administer the Licensed Professional Counselor Act; §14(s), relating to rules concerning temporary licenses; §16C(a), relating to rules concerning investigations; and §19(b), relating to rules on fees

The amendment and new section affect the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g.

§681.112. Endorsement.

(a) The Texas State Board of Examiners of Professional Counselors (board) may grant a provisional license to a person who holds, at the time of application, a license [or certificate] as a counselor **or art therapist** issued by another state or territory that is acceptable to the board. An applicant for a provisional license must:

(1) (No change.)

(2) be licensed in good standing as a counselor **or art therapist** in another state or territory that has licensing requirements that are substantially equivalent to the regular licensing requirements of the Licensed Professional Counselor Act (Act);

(3) have passed a national examination relating to counseling **or art therapy** or an exam offered by another state or territory for licensure as a counselor **or art therapist**; and

(4) (No change.)

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

(e) The board shall issue a regular license **or a regular license with art specialty designation** to the holder of a provisional license if[:

[(1) the provisional licensee passes the examination required by the Act, §12; and

[(2)] the board verifies that the provisional licensee has the academic and experience requirements for a regular license **or a regular license with art therapy specialty designation**.

(f) (No change.)

§681.114. Application for Art Therapy Specialty Designation.

(a) A person applying for examination and licensure with an art therapy specialty designation must:

(1) meet the requirements for a regular license set out in Subchapter E of this chapter (relating to Academic Requirements for Examination and Licensure) and Subchapter F of this chapter (relating to Experience Requirements for Examination and Licensure);

(2) hold either:

(A) a master's or doctoral degree in art therapy that includes 600 hours of supervised practicum from an accredited institution except that on or after September 1, 1996, applicants must have 700 hours of supervised practicum from an accredited institution; or

(B) have all of the following:

(i) a master's degree in a counseling-related field;

(ii) a minimum of 21 semester hours or the equivalent of sequential course work in the history, theory, and practice of art therapy;

(iii) 600 hours of supervised practicum from an accredited institution except that on or after September 1, 1996, an applicant must have completed 700 hours of supervised practicum from an accredited institution;

(3) have the experience requirements set out in subsection (d) of this section; and

(4) have successfully completed the Certification Examination in Art Therapy of the Art Therapy Credentials Board.

(b) The Texas State Board of Examiners of Professional Counselors (board) shall accept an individual course from an art therapy program accredited through the American Art Therapy Association as satisfying the education requirements set out in §681.63 of this title (relating to Academic Requirements) if not less than 75% of the course content is substantially equivalent to the content of a course required in §681.64 of this title (relating to Academic Course Content).

(c) A temporary license with an art therapy specialty designation may be issued to a person who holds a master's degree in counseling or a counseling related field and:

(1) has completed not less than 42 graduate semester hours of the education requirements under the Act, §10(a)(4) in an art therapy program accredited by the American Art Therapy Association. The requirements are described in §681.63(b) of this title. These semester hours may be included in the master's degree;

(2) has completed the supervised work experience required under the Act, §10A(a)(3) and subsection (d) of this section;

(3) has passed the examination required under the Act, §10A(a)(4) and subsection (a)(4) of this section;

(4) is a registered art therapist with the Art Therapy Credentialing Board, Inc. and may use the title "A.T.R." in the practice of art therapy;

(5) represents himself or herself to the public as an "art therapist";

(6) limits the scope of practice to art therapy;

(7) files a plan acceptable to the board on board forms detailing a course of study to complete the additional graduate semester hours necessary to satisfy the education requirements under the Act, §10(a)(4); and

(8) applies prior to September 1, 1996.

(d) As part of the supervised experience requirements for art therapy specialty designation required under the Act, §10(a)(5) and §§681.82-681. 84 of this title (relating to Experience Requirements for Examination and Licensure), an applicant must have the following hours.

(1) For a person applying before September 1, 1996, supervised experience hours must include 1,000 client contact hours under supervision of a nationally registered art therapist or other supervisor acceptable to the board as set out in §681.83 of this title (relating to Supervisor Requirements).

(2) For a person applying on or after September 1, 1996, supervised experience hours must include:

(A) 1,000 client contact hours under supervision of a licensed professional counselor with an art therapy specialty designation, if the applicant holds a master's or doctoral degree in art therapy that includes 700 hours of practicum; or

(B) 2,000 client contact hours under supervision of a nationally registered art therapist or other supervisor acceptable to the board as set out in §681.83 of this title if the applicant holds a master's degree in a counseling related field and has a minimum of 21 semester hours or the equivalent of sequential course work in the

history, theory, and practice of art therapy with 700 hours of practicum.

(3) For a person applying on or after September 1, 1998, supervised experience hours must include:

(A) 1,000 client contact hours under supervision of a licensed professional counselor with an art therapy specialty designation, if the applicant holds a master's or doctoral degree in art therapy that includes 700 hours of practicum; or

(B) 2,000 client contact hours under supervision of a licensed professional counselor with an art therapy specialty designation, if the applicant holds a master's degree in a counseling related field and has a minimum of 21 semester hours or the equivalent of sequential course work in the history, theory, and practice of art therapy with 700 hours practicum.

(e) An LPC intern with art therapy specialty designation must comply with the requirements set out in:

(1) §681.81(c)-(g) of this title (relating to Temporary License);

(2) §681.82(a)-(b) and (e)-(g) of this title (relating to Experience Requirements (Internship));

(3) §681.83(c) of this title; and

(4) §681.84(a) and (c)-(n) of this title (relating to Other Conditions for Supervised Experience).

(f) An applicant for a regular license with art therapy specialty designation must pass the licensed professional counselor examination administered by the board.

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

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Chair
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Subchapter I. Regular License Renewal and Inactive and Retirement Status

- **22 TAC §§681.121, 681.123, 681.125, 681.126, 681.128**

The amendments and new section are proposed under the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g, §6, which provide the Texas State Board of Examiners of Professional Counselors with the authority to adopt and revise rules that are necessary to administer the Licensed Professional Counselor Act; §14(s), relating to rules concerning temporary licenses; §16C(a), relating to rules concerning investigations; and §19(b), relating to rules on fees.

The amendments and new section affect the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g.

§681.121. General.

(a) A regular license **or a regular license with art therapy specialty designation** must be renewed annually.

(b) A person who holds a regular license **or a regular license with art therapy specialty designation** must have fulfilled any continuing education requirements prescribed by Texas State Board of Examiners of Professional Counselors (board) rule in order to renew a license.

(c) Each person who holds a regular license **or a regular license with art therapy specialty designation** is responsible for renewing the license and shall not be excused from paying late renewal fees or renewal penalty fees. Failure to receive notice from the board does not waive payment of late penalty fees.

(d)-(e) (No change.)

(f) A person whose license has expired shall not practice **professional** counseling or advertise counseling **treatment interventions** [services].

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

§681.123. License Renewal.

(a) At least 45 days prior to the expiration of a regular license **or a regular license with art therapy specialty designation**, the Texas State Board of Examiners of Professional Counselors (board) will send notice to a licensee that includes the expiration date of the license, a schedule of the renewal and late fees, and the number of hours needed to complete any continuing education requirements.

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

§681.125. Inactive Status.

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

(c) All fees are not applicable during the inactive status period. A person may not act as a counselor, represent himself or herself as a counselor, or provide counseling **treatment intervention** [services] during the inactive status period.

(d)-(h) (No change.)

§681.126. Retired Status.

(a) (No change.)

(b) Once a licensee places his or her license on retired status, the individual may no longer practice **professional** counseling or refer to himself or herself as a counselor. The individual will no longer be required to pay renewal fees or to obtain continuing education.

(c) A retired license cannot be renewed or reinstated. To be eligible for a new license to practice **professional** counseling, the person would be required to apply for another license by meeting requirements in effect at the time of the application, including passing the examination.

§681.128. Suspension of License for Failure to Pay Child Support.

(a) On receipt of a final court or attorney general's order suspending a license due to failure to pay child support, the executive secretary shall immediately determine if the board has issued a license to the obligator named on the order, and, if a license has been issued:

(1) record the suspension of the license in the board's records;

(2) report the suspension as appropriate; and

(3) demand surrender of the suspended license.

(b) The board shall implement the terms of a final court or attorney general's order suspending a license without additional review or hearing. The board will provide notice as appropriate to the licensee or to others concerned with the license.

(c) The board may not modify, remand, reverse, vacate, or stay a court or attorney general's order suspending a license issued under the Family Code, Chapter 232 as added by Acts 1995, 74th Legislature, Chapter 751, §751.85 (House Bill 433) and may not review, vacate, or reconsider the terms of an order.

(d) A licensee who is the subject of a final court or attorney general's order suspending his or her license is not entitled to a refund for any fee paid to the board.

(e) If a suspension overlaps a license renewal period, an individual with a license suspended under this section shall comply with the normal renewal procedures in the Act and this chapter; however, the license will not be renewed until subsections (g) and (h) of this section are met.

(f) An individual who continues to engage in the practice of counseling or continues to use the titles "Licensed Professional Counselor," "Licensed Counselor," "Licensed Professional Counselor-Art Therapist," "Art Therapist" or the initials "L.P.C.," "L.P.C.-A.T.," or "A.T." after the issuance of a court or attorney general's

order suspending the license is liable for the same civil and criminal penalties provided for engaging in the prohibited activity without a license or while a license is suspended as any other license holder of the board.

(g) On receipt of a court or attorney general's order vacating or staying an order suspending a license, the executive secretary shall promptly issue the affected license to the individual if the individual is otherwise qualified for the license.

(h) The individual must pay a reinstatement fee in an amount equal to the annual renewal fee set out in §681.17 of this title (relating to Fees) prior to issuance of the license under subsection (g) of this section.

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

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Chair
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Subchapter K. Continuing Education Requirements

- **22 TAC §§681.171, 681.173, 681.174**

The amendments are proposed under the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g, §6, which provide the Texas State Board of Examiners of Professional Counselors with the authority to adopt and revise rules that are necessary to administer the Licensed Professional Counselor Act; §14(s), relating to rules concerning temporary licenses; §16C(a), relating to rules concerning investigations; and §19(b), relating to rules on fees.

The amendments affect the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g.

§681.171. Purpose. The purpose of these sections is to establish the continuing education requirements for the renewal of a regular license **or a regular license with art therapy specialty designation** which a licensee must complete every three years toward furthering of professional development in **professional** counseling. These requirements are intended to maintain and improve the quality of professional services in counseling provided to the public and keep the licensee knowledgeable of current research, techniques, and practice, and provide other resources which will improve skill and competence in **professional** counseling.

§681.173. Hour Requirements for Continuing Education. A licensee must complete 60 clock-hours of continuing education acceptable to the Texas State Board of Examiners of Professional Counselors (board) during each three-year period as described in §681.172 of this title (relating to Deadlines). **Six** [Three] hours of the 60 hours must be directly related to counselor ethics. [Licensees whose three-year reporting cycle ends after June 1, 1995, are required to obtain six hours of counselor ethics.]

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

§681.174. Types of Acceptable Continuing Education.

(a) Continuing education undertaken by a licensee shall be acceptable if the experience falls in one or more of the following categories:

(1) (No change.)

(2) participation in those sections of programs (e.g., institutes, seminars, workshops, and conferences) which are designed to increase professional knowledge related to the practice of **professional** counseling and which are conducted by persons who:

(A)-(C) (No change.)

(3) teaching or consultation in graduate level programs such as institutes, seminars, workshops, and conferences which are designed to increase professional knowledge related to the practice of **professional** counseling provided that such teaching and consultation is not part of, or required as a part of, one's employment;

(4) completion of graduate academic courses in areas supporting development of skill and competence in **professional** counseling at an accredited institution;

(5)-(7) (No change.)

(b) (No change.)

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

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Subchapter L. Complaints and Violations

- **22 TAC §§681.192, 681.193, 681.195**

The amendments are proposed under the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g, §6, which provide the Texas State Board of Examiners of Professional Counselors with the authority to adopt and revise rules that are necessary to administer the Licensed Professional Counselor Act; §14(s), relating to rules concerning temporary licenses; §16C(a), relating to rules concerning investigations; and §19(b), relating to rules on fees.

The amendments affect the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g.

§681.192. Disciplinary Action; Notices.

(a) The Texas State Board of Examiners of Professional Counselors (board) may deny, revoke, temporarily suspend, or suspend a license, or may probate disciplinary action, or may issue a reprimand to a person who has:

(1) (No change.)

(2) violated any rule adopted by the board; [or]

(3) is legally committed to an institution because of mental incompetence from any cause; or[.]

(4) offers to pay or agrees to accept any remuneration, directly or indirectly, to or from any person or entity for securing or soliciting a patient or patronage.

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

§681.193. Violations by Non-Licensed Persons.

(a) A [On or after January 1, 1994, a] person commits an offense if he or she knowingly or intentionally:

(1) engages in the practice of professional [practices] counseling **without holding a license issued by the board;**

(2) engages in the practice of professional counseling after the person's license has expired;

(3) represents himself or herself by the title "Licensed Professional Counselor" or "Licensed Counselor" without being licensed by the board;

(4) represents the person by the title "Licensed Professional Counselor-Art Therapist," "Art Therapist," or by the initials "L.P.C.-A.T." or "A.T." without being licensed with an art therapy specialty designation under the Act, §10A or §14(s); or

(5) makes use of any title, words, letters, or abbreviations that imply that the person is licensed under the Act if the person is not licensed under the Act [or represents himself or herself as a counselor without being licensed by the Texas State Board of Examiners of Professional Counselors or exempt from licensure under this Licensed Professional Counselor Act]

(b) Such an offense is a Class B misdemeanor.

(c) Subsection (a)(4) of this section takes effect on September 1, 1996.

§681.195. Complaint Procedures.

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

(e) Prior to or during an investigation, the executive secretary or his or her designee shall request a notarized response from the licensee or person against whom an alleged violation has been filed and gather information required by the complaints committee of the board.

(f)-(m) (No change.)

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

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Chair
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Part I. Texas Department of Insurance

Chapter 3. Life Accident and Health Insurance and Annuities

Subchapter Z. Exemption From Review and Approval of Certain Life, Accident, Health and Annuity Forms and Expedition of Review

• 28 TAC §§3.4004, 3.4005, 3.4008, 3.4009, 3.4020

The Texas Department of Insurance proposes amendments to §§3.4004, 3. 4005, 3.4008, and 3.4009, and new §3.4020, relating to the exemption of certain life, accident, health and annuity forms from review and approval requirements. The amendments are necessary to revise and update the class of described forms for which the department has determined that the review and official action provisions of the Insurance Code, Article 3.42, are not required or necessary for the protection of the public, thereby enhancing the streamlining of the overall filing, review, and official action process for life and health insurance forms. The proposed amendment to §3.4004 sets out various categories of forms for which exemption from review applies, and exceptions to those exemptions. It also reorganizes information about specific form categories and types so that both the exemptions relating to specific form categories/types and the exceptions from exemption for each form category/type are contained in specific subsections. Proposed new subsection (g) in §3.4004 contains substantive provisions transferred from existing §3.4008. The proposed amendment to §3.4005 addresses organizational and informational elements generally relating to the operational impact of the sections. The proposed amendment to §3.4008 creates new subject matter for inclusion in the section by addressing random and targeted audit procedures of forms filed under Subchapter Z, and by eliminating original subject matter of the section, which is transferred to §3.4004(g). The proposed amendment to §3.4009 makes a change to procedures regarding reinstatement of any privilege canceled for failure to comply with the sections. Proposed new §3. 4020 sets out as Figure 1 the full contents of form "TEXAS POLICY FORM CERTIFICATIONS" for uniform use in filing certifications under Chapter 3 of this title and more specifically in connection with filing of forms made exempt from review and official action by these sections, as well as filing of forms similar to forms previously approved by the department.

Rhonda C. Myron, deputy commissioner for the life/health group of the Texas Department of Insurance, has determined that for each year of the first five years the sections are in effect, there will be no fiscal impact on state or local government as a result of enforcing or administering the sections. Ms. Myron also has determined that there will be no effect on local employment or the local economy.

Ms. Myron 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 administration and enforcement of the sections will be the more efficient administrative regulation of insurance licensees and the more effective utilization of public resources by an appropriate streamlining of the overall policy form submission, review and official action process. There is no anticipated difference in cost of compliance between small and large businesses, or between business entities and natural persons. There is no anticipated economic cost to persons who are required to comply with the proposed amendments which arises as a result of provisions of these amendments.

Comments on the proposal must be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to the Office of Chief Clerk, P.O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of the comment should be submitted to Rhonda C. Myron, Deputy Commissioner, Life/Health Group, P.O. Box 149104, MC 106-1A, Austin, Texas 78714-9104. A request for public hearing on the proposed sections should be submitted separately to the Office of the Chief Clerk.

The amendments and new section are proposed pursuant to the Insurance Code, Articles 3.42 and 1.03A. The Insurance Code, Article 3.42(h) provides that the department may by written order exempt from the requirements of the article certain documents or forms, and may adopt reasonable rules necessary to establish guidelines, procedures, methods, standards and criteria by which various and different types of forms and documents submitted to the department may receive expeditious treatment in the policy form review process. Article 1. 03A authorizes the commissioner of insurance to promulgate and adopt rules and regulations for the conduct and execution of the duties and functions by the department.

The proposed amendments and new section affect regulation pursuant to the following statute: The Insurance Code, Article 3.42.

§3.4004. Exempt Forms.

(a) **Group and Individual Life Forms.** The group and individual life insurance forms specified in this subsection [section] are exempt from the review and approval requirements of the Insurance Code, Article 3.42, unless the forms are required by law to be specifically approved or are otherwise excepted in subsection (b) of this section:

(1) group [term] life insurance master policies, contracts, certificates, applications, enrollment forms, riders, [and] amendments and endorsements applicable thereto, issued under authority of the Insurance Code, Article 3.50, §1(1), (2), (3), (4), (5), (7), (7A), (8), (9), and (10), listed in subparagraphs (A) and (B) of this paragraph: [excluding re-entry term and indeterminate premium term;]

(A) term policies and riders; and

(B) cash value and endowment policies with no more than five death benefit and/or premium changes;

(2) any alternate face pages filed subsequent to the original approval of a policy for use with multiple employer trusteed arrangements as defined in Insurance Code, Article 3.50, §1(5) [the following group and blanket accident and health forms, with the exception of Medicare supplement policies as defined in the Insurance Code, Article 3.74:]

[(A) group accident and health master policies, contracts, certificates, applications, riders and amendments applicable thereto issued under authority of the Insurance Code, Article 3.51-6, §1(a)(1) and (2); provided the forms issued under authority of the Insurance Code, Article 3.51-6, §1(a)(2) are exempt only if delivered or issued for delivery to a labor union or organization of labor unions;

[(B) blanket accident and health master policies, contracts, certificates, applications, riders and amendments thereto, issued under authority of the Insurance Code, Article 3.51-6, §2(1)-(8)];

(3) [the following] individual and joint life insurance forms, **including applications, listed in subparagraphs (A)-(P) of this paragraph** [with the exception of universal related life, adjustable life, indeterminate premium, re-entry products, or last survivor joint contracts]:

(A) (No change.)

(B) [level death benefit] limited pay life **with no more than five death benefit and/or premium changes**;

(C) [level death benefit] life paid up at specified ages **with no more than five death benefit and/or premium changes**;

(D) single premium [level death benefit] life **with no more than five death benefit changes**;

(E) modified premium level death benefit life with no more than five [one] premium **changes** [change];

(F) level premium life with no more than five [one] death benefit **changes** [change];

(G) [level premium] retirement income policies;

(H) level or decreasing term policies and riders[, but not including deposit term or forms subject to the Insurance Code, Article 3.53];

(I) increasing term policies and riders[, but not including deposit term];

(J)-(K) (No change.)

(L) family plan riders, including **but not limited to** children's term riders, **dependent term riders, and spouse term riders**;

(M)-(N) (No change.)

(O) single premium endowment; and

(P) indeterminate premium policies;

(4) rider forms listed in subparagraphs (A)-(H) of this paragraph [the following annuities] :

(A) accidental death benefit riders [single premium immediate annuities]; [and]

(B) waiver of premium riders [group annuities];

(C) guaranteed insurability riders;

(D) IRA riders;

(E) preliminary term riders;

(F) conversion riders;

(G) exchange riders; and

(H) waiver of cost riders, including waiver of cost and monthly expense charge, and waiver of cost and premium payment;

(5) endorsement forms listed in subparagraphs (A)-(I) of this paragraph: [applications, accidental death benefit riders, waiver of premium riders, guaranteed insurability riders, IRA riders,]

(A) ORP endorsements[,];

(B) nontransferability endorsements[,] ;

(C) H.R. 10 endorsements[,];

(D) tax sheltered annuity endorsements[,]; [and]

(E) nonassignability endorsements;

(F) settlement option endorsements;

(G) individual retirement account endorsements;

(H) unisex endorsements;

(I) loan endorsements; and

(6) limited refilings for life insurance which indicate only a change in the mortality table or interest rates for new issues under the policy form, or changes to the separate account for variable products.

(b) Exceptions. The provisions of subsection (a)(1) and (2), of this section shall not apply to any group or individual life insurance forms providing the types of coverages set out in paragraphs (1)-(10) of this subsection, as follow:

(1) universal life;

(2) universal related life;

(3) adjustable life;

(4) variable life;

(5) re-entry products;

(6) business value;

(7) any forms containing a market value adjustment;

(8) deposit term;

(9) forms subject to the Insurance Code, Article 3.53; or

(10) any life insurance product used to fund prepaid funeral policies.

(c) Group and Individual Annuity Forms. The group and individual annuity forms, including applications, specified in paragraphs (1)-(6) of this subsection, as follow, are exempt from the review and approval requirements of the Insurance Code, Article 3.42, unless the forms are required by law to be specifically approved or are otherwise excepted in subsection (d) of this section:

(1) single premium immediate annuities;

(2) deferred annuities used as structured settlement options;

(3) deferred annuities that do not include persistency bonuses of any type, waiver of surrender charges, two-tier values, or a market value adjustment;

(4) group annuities that do not include persistency bonuses of any type, waiver of surrender charges, two-tier values, or a market value adjustment; and

(5) limited refilings for annuity products which indicate only a change in the mortality table or interest rates for new issues under the policy form, or changes to the separate account for variable products.

(d) Exceptions. The provisions of subsection (c)(1)-(4) of this section shall not include any annuity products used to fund prepaid funeral policies.

(e) Group and Individual Accident and Health Forms. The group and individual accident and health insurance forms specified in paragraphs (1)-(3) of this subsection, as follows, are exempt

from the review and approval requirements of the Insurance Code, Article 3.42, unless the forms are required by law to be specifically approved or are otherwise excepted in subsection (f) of this section:

(1) the group and blanket accident and health forms set out in subparagraphs (A)-(D) of this paragraph:

(A) any group accident and health master policies, contracts, certificates, applications, enrollment forms, riders, amendments, and endorsements applicable thereto issued under authority of the Insurance Code, Article 3.51-6, §1(a)(1) and (2); provided the forms issued under authority of the Insurance Code, Article 3.51-6, §1(a)(2) are exempt only if delivered or issued for delivery to a labor union or organization of labor unions;

(B) any blanket accident and health master policies, contracts, certificates, applications, enrollment forms, riders, amendments, and endorsements applicable thereto, issued under authority of the Insurance Code, Article 3.51-6, §2(a)(1)-(8);

(C) any group master policies, contracts, certificates, applications, enrollment forms, riders, amendments, and endorsements applicable thereto, issued under the authority of the Insurance Code, Article 3.51-6, §1(a)(1), (2), or (3) providing Medicare Supplement coverage to an employer, multiple employer arrangement, or a labor union;

(D) any group master policies, contracts, certificates, applications, enrollment forms, riders, amendments, and endorsements applicable thereto, issued under the authority of the Insurance Code, Article 3.51-6, §1(a)(1) or (2) providing long term care coverage to a single employer or a labor union through a policy which is delivered or issued for delivery outside of Texas;

(2) group and individual accident and/or health policies, contracts, certificates, applications, enrollment forms, riders, amendments, endorsements, and related forms (including but not limited to outlines of coverage, notices, and conditional receipts) applicable thereto, providing coverages set forth in subparagraphs (A)-(I) of this paragraph:

(A) accident only, (including occupational accident and other specified accident);

(B) accidental death and dismemberment;

(C) dental;

(D) in-hospital coverages only (including policies with coverage on an indemnity or expense-incurred basis);

(E) vision;

(F) specified disease (including cancer, heart attack, stroke, and other specifically named diseases);

(G) group and individual policies providing disability coverages (including but not limited to income replacement, key-man, buy/sell, and overhead expense);

(H) policies designed to provide conversion coverages; and

(I) other permitted coverages which are designed to supplement other in-force health insurance, including Champus supplements; and

(3) any alternate face pages filed subsequent to the original approval of a policy for use with multiple employer trusteed arrangements as defined in Insurance Code, Article 3.51-6, §1(a)(3).

(f) Exceptions. The provisions of subsection (e) of this section shall not apply to any of the insurance forms set out in paragraphs (1)-(6) of this section.

(1) The provisions of subsection (e)(2) of this section, shall not apply to any group or individual health insurance policy which provides a combination of hospital, medical, and surgical coverages, including but not limited to any major medical policies and any limited benefit hospital, medical, and surgical policies as defined in §3.3079 of this title (relating to Minimum Standards for Limited Benefit Coverage).

(2) The provisions of subsection (e)(1) and (2) of this section, shall not apply to any Medicare supplement policies as defined in the Insurance Code, Article 3.74, except as specifically provided in subsection (e)(1)(C) of this section.

(3) The provisions of subsection (e)(1) and (2) of this section, shall not apply to any long term care policies as defined in the Insurance Code, Article 3.70-12 (including but not limited to any policies providing nursing home or home health care coverages), except as specifically provided in subsection (e)(1)(D) of this section.

(4) The provisions of subsection (e)(1) and (2) of this section, shall not apply to any forms which contain preferred provider benefit plan provisions as defined in §§3.3701-3.3705 of this title (relating to Preferred Provider Benefit Plans).

(5) The provisions of subsection (e)(1) and (2) of this section, shall not apply to any group forms which are issued under the authority of Insurance Code, Article 3.51-6, §1(a)(6) (relating to discretionary groups).

(6) The provisions of subsection (e)(2)(H) of this section shall not apply to any policy subject to the provisions of Subchapter F of this chapter (relating to Mandatory Group Insurance Conversion Option), except for policies providing conversion from a policy included as an exempt form in this section.

(g) Copies of Previously Approved Forms. Any form not otherwise exempted under these sections that is an exact copy of a previously approved form is exempt from the review and approval requirements of the Insurance Code, Article 3.42. Such forms must be filed in accordance with and accompanied by the required certification as prescribed in Subchapter A of this chapter (relating to Filing of Policy Forms, Riders, Amendments and Endorsements for Life, Accident and Health Insurance and Annuities). The certification form required to be used in filing the certification is "TEXAS POLICY FORM CERTIFICATIONS, Multi-Use Form," which also is to be utilized for filing certifications for file-and-use under Article 3.42(c), as well as for corrections, resubmissions, substitutions, and filings for forms exempted from review and official action by these sections. Form "TEXAS POLICY FORM CERTIFICATIONS" is available from the Life/Health Group, has been filed with the Texas Register Division of the Secretary of State for public inspection, and is adopted by reference in these sections. The form also is reproduced in full as Figure 1 in §3.4020 of this title (Relating to Appendix).

§3.4005. General Information.

(a) This section does not relieve any insurer or other licensee [person] from complying with the Insurance Code or the rules and regulations of the Texas Department [State Board] of Insurance.

(b) Insurers shall cause all forms to comply with all required provisions of all applicable law including, but not limited to the Insurance Code and the rules and regulations of the department [State Board of Insurance]. In addition to other legal requirements:

(1) [no] forms may **not** contain any ambiguous, deceptive, misleading, unfair, inequitable or unjust wording or terminology;

(2) [no] title **headings** [heading] or other **indications** [indication] of a form's provisions may **not** be misleading;

(3) [no] forms may **not** contain any exception, exclusion, limitation, or reduction that is deceptive, unjust, unfair, encourages misrepresentation, or inequitable or that would deceptively affect the risk purported to be assumed in the general coverage of the contract; and

(4) **forms** [no form] may **not** be printed or otherwise reproduced in such a manner as to render any provision of the form substantially illegible or not easily legible to persons of normal vision.

(c) Every filing exempted from review by these sections shall be accompanied by **each item of information set out in paragraphs (1)-(3) of this subsection.**

(1) A [a] signed copy of the [a] certification form which is entitled **"TEXAS POLICY FORM CERTIFICATIONS, Multi-Use Form," which also is to be utilized for filing certifications for file-and-use under Article 3.42(c), as well as for corrections, resubmissions, substitutions, and filings for previously approved similar forms. Form "TEXAS POLICY FORM CERTIFICATIONS" is available from the Life/Health Group, has been filed with the Texas Register Division of the Secretary of State for public inspection, and is adopted by reference in these sections. The form also is reproduced in full as Figure 1 in §3.4020 of this title (Relating to Appendix).** [adopted herein by reference. The certification form may be obtained by contacting the Policy Approval Division, State Board of Insurance, 1110 San Jacinto, Austin, Texas 78786.]

(2) Any additional information or documentation generally required under the provisions of Chapter 3, Subchapter A, of this title (relating to Requirements for Filing of Policy Forms, Riders, Amendments and Endorsements for Life, Accident and Health Insurance and Annuities).

(3) A [The filing shall also be accompanied by a] cover letter **setting out the items in subparagraphs (A)-(C), as follows** [stating the following]:

(A)[(1)] that the filing is exempt;

(B)[(2)] the particular section, paragraph and subparagraph of the section under which the filing is exempt; and

(C)[(3)] a brief description of the benefits provided by the form.

*§3.4008. **Audit Procedures** [Copies of Previously Approved Forms].* **In order to monitor the appropriateness and effectiveness of the exemption provisions, the department will conduct periodic random and targeted audits of forms filed under these sections. Any compliance deficiencies identified during the audit process will be communicated to the insurer with a request for corrective action. Any failure to acknowledge a request and provide a plan for corrective action will be subject to the provisions of §3.4009 of this title (related to Sanctions).** [Any form not exempted under these sections that is an exact copy of a previously approved form must be accompanied by a certification signed by the president or his designated representative to expedite the review process. The certification must state the name of the company whose form is being copied, the form number of the approved form, and the commissioner's order number and date of approval of the form.]

§3.4009. Sanctions.

(a) The privileges under these sections are canceled for an insurer if either of the determinations in paragraphs (1) or (2) are made [If] after notice and hearing as follows [it is determined that]:

(1) an insurer's filing made under §3.4004 of this title (relating to Exempt Forms) fails to comply with §3.4005 of this title (relating to General Information); or

(2) an [that] insurer's filing made under **§3.4004(g)** [§3.4008 of this title] (relating to Copies of Previously Approved Forms) fails to be an exact copy of a filing previously approved[, the privileges under these sections are canceled for the insurer and the insurer is henceforth required to file for review and approval any and all forms intended for use in Texas].

(b) In the event of cancellation of privileges under these sections, the insurer is henceforth required to file for review and approval any and all forms intended for use in Texas, until such time as privileges under these sections are reinstated.

(c) [Application for reinstatement] **Reinstatement** of any privilege canceled under these sections **will be automatic after** [may not be made for] a period of one year from the date the privileges finally terminate, **unless otherwise determined by the commissioner. An insurer may make application for reinstatement prior to such automatic reinstatement.**

(d) Nothing in these sections limits the commissioner from imposing any other sanction authorized by law, including, but not limited to, the sanctions specified in Insurance Code, Article 1.10, §7.

§3.4020. Appendix The forms adopted and referenced in §3. 4004(g) of this title (relating to Copies of Previously Approved Forms) and §3.4005 (relating to General Information) are included in the following appendix to these sections.

Figure 1: 28 TAC §3.4020

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

Issued in Austin, Texas, on October 9, 1995.

TRD-9512872

Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance

Earliest possible date of adoption: November 17, 1995

For further information, please call: (512) 463-6327

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part X. Texas Water Development Board

Chapter 363. Financial Assistance Programs

Subchapter A. General Provisions

The Texas Water Development Board (the board) proposes new §363.33, Interest Rates for Loan and Purchase of Board's Interest in State Participation Projects and amendments to §363.204, Public Hearings and §363.205, Project Priority List. New §363.33 includes the board's interest rate policy for the Water Development Fund, Water Assistance Fund, and SRF. Amendments to §363.204 and §363.205 provide the board an option of utilizing public review and comment period in lieu of holding public hearings before adoption of the Intended Use Plan and Priority List for the SRF. Adoption of the amendment is in compliance with Chapter 6, §6.101 of the Texas Water Code.

Pamela Ansboury, the Director of Finance, has determined that for the first five year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Ansboury also has determined that for each year of the first five years that the sections are in effect the public benefit anticipated as a result of enforcing the sections will

be to streamline public participation procedures and establish by rule interest rate policies. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Comments on the proposed new section and amendments will be accepted for 30 days following publication and may be submitted to Kevin Ward, Development Fund Manager, (512) 463-0991, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231.

Formal Action by the Board

• 31 TAC §363.33

The new section is proposed under the authority of the Texas Water Code, §§6.101, 16.342, and 15.605, which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, including the SRF Program.

Chapter 15, Subchapters C, E, and J, Chapter 16, Subchapters E and F, and Chapter 17, Subchapters D, E, F, G, and K are the statutory provisions affected by the proposed sections.

§363.33. Interest Rates for Loans and Purchase of Board's Interest in State Participation Projects.

(a) Procedure and Method for Setting Fixed Interest Rates.

(1) The Development Fund Manager will set fixed interest rates under this section for purchase of the board's interest in state participation projects or for loans on a date that is five business days prior to the political subdivision's adoption of the ordinance or resolution authorizing its bonds or drawdown of state participation funds and not more than 45 days before the anticipated closing of the loan or state participation project from the board. After 45 days from the establishment of the interest rate of a loan, rates will be reconsidered, and may be extended only with the approval of the Development Fund Manager.

(2) For loans from the Development Fund or for lending rates for purchases of the board's interest in state participation projects, the Development Fund Manager will set the interest rate at the higher of:

(A) the rates established in the lending rate scale adopted by the board under subsection (b) of this section; or

(B) either:

(i) for tax-exempt issues, the rates established by the "A" scale of the Delphis Hanover Corporation Range of Yield Curve Scales (Delphis A scale), or

(ii) for taxable issues, the Delphis A scale adjusted to take into consideration the difference between taxable and tax-exempt rates in the market, as determined by the Development Fund Manager; or

(C) for loans with a maturity less than 15 years, if the interest rates calculated in subparagraph (A) or (B) of this paragraph results in a true interest cost that is less than the minimum true interest cost of the lending rate scale established under subsection (b) of this section for those funds, at a rate increased to match the minimum true interest costs so the board may recover all costs attributed to the bonds sold by the board.

(3) Interest rates for loans from the Water Loan Assistance Fund, or from funds from the board's sale of political subdivision bonds to the Texas Water Resources Finance Authority will be set according the Delphis A scale. The board may establish different interest rates for loans under this paragraph if it finds such rates are legislatively directed or are necessary to promote major water initiatives designed to provide significant regional benefit.

(b) Lending Rate Scale. After each bond sale, or as necessary to meet changing market conditions, the board will set the lending rate scale for loans and state participation projects based upon cost of funds to the board, risk factors of managing the board loan portfolio, and market rate scales. To calculate the cost of funds, the board will add new bond proceeds to those remaining bond funds that are not currently assigned to scheduled loan closings, weighting the funds by dollars and true interest costs of each source. The board will establish separate lending rate scales for tax-exempt and taxable projects from each of the following:

(1) loans from the Water Development Fund (Water Supply Account, Water Quality Enhancement Account, and Flood Control Account), and purchase of the board's interest in state participation projects; and

(2) Economically Distressed Areas loans (Water Supply Account and Water Quality Enhancement Account).

(c) Interest Rates for Loans from the State Water Pollution Control Revolving Fund.

(1) The fixed interest rates for SRF loans under this chapter are set at a rate 70 basis points below the fixed rate index rates for borrowers, plus an additional reduction under subparagraph (A) or (B) of this paragraph. The fixed rate index rates shall be established for each borrower based on the borrower's market cost of funds as they relate to the Delphis Hanover Corporation Range of Yield Curve Scales or the 90 index of the Delphis Hanover Corporation Scale for borrowers with either no rating or a rating less than investment grade, using individual coupon rates for each maturity of proposed debt based on the appropriate index's scale.

(A) For borrowers which utilize Option One under §363.209(c) of this title (relating to Administrative Cost Recovery) an additional 30 basis point reduction will be used, for total fixed lending rates of 100 basis points below the fixed rate index rates for such borrower.

(B) For borrowers which utilize Option Two under §363.209(d) of this title (relating to Administrative Cost Recovery) an additional 48 basis point reduction will be used, for total fixed lending rates of 118 basis points below the fixed rate index rates for such borrower.

(2) The interest rate for SRF variable rate loans under this chapter will be set at a rate equal to the actual interest cost paid by the board on its outstanding variable rate debt plus thirty-six and one-half (36.5) basis points. Variable rate loans are required to be converted to long-term fixed rate loans within 90 days of project completion unless an extension is approved in writing by the Development Fund Manager. Borrowers may request to convert to a long-term fixed rate at any time, upon notification to the Development Fund Manager and submittal of a resolution requesting such conversion. The fixed lending rate will be calculated under the procedures and requirements of subsection (a)(1) of this section and paragraph (1) of this subsection.

(3) The Development Fund Manager may adjust a borrower's interest rate at any time prior to closing as a result of a change in the borrower's credit rating.

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

Issued in Austin, Texas, on October 6, 1995.

TRD-9512816

Craig D. Pedersen
Executive Administrator
Texas Water Development Board

Earliest possible date of adoption: November 17, 1995

For further information, please call: (512) 463-7981

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Subchapter B. State Water Pollution Control Revolving Fund .

Introductory Provisions

• 31 TAC §363.204, §363.205

The amendments are proposed under the authority of the Texas Water Code, §6.101, §16.342, and §15.605, which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, including the SRF Program.

§363.204. Public Hearings. In accordance with the Act, the board shall **either** hold public hearings **or allow a period for public review and comment before** [to consider] adoption and approval of the priority list and amendments thereto and the annual intended use plan as required.

§363.205. Project Priority List.

(a) (No change.)

(b) After the priority list is subjected to a **public review and comment period or** public hearing in accordance with §363.204 of this title (relating to Public Hearings) and approved by the board, it will be submitted to EPA. The priority list will become effective upon the date of EPA acceptance and shall remain effective until changed by the board and accepted by EPA.

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

Issued in Austin, Texas, on October 6, 1995.

TRD-9512817 Craig D. Pedersen
Executive Administrator
Texas Water Development Board

Earliest possible date of adoption: November 17, 1995

For further information, please call: (512) 463-7981

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Applications for Assistance

• 31 TAC §363.224, §363.225

The Texas Water Development Board (the board) proposes new §363.224 and §363.225, concerning applications for assistance. The new sections provide for a Capital Improvements Plan Option through the State Water Pollution Control Revolving Fund (SRF) The Capital Improvements Plan (CIP) Option is a methodology for funding large borrowers' ongoing capital improvement programs that address the long term process of constructing/financing wastewater infrastructure.

New §363.224 defines a two step process whereby borrowers can proceed with a project or projects by financing the construction through commercial paper, other interim financing, or system revenues and later close into permanent financing through the SRF. Under the process, borrowers may have their CIP approved by the board for eligibility and later submit financial assistance applications for any portion or combination of portions of projects in the CIP.

New §363.225 defines the procedure certain borrowers must follow to ensure the availability of project funding. The procedure outlines the need for a resolution and financing agreement from those borrowers needing either $50 million or more in funding or a funding request that drives the timing of a Board bond sale. Binding certain borrowers with a resolution and the financing agreement reduces the additional anticipated risk of larger loans timed for specific refundings resulting in impacts on both the availability of funds and in the bond issuance proceeds, and effects on the SRF cashflow.

Pamela Ansboury, the Director of Finance, has determined that there will be no fiscal implications for state or local government as a result of enforcing or administering the new sections.

Pamela Ansboury, the Director of Finance, has further determined that for each year of the first five years that the new sections are in effect the public benefits anticipated as a result of enforcing the rule as proposed will be a streamlined loan process resulting in savings for borrowers over the current process, better management of long term debt issuance, and interest rate savings. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with this sections as proposed.

Comments on the proposal may be submitted within 30 days of publication to Lana Lutringer, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, (512) 463-7870.

The new sections are proposed under Texas Water Code, §6.101 and Texas Water Code, §16.342, which requires the board to adopt rules that are necessary to carry out the powers and duties of the Board under the Texas Water Code and other laws of the state.

Texas Water Code, Chapter 15, Subchapter J is the statutory provision affected by the proposed sections.

§363.224. Capital Improvements Plan Option.

(a) The capital improvements plan SRF loan processing option will provide applicants an alternative to secure loan proceeds for eligible projects under the applicant's capital improvements plan. This option is a two-step loan processing method. First, an applicant will provide applicable information to the board for preliminary eligibility determination under subsection (b) of this section. Second, an applicant will submit a financial application in order to apply for financing under subsection (d) of this section. Under the capital improvements plan option, a loan may be closed: after bids are approved and prior to construction commencing as specified in §363.42 of this title (relating to Loan Closing) and §363.43 of this title (relating to Release of Funds); utilizing the pre-design funding option as specified in §363.16 of this title (relating to Pre-Design Funding). This capital improvements plan option may be used for the purpose of reimbursement of system revenues and/or refinancing of interim financing, including commercial paper expended for approved project(s). General procedures and requirements for processing a loan application under the capital improvements plan option are described in subsections (b), (c) and (d) of this section.

(b) An applicant will request a preliminary eligibility determination from the board on the project(s) described in the applicant's capital improvements plan or similar document addressing capital improvement planning.

(1) The board's action of preliminary eligibility determination will:

(A) authorize board staff to expend agency resources to review and approve project documents as described in subsection (c) of this section for the proposed capital improvements plan;

(B) establish that those portions of project(s) and costs approved in the preliminary eligibility determination are eligible for SRF financing provided that the requirements in subsection (c) of this section are met; and

(C) acknowledge the applicant's intention to construct the project(s) in the capital improvements plan and to seek financial assistance to finance, including refinancing all or part of, those project(s).

(2) The board's action of preliminary eligibility determination will provide no financial commitment by the board to the project(s) in the capital improvements plan.

(3) Requests for preliminary eligibility determination must include:

(A) a capital improvements plan or similar information which includes a description and purpose of the project(s), area maps or drawings which adequately locate the project area(s), a proposed project schedule, estimated project costs and sources of funds;

(B) a forecast of system cash flow, timing and approximate amount of

financial assistance to be requested from the SRF, and a description of any intention to use the SRF loan proceeds to refinance existing interim debt obligations, including a description of the debt obligations, interfund transfers or internal methods of finance;

(C) a discussion of known permitting, social or environmental issues which may affect the alternatives considered and the implementation of the proposed project and any environmental information which may already be prepared pertaining to the proposed project(s) included in the capital improvement plan or documentation of environmental review of the proposed project(s) which may have been required by another state or federal agency;

(D) a resolution of the applicant's governing body requesting SRF preliminary eligibility determination from the board and stating that the applicant will comply with all board rules and requirements; and

(E) any additional information the executive administrator may request to complete eligibility evaluation of the capital improvements plan.

(c) Procedures between board preliminary eligibility determination and before financial commitment are as follows:.

(1) Prior to the initiation of construction of each project included in the capital improvements plan which will be funded by the board, the applicant will obtain from the executive administrator approval of the engineering feasibility report(s) as defined in §363.222 of this title (relating to Required SRF Engineering Feasibility report), a favorable environmental determination as defined in §363.223 of this title (relating to Required Environmental Review and Determinations), approval of design plans and specifications as defined in §363.41 of this title (relating to Engineering Design Approvals), and will submit to the executive administrator bidding documents including executed contracts for the project(s).

(2) The executive administrator will make periodic inspections of project(s) under §363.51 of this title (relating to Inspection During Construction).

(3) The executive administrator will advise the board concerning projects that involve major economic or administrative impacts to the applicant resulting from environmentally-related special mitigative or precautionary measures from an environmental assessment under §363.14 of this title (relating to Environmental Assessment) or as conditions in the environmental determination required by §363.223 of this title (relating to Required Environmental Review and Determinations) as applicable.

(d) After the board's preliminary eligibility determination under subsection (b) of this section and after all requirements under subsection (c) of this section have been met, any of the project(s) included in the applicant's capital improvements plan may be considered for a commitment for financial assistance. An applicant must submit an application which includes the following:

(1) all applicable information required in §363.12 of this title (relating to General, Legal and Fiscal Information);

(2) a water conservation plan required by §363.15 of this title (relating to Required Water Conservation Plan); and

(3) any additional information the executive administrator may request to complete evaluation of the financial application.

(e) After board commitment and after completion of all closing and release prerequisites specified in §363.42 of this title (relating to Loan Closing) and §363.43 of this title (relating to Release of Funds), funds will be released in the sequence specified in §363. 16(e) of this title (relating to Pre-Design Funding Option).

(f) The executive administrator may recommend to the board the use of this section if, based on available information submitted under subsection (b), (c) or (d) of this section, there appear to be no significant permitting, social, environmental, engineering, or financial issues associated with the project. Any request for preliminary eligibility determination or financing under this option may be considered by the board despite a negative recommendation from the executive administrator.

(g) An applicant with outstanding commitments for financial assistance for project(s) previously approved by the board or with funds available from closed loans may utilize identified funds from the outstanding commitments or closed loans for costs approved in the preliminary eligibility determination when the requirements in subsection (c) of this section have been met. If the applicant uses this subsection, the board cannot guarantee that additional funds for project(s) or work previously approved by the board will be available. The applicant must submit a new request for additional financial assistance in the event funds from outstanding commitments or closed loans are utilized for project(s) in the preliminary eligibility determination and additional funding is required to complete the project(s). The provisions of this subsection may not be used if the previously committed or closed loans are backed by project-specific revenues as opposed to system revenues or tax pledges of the applicant.

§363.225. Applicant Resolution and Financing Agreement.

(a) At the time the board initiates the process for sizing a bond sale, an applicant needing funds shall submit a resolution requesting inclusion in the board's future bond sale. In order to be included in a board bond sale, an applicant must submit a resolution outlining its intent to utilize board financing and the timing at which the loan will be closed.

(b) An applicant requesting $50 million or more in bond proceeds or requesting a board bond sale be scheduled specifically to address an applicant's financing needs, shall execute a financing agreement, the form of which will be provided by the development fund manager at least ten days prior to the pricing date of the board's bonds. In the event the financing agreement is not executed prior to the pricing date, the applicant's request for funds at that time will not be included in that bond sale. A financing agreement will include performance obligations, closing language, maturities and interest rates. The financing agreement will also provide for cancellation by the applicant, associated payments to the board to compensate for costs and loan origination risk and conditions under which the development fund manager may extend or cancel the agreements.

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

Issued in Austin, Texas, on October 6, 1995.

TRD-9512747 **Craig D. Pedersen**
Executive Administrator
Texas Water Development Board

Earliest possible date of adoption: November 17, 1995

For further information, please call: (512) 463-7981

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Subchapter E. Economically Distressed Areas Program

• 31 TAC §363.511

The Texas Water Development Board (the board) proposes new §363.511, concerning a Memorandum of Understanding (MOU) between the Texas Water Development Board and the Texas Department of Housing and Community Affairs. Pursuant to the 1995 Appropriations Act of the Texas Legislature, the board and the Texas Department of Housing and Community Affairs are required to develop this MOU to detail the responsibility of each agency regarding the coordination of funds out of the Economically Distressed Ar-

eas Program, administered by the board, and the Colonia Fund, administered by the Texas Department of Housing and Community Affairs so as to maximize delivery of the funds and minimize administrative delay in their expenditure.

Pamela Ansboury, the Director of Finance, has determined that there will be no fiscal implications for state or local government as a result of enforcing or administering the new section.

Ms. Ansboury also has determined that for each year of the first five years that the new section is in effect the public benefits anticipated as a result of enforcing the rule as proposed will be to maximize delivery of the Economically Distressed Areas Program funds and the Colonias Fund and minimize administrative delay in the expenditure of these funds and thereby obtain the public health benefits from the installation of wastewater treatment and collection systems in colonias. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with this amendment as proposed.

Comments on the proposals may be submitted within 30 days of publication to Jonathan Steinberg, Attorney, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231; (512) 475-2051.

The new rule is proposed under Texas Water Code, §6.104, which requires the board to adopt by rule any memorandum of understanding between the board and any other state agency.

Texas Water Code, §17.934 and the General Appropriations Act of 1995, House Bill 1, Article VI, §1, "Water Development Board", p. 56, paragraph 12, and Art. VII, §1, "Department of Housing and Community Affairs", p. 21, paragraph 6, 74th Legislature Regular Session are the statutory provisions affected by the proposed section.

§363.511. Memorandum of Understanding between the Texas Water Development Board and the Texas Department of Housing and Community Affairs.

(a) Parties. This Memorandum of Understanding hereinafter referred to as "Memorandum," is made and entered into between the Texas Department of Housing and Community Affairs (TDHCA), an agency of the State of Texas, and the Texas Water Development Board (TWDB), an agency of the State of Texas.

(b) Purpose. The purpose of this Memorandum is to assure that none of the funds appropriated under Community Development Block Grant Program, Colonia Fund, are expended in a manner that aids the proliferation of colonias or are otherwise used in a manner inconsistent with the intent of the Economically Distressed Areas Program (EDAP) operated by the Texas Water Development Board, so as to maximize delivery of the funds and minimize administrative delay in their expenditure.

(c) Period of Performance. This Memorandum shall begin on September 1, 1995 and shall terminate on August 31, 1997. The Memorandum may be extended for additional period of time to ensure compliance with TDHCA Rider Number 06 and TWDB Rider Number 12 to the General Appropriations Act for the 1996-1997 Biennium.

(d) Performance. Each party to this Memorandum shall coordinate with the other in delivering water and sewer service lines, hook-ups, and plumbing improvements to residents of selected colonias in order to connect those residents' housing units to EDAP-funded water and sewer systems. TDHCA shall be responsible for the following functions:

(1) develop an application process for projects submitted by eligible units of local government;

(2) assist units of general local government in preparing an application to the Colonia Fund;

(3) determine whether projects meet federal requirements;

(4) select projects to receive funding jointly with TWDB;

(5) make Colonia Fund grant awards for selected projects on an as-needed basis;

(6) prepare and execute contracts with units of local government (Contractor localities);

(7) provide oversight and guidance to Contractor localities regarding applicable federal and state laws and program regulations (environmental, labor, acquisition of real property, relocation, procurement, financial management, fair housing, equal employment opportunity, etc.);

(8) provide on-site technical assistance if necessary to ensure that funds are efficiently and effectively used to accomplish the activities for which they were intended;

(9) review, approve, process, and honor valid reimbursement requests from Contractor localities;

(10) monitor each project prior to contract completion to ensure compliance with applicable federal and state laws and program regulations;

(11) consult with TWDB regarding specific projects on an as needed basis;

(12) TWDB shall be responsible for the following functions:

(A) provide TDHCA with descriptions of and schedules for EDAP-funded projects that need Colonia Fund assistance to provide connections and plumbing improvements at least six weeks before such assistance would be required;

(B) assist eligible units of local government in preparing an application for assistance through TDHCA's Colonia Fund;

(C) select projects to receive funding jointly with TDHCA; and

(D) provide assistance with technical project-related concerns brought forward by Contractor localities or TDHCA during the course of the project.

(e) Limitations. Eligible applicants shall be those counties eligible under both TDHCA's Colonia Fund and TWDB's Economically Distressed Areas Program. Non-entitlement cities located within eligible counties are also eligible applicants. Eligible projects shall be located in unincorporated colonias identified by the TWDB and in eligible cities that annexed the colonia where improvements are to be made after January 1, 1993, or are in the process of annexing the colonia where improvements are to be made. Eligibility shall be denied to any project in a county that has not adopted or is not enforcing the Model Subdivision Rules established pursuant to §16.343 of the Texas Water Code.

(f) Funding Obligations. TDHCA shall make available a maximum of $2 million of program year 1995 funds from the State of Texas' federal Community Development Block Grant (CDBG) allocation to perform the construction activities specified in subsection (d) of this section. TDHCA and TWDB will provide staff and related support for their respective duties related to the administration of this coordinated effort, as specified in subsection (d) of this section.

(g) Reporting Requirements. Each party to this Memorandum shall submit, on or before the 15th day of the month following the end of the calendar quarter, to the other party a report of its activities and expenditures during the previous calendar quarter. The first such report shall be due January 15, 1996. No later than November 15, 1996, the TDHCA and TWDB shall submit a joint report to the Legislative Budget Board that describes and analyzes the effectiveness of projects funded as a result of coordinated Colonia Fund/EDAP efforts.

(h) Termination. This Memorandum shall terminate upon ten days written notice by either party to the other party in this contract.

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

Issued in Austin, Texas, on October 5, 1995.

TRD-9512746 Craig D. Pedersen
Executive Administrator
Texas Water Development Board

Earliest possible date of adoption: November 17, 1995

For further information, please call: (512) 463-7981

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Chapter 375. State Water Pollution Control Revolving Fund

The Texas Water Development Board (the board) proposes amendments to §§375.1-375.3, 375.14, 375.17, 375.18, 375.36, 375.38, 375.51, 375.61, 375. 75, 375.86, and 375.102; repeal of §§375.12, 375.13, 375.19, and 375.87; and new §375.19 and §375.52.

When the board originally implemented the SRF program, it was required to pass on to borrowers a number of Federal requirements as long as capitalization grant funds were used to fund projects. These requirements were known as "equivalency" requirements and consisted of a group of 16 requirements from Title II of the Act and a number of other federal requirements that append to all programs using federal funds (crosscutting requirements). The board began the program in 1988 with the specific intent of funding projects to satisfy all of the federal requirements as soon as possible so it could eliminate these requirements for future applicants. By early 1992, the board projected it was near satisfying the adopted new rules for the SRF program (31 TAC Chapter 363, Subchapter B of this title relating to Financial Assistance Programs) and began implementing a second tier SRF program, free from all the equivalency requirements.

Since then, the board has received an unanticipated capitalization grant of $56 million in Fiscal Year 1995 as a result of the Federal Appropriations Bill for which it will have to make some loans that will satisfy federal requirements. However, since the new funds are appropriated without the Clean Water Act being reauthorized, loan recipients will only have to satisfy the "crosscutters", and not the equivalency requirements. Because of the additional federal requirements imposed by the equivalency and crosscutter requirements, the board traditionally has and will continue to loan these funds at a lower interest rate than loans under 31 TAC Chapter 363 of this title (relating to Financial Assistance Programs).

In addition, the amendments will reflect that the Board has to make only a limited amount of loans periodically to satisfy equivalency and/or crosscutters. Thus, the amendments will establish a procedure to make the lower interest rate funds available to all interested applicants on a first-come, first served basis, with a procedure for prioritizing projects to receive the SRF funds at this lower rate if the number of applications exceeds funds available under this Chapter. Projects which exceed the lower-interest rate funding capacity under this Chapter may be funded through the SRF under 31 TAC Chapter 363 of this title (relating to Financial Assistance Programs).

Amendments are also proposed to include the board's interest rate policy and reflect the future interest rate reduction to SRF loans to compensate for the administrative cost recovery charge to be implemented under proposed amendments to 31 TAC 375.21, Administrative Cost Recovery (20 TexReg 6803). The proposed amendments will also eliminate several obsolete policy statements from the rules, and modify the public involvement requirements for Intended Use Plans and Project Priority Lists to add public notice and comments as an alternative to public hearing.

Proposed amendments to Chapter 375 will require compliance with Title II requirements only if required by federal law.

Section 375.1 describes the scope of Chapter 375, indicating that it is limited to applications that are needed to satisfy the federal requirements as a prerequisite to the State's receipt of capitalization grant funds. The definitional provision in §375.2 amends the definition of eligible applicant to include political subdivisions that are applying for assistance for estuary management projects.

Changes are made to §375.3, Policy Declarations, to remove outdated policies and to incorporate new policies.

Section 375.12 and §375.13 are eliminated as they merely repeat a requirement imposed on the board under federal law, and are not needed in these rules.

Changes to §375.14 and §375.18 reflect that the board may utilize public review and comment period in lieu of holding public hearings before adoption of the Intended Use Plan and Priority List for the SRF.

Amendment to §375.17(a) will allow the section to be applicable in the event the board receives any additional federal funds which require that the applicants meet Title II requirements. The section also indicates that the requirements of the crosscutters listed in subsection (b) of the section must be met from Title II funded projects. Subsection (b) is a new subsection which lists all of the federal crosscutter requirements that all projects funded with federal monies must meet. These requirements are imposed by federal law. Section 375.19 is repealed in order to allow a new section to be more conveniently adopted. Proposed §375.19 recognizes that because Chapter 375 imposes requirements grater than those imposed under SRF funding in 31 TAC Chapter 363 of this title (relating to Financial Assistance Programs), the board will provide lower interest rates for these projects and also will limit its funding under Chapter 375 to that dollar amount that is reasonably necessary to meet federal requirements. It provides that the board will publish that it will be seeking projects to meet these federal requirements, that applications will be considered on a first-come, first-served basis based upon the dates the application is complete and ready for board action unless a fund shortage exists, and provides a method for prioritizing projects if a fund shortage exists. Subsection (b), which provides a rating process to rate treatment works, contains the same requirements as the repealed provisions of §375.19(a).

The changes to §§375.36(b) and (c), 375.86, and 375.102 specify that certain of the materials an applicant is required to submit in the SRF engineering plan are required only for those projects which require compliance with the Act, Title II.

Amendments to §375.38(a) delete language which was utilized when the board provided for funding of applicants in various funding categories, a procedure which is no longer used. Subsections (c) and (d) are eliminated, as the requirements for return of incomplete applications and applications which cannot be funded have been incorporated into the new §375.19(a).

New §375.52 provides a procedure for setting both fixed and variable interest rates for loans made under this chapter. The fixed rates reflect the rate reduction provided in proposed 31 TAC §375.21 for applicants who now must pay administrative cost recovery fees to the board.Subsection (c) provides for a method of calculating the interest rates for SRF variable rate loans.

Section 375.75 provides for movements of funds between approved projects under Chapter 375 or for projects receiving SRF funding under Chapter 363 of this title (relating to Financial Assistance Programs) if the project has met all requirements imposed for capitalization grants and for environmental review and determinations.

Pamela Ansboury, the Director of Finance, has determined that for the first five year period the sections are in effect there will be no fiscal implications on state or local government as a result of enforcing or administering the sections.

Ms. Ansboury also has determined that for each year of the first five years that the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to ensure the ability of the Board to administer continuing appropriated federal funds through the State Water Pollution Control Revolving Fund while making lower interest rate funds available to applicants on a first-come, first-served basis and reducing the federal requirements for applicants whenever possible. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Comments on the proposed sections will be accepted for 30 days following publication and may be submitted to George Green, Director of Engineering, (512) 463-7853, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231.

Introductory Provisions

- **31 TAC §§375.1-375.3**

The amendments are proposed under the authority of the Texas Water Code, §6.101 and §15.605, which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers

and duties in the Water Code and other laws of the State, including specifically the SRF program.

The proposed amendments affect Texas Water Code, Chapter 15, Subchapter J.

§375.1. Scope of Rules. These sections, adopted pursuant to the Texas Water Code, §6.101, shall govern **applications for financial assistance from the State Water Pollution Control Revolving Fund (SRF) that are needed to satisfy the federal requirements as a prerequisite to the State's receipt of capitalization grant funds**[as authorized by the Texas Water Code, §§15.601-15.608].

§375.2. Definitions of Terms. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Words defined in the Texas Water Code, Chapter 15 and not defined here shall have the meanings provided by the chapter or subchapter as appropriate.

Eligible applicant–A waste treatment management agency including any interstate agencies, or any city, town, county, district, river authority, or other public body created by or pursuant to state law which has authority to dispose of sewage, industrial wastes, or other waste; or an authorized Indian tribal organization; or any political subdivision applying for financial assistance to build a nonpoint source pollution control project pursuant to the Act, §319; **or any political subdivision applying for financial assistance for an estuary management project pursuant to the Act, §320.**

§375.3. Policy Declarations.

(a) General. **The SRF is** [The Construction Grants Program, created by Title II of the Act, has been providing financial assistance in the form of grants to Texas communities for the design and construction of waste treatment works since 1972. The 1987 amendments to the Act will phase out the Construction Grants Program after 1990 and leave the provision of financial assistance for such works to the individual states. Historically, the funds needed for the construction of waste treatment works at any particular time have exceeded the amount of assistance funds available many times over. Consequently, the burden upon the state to provide financial assistance will be a great one. In order to ease the transition, the 1987 amendments to the Act also allowed creation and federal funding for the state water pollution control revolving fund, which is] intended to be a perpetual fund to provide low interest loan assistance for the construction of waste treatment works during the phase out period and after the end of the Construction Grants Program, **for implementing a management program for nonpoint source pollution under the Act, §319, and for developing and implementing a conservation and management plan under the National Estuary Program under the Act, §320.** [Until construction grants are mandatorily discontinued, the option exists to transfer monies appropriated under Title II of the Act to the fund in lieu of making grants. Such transfers will increase the amount of capitalization monies available to the fund initially and vastly increase the size of the fund over time. It is clearly in the best interest of the State of Texas to do so. Therefore, it is the policy of the board to administer the grants program and the fund to maximize the amounts of capitalization money available to the fund to ensure the perpetual nature and viability of the fund for the benefit of all of the citizens of the state. Based upon this policy, the board will no longer make grants out of new appropriations after October 1, 1988, except from monies which have been deobligated.]

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

(e) Management of financial resources. It is the policy of the board to structure financial assistance to applicants, including providing state matching funds in excess of that required by the Act when necessary and feasible, such that the board may maximize financial resources available to the state. It is further the policy of the board to satisfy the requirements of the Act, Title II, **and the requirements associated with any grants of federal funds** as soon as possible.

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

[(h) Lending rate. It is the policy of the board through the implementation of the lending rate to serve the political subdivisions of the state by making loans at interest rates which reflect the costs of all of the funds in the SRF. The board will establish rate scales for loans to political subdivisions which have coupon rates for each maturity. In establishing the lending rate scales, the board will take into account the true interest cost of the state matching funds including issuance costs, the risks associated with operating a loan program, the inflation rate, and market conditions, including the yield curve which exist in the market. The board will continuously review the lending rate scale, in light of current market conditions, and alter the scale if changes are necessary. The board reserves the right to determine the lending rate scale applied and maturity schedule for each loan. The board may, from time to time, be approached by political subdivisions with proposed projects which may require special financing by the board. Because of the special and unusual characteristics of these projects, separate lending rate scales for these projects may be established to fit the special circumstances that may be applicable to these projects.]

(h)[(i)] Force account. It is the policy of this board that all significant elements of the project be constructed with skilled laborers and mechanics obtained through the competitive bidding process. The board will not approve the use of force account in the major construction of the project, but may approve the use of force account for inspection and/or minor construction when the applicant demonstrates that it possesses the necessary competence required to accomplish such work and that the work can be accomplished more economically by the use of the force account method, or emergency circumstances dictate its use.

[(j) Collection system. It is the policy of the board not to provide financial assistance for construction of sewage collection systems to serve substantially undeveloped areas. In implementing this policy, consideration will be given to the percentage of development in the areas to be served by the collection system and the rate of development of the areas in question.

[(k) Nonpoint source projects. It is the policy of the board that applications for financial assistance to build nonpoint source pollution control projects pursuant to the Act, §319, will be evaluated on their individual merits, on a first-come first-serve basis. However, because of the significant amounts of identified needs to construct municipal wastewater treatment facilities, the board feels it appropriate to maintain a continuous source of financing for such facilities. Therefore, the board has chosen to limit its initial financing of nonpoint source pollution control projects to 10% of each year's available funds.]

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

Issued in Austin, Texas, on October 6, 1995.

TRD-9512818 Craig D. Pedersen
Executive Administrator
Texas Water Development Board

Earliest possible date of adoption: November 17, 1995

For further information, please call: (512) 463-7981

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Program Requirements

• 31 TAC §§375.12, 375.13, 375.19

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

The repeals are proposed under the authority of the Texas Water Code, §6.101 and §15.605, which provides the Texas Water Development Board with the authority to adopt

rules necessary to carry out the powers and duties in the Water Code and other laws of the State, including specifically the SRF program.

§375.12. Obligation Period.

§375.13. Reserves.

§375.19. Rating Process and Criteria and Methods for Distribution of Funds.

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

Issued in Austin, Texas, on October 6, 1995.

TRD-9512819 Craig D. Pedersen
Executive Administrator
Texas Water Development Board

Earliest possible date of adoption: November 17, 1995

For further information, please call: (512) 463-7981

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• 31 TAC §§375.14 375.17, 375.18, 375.19

The amendments and new section are proposed under the authority of the Texas Water Code, §6.101 and §15.605, which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, including specifically the SRF program.

§375.14. Public Hearings. In accordance with the Act, the board shall **either** hold public hearings **or allow a period for public review and comment before** [to consider] adoption [and approval] of the annual intended use plan and the priority list and amendments thereto when required.

§375.17. Capitalization Grant Requirements.

(a) All projects which receive assistance from the fund and will be constructed in whole or in part [before fiscal year 1995] with funds directly made available by capitalization grants **which require compliance with the Act, Title II,** must meet the requirements under the Act, §§201(b), 201(g) (1), 201(g)(2), 201(g)(3), 201(g)(5), 201(g)(6), 201(n)(1), 201(o), 204(a)(1), 204(a)(2), 204(b)(1), 204(d)(2), 211, 218, 511(c)(1), and 513 **and with the requirements of subsection (b) of this section.** [If possible, capitalization grant funds will be committed before any other available funds in the SRF are used.] A brief description of the [federal statutory] requirements are as follows.

(1)-(15) (No change.)

(b) All projects which receive assistance from the fund under this chapter shall satisfy the following federal requirements:

(1) National Environmental Policy Act of 1969, PL 91-190;

(2) Davis-Bacon Act, 40 U.S.C., see 276a-276a-5;

(3) Archeological and Historic Preservation Act of 1974, PL 93-291;

(4) Clean Air Act, 42 U.S.C. 7506(c);

(5) Coastal Barrier Resources Act, 16 U.S.C. 3501 et seq;

(6) Coastal Zone Management Act of 1972, PL 92-583, as amended;

(7) Endangered Species Act, 16 U.S.C. 1531, et seq;

(8) Executive Order 11593, Protection and Enhancement of the Cultural Environment;

(9) Executive Order 11988, Floodplain Management;

(10) Executive Order 11990, Protection of Wetlands;

(11) Farmland Protection Policy Act, 7 U.S.C. 4201 et seq;

(12) Fish and Wildlife Coordination Act, PL 85-624, as amended;

(13) National Historic Preservation Act of 1966, PL 89-665, as amended;

(14) Safe Drinking Water Act, §1424(e), PL 92-523, as amended;

(15) Wild and Scenic Rivers Act, PL 90-542, as amended;

(16) Demonstration Cities and Metropolitan Development Act of 1966, PL 89-754, as amended;

(17) Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans;

(18) Age Discrimination Act, PL 94-135;

(19) Civil Rights Act of 1964, PL 88-352;

(20) Section 13 of PL 92-500; Prohibition against sex discrimination under the Federal Water Pollution Control Act;

(21) Executive Order 11246, Equal Employment Opportunity;

(22) Executive Orders 11625 and 12138, Women's and Minority Business Enterprise;

(23) Rehabilitation Act of 1973, PL 93-112 (including Executive Orders 11914 and 11250);

(24) Uniform Relocation and Real Property Acquisition Policies Act of 1970, PL 91-646; and

(25) Executive Order 12549, Debarment and Suspension.

§375.18. Project Priority List.

(a) (No change.)

(b) After the priority list is subjected to a **public review and comment period or** public hearing in accordance with §375.14 of this title (relating to Public Hearings) and approved by the board, it will be submitted to EPA. The priority list will become effective upon the date of EPA acceptance and shall remain effective until changed by the board and accepted by EPA.

§375.19. Rating Process and Criteria and Methods for Distribution of Funds.

(a) Criteria and Methods for Distribution of Funds.

(1) Because this chapter imposes requirements greater than those in SRF funding under Chapter 363 of this title (relating to Financial Assistance Program), the board generally provides lower interest rates for projects funded under this chapter. The board will limit funding under this chapter only to that dollar amount of projects reasonably necessary to meet federal requirements. The executive administrator, upon determining that it is necessary to seek projects to be funded under the requirements of this chapter, will provide notice by publication in the Texas Register and by direct mail to political subdivisions included in the project priority list of the availability of funds. The notice shall specify the approximate dollar amount of projects that the board intends to fund through this chapter, and shall notice that applications will be considered on a first come, first served basis based upon the date the application is considered to be complete and ready for board action unless a fund shortage exists. The board will not accept for funding under this chapter projects for which the board already has closed a loan under Chapter 363 of this title (relating to Financial Assistance Programs).

(2) A fund shortage is considered to exist when on the first business day of the month prior to the board meeting the cumulative amount of funds previously committed pursuant to paragraph (1) of this subsection, plus the amount of funds required to fund all applications which are complete and ready for scheduling for board action exceeds the amount of funds identified as available for such funding in the

notice under paragraph (1) of this subsection. Applications are considered to be complete and ready for board action if they meet the requirements of §375.32 of this title (relating to Required General Information), §375.33 of this title (relating to Required Fiscal Data), and §375.34 of this title (relating to Required Legal Data) of this title and either both §375.35 of this title (relating to Required Environmental Review and Determinations) and §375.36 of this title (relating to SRF Engineering Plan) of this title or §375.40 of this title (relating to Pre-Design Funding Option).

(3) Applications which are ready for scheduling for board action at the time a fund shortage occurs will be presented for board action under this chapter as follows:

(A) first, applications for treatment works in the order of their priority ranking in accordance with subsection (b) of this section;

(B) next, if additional funds are available, to applications for implementing management programs for nonpoint source pollution under §319 of the Act in the order of the receipt of completed applications; and

(C) next, if additional funds are available, applications for developing and implementing conservation and management plans under the National Estuary Program under §320 of the Act in the order of the receipt of completed applications.

(4) Funds will be made available to applicants under the provisions of paragraph (3) of this subsection in the order specified until available funds identified in paragraph (1) of this subsection, have been utilized. If funds are available under this chapter for only part of an application, the remainder of the project may be funded under the SRF interest rate associated with loans under Chapter 363, Subchapter B of this title (relating to Financial Assistance Programs). Applications for projects for which no funds are available under this chapter will be considered under Chapter 363, Subchapter B of this title (relating to Financial Assistance Programs), unless the applicant indicates it does not want to proceed under such chapter.

(b) Rating Process. The rating process will be used to rate treatment works if a funds shortage exists under subsection (a) of this section. The rating process is designed to achieve optimum water quality management, consistent with public health and water quality goals, and to give consideration to the varying populations of the state's political subdivisions.

(1) In situations where the application includes line work and sewage treatment plant work, and/or includes more than one sewage treatment plant, the application will be given the rating calculated for the principal project, type of work or the single facility which comprises the majority of the cost. The criteria used to rate applications and the number of points assignable to each criterion shall be as follows.

(A) Applications in which the principal project is a sewage treatment plant or lines which are at 90% or greater of their rated capacity as reported to the commission will receive three points.

(B) Applications in which the principal project is a sewage treatment plant or lines which are 75% or greater but less than 90% of their rated capacity as reported to the commission will receive two points.

(C) Applications in which the principal project is a sewage treatment plant or lines which are 65% or greater but less than 75% of their rated capacity as reported to the commission will receive 1.5 points.

(D) Applications in which the principal project is under a schedule imposed by a court order, EPA administrative order, or commission enforcement order which requires initiation of construction within 18 months will receive one point.

(E) Applications in which the principal project is required to meet a higher level of treatment than required by their current permit or in which the applicant elects not to discharge in order to avoid higher levels of treatment will receive 1.5 points.

(F) Applications in which the principal project will provide service to areas which have no sewerage systems and which have documented public health problems will receive two points.

(G) Applicants which are proposing to construct nonconventional, innovative, or alternative treatment or collection systems will receive one point.

(H) Applicants having jurisdiction over a population of 1,000 or less will receive three points.

(I) Applicants having jurisdiction over a population greater than 1,000, but less than 2,500 will receive 2.5 points.

(J) Applicants having jurisdiction over a population of 2,500 or greater, but less than 10,000 will receive two points.

(K) Applicants having jurisdiction over a population of 10,000 or greater, but less than 100,000 will receive 1.5 points.

(L) Applicants having jurisdiction over a population of 100,000 or greater will receive one point.

(M) Applicants whose proposed project will create or upgrade a system that qualifies as a regional system under the definition of Texas Water Code §17.001(24) will receive one point.

(2) The rating score will be the sum of the points assigned to the application under all criteria which are applicable to the application.

(3) In the event more than one applicant receives the same rating score, funding will first be made available to the applicant(s) whose sewage treatment plant(s) or lines are at the greatest percentage of their rated capacities.

(4) Where the existing treatment facilities will be abandoned and sewage diverted to a different location, the diversion line will be given the rating score of the treatment facilities to be abandoned.

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

Issued in Austin, Texas, on October 6, 1995.

TRD-9512820 Craig D. Pedersen
Executive Administrator
Texas Water Development Board

Earliest possible date of adoption: November 17, 1995

For further information, please call: (512) 463-7981

Application for Assistance

• 31 TAC §375.36, §375.38

The amendments are proposed under the authority of the Texas Water Code, §6.101 and §15.605, which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, including specifically the SRF program.

§375.36. SRF Engineering Plan.

(a) (No change.)

(b) Contents of SRF engineering plan. Pursuant to the Act, §602(b)(6), the SRF engineering plan shall contain the following information:

(1) (No change.)

(2) **for projects which require compliance with the Act, Title II,** demonstration that each sewer collection system is not or will not be subject to excessive infiltration;

(3) **for projects which require compliance with the Act, Title II,** systematic identification, screening, study, evaluation, and cost-effectiveness analysis of conventional (BPWTT) technologies, as well as innovative, and alternative technologies, processes, and techniques. Innovative and alternative technologies options are to include, as appropriate, the ultimate disposal of residues and sludge, revenue producing facilities and allowing, to the extent practicable, the more efficient use of energy and resources. **For projects not required to comply with the Act, Title II, sufficient information to evaluate the engineering feasibility of the project including a description of innovative and nonconventional alternatives considered and reasons for selection of the project proposed;**

(4)-(5) (No change.)

(6) **for projects which require compliance with the Act, Title II,** if collection lines are included, establishment of whether they are for replacement or major rehabilitation necessary to the total integrity and performance of the waste treatment works servicing the community, or they are for a new collection system in an existing community with sufficient existing or planned wastewater treatment capacity;

(7) (No change.)

(8) **for projects which require compliance with the Act, Title II,** description of the proposed or existing user charge system which will proportionately distribute operation and maintenance and replacement costs to each recipient of wastewater treatment services within the applicant's jurisdiction. The user charge system should generate sufficient funds to cover operation and maintenance and replacement costs. The description should include the formula for distributing charges, a projection of operation and maintenance and replacement costs, and the proposed rates to cover the costs. The system may allow subsidizing of low-income residential users (as defined by the board) when adopted after public notice and hearing;

(9) (No change.)

(10) **for projects which require compliance with the Act, Title II,** an analysis of potential recreation and open space opportunities for the proposed project;

(11) (No change.)

(12) **for projects which require compliance with the Act, Title II,** a description of the operational evaluation that will be provided for certification that the completed project conforms with the design specifications and effluent limitations;

(13)-(15) (No change.)

(c) Capital financing plan. **For projects which require compliance with the Act, Title II, the** [The] applicant should also include a capital financing plan including a projection of future additional (through ten or more years) needs for construction and reconstruction for wastewater services and an explanation of how and when the financing will be obtained.

(d)-(e) (No change.)

§375.38. Review of Applications by the Executive Administrator.

(a) Review criteria for loans. The executive administrator will review the applications and request any modifications or additional information as may be required for consistency with: §375.32 of this title (relating to Required General Information); §375.33 of this title (relating to Required Fiscal Data); §375.34 of this title (relating to Required Legal Data); §375.35 of this title (relating to Required Environmental Review and Determinations); and §375.36 of this title (relating to SRF Engineering Plan) . If at any time the executive administrator determines that requested modifications or information is not being provided expeditiously by the applicant or that the applicant is not proceeding expeditiously to seek a loan commitment he shall, after notice to the applicant, return the application. [Return of an application will result in moving the applicant to the bottom of the list within their population category in relative priority order. In the case of an application for assistance to build a nonpoint source pollution control project, return of an application will result in the project's being dropped from further consideration for that funding year.] The application **will** [would] have to be resubmitted to receive consideration for financial assistance [in a subsequent year].

(b) (No change.)

[(c) Return of incomplete application. The executive administrator shall return any application not in substantial compliance with these rules with notations showing deficiencies.

[(d) Return of applications which cannot be funded. All or parts of applications which cannot be funded within the funding year be returned to the applicant. Applications not funded during the funding year must be resubmitted according to §375.20 of this title (relating to Intended Use Plan) in order to be considered for funding in a later funding year.]

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

Issued in Austin, Texas, on October 6, 1995.

TRD-9512821 Craig D. Pedersen
Executive Administrator
Texas Water Development Board

Earliest possible date of adoption: November 17, 1995

For further information, please call: (512) 463-7981

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Board Action on Application • 31 TAC §375.51, §375.52

The amendment and new section are proposed under the authority of the Texas Water Code, §6.101 and §15.605, which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, including specifically the SRF program.

§375.51. Formal Action by the Board.

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

(c) **Commitment date. Recipients of funds for pre-design funding under this chapter must close their loans under §375.72 of this title (relating to Loan Closing) within six months of the date the board commits funds. Recipients of all other funding shall close their loans under §375.72 of this title (relating to Loan Closing) within 18 months of the date the board commits funds. Applicants which fail to close within the times specified by this section shall not be eligible to receive funds under this chapter, but may close their loans under the provisions of Chapter 363 of this title (relating to Financial Assistance Programs) at the interest rates associated with SRF loans made under that chapter.**

§375.52. Lending Rates.

(a) Procedure for setting fixed interest rates.

(1) The Development Fund Manager will set fixed rates for loans on a date that is:

(A) five business days prior to the adoption of the political subdivision's bond ordinance or resolution, and

(B) not more than 45 days before the anticipated closing of the loan from the board.

(2) After 45 days from the assignment of the interest rate on the loan,

rates may be extended only with the Development Fund Manager's approval.

(b) Fixed Rates. The fixed interest rates for SRF loans under this Chapter are set at rates 120 basis points below the fixed rate index rates for borrowers plus an additional reduction under paragraph (1) or (2) of this subsection. The fixed rate index rates shall be established for each borrower based on the borrower's market cost of funds as they relate to the Delphis Hanover Corporation Range of Yield Curve Scales or the 90 index of the Delphis Hanover Corporation Scale for borrowers with either no rating or a rating less than investment grade, using individual coupon rates for each maturity of proposed debt based on the appropriate index's scale.

(1) For borrowers which utilize Option One under §375.21(c) of this title (relating to Administrative Cost Recovery) an additional 30 basis points reduction will be used, for total fixed interest rates of 150 basis points below the fixed index rates for such borrower.

(2) For borrowers which utilize Option Two under §375.21(d) of this title (relating to Administrative Cost Recovery) an additional 48 basis points reduction will be used, for total fixed interest rates of 168 basis points below the fixed index rates for such borrower.

(c) Variable Rates. The interest rate for SRF variable rate loans under this chapter will be set at a rate equal to the actual interest cost paid by the board on its outstanding variable rate debt plus 36.5 basis points. Variable rate loans are required to be converted to long-term fixed rate loans within 90 days of project completion unless an extension is approved in writing by the Development Fund Manager. Within the time limits set forward in this subdivision, borrowers may request to convert to a long-term fixed rate at any time, upon notification to the Development Fund Manager and submittal of a resolution requesting such conversion. The fixed lending rate will be calculated under the procedures and requirements of subsections (a) and (b) of this section.

(d) The Development Fund Director may adjust a borrower's interest rate at any time prior to closing as a result of a change in the borrower's credit rating.

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

Issued in Austin, Texas, on October 6, 1995.

TRD-9512822 Craig D. Pedersen
Executive Administrator
Texas Water Development Board

Earliest possible date of adoption: November 17, 1995

For further information, please call: (512) 463-7981

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Engineering Design

• 31 TAC §375.61

The amendment is proposed under the authority of the Texas Water Code, §6.101 and §15.605, which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, including specifically the SRF program.

§375.61. Value Engineering.

(a) Applicability. **For projects required to comply with the Act, Title II, the** [The] applicant shall conduct value engineering, during the design of the project, if the estimated cost of building the treatment works is more than $10 million.

(b) (No change.)

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

Issued in Austin, Texas, on October 6, 1995.

TRD-9512823 Craig D. Pedersen
Executive Administrator
Texas Water Development Board

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For further information, please call: (512) 463-7981

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Prerequisites to Release of Funds

• 31 TAC §375.75

The amendment is proposed under the authority of the Texas Water Code, §6.101 and §15.605, which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, including specifically the SRF program.

§375.75. Movement of Funds Between Approved Projects. If approved by the executive administrator, a borrower may transfer remaining excess funds from one or more of the borrower's board-approved projects **under this chapter** to other of the borrower's board-approved projects **under this chapter or under Chapter 363 of this title (relating to Financial Assistance Programs) only if the project to which funds are being transferred has met all requirements imposed on projects by §375.17 of this title (relating to Capitalization Grant Requirements) and §375.35 of this title (relating to Required Environmental Review and Determinations).** Applicants must comply with any new requirements triggered by the transfer of funds.

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

Issued in Austin, Texas, on October 6, 1995.

TRD-9512824 Craig D. Pedersen
Executive Administrator
Texas Water Development Board

Earliest possible date of adoption: November 17, 1995

For further information, please call: (512) 463-7981

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Building Phase

• 31 TAC §375.86

The amendment is proposed under the authority of the Texas Water Code, §6.101 and §15.605, which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, including specifically the SRF program.

§375.86. Building Phase Submittals. The following submittals and accompanying actions by the assistance recipient will be required during the building phase of the project.

(1) **For projects required to comply with the Act, Title II, prior** [Prior] to placing the treatment works into operation, the applicant will adopt its user charge system and submit a copy of the enacted ordinance to the executive administrator. Further, the loan recipient will implement the user charge system for the useful life of the project.

(2)-(5) (No change.)

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

Issued in Austin, Texas, on October 6, 1995.

TRD-9512825 Craig D. Pedersen
Executive Administrator
Texas Water Development Board

Earliest possible date of adoption: November 17, 1995

For further information, please call: (512) 463-7981

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• 31 TAC §375.87

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

The repeal is proposed under the authority of the Texas Water Code, §6. 101 and §15.605, which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, including specifically the SRF program.

§375.87. Progress Payments.

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

Issued in Austin, Texas, on October 6, 1995.

TRD-9512826 Craig D. Pedersen
Executive Administrator
Texas Water Development Board

Earliest possible date of adoption: November 17, 1995

For further information, please call: (512) 463-7981

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Post Building Phase

• 31 TAC §375.102

The amendment is proposed under the authority of the Texas Water Code, §6.101 and §15.605, which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, including specifically the SRF program.

§375.102. Project Performance Certification. **For projects required to comply with the Act, Title II, the applicant shall,** on [On] the date one year after the initiation of operation, [the applicant shall] certify in a form acceptable to the executive administrator whether the project meets the design specifications and effluent limitations. If the applicant cannot certify that the project meets these requirements, the applicant shall accomplish the following actions:

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

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

Issued in Austin, Texas, on October 6, 1995.

TRD-9512827 Craig D. Pedersen
Executive Administrator
Texas Water Development Board

Earliest possible date of adoption: November 17, 1995

For further information, please call: (512) 463-7981

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TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter L. Motor Fuels Tax

• 34 TAC §3.171

The Comptroller of Public Accounts proposes an amendment to §3.171, concerning records required; information required. The State of Texas became a member of a multistate fuel tax agreement on July 1, 1995. Liquefied gas interstate truckers are required to maintain mileage records and fuel purchase invoices. Permitted liquefied gas dealers are required to maintain records of taxable deliveries.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule is in effect there will be no significant revenue impact on the state or local government.

Mr. Reissig also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding tax responsibilities. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to persons who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed under the 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 the Tax Code, Title 2.

The amendment implements the Tax Code, §153.302 and §153.309.

§3.171. Records Required; Information Required.

(a) Records required.

(1) (No change.)

(2) A dealer, as that term is defined in the Tax Code, §153.001, shall keep records showing the number of gallons of:

(A)-(C) (No change.)

(D) all diesel fuel sold, distributed, or used showing the date of the sale, distribution, or use and individual invoices issued covering deliveries into **fuel supply tanks of motor vehicles described under the definition of "interstate trucker" in the Tax Code, §153.001, in** [motor vehicle fuel supply tanks of 60 gallons or more in] accordance with the Tax Code, §153.220; and

(E) (No change.)

(3) A permitted liquefied gas dealer must keep records showing the number of gallons of:

(A) all liquefied gas sold or delivered for taxable purposes; and

(B) individual invoices issued covering taxable sales and deliveries in accordance with the Tax Code, §153.309.

(4)[(3)] An aviation fuel dealer, as that term is defined in the Tax Code, §153.001, shall keep records showing the number of gallons of:

(A) all gasoline or diesel fuel inventories on hand on the first day of each month;

(B) all gasoline or diesel fuel purchased or received, showing the name of the seller, the date of each purchase or receipt, the amount of motor fuels tax paid, or if no tax was paid, the basis for the nonpayment of the motor fuels tax;

(C) all gasoline or diesel fuel sold, distributed, or used in aircraft or aircraft servicing equipment, showing the name of the purchaser or user, the date of each sale, distribution or use, and the registration or "N" number of the airplane or a description or number of the aircraft servicing equipment in which the gasoline or diesel fuel was used; and

(D) all gasoline or diesel fuel lost by fire or other accident.

(5)[(4)] An interstate trucker, as that term is defined in the Tax Code, §153.001, shall keep records of:

(A) the total miles traveled in all states by all vehicles traveling into or from Texas and the total quantity of gasoline, [or] diesel fuel, **or liquefied gas** consumed in those vehicles; and

(B) the total miles traveled in Texas and the total quantity of gasoline, [or] diesel fuel, **or liquefied gas** delivered into the fuel supply tanks of motor vehicles **and into storage facilities** in Texas.

(6)[(5)] A jobber, as that term is defined in the Tax Code, §153.001, shall keep records showing the number of gallons of:

(A) all gasoline or diesel fuel inventories on hand on the first day of each month;

(B) all gasoline or diesel fuel purchased or received, showing the name of the seller, the date of each purchase or receipt, the amount of motor fuels tax paid, or if no tax was paid, the basis for nonpayment of the motor fuels tax;

(C) all gasoline or diesel fuel sold, distributed, or used, showing the name of the purchaser, the date of each sale, distribution, or use, and the amount of motor fuels tax assessed; and

(D) all gasoline or diesel fuel lost by fire or other accident.

(7)[(6)] A bonded user or other user with nonhighway equipment who files a claim for refund shall keep records showing the number of gallons of:

(A) all diesel fuel inventories on hand on the first day of each month;

(B) all diesel fuel purchased or received, showing the name of the seller and the date of each purchase or receipt;

(C) all diesel fuel deliveries into the fuel supply tanks of motor vehicles;

(D) all diesel fuel used for other purposes, showing the purpose for which used; and

(E) all diesel fuel lost by fire or other accident.

(8)[(7)] Additional records must be kept to substantiate any claimed deductions or exclusions authorized by law. When records regarding the amount and applicability of any deductions or exclusions from the motor fuels tax are insufficient, the comptroller may estimate deductions or exclusions based on any records available or may disallow all deductions and exclusions. No exclusions for loss by fire, accident, or theft will be allowed unless accompanied by fire department, environmental regulatory agency, or police department reports verifying the fire, accident, or theft.

(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 authority to adopt.

Issued in Austin, Texas, on October 11, 1995.

TRD-9512972 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Earliest possible date of adoption: November 17, 1995

For further information, please call: (512) 463-4062

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• 34 TAC §3.175

The Comptroller of Public Accounts proposes an amendment to §3.175, concerning liquefied gas tax decal. The 73rd Legislature, 1993, amended the Tax Code, Chapter 153, effective September 1, 1993, to change when the tax on liquefied gas used in interstate motor vehicles registered in the State of Texas and operating under a multistate tax agreement shall be paid.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule is in effect there will be no significant revenue impact on the state or local government.

Mr. Reissig also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding tax responsibilities. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to persons who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed under the 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 the Tax Code, Title 2.

The amendment implements the Tax Code, §153.302.

§3.175. Liquefied Gas Tax Decal.

(a) Use of decal. A person operating a motor vehicle that is required to be licensed in Texas for use on the public highways of Texas and is powered by natural gas, methane, ethane, propane, butane, or a mixture of those gases, including a motor vehicle equipped to use liquefied gas interchangeably with another motor fuel, must:

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

(3) if a motor vehicle dealer, pay the liquefied gas tax to a permitted liquefied gas dealer when the fuel is delivered into the fuel supply tanks of each motor vehicle; or[.]

(4) if an interstate trucker registered under a multistate tax agreement, pay the liquefied gas tax to a permitted liquefied gas dealer when the fuel is delivered into the fuel supply tanks of motor vehicles described under the definition of "interstate trucker" in the Tax Code, §153.001, that display a current multistate tax agreement decal.

(b)-(g) (No change.)

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

Issued in Austin, Texas, on October 11, 1995.

TRD-9512968 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Earliest possible date of adoption: November 17, 1995

For further information, please call: (512) 463-4062

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• 34 TAC §3.177

The Comptroller of Public Accounts proposes new §3.177, concerning separate liquefied gas tax permits required. The State of Texas became a member of a multistate fuels tax agreement on July 1, 1995. Interstate truckers registered under the multistate tax agreement and that deliver liquefied gas into the fuel supply tanks of certain motor vehicles from their own bulk storage must secure a liquefied gas dealer's permit. A liquefied gas dealer's permit is required when making taxable deliveries of liquefied gas. A permitted liquefied gas dealer operating certain motor vehicles interstate must secure a separate interstate trucker's permit.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule is in effect there will be no significant revenue impact on the state or local government.

Mr. Reissig also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding tax responsibilities. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to persons who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The new section is proposed under the 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 the Tax Code, Title 2.

The new section implements the Tax Code, §153.302.

§3.177. Separate Liquefied Gas Tax Permits Required.

(a) Dealer's permit required. Liquefied gas interstate truckers that are registered under a multistate tax agreement and that maintain bulk storage of liquefied gas for delivery into motor vehicles described under the definition of "interstate trucker" in the Tax Code, §153.001, must secure a separate liquefied gas dealer's permit.

(b) Delivery of liquefied gas.

(1) Liquefied gas delivered into the fuel supply tanks of motor vehicles described under the definition of "interstate trucker" in the Tax Code, §153.001, and displaying a current multistate tax agreement decal is a taxable delivery of liquefied gas.

(2) Liquefied gas delivered into the fuel supply tank of motor vehicles licensed in the state of Texas and displaying a current liquefied gas tax decal is not a taxable delivery.

(c) Report. Taxable deliveries of liquefied gas must be reported on the Texas Liquefied Gas Dealer Report in the same reporting period in which the taxable delivery was made.

(d) Interstate trucker permit required. As of July 1, 1995, a permitted liquefied gas dealer who operates a motor vehicle described under the definition of "interstate trucker" in the Tax Code, §153.001, must secure a separate liquefied gas interstate trucker's permit.

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

Issued in Austin, Texas, on October 11, 1995.

TRD-9512969 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Earliest possible date of adoption: November 17, 1995

For further information, please call: (512) 463-4062

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• 34 TAC §3.179

(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 Comptroller of Public Accounts or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Comptroller of Public Accounts proposes the repeal of §3.179, concerning liquefied gas dealers operating as interstate truckers. The State of Texas became a member of a multistate fuels tax agreement on July 1, 1995. This agreement will require permitted liquefied gas dealers to secure a separate liquefied gas interstate trucker permit for certain motor vehicles. The separate permit requirement is included in new §3.177 concerning Separate Liquefied Gas Permits Required.

Mike Reissig, chief revenue estimator, has determined that repeal of the rule will not result in any fiscal implications to the state or to units of local government.

Mr. Reissig also has determined that there will be no cost or benefit to the public from the repeal of this rule. This repeal is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There are no additional costs to persons who are required to comply with the repeal.

Comments on the proposal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The repeal is proposed under the 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 the Tax Code, Title 2.

The repeal implements the Tax Code, §153.302.

§3.179. Liquefied Gas Dealers Operating as Interstate Truckers.

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

Issued in Austin, Texas, on October 11, 1995.

TRD-9512970 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Earliest possible date of adoption: November 17, 1995

For further information, please call: (512) 463-4062

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• 34 TAC §3.196

The Comptroller of Public Accounts proposes an amendment to §3.196, concerning reports, due dates, bonding requirements, and qualifications for annual filers. The State of Texas became a member of a multistate fuels tax agreement on July 1, 1995. Interstate truckers registered under the multistate tax agreement are required to file reports based on different criteria than interstate truckers not registered under the multistate tax agreement.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule is in effect there will be no significant revenue impact on the state or local government.

Mr. Reissig also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding tax responsibilities. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to persons who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed under the 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 the Tax Code, Title 2.

The amendment implements the Tax Code, §153.302.

§3.196. Reports, Due Dates, Bonding Requirements, and Qualifications for Annual Filers.

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

(e) Exemptions. Subsections (a), (b), and (d) of this section do not apply to interstate truckers who are registered under a multistate tax agreement. Reports, due dates and bonding requirements are determined by the multistate tax agreement for interstate truckers registered under the multistate agreement.

(f) Liquefied gas reports. Permitted liquefied gas dealers who are also liquefied gas interstate truckers registered under a multistate tax agreement must file their liquefied gas dealer report with the same frequency that they report their interstate trucker operations under the multistate tax agreement.

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

Issued in Austin, Texas, on October 11, 1995.

TRD-9512971 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

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For further information, please call: (512) 463-4062

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Subchapter Q. Franchise Tax

• 34 TAC §3.397

(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 Comptroller of Public Accounts or in the Texas

Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Comptroller of Public Accounts proposes the repeal of §3.397, concerning requests for franchise tax reports and other information. This section is being repealed because the information in it is no longer current. Because the current information is contained in the Open Records Act, a specific franchise tax section is no longer necessary.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the repeal will be in effect there will be no significant revenue impact for state or local government as a result of enforcing or administering the rule.

Mr. Reissig also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated will be in eliminating duplicative rules. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to persons who are required to comply with the proposed rule.

Comments on the repeal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This repeal is proposed under the 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 the Tax Code, Title 2.

The repeal implements the Tax Code, §171.203, §171.207, and Government Code, §552.001 et seq.

§3.397. Requests for Franchise Tax Reports and Other Information.

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

Issued in Austin, Texas, on October 5, 1995.

TRD-9512778 Martin Cherry
Chief, General Law
Comptroller of Public Accounts

Earliest possible date of adoption: November 17, 1995

For further information, please call: (512) 463-4028

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• 34 TAC §3.402

(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 Comptroller of Public Accounts or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Comptroller of Public Accounts proposes the repeal of §3.402, concerning limitations on collections and refunds. This section is being repealed because the information contained in the section is no longer current due to past changes in the general provisions of the tax code. Because the current information is contained in the general provisions of the Tax Code, a specific franchise tax section is no longer necessary. This information will be addressed in a general rule being drafted by this agency.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the repeal will be in effect there will be no significant revenue impact for state or local government as a result of enforcing or administering the rule.

Mr. Reissig also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated will be in eliminating duplicative rules. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to persons who are required to comply with the proposed repeal.

Comments on the repeal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This repeal is proposed under the 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 the Tax Code, Title 2.

The repeal implements the Tax Code, §§111.060, 111.104, 111.201, 111.203, 111.205, and 112.051.

§3.402. Limitations on Collections and Refunds.

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

Issued in Austin, Texas, on October 5, 1995.

TRD-9512779 Martin Cherry
Chief, General Law
Comptroller of Public Accounts

Earliest possible date of adoption: November 17, 1995

For further information, please call: (512) 463-4028

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Subchapter U. Public Utility Gross Receipts Tax

• 34 TAC §3.511

The Comptroller of Public Accounts proposes an amendment to §3.511, concerning due date for assessment. The section is being amended pursuant to Senate Bill 319, 74th Legislature, 1995, which changes the section references and House Bill 2128, 74th Legislature, 1995, which extends the requirements for a public utility to prepay its gross receipts assessment for the years 1997 and 1998.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule is in effect there will be no significant revenue impact on the state or local government.

Mr. Reissig also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding tax responsibilities. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses There is no significant anticipated economic cost to persons who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed under the 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 the Tax Code, Title 2.

The amendment implements Texas Civil Statutes, Article 1446c, §1.352 and §1.353.

§3.511. Due Date for Assessment.

(a) The assessment imposed by Texas Civil Statutes, Article 1446c, §1.351 [§78], is due and payable, except as provided in subsection (c) of this section, on August 15 of each year. The payment and the report on the form prescribed by the Comptroller of Public Accounts will be considered timely if received by the comptroller or postmarked no later than midnight on August 15, except as provided in subsection (c)(1)-(3) of this section. The report due on August 15 of each year is for the reporting period of July 1 of the prior year through June 30 of the current year.

(b) (No change.)

(c) A taxpayer subject to the assessment is required to prepay the assessment due for the years 1995, 1996, [and] 1997, **and 1998**. The prepayments will be based on the taxpayer's estimate of its gross receipts for the next year. After the August 15, 1994, report, all taxpayers will be required to file annual reports. This subsection expires September 1, **1998** [1997]. The required estimated assessment payments due for the August 15, 1995, 1996, [and] 1997, **and 1998** reports are payable as follows:

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

(3) 1997-50% by August 15, 1996, and **50% by February 15, 1997**; [the remainder by August 15, 1997.]

(4) 1998-50% by August 15, 1997, and the remainder by August 15, 1998.

(d) The required estimated assessment payments will be determined in the following manner:

(1) the estimated assessments due for the years 1995, 1996, [and] 1997, **and 1998** are equal to the assessment due for the previous annual report or previous four quarterly reports, whichever may apply, or the actual assessment due; and

(2) any assessment amounts underpaid on assessments due on August 15, 1995, [or] August 15, 1996, **or August 15, 1997,** must be paid by those respective dates. Any assessment amounts overpaid shall be credited against the following assessments.

(e) (No change.)

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

Issued in Austin, Texas, on October 11, 1995.

TRD-9512976 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Earliest possible date of adoption: November 17, 1995

For further information, please call: (512) 463-4062

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• 34 TAC §3.513

The Comptroller of Public Accounts proposes an amendment to §3.513, concerning tax rate, gross receipts, exclusions and rates. The section is being amended pursuant to Senate Bill 319, Senate Bill 373, and House Bill 2128, 74th Legislature, 1995, which changes the section references.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule is in effect there will be no significant revenue impact on the state or local government.

Mr. Reissig also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding tax responsibilities. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to persons who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed under the 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 the Tax Code, Title 2.

The amendment implements Texas Civil Statutes, Article 1446c, §§1.003(14), 1.351, 2.0011(1), and 3.002(9).

§3.513. Tax Rate, Gross Receipts, Exclusions and Rates.

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

(1) Rate-Every compensation, tariff, charge, fare, toll, rental and classification, or any of them demanded, observed, charged, or collected whether directly or indirectly by any public utility for any service, product or commodity included in Texas Civil Statutes, Article 1446c, **§2.0011(1) or §3.002(9)** [§3(c)], or any rules, regulations, practices, or contracts affecting any compensation, tariff, charge, fare, toll, rental, or classification.

(2) (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 authority to adopt.

Issued in Austin, Texas, on October 11, 1995.

TRD-9512978 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Earliest possible date of adoption: November 17, 1995

For further information, please call: (512) 463-4062

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Subchapter V. Franchise Tax

• 34 TAC §3.561

The Comptroller of Public Accounts proposes an amendment to §3.561, concerning enterprise zones. Some of the definitions in subsection (b) were amended in accordance with legislation enacted by the 73rd Legislature, 1993, and the 74th Legislature, 1995. Subsection (j) was added to provide guidelines for corporations receiving an enterprise project designation after August 31, 1993. Subsection (k) was added to provide guidelines for corporations receiving an enterprise project designation after August 31, 1995.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule is in effect there will be no significant revenue impact on the state or local government beyond that anticipated in the legislations' fiscal notes.

Mr. Reissig also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be in the clarification of comptroller policy. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to persons who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed under the 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 the Tax Code, Title 2.

The amendment implements the Tax Code, §171.501 and §171.1015.

§3.561. Enterprise Zones.

(a) (No change.)

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

(1) Enterprise project-A **person, including a corporation or other entity,** [qualified business] designated by the Texas Department of Commerce as an enterprise project under the **Government Code, Chapter 2303** [Texas Enterprise Zone Act (Texas Civil Statutes, Article 5190.7) that is eligible for the state tax incentives provided by law for an enterprise project].

(2) Enterprise zone-An area of the state designated by the Texas Department of Commerce as an enterprise zone under the **Government Code, Chapter 2303** [Texas Enterprise Zone Act (Texas Civil Statutes, Article 5190.7)].

(3) New **permanent** job-A new employment position that is:

(A) created by a qualified business as **described by the Government Code, §2303.402** that has provided employment to a qualified employee of at least **1,820** [1,040] hours annually **(applicable to reports originally due on or after September 1, 1995);** and

(B) intended to **exist under the Government Code, Chapter 2303** [be an employment position retained] during the period the business is designated as an enterprise project.

(4) Qualified business-A person, including a corporation or other entity, that **is certified as a qualified business under the Government Code, §2303.402** [the Texas Department of Commerce certifies has met the necessary criteria specified under the Texas Enterprise Zone Act (Texas Civil Statutes, Article 5190.7)].

(5) Qualified employee-A **person** [An employee] who works for a qualified business and who performs at least 50% of **the person's** [his] service for the business within the enterprise zone. **See the Government Code, §2303.003.**

(6) (No change.)

(c) (No change.)

(d) The comptroller shall issue a refund under the Tax Code, §171.501, after receiving certification from the Texas Department of Commerce that a qualified business has created ten or more new **permanent** jobs for qualified employees in its enterprise zone. The ten or more new **permanent** jobs must have been created during the calendar year containing the accounting year end on which the franchise tax report is based. For example, a corporation with a June 30, 1992, accounting year end would be eligible for a refund of franchise tax paid on its 1993 annual report if ten or more new **permanent** jobs are created during the 1992 calendar year.

(e) (No change.)

(f) Claims for refund under this rule must be on the form provided by the comptroller for that purpose. The claim must indicate the report year in which franchise tax was paid. The claim must include certification from the Texas Department of Commerce that ten or more new **permanent** jobs have been created during the applicable calendar year.

(g) (No change.)

(h) A corporation must retain records substantiating its apportioned taxable capital or apportioned **taxable** earned surplus deduction. The records must be verifiable by audit and include copies of invoices showing the items purchased, the date of purchase, and the cost of the purchase. The records must also reflect the depreciated value of the items purchased and show that these items were placed in service in the zone after the corporation's designation as an enterprise project.

(i) (No change.)

(j) A corporation receiving its enterprise project designation after August 31, 1993, cannot claim a tax base deduction under the Tax Code, §171.1015, until after August 31, 1995. For example, a corporation with a November 30, 1993, fiscal year end is designated an enterprise project on September 30, 1993. The corporation could not claim the tax base deduction on its 1994 report until after August 31, 1995. An amended report would have to be filed at that time.

(k) A corporation receiving its enterprise project designation after August 31, 1995, cannot claim a tax base deduction under the Tax Code, §171.10015, until after August 31, 1997. For example, a corporation with a November 30, 1995, fiscal year end is designated an enterprise project on September 30, 1995. The corporation could not claim the tax base deduction on its 1996 report until after August 31, 1997. An amended report would have to be filed at that time.

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

Issued in Austin, Texas, on October 11, 1995.

TRD-9512977 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Earliest possible date of adoption: November 17, 1995

For further information, please call: (512) 463-4062

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Subchapter AA. Automotive Oil Sales Fee

• 34 TAC §3.701

The Comptroller of Public Accounts proposes an amendment to §3.701, concerning the reporting requirements. The 74th Legislature amended the Health and Safety Code, §371 to require distributors to file with the comptroller in the same manner as manufacturers and importers.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule is in effect there will be no significant revenue impact on the state or local government.

Mr. Reissig also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding tax responsibilities. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to persons who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed under the 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 the Tax Code, Title 2.

The amendment implements Texas Health and Safety Code §371.062.

§3.701. Reporting Requirements.

(a) Report and payment required.

(1) Each automotive oil manufacturer, [or] importer, **or distributor** shall file a report with the comptroller stating the number of quarts of automotive oil sold, imported, used, or consumed in this state.

(2) An automotive oil manufacturer **or distributor** who makes a first sale or use of automotive oil in Texas is liable for the fee.

(3) An automotive oil importer who imports or causes to be imported automotive oil into Texas for sale, use, or consumption is liable for the fee at the time the oil is received by the importer.

(b) Amount of fee.

(1) Except as provided in paragraph (2) of this subsection, the rate of the fee shall be $.02 per quart or $.08 per gallon of automotive oil.

(2) The Texas Natural Resource Conservation Commission[, formerly the Texas Water Commission,] may adjust the fee rate to meet the expenditure requirements of the used oil recycling program, and to maintain an appropriate fund balance. The fee rate may not exceed $.05 per quart or $.20 per gallon.

(3) On or before September 1 of each year, the Texas Natural Resource Conservation Commission[, formerly the Texas Water Commission,] and the comptroller shall jointly issue notice of the effective fee rate for the next fiscal year.

(4) Effective September 1, 1997, the rate of fee shall be $.01 per quart or $.04 per gallon of automotive oil. The rate shall be fixed at this level and paragraphs (1), (2), and (3) are superseded.

(c) Due date of report and payment.

(1) (No change.)

(2) An automotive oil manufacturer, [or] importer **or distributor** of automotive oil must file a quarterly report even if there is no fee to report.

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

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

Issued in Austin, Texas, on October 11, 1995.

TRD-9512991 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Earliest possible date of adoption: November 17, 1995

For further information, please call: (512) 463-4062

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• 34 TAC §3.702

The Comptroller of Public Accounts proposes an amendment to §3.702, concerning definitions and exemptions. The 74th Legislature amended the Health and Safety Code, §371 to provide new definitions, responsibilities

and categories of exemptions for the automotive oil sales fee. This amendment prescribes procedures and records required to claim the exemption.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule is in effect there will be no significant revenue impact on the state or local government.

Mr. Reissig also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding tax responsibilities. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to persons who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed under the 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 the Tax Code, Title 2.

The amendment implements Texas Health and Safety Code, §371.003 and §371.062.

§3.702. Definitions and Exemptions.

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

(1) (No change.)

(2) Distributor-A person who maintains a distribution center or warehouse in this state and annually sells more than 25,000 gallons of automotive oil. A distributor must obtain a permit from the comptroller's office.

(A) The distributor's permit is valid until the permit is surrendered by the holder or canceled by the comptroller.

(B) Oil manufacturers that meet the distributor definition, and are currently liable for paying this fee to the comptroller, will not be required to obtain a distributor's permit.

(3) Do-it-yourselfer used oil collection center-A site or facility registered with the Texas Natural Resource Conservation Commission ("TNRCC") that accepts or aggregates and stores used oil collected only from household do-it-yourselfers.

(4)[(2)] First sale-The first actual sale of automotive oil delivered to a location in this state and sold to a purchaser who is not an automotive oil manufacturer **or distributor**. First sale does not include the sale of automotive oil exported from this state[,] to a location outside this state[,] for the purpose of sale or use outside this state, **to the United States Government,** or for resale to or use by vessels engaged exclusively in foreign or interstate commerce. **A sale to a subsequent purchaser who maintains a do-it-yourselfer used oil collection center or used oil collection center registered by the TNRCC is not considered a first sale.**

(5)[(3)] Importer-Any person who imports, or causes to be imported, automotive oil into this state for sale, use, or consumption. For purposes of this subsection first sale includes the use or consumption of automotive oil in this state.

(6)[(4)] Oil manufacturer-Any person or entity that formulates automotive oil and packages, distributes, or sells that automotive oil. Oil manufacturer includes any person packaging or repackaging automotive oil.

(7)[(5)] Out-of-state seller-A person or entity engaged in business in this state will be defined as in §3.286 of this title (relating to Seller's and Purchaser's Responsibilities).

(8) Used oil collection center-A site or facility that is registered by the TNRCC to manage used oil collected from used oil generators or household do-it-yourselfers.

(b) Exemptions.

(1) Sales of automotive oil to an oil manufacturer **or distributor** are exempted from the automotive oil fee.

(2) Sales of automotive oil to a subsequent purchaser who maintains a do-it-yourselfer used oil collection center or used oil collection center registered by the TNRCC are exempted from this fee. A copy of their current TNRCC registration must be provided by the purchaser as documentation for an exempt purchase.

(3)[(2)] Sales of automotive oil that is to be used by vessels engaged exclusively in foreign and interstate commerce are exempted from this fee.

(4) Sales of automotive oil to the United States Government are exempted from this fee.

(5)[(3)] Out-of-state sales of automotive oil delivered to a location in another state for the purpose of sale or use outside the State of Texas are exempted from this fee if shipment is made by means of:

(A) the facilities of the seller;

(B) delivery by the seller to a carrier for shipment to a consignee at a point outside this state;

(C) delivery by the seller to a forwarding agent for shipment to a location in another state of the United States or its territories or possessions; or

(D) the facilities of the purchaser if proof of delivery outside of Texas is provided.

(6)[(4)] Exports beyond the territorial limits of the United States are exempted from this fee if proof of export can be shown by:

(A) a copy of the bill of lading issued by a licensed and certificated carrier showing the seller as consignor, the buyer or purchaser as consignee, and a delivery point outside the territorial limits of the United States;

(B) documentation provided by a licensed United States custom broker certifying that delivery was made to a point outside the territorial limits of the United States;

(C) formal entry documents from the country of destination showing that the automotive oil was imported into a country other than the United States. For the country of Mexico, the formal entry document would be the pedimento de importaciones document with a computerized number issued by Mexican customs officials; or

(D) a copy of the original airway, ocean, or railroad bill of lading issued by a licensed and certificated carrier which describes the items being exported and a copy of the freight forwarder's receipt if the freight forwarder takes possession of the property in Texas.

(c) Credit or refund of fee paid. A purchaser of automotive oil who makes an exempt sale or use of the oil as provided in this section may obtain a refund or credit from the supplier for the automotive oil fee previously paid to the supplier. The purchaser requesting a refund or credit from their supplier must furnish documentation that verifies the exemption. An oil manufacturer, **or distributor,** or importer who makes an exempt sale or use of the oil as provided in this section may obtain a refund or credit from the comptroller for the automotive oil fee previously paid to the comp-

troller. The amount of refund that may be claimed may equal but not exceed the amount of the fee paid on the automotive oil.

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

Issued in Austin, Texas, on October 11, 1995.

TRD-9512992 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Earliest possible date of adoption: November 17, 1995

For further information, please call: (512) 463-4062

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Subchapter CC. Waste Tire Recycling Fee

• 34 TAC §3.721

The Comptroller of Public Accounts proposes an amendment to §3.721, concerning the collection and reporting requirements. The 74th Legislature amended the Health and Safety Code, §361 to impose the waste tire recycling fee on the sale of certain used and new large tires. This amendment prescribes which tires are subject to the fee and who must collect and remit the fee to the comptroller.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule is in effect there will be no significant revenue impact on the state or local government.

Mr. Reissig also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding tax responsibilities. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to persons who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed under the 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 the Tax Code, Title 2.

The amendment implements Texas Health and Safety Code, §361.471 and §361.472.

§3.721. Collection and Reporting Requirements.

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

(1) Dealer–A wholesaler, retailer, or any other person who sells or offers to sell new or **good used** tires.

(2) Good used tire–A tire, not including a recapped or retreaded tire, suitable for continued use for its original intended purpose.

(3)[(2)] Tire–A new or **good used** tire that has a rim diameter equal to or greater than 12 inches but less than **17.5** [25] inches, **a new tire with a rim diameter equal to or greater than 17.5 inches,** or a new motorcycle tire, regardless of the rim diameter.

(4)[(3)] Sale for resale–A sale of a tire to a purchaser for the purpose of reselling the tire in the normal course of business in the form or condition in which it is acquired (i.e., as a separate item), or as original equipment in the manufacture of new vehicles. A sale of a replacement tire that is attached to or becomes an integral part of a vehicle, trailer, or other equipment that is being sold, rented, or leased is not a sale for resale. The waste tire recycling fee is due on the sale prior to the replacement tire becoming a part of this equipment.

(b) Collection and remittance of the fee.

(1) Every dealer must collect the fee on each sale of a new or **good used** tire, unless specifically exempted by this section.

(2)-(4) (No change.)

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

(g) Exemptions.

(1)-(7) (No change.)

(8) Off-road tires with a rim diameter of 17.5 inches or greater intended for use on heavy machinery such as loaders, dozers, graders, or mining equipment are not subject to the fee.

(9) A recapped or retreaded tire is not subject to the fee.

(h) (No change.)

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

Issued in Austin, Texas, on October 11, 1995.

TRD-9512993 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Earliest possible date of adoption: November 17, 1995

For further information, please call: (512) 463-4062

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

Chapter 3. Traffic Law Enforcement

Traffic Supervision

• 37 TAC §3.62

(Editor's Note: The Texas Department of Public Safety proposes for permanent adoption the repealed section it adopts on an emergency basis in this issue. The text of the repealed 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.)

The Texas Department of Public Safety proposes the repeal of §3.62, concerning regulations governing transportation safety. The repeal is necessary due to the department proposing simultaneous new §3.62, which implements the provisions of Senate Bill 3, 74th Legislature, 1995, (Chapter 705, Acts of the 74th Legislature, Regular Session, 1995) effective September 1, 1995, which requires the director to adopt by reference, rules, regulating the safe transportation of hazardous materials and to regulate the operations of commercial motor vehicles in the state.

Tom Haas, Chief of Finance, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Haas also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be to ensure the public that a motor carrier and a commercial motor carrier vehicle are in compliance with all statutes and regulations pertaining to the safe transportation of persons, property, and hazardous materials. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to John C. West, Jr., Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0001, (512) 465-2890.

The repeal is proposed under Texas Civil Statutes, Article 6675d and Article 6687b-2, which provide the director of the Texas Department of Public Safety with the authority to establish rules for the conduct of the work of the Texas Department of Public Safety, and more specifically which authorizes the director to adopt rules regulating the safe operation of commercial motor vehicles.

The repeal affects Texas Civil Statutes, Article 6675d and 6687b-2.

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

Issued in Austin, Texas, on October 5, 1995.

TRD-9512741 James R Wilson
Director
Texas Department of
Public Safety

Earliest possible date of adoption: November 17, 1995

For further information, please call: (512) 465-2890

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Chapter 6. License To Carry Concealed Handgun

The Texas Department of Public Safety proposes new §§6.1-6.5, 6.11-6.21, 6.31, 6.32, 6.41-6.47, 6.51-6.54, 6.61-6.63, 6.71-6.96, and 6.111-6.119, concerning License To Carry Concealed Handgun. These new sections set forth eligibility and procedures for licensing persons to carry concealed handguns, enforcement, suspension and revocation procedures, and certification of qualified handgun instructors. Identical emergency action has been simultaneously filed.

The proposals are necessary to implement the provisions of Senate Bill 60, 74th Legislature, 1995, to be codified as Texas Civil Statutes, Article 4413(29ee) "the Act." The Act requires the Texas Department of Public Safety to adopt necessary procedures by which qualified handgun instructors may become certified to instruct applicants for a license to carry a concealed handgun. These rules set forth procedures for issuance, denial, suspension, and revocation of the license to carry a concealed handgun, and similarly, procedures for instructor certification.

Tom Haas, Chief of Finance, has determined that for the first-five year period the sections are in effect, there will be some fiscal impact on state government as a result of enforcing or administering the sections. Local agencies will be asked to cooperate in providing information related to background investigations of instructor applicants and license applicants, resulting in some administrative expense. The department has no historical data on which to determine the fiscal impact of this chapter to units of local government. Local law enforcement agencies will also be required to submit Uniform Crime Reporting (UCR) data related to offenses committed by license holders. The department has no historical data from which to project the volume of police agency reports that will be necessary to fulfill reporting requirements.

Mr. Haas 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 licensing of individuals to carry a concealed handgun. There will be fiscal impact on small and large businesses. The department anticipates that certified handgun instructors will derive some economic benefit from instruction of license applicants. Shooting range establishments will derive economic benefit from instruction and proficiency demonstration required of license applicants. Insurance companies may derive some benefit from issuing liability policies to businesses involved in instruction of license applicants. Some establishments are required by statute to post signs prohibiting persons from carrying handguns on certain premises: hospitals, nursing homes, and certain alcohol establishments. Other businesses may post signs to prohibit persons from carrying on their premises.

Shooting ranges which intend to participate in the instruction of license applicants must register with the Department of Public Safety as provided by this chapter. The department is obliged by statute to monitor instruction of license applicants. The department considers this registration procedure to be the least restrictive means to achieve this goal. This registration procedure is voluntary and at no expense to the range owner. Shooting range establishments which do not intend to participate in the instruction of license applicants are under no obligation to register with the Department of Public Safety. Shooting ranges are not subject to direct administrative authority of the department.

The anticipated economic cost to persons who wish to obtain a license will include a nonrefundable basic application fee of $140 for a four-year license. Certain applicants may apply under reduced fee provisions or be entitled to proration of the fee where a two-year license is issued. A required course of instruction may cost the license applicant approximately $100 through $300. The fee for instruction is not set by statute or rule. The department has no statutory authority to regulate fees charged by instructors to license applicants. Additional expenses may include one or more handguns, ammunition, and appropriate clothing.

The anticipated cost to persons who wish to become certified handgun instructors will include an instructor application and training fee of $100. An instructor applicant must also provide for travel and living expenses for a one-week course of training. Currently, instructor training is available only in Austin. Ammunition will cost approximately $120.

Comments on the proposal may be submitted to John C. West, Jr., Chief of Legal Services, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0001, (512) 465-2890.

Subchapter A. General Provisions

• 37 TAC §§6.1-6.5

(Editor's Note: The Texas Department of Public Safety proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The new sections are proposed pursuant to Texas Civil Statutes, Article 4413(29ee), §22, which authorize the department to adopt rules to administer this article. Authority to adopt by rule specific forms, fees and procedures, is provided under Article 4413(29ee) as follows: application request form, §6(a); form of license §6(e); application for modified license, §10(b); renewal application form and renewal fee, §11(b); procedure for renewal by mail, §11(d); minimum standards for handgun proficiency, §16(a); establishment of continuing education course, §16(c); recordkeeping responsibilities of certified handgun instructors, §16(i); fee for handgun proficiency certificate, §17(a); and retraining course for certified handgun instructors, §17(d). Authority for the department to adopt rules for local law enforcement to report concealed handgun incidents is provided by Texas Government Code, §411.047(b).

Texas Civil Statutes, Article 4413 (29ee), Texas Government Code, §411. 047, and Texas Penal Code §46.02 and §46.035 is affected by this proposal.

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

Issued in Austin, Texas, on October 3, 1995.

TRD-9512684 James R. Wilson
Director
Texas Department of
Public Safety

Earliest possible date of adoption: November 17, 1995

For further information, please call: (512) 465-2890

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Subchapter B. Eligibility and Application Procedures

• 37 TAC §§6.11-6.21

(Editor's Note: The Texas Department of Public Safety proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The new sections are proposed pursuant to Texas Civil Statutes, Article 4413(29ee). Authority to adopt by rule specific forms, fees and procedures, is provided under Article 4413(29ee) as follows: application request form, §6(a) ; form of license, §6(e); application for modified license, §10(b); renewal application form and renewal fee, §11(b); procedure for renewal by mail, §11(d); minimum standards for handgun proficiency, §16(a); and application fee for active or retired judicial officer, §30(d) (4). Authority to adopt a system to implement staggered and evenly distributed license expiration dates is granted by Senate Bill 60, 74th Legislature, 1995, Chapter 229, §8(b).

The new sections affect Texas Civil Statutes, Article 4413(29ee).

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

Issued in Austin, Texas, on October 3, 1995.

TRD-9512686 James R. Wilson
Director
Texas Department of
Public Safety

Earliest possible date of adoption: November 17, 1995

For further information, please call: (512) 465-2890

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Subchapter C. Procedures on Denial of License

• **37 TAC §6.31, §6.32**

(Editor's Note: The Texas Department of Public Safety proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The new sections are proposed pursuant to Texas Civil Statues, Article 4413(29ee), §22, which authorizes the department to adopt rules to administer this article.

The new sections affect Texas Civil Statutes, Article 4413(29ee), §22.

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

Issued in Austin, Texas, on October 3, 1995.

TRD-9512688 James R. Wilson
Director
Texas Department of Public Safety

Earliest possible date of adoption: November 17, 1995

For further information, please call: (512) 465-2890

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Subchapter D. Time, Place, and Manner Restrictions on License Holders

• **37 TAC §§6.41-6.47**

(Editor's Note: The Texas Department of Public Safety proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The new sections are proposed pursuant to Texas Civil Statutes, Article 4413(29ee), §22, which authorize the department to adopt rules to administer this article.

The new sections affect Texas Civil Statutes, Article 4413(29ee), §22.

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

Issued in Austin, Texas, on October 3, 1995.

TRD-9512690 James R. Wilson
Director
Texas Department of Public Safety

Earliest possible date of adoption: November 17, 1995

For further information, please call: (512) 465-2890

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Subchapter E. Enforcement Procedures

• **37 TAC §§6.51-6.54**

(Editor's Note: The Texas Department of Public Safety proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The new sections are proposed pursuant to Texas Civil Statutes, Article 4413(29ee), §22, which authorize the department to adopt rules to administer this article. Authority for the department to adopt rules for local law enforcement to report concealed handgun incidents is provided by Texas Government Code, §411.047(b).

The new sections affect Texas Civil Statutes, Article 4413(29ee).

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

Issued in Austin, Texas, on October 3, 1995.

TRD-9512692 James R. Wilson
Director
Texas Department of Public Safety

Earliest possible date of adoption: November 17, 1995

For further information, please call: (512) 465-2890

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Subchapter F. Suspension and Revocation Procedures

• **37 TAC §§6.61-6.63**

(Editor's Note: The Texas Department of Public Safety proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The new sections are proposed pursuant to Texas Civil Statutes, Article 4413(29ee), §22, which authorize the department to adopt rules to administer this article. Authority for the department to adopt rules for local law enforcement to report concealed handgun incidents is provided by Texas Government Code, §411.047(b).

The new sections affect Texas Civil Statutes, Article 4413(29ee).

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

Issued in Austin, Texas, on October 3, 1995.

TRD-9512694 James R. Wilson
Director
Texas Department of Public Safety

Earliest possible date of adoption: November 17, 1995

For further information, please call: (512) 465-2890

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Subchapter G. Certified Handgun Instructors

• **37 TAC §§6.71-6.96**

(Editor's Note: The Texas Department of Public Safety proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The new sections are proposed pursuant to Texas Civil Statutes, Article 4413(29ee), §22, which authorize the department to adopt rules to administer this article.

The new sections affect Texas Civil Statutes, Article 4413(29ee).

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

Issued in Austin, Texas, on October 3, 1995.

TRD-9512697 James R. Wilson
Director
Texas Department of Public Safety

Earliest possible date of adoption: November 17, 1995

For further information, please call: (512) 465-2890

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Subchapter H. Information and Reports

• **37 TAC §§6.111-6.119**

(Editor's Note: The Texas Department of Public Safety proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The new sections are proposed pursuant to Texas Civil Statutes, Article 4413(29ee), §22, which authorize the department to adopt rules to administer this article.

The new sections affect Texas Civil Statutes, Article 4413(29ee).

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

Issued in Austin, Texas, on October 3, 1995.

TRD-9512698 James R. Wilson
Director
Texas Department of Public Safety

Earliest possible date of adoption: November 17, 1995

For further information, please call: (512) 465-2890

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Chapter 16. Commercial Driver's License

Licensing Requirements, Qualifications, Restrictions, and Endorsements

• 37 TAC §16.9

(Editor's Note: The Texas Department of Public Safety proposes for permanent adoption the amended section it adopts on an emergency basis in this issue. The text of the amended section is in the Emergency Rules section of this issue.)

The Texas Department of Public Safety proposes an amendment to §16.9, concerning licensing requirements, qualifications, restrictions, and endorsements. Amendment adds new paragraph (5), which states a driver who operates a commercial motor vehicle in intrastate commerce only may obtain a vision waiver from the department provided the person has 20/40 (Snellen) or better distant binocular acuity with or without corrective lenses. Identical emergency action has been simultaneously filed.

Tom Haas, Chief of Finance, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Haas 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 waiving of the vision standards for those commercial drivers who operate intrastate commerce. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to John C. West, Jr., Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0001, (512) 465-2890.

The amendment is proposed under Texas Civil Statutes, Article 6687b-2, §12B, as passed by the 74th Legislature, 1995, which provides the Texas Department of Public Safety with the authority to adopt rules and regulations necessary to carry out the provisions of the Texas Commercial Driver's License Act and the Federal Commercial Motor Vehicle Safety Act of 1986 and Texas Transportation Code, §522.005.

The amendment affects Texas Civil Statutes, Article 6687b-2, §12B, as passed by 74th Legislature, Regular Session 1995.

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

Issued in Austin, Texas, on October 5, 1995.

TRD-9512742 James R. Wilson
Director
Texas Department of Public Safety

Earliest possible date of adoption: November 17, 1995

For further information, please call: (512) 465-2890

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Part V. Texas Board of Pardons and Paroles

Chapter 141. General Provisions

Rulemaking

• 37 TAC §141.52, §141.57

(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 Board of Pardons and Paroles or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Board of Pardons and Paroles proposes the repeal of §141.52, and §141.57, concerning the suspension of board rules and procedures.

The section is proposed for repeal because the board is proposing the adoption of a new rule 37 TAC §141.52 in order to: stress that the board, as the body exercising paroling discretion, considers it a paramount goal that its decisions be made in the best interest of the public and public safety, and give the board more flexibility in making its decisions consistent with the best interest of the public and public safety.

Michael F. Miller, General Counsel, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing the repeals.

Mr. Miller also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be inapplicable, as the public is relatively unaffected by this particular repeal in an economic sense. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Michael F. Miller, 8610 Shoal Creek Boulvevard, Austin, Texas 78759; P.O. Box 13401, Capitol Station, Austin, Texas 78711.

The repeals are proposed under Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

No other code or amendment is affected by the proposed repeals.

§141.52. Suspension of Rules.

§141.57. Petition for Adoption of Rules.

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

Issued in Austin, Texas, on October 6, 1995.

TRD-9512877 Michael F. Miller
General Counsel
Texas Board of Pardons and Paroles

Earliest possible date of adoption: November 17, 1995

For further information, please call: (512) 406-5863

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The Texas Board of Pardons and Paroles proposes new §141.52 and §141.57, concerning the suspension of board rules and procedures, and the adoption of rules on an emergency basis.

The new sections are proposed in order: to stress that the board, as the body exercising paroling discretion, considers it a paramount goal that its decisions be made in the best interest of the public and public safety, and to give the board more flexibility in making its decisions consistent with the best interest of the public and public safety.

Michael F. Miller, General Counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Miller 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 as proposed will be increased efficiency consistent with preservation of the legal interests of all interested parties in parole decision matters.

Comments on the proposal may be submitted to Michael F. Miller, 8610 Shoal Creek Boulevard, Austin, Texas 78759; P.O. Box 13401, Austin, Texas 78711.

The new sections are proposed under Article 42.18, §8(g) of the Code of Criminal Procedure, which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

No other code or amendment is affected by the proposed new sections.

§141.52. Suspension of Rules; Emergency Adoption of Rules.

(a) The board may suspend the provisions of any procedure or rule when the enforcement of the rule would unduly complicate or prolong the process and the suspension would not result in significant harm to the interests of any person and would be in the best interest of justice for all interested persons.

(b) Pursuant to the Texas Government Code, §2001.034, the board may adopt an emergency rule without prior notice or hearing, or with an abbreviated notice and a hearing that it finds practicable, if the board:

(1) 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; and

(2) states in writing the reasons for its finding under paragraph (1) of this subsection.

(c) The board shall set forth in an emergency rule's preamble the finding required by subsection (b) of this section.

(d) A rule adopted under this section may be effective for not longer than 120 days and may be renewed once for not longer than 60 days. An identical rule may be adopted under §2001.023 and §2001.029 of the Texas Government Code.

(e) The board shall file an emergency rule adopted under this section and the board's written reasons for the adoption in the office of the secretary of state for publication in the *Texas Register* in the manner prescribed by Chapter 2002 of the Texas Government Code.

§141.57. Petition for Adoption of Rules.

(a) Any interested person who is not a state agency may petition the board requesting the adoption of a proposed rule.

(b) The petition shall be submitted in writing, must be initially identified as such, and must comply with the following requirements:

(1) Each rule requested must be requested by separate petition;

(2) Each petition must state the name, address, and the interest of the petitioner;

(3) Each petition must be addressed to the board at its Chairman's office;

(4) Each petition shall include:

(A) a brief explanation of the proposed rule;

(B) the text of the proposed rule prepared in a manner to indicate any words to be added or deleted from the current text;

(C) a statement of the statutory or other authority under which the rule is proposed to be adopted, including:

(i) a concise explanation of the particular statutory or other provisions under which the rule is proposed;

(ii) the section or article of the code affected; and

(iii) a reasoned justification for adopting the proposed rule;

(D) a statement relative to the fiscal or economic implications on the board or other public entity of adopting,implementing, and enforcing the proposed rule.

(c) A proposed rule is considered submitted for purposes of this rule and §2001.021 of the Texas Government Code at the date of the next regularly scheduled meeting of the board after the proposed rule is sent in for consideration, and it is acknowledged submitted by the board at such meeting. Not later than the 60th day after the date of submission of a petition under this section, the board shall:

(1) deny the petition in writing, stating its reasons for the denial; or

(2) initiate a rulemaking proceeding as provided under the Texas Government Code.

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

Issued in Austin, Texas, on October 6, 1995.

TRD-9512878 Michael F. Miller
General Counsel
Texas Board of Pardons and Paroles

Earliest possible date of adoption: November 17, 1995

For further information, please call: (512) 406-5863

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Chapter 145. Parole

Parole Process

• 37 TAC §145.6

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

The Texas Board of Pardons and Paroles proposes the repeal of §145.6, concerning the denial of parole.

The section is proposed for repeal because the board is proposing the adoption of a new rule §145.6 in order to: stress that the board, as the body exercising paroling discretion, considers it a paramount goal that its decisions be made in the best interest of the public and public safety, give the board more flexibility in making its decisions consistent with that paramount goal; and bring the notification process into compliance with statutory law found in the Code of Criminal Procedure, Article 42.18 §8.

Michael F. Miller, General Counsel, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing the repeal.

Mr. Miller also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be inapplicable, as the public is relatively unaffected by this particular repeal in an economic sense. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Michael F. Miller, 8610 Shoal Creek Boulevard, Austin, Texas 78759; P.O. Box 13401, Austin, Texas 78711.

The repeal is proposed under Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

No other code or amendment is affected by the proposed repeal.

§145.6. Denial of Parole.

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

Issued in Austin, Texas, on October 6, 1995.

TRD-9512879 Michael F. Miller
General Counsel
Texas Board of Pardons and Paroles

Earliest possible date of adoption: November 17, 1995

For further information, please call: (512) 406-5863

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The Texas Board of Pardons and Paroles proposes new §145.6, concerning denial of parole.

The board proposes the new section in order to: stress that the board, as the body exercising paroling discretion, considers it a paramount goal that its decisions be made in the best interest of the public and public safety, give the board more flexibility in making its decisions consistent with that paramount goal; and bring the notification process into compliance with statutory law found in the Code of Criminal Procedure, Article 42.18 §8.

Michael F. Miller, General Counsel, has determined that for the first five-year period the new section is in effect there will be no fiscal implications for state or local government as a result of enforcing the section.

Mr. Miller also has determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the section will be inapplicable, as the public is relatively unaffected by this particular section in an economic sense. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the new section as proposed.

Comments on the proposal may be submitted to Michael F. Miller, 8610 Shoal Creek Boulevard, Austin, Texas 78759; P.O. Box 13401, Capitol Station, Austin, Texas 78711.

The new section is proposed under Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

No other code or amendment is affected by the proposed new section.

§145.6. Denial of Parole. If the board or a board panel denies parole, the inmate shall be notified in writing that the board/panel has denied parole because his/her release is not currently in the best interest of the public or the public's safety.

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

Issued in Austin, Texas, on October 6, 1995.

TRD-9512879 Michael F. Miller
General Counsel
Texas Board of Pardons and Paroles

Earliest possible date of adoption: November 17, 1995

For further information, please call: (512) 406-5863

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Chapter 149. Mandatory Supervision

Rules and Conditions of Mandatory Supervision

• 37 TAC §149.2

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

The Texas Board of Pardons and Paroles proposes the repeal of §149.2, concerning restitution.

The section is proposed for repeal because the procedures described in it are no longer required functions of the Texas Board of Pardons and Paroles. These functions have been transferred to the Texas Department of Criminal Justice-Pardons and Paroles Division.

Michael F. Miller, General Counsel, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing the repeal.

Mr. Miller also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be inapplicable, as the public is relatively unaffected by this particular repeal in an economic sense. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Michael F. Miller, 8610 Shoal Creek Boulevard, Austin, Texas 78759; P.O. Box 13401, Austin, Texas 78711.

The repeal is proposed under Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

Article 42.037(h) and Article 42.18 §15(b)(2) of the Code of Criminal Procedure are affected by this proposed repeal.

§149.2. Restitution; Monthly Amount; Payment; Alteration.

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

Issued in Austin, Texas, on October 6, 1995.

TRD-9512880 Michael F. Miller
General Counsel
Texas Board of Pardons and Paroles

Earliest possible date of adoption: November 17, 1995

For further information, please call: (512) 406-5863

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TITLE 43. TRANSPORTATION

Part I. Texas Department of Transportation

Chapter 11. Design

Private Toll Roads

• 43 TAC §§11.100-11.107

(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.)

The Texas Department of Transportation proposes the repeal of §§11. 100-11.107 concerning private toll roads.

Transportation Code, §§362.101-362.104, authorizes the Texas Transportation Commission to adopt procedural and substantive rules and regulations for approval of privately constructed and owned toll projects which connect to a road, bridge, or a highway included in the state highway system.

The sections are proposed for repeal to provide ease of access to all rules relating to toll projects. Repeal of these sections is necessary because the subject matter of these sections falls within new Chapter 27, Toll Projects. The subject matter is reenacted in new §§27.30-27.37, concerning private toll roads, which are being contemporaneously proposed for adoption.

Thomas A. Griebel, Assistant Executive Director, Multimodal Transportation, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed repeals.

Mr. Griebel also has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed repeals.

Mr. Griebel also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of implementing the repeals will be a easier access to rules concerning toll roads. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Written comments on the proposed repeals may be submitted to Thomas A. Griebel, Assistant Executive Director, Multimodal Transportation, Texas Department of Transportation, Dewitt C. Greer Building, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of written comments will be 5:00 p.m. on November 17, 1995.

The repeals are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation and Transportation Code, §§362.101-362.104, which authorizes the Texas Transportation Commission to adopt procedural and substantive rules and regulations for approval of privately constructed and owned toll projects which connect to a road, bridge, or a highway included in the state highway system.

The repeals do not affect other statutes, articles, or codes.

§11.100. Purpose.

§11.101. Definitions.

§11.102. Preliminary Studies.

§11.103. Application.

§11.104. Projects Requirements.

§11.105. Hearing.

§11.106. Commission Action.

§11.107. Compliance.

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

Issued in Austin, Texas, on October 6, 1995.

TRD-9512838 Robert E. Shaddock
General Counsel
Texas Department of Transportation

Earliest possible date of adoption: November 17, 1995

For further information, please call: (512) 463-8630

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Chapter 17. Vehicle Titles and Registration

Motor Vehicle Certificates of Title

• 43 TAC §§17.2, 17.3, 17.7, 17.8

The Texas Department of Transportation proposes amendments to §§17.2, 17.3, and 17.7, concerning the issuance of original, duplicate, certified, and alias motor vehicle certificates of title, and new §17.8, concerning the issuance of motor vehicle certificates of title for salvage and nonrepairable motor vehicles.

House Bill 2151, 74th Legislature, 1995, amended Texas Civil Statutes, Article 6687-1, to authorize the department to issue motor vehicle certificates of title for salvage and nonrepairable motor vehicles.

Amended §17.2 adds certain words and terms applicable to these sections and changes citations to statutory authority to the Transportation Code in accordance with Senate Bill 971, 74th Legislature, 1995, which recodified the statutes relating to transportation.

Amended §17.3 clarifies existing procedures for obtaining a certificate of title for a house trailer and removes all reference to a certificate of title for equipment. These amendments also changes citations to statutory authority to the Transportation Code.

Amended §17.7 removes definitions which are being deleted or incorporated into amended §17.2 and clarifies existing procedures for obtaining alias certificates of title.

New §17.8 describes the place of application, who must apply, information to be included on application, and accompanying documentation for salvage vehicle certificates of title. The section describes issuance of certificates of title for salvage vehicles, explains the process for recording a lien on a salvage certificate of title, describes how an owner or lienholder may obtain a replacement for lost or destroyed certificates of title, describes to whom and how ownership of a salvage vehicle may be transferred, describes the process of obtaining a certificate of title for a rebuilt salvage motor vehicle, states the procedure by which insurance companies shall notify the department regarding payment of a total loss claim on a new or late model salvage or nonrepairable motor vehicle, and describes how a salvage vehicle dealer may acquire salvaged vehicles for the purpose of dismantling, scrapping, or destruction.

Jerry L. Dike, Director, Vehicle Titles and Registration Division, has determined that for the first five years the amendments and new section are in effect, there will be fiscal implications to the state as a result of enforcing or administering the amendments and new section. The estimated increase in cost to the state is approximately $284,216 for the first year the proposed sections are in effect, and $35,090 for each year of the next four years the proposed sections are in effect. The estimated increase in revenue will be $180,000 for each year of the first five years the proposed sections are in effect. There will be no significant fiscal implications expected to local governments as a result of administering or enforcing the amendments and new section.

Mr. Dike has determined that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed amendments and new section.

Mr. Dike also has determined that for each year of the first five years the sections are in effect the public benefits anticipated as a result of enforcing the amendments and new section will be the proper, efficient, and effective issuance of motor vehicle certificates of title for salvage and nonrepairable vehicles. There will be no effect on small businesses. It is anticipated that economic costs to persons who are required to comply with the sections as proposed will total approximately $3.00 for fees associated with each application for salvage or nonrepairable certificate of title for each of the first five years the sections are in effect.

Pursuant to the Administrative Procedure Act, the Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed amendments and new section. The public hearing will be held at 9:00 a.m. on October 27, 1995, 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 person 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 same or similar comments, through a representative member where possible. Presentations must remain pertinent to the issue being discussed. A person may not assign a portion of his or her time to another speaker. A person who disrupts a public hearing must leave the hearing room if ordered to do so by the presiding officer. 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 Eloise Lundgren, Director of the Public Information Office, at 125 East 11th Street, Austin, Texas 78701-2383, (512) 463-8588 at least two work days prior to the meeting so that appropriate arrangements can be made.

Written comments on the proposal may be submitted to Jerry L. Dike, Director, Vehicle Titles and Registration Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701. The deadline for receipt of written comments will be at 5:00 p.m. on November 17, 1995.

The amendments and new section are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically Texas Civil Statutes, Article 6687-1, §37A, which authorize the department to adopt rules to administer the issuance of salvage and nonrepairable certificates of title.

No statutes, articles, or codes are affected by these proposed amendments and new section.

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

Actual cash value-The market value of a motor vehicle as determined:

(A) from publications commonly used by the automotive and insurance industries to establish the value of motor vehicles; or

(B) if the entity determining the value is an insurance company, by any other procedure recognized by the insurance industry, including market surveys, that is applied by the company in a uniform manner.

Automobile recycler-A person in the business of dealing in salvage motor vehicles for the purpose of dismantling the vehicles to sell used parts, or a person otherwise engaged in the business of acquiring, selling, or dealing in salvage parts for reuse or resale as parts. The term includes a dealer in used motor vehicle parts.

Alias-The name of a vehicle owner reflected on the certificate of title, different than the name of the legal owner of the vehicle.

Alias certificate of title-A title document issued by the department for a vehicle that is used by an exempt law enforcement agency in covert criminal investigations.

Casual sale-The sale at auction of not more than one nonrepairable motor vehicle or new or late model salvage motor vehicle to the same person during a calendar year.

Executive administrator-The director of a federal agency, the director of a Texas state agency, the sheriff of a Texas county, or the chief of police of a Texas city who by law possesses the authority to conduct covert criminal investigations.

Exempt agency-A governmental body exempt by law from paying registration fees for motor vehicles.

Flood damage-A remark initially indicated on a salvage or nonrepairable motor vehicle certificate of title to denote the type of damage the vehicle encountered, which is carried forward upon subsequent title issuance.

Identification certificate-A form issued by an inspector of an authorized safety inspection station on a vehicle previously registered or titled in another state or country in accordance with Transportation Code, §548.256 [Texas Civil Statutes, Article 6701d, §142A].

Insurance company-A person authorized to write automobile insurance in Texas or an out-of-state insurance company that pays a loss claim for a motor vehicle in Texas.

Late model motor vehicle-A motor vehicle with a model year equal to the then current calendar year or one of the five preceding calendar years.

Late model salvage motor vehicle-A late model motor vehicle, other than a late model vehicle that is a nonrepairable motor vehicle, that is damaged to the extent that the total estimated cost of repairs, other than repairs related to hail damage but including parts and labor, is equal to or greater than an amount equal to 75% of the actual cash value of the vehicle in its predamaged condition.

Major component part-One of the following parts of a motor vehicle:

(A) the engine;

(B) the transmission;

(C) the frame;

(D) the right or left front fender;

(E) the hood;

(F) a door allowing entrance to or egress from the passenger compartment of the vehicle;

(G) the front or rear bumper;

(H) the right or left quarter panel;

(I) the deck lid, tailgate, or hatchback;

(J) the cargo box of a pickup truck;

(K) the cab of a truck; or

(L) the body of a passenger vehicle.

Motor vehicle-Every kind of motor driven or propelled vehicle required to be registered under the laws of the state, including trailers, house trailers, and semitrailers, and shall also include motorcycles, motor-driven cycles, mopeds, and four-wheel all-terrain vehicles designed by the manufacturer for off-highway use, whether or not the vehicle is required to be registered under Transportation Code, Chapter 501 [Texas Civil Statutes, Article 6675a-1]. The term motor vehicle does not include manufactured housing, motorcycles, motor-driven cycles, and mopeds, designed for and used exclusively on golf courses.

New model motor vehicle-A motor vehicle with a year model that is newer than the current calendar year.

New model salvage motor vehicle-A new model motor vehicle, other than a new model vehicle that is a nonrepairable motor vehicle, that is damaged to the extent that the total estimated cost of repairs, other than repairs related to hail damage but including parts and labor, is equal to or greater than an amount equal to 75% of the actual cash value of the vehicle in its predamaged condition.

Nonrepairable motor vehicle-A new or late model motor vehicle that is damaged or missing a major component part to the extent that the total estimated cost of repairs to rebuild or reconstruct the vehicle, including parts and labor other than the costs of materials and labor for repainting the vehicle and excluding sales taxes on the total cost of the repairs, and excluding the cost of repairs to repair hail damage, is equal to or greater than an amount equal to 95% of the actual cash value of the vehicle in its predamaged condition.

Nonrepairable motor vehicle certificate of title-A document issued by the department that evidences ownership of a nonrepairable motor vehicle.

Older model motor vehicle-A motor vehicle that was manufactured in a model year before the sixth preceding model year, including the current model year.

Other negotiable evidence of ownership-A document, other than a Texas certificate of title or a salvage certificate of title, that relates to a motor vehicle which the department considers sufficient to support issuance of a Texas certificate of title for the vehicle.

Out-of-state buyer-A person licensed by another state or jurisdiction in an automotive business if the department has listed the holders of such license as permitted purchasers of salvage motor vehicles or nonrepairable motor vehicles based on substantially similar licensing requirements and on whether salvage vehicle dealers licensed in Texas are permitted to purchase salvage motor vehicles or nonrepairable motor vehicles in the other state or jurisdiction.

Person-An individual, firm, corporation, company, partnership, or other entity.

Rebuilder-A person that acquires and repairs, for operation on public highways, five or more new or late model salvage motor vehicles in any 12-month period.

Rebuilt salvage-A remark indicated on the face of a certificate of title issued by the department that evidences ownership of a rebuilt salvage motor vehicle.

Salvage motor vehicle-A new or late model motor vehicle, other than a new or late model vehicle that is a nonrepairable motor vehicle, that is damaged to the extent that the total estimated cost of repairs, other than repairs related to hail damage but including parts and labor, is equal to or greater than an amount equal to 75% of the actual cash value of the vehicle in its predamaged condition.

Salvage motor vehicle certificate of title-A document issued by the department that evidences ownership of a salvage motor vehicle.

Salvage vehicle dealer-A person who is engaged in this state in the business of acquiring, selling, or otherwise dealing in salvage vehicles or vehicle parts of a type required to be covered by a salvage vehicle certificate of title or nonrepairable vehicle certificate of title under a license issued by the department that allows the holder of the license to acquire, sell, dismantle, repair, or otherwise deal in salvage vehicles.

Token trailer fee-A registration fee paid for certain semitrailers, meeting the qualifications delineated in Transportation Code, §502.167 [Texas Civil Statutes, Article 6675a-6], and used in combination with truck tractors or commercial motor vehicles whose registration is based upon a combined gross weight.

§17.3. Motor Vehicle Certificates of Title.

(a) Certificates of Title. Unless otherwise exempted by law or this chapter, the owner of any vehicle that is required to be registered in accordance with Transpor-

tation Code, Chapter 502 [Texas Civil Statutes, Article 6675a-1], shall be required to apply for a Texas Certificate of Title in accordance with the Certificate of Title Act, **Transportation Code, Chapter 501** [Texas Civil Statutes, Article 6687-1].

(1) (No change.)

(2) Farm vehicles.

(A) (No change.)

(B) Farm tractors owned by agencies exempt from registration fees in accordance with **Transportation Code, §502.283** [Texas Civil Statutes, Article 6675a-5b], and farm tractors used as road tractors to mow rights-of-way or used to move commodities over the highway for hire are required to be registered and titled.

(3) Exemptions from title. Vehicles registered with the following distinguishing license plates may not be titled under the Certificate of Title Act, **Transportation Code, Chapter 501**:

(A) vehicles eligible for machinery license plates in accordance with **Transportation Code, §502.278** [Texas Civil Statutes, Article 6675a-2];

(B) vehicles eligible for farm trailer license plates in accordance with **Transportation Code, §502.163** [Texas Civil Statutes, Article 6675a-6a]; and

(C) vehicles eligible for permit license plates in accordance with **Transportation Code, §§502. 351-502.353** [Texas Civil Statutes, Article 6675a-6b, Article 6675a-6c, and Article 6675a-6d].

(4) Trailers, semitrailers, and house trailers. Owners of trailers **and**[,] semitrailers[, and house trailers] must apply for and receive a Texas Certificate of Title for any stand alone (full) trailer, including homemade full trailers, having an empty weight in excess of 4,000 pounds or any semitrailer having a gross weight in excess of 4,000 pounds. House trailer-type vehicles must meet the criteria outlined in **subparagraph (C)** [subsection (c)] of this **paragraph** [section] in order to be titled.

(A)-(C) (No change.)

(b) Initial application for Certificate of Title.

(1) Place of application. When motor vehicle ownership is transferred, except as provided by **16 TAC, §111 (relating to General Distinguishing Numbers)** [§17.74(c) of this title (relating to Dealers and Manufacturers Vehicle License Plates)], a certificate of title application must be filed with the county tax assessor-collector in the county in which the applicant resides, or the county in which the motor vehicle was purchased or encumbered, within 20 working days of the date of sale.

(2) Information to be included on application. An applicant for an initial certificate of title shall file an application on a form prescribed by the department. The form shall at a minimum require the:

(A) (No change.)

(B) license plate number, if the motor vehicle is subject to registration under **Transportation Code, Chapter 502** [Texas Civil Statutes, Article 6675a-1];

(C)-(H) (No change.)

(3) Serial Number. If no serial number is die-stamped by the manufacturer upon a motor vehicle, house trailer, trailer, semi-trailer, or an item of equipment required to be titled, or if the serial number assigned and die-stamped by the manufacturer has been lost, removed or obliterated, the department will upon proper application, presentation of evidence of ownership, and presentation of a law enforcement physical inspection, assign a serial number to the motor vehicle, trailer or equipment; the manufacturer's serial number or the assigned serial number will be used by the department as the major identification of the motor vehicle **or**[,] trailer [or equipment] in the issuance of a certificate of title.

(4) Accompanying documentation. The certificate of title application shall be supported by, at a minimum, the following documents:

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

(C) the identification certificate required by **Transportation Code, §548.256** [Texas Civil Statutes, Article 6701d], and **Transportation Code, §501.030** [Texas Civil Statutes, Article 6687-1, §30(a)], if the vehicle was last registered in another state or country; and

(D) (No change.)

(c) Evidence of motor vehicle ownership. Evidence of motor vehicle ownership properly assigned to the applicant shall accompany the certificate of title application. Evidence shall include, but is not limited to, the following documents.

(1) New motor vehicles. A manufacturer's certificate of origin assigned by the manufacturer or the manufacturer's representative or distributor to the original purchaser shall be required for a new motor vehicle that is sold or offered for sale.

(A) The manufacturer's certificate of origin shall be in the form prescribed by the division director and shall contain, at a minimum, the following information:

(i) (No change.)

(ii) the manufacturer's rated carrying capacity in tons when the manufacturer's certificate of origin is invoiced to a Texas dealer as defined in **16 TAC, §111.2, (relating to Definitions)** [§17.60 of this title (relating to Dealers and Manufacturers Vehicle License Plates)], and is issued for commercial motor vehicles as that term is defined in **Transportation Code, Chapter 502** [Texas Civil Statutes, Article 6675a-1]; and

(iii) (No change.)

(B) (No change.)

(2)-(4) (No change.)

(d)-(e) (No change.)

(f) Suspension, revocation, or refusal to issue Certificates of Title.

(1) Grounds for title suspension, revocation, or refusal to issue. The department will refuse issuance of a certificate of title, or having issued a certificate of title, suspend or revoke the certificate of title if the:

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

(C) applicant is not entitled to the issuance of a certificate of title under the Certificate of Title Act, **Transportation Code, Chapter 501** [Texas Civil Statutes, Article 6687-1];

(D)-(F) (No change.)

(2) Contested case procedure. Any person who has an interest in a motor vehicle to which the department has refused to issue a certificate of title or has suspended or revoked the certificate of title may contest such decisions in accordance with the Certificate of Title Act, **Transportation Code, §501.052 and §501.053** [Texas Civil Statutes, Article 6687-1, §39], in the following manner:

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

§17.7. Alias Certificate of Title.

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

[(1) Affidavit for alias certificate of title–A form prescribed by the director that must be executed by an exempt law enforcement agency to request the issuance of title in the name of an alias.

[(2) Alias–The name of a vehicle owner reflected on the certificate of title, different than the name of the legal owner of the vehicle.

[(3) Alias certificate of title–A title document issued by the department for a vehicle used by an exempt law enforcement agency in covert criminal investigations.

[(4) Certificate of title application–A form prescribed by the director that reflects the information required by the department to create the alias title record.

[(5) Department–State Department of Highways and Public Transportation.

[(6) Director–Director, Division of Motor Vehicles, State Department of Highways and Transportation.

[(7) Executive administrator–The director of a federal agency, the director of a Texas state agency, the sheriff of a Texas county, or the chief of police of a Texas city who by law possesses the authority to conduct covert criminal investigations.

[(8) Exempt agency–A governmental body sanctioned by statute to register motor vehicles without paying applicable registration fees.]

(a)[(b)] Authority to issue. Upon receipt of the exempt agency's affidavit for alias certificate of title properly executed by the executive administrator, certificate of title application, and evidence of ownership, the **division** director may authorize the issuance of an alias certificate of title for a vehicle used by an exempt law enforcement agency in covert criminal investigations.

(b)[(c)] Affidavit for alias certificate of title.

(1) The affidavit for an alias certificate of title shall be in a form prescribed by the **division** director and must contain, but is not limited to, the following information:

(A) the vehicle description;

(B) the name of exempt agency;

(C) a sworn statement that the vehicle will be used in covert criminal investigations; and

(D) the signature of the executive administrator or an authorized designee as provided in paragraph (2) of this subsection.

(2) The executive administrator **of an exempt law enforcement agency**, by annually filing an authorization with the **division** director, may appoint a staff designee to execute the affidavit for alias certificate of title. Upon the appointment of a new executive administrator or his designee, a new authorization must be filed.

(c)[(d)] Certificate of title application.

(1) The application for certificate of title in the name of an alias shall be in a form prescribed by the **division** director and must contain, but is not limited to, the following information:

(A) the vehicle description;

(B) the odometer reading;

(C) the empty weight;

(D) the name and address of the alias; and

(E) the name and address of the alias previous owner.

(2) Notarization of the application for certificate of title in the name of an alias is not required.

(d)[(e)] Evidence of ownership. A certificate of title in the name of an alias will not be issued to an exempt law enforcement agency, including an agency of the federal government, unless such agency furnishes evidence of vehicle ownership.

(e)[(f)] Cancellation. An alias certificate of title will be cancelled if the vehicle for which it was issued ceases to be used by the exempt law enforcement agency in a covert criminal investigation.

§17.8. Certificates of Title for Salvaged Vehicles.

(a) Certificate of title applications for salvaged vehicles.

(1) Place of application.

(A) When ownership of a new or late model salvage motor vehicle is transferred, the person who acquires ownership must submit a salvage or nonrepairable motor vehicle certificate of title application to the department along with the applicable fee within ten days of receiving the title document, which transfers ownership.

(B) A person who acquires ownership of a motor vehicle other than a new or late model salvage motor vehicle or a nonrepairable motor vehicle may voluntarily submit a salvage or nonrepairable motor vehicle certificate of title application to the department along with the applicable fee for issuance of a salvage or nonrepairable motor vehicle certificate of title.

(C) When a new or late model salvage motor vehicle has been rebuilt and the vehicle's and parts' identification numbers, as well as compliance of state safety standards, have been certified to by a specially trained commissioned officer of the Texas Department of Public Safety, the owner shall file a certificate of title application with the county tax assessor-collector in the county in which the applicant resides, or the county in which the motor vehicle was purchased or encumbered supported by the evidence required by subsection (b)(2) of this section.

(2) Information to be included on application.

(A) An applicant for a salvage or nonrepairable motor vehicle certificate of title shall submit an application on a form prescribed by the department. The form, in addition to any other information required by the department, shall at a minimum include:

(i) the name and current address of the owner;

(ii) a description of the vehicle, including, the motor vehicle's model year, make, model, identification number, body style, manufacturer's rated carrying capacity in tons for commercial motor vehicles, and empty weight;

(iii) a description of the damage to the vehicle;

(iv) the estimated cost of repairs to the vehicle, including parts and labor;

(v) the predamaged actual cash value of the vehicle;

(vi) odometer reading and brand, or the word "exempt" if the motor vehicle is exempt from federal and state odometer disclosure requirements;

(vii) previous owner's name and city and state of residence;

(viii) name and mailing address of any lienholder and the date of lien (applicable only in instances of salvage motor vehicle certificate of title issuance); and

(ix) the signature of the applicant or the applicant's authorized agent and the date the certificate of title application was signed.

(B) An applicant for a certificate of title involving a transaction for a rebuilt salvage motor vehicle shall submit an application on a form prescribed by the department. The form, in addition to any other information required by the department, shall at a minimum require or include in the transaction:

(i) the name and current address of the owner;

(ii) a description of the vehicle, which includes, but is not limited to, the motor vehicle's model year, make, model, identification number, body style, manufacturer's rated carrying capacity in tons for commercial motor vehicles, and empty weight;

(iii) description of each major component part used to repair the vehicle and shows the identification number required by federal law to be affixed to or inscribed on the part;

(iv) the description or disclosure of the vehicle's former condition in a manner that is understandable to a potential purchaser of the vehicle;

(v) license plate number, if the motor vehicle is subject to registration under Transportation Code, Chapter 501;

(vi) odometer reading and brand, or the word "exempt" if the motor vehicle is exempt from federal and state odometer disclosure requirements;

(vii) previous owner's name and city and state of residence;

(viii) name and mailing address of any lienholder and the date of lien, if applicable;

(ix) signature of the seller of the motor vehicle or the seller's authorized agent and the date the certificate of title application was signed; and

(x) the signature of the applicant or the applicant's authorized agent and the date the certificate of title application was signed.

(3) Accompanying documentation.

(A) The salvage and nonrepairable motor vehicle certificate of title applications shall be supported by, at a minimum, the following documents:

(i) evidence of vehicle ownership, as described in subsection (c)(1) of this section;

(ii) odometer disclosure statement properly executed by the seller of the motor vehicle and acknowledged by the purchaser, if applicable; and

(iii) release of any liens.

(B) The application for certificate of title for a transaction involving a rebuilt salvage shall be supported by, at a minimum, the following documents:

(i) evidence of vehicle ownership, as described in subsection (c)(2) of this section;

(ii) odometer disclosure statement properly executed by the seller of the motor vehicle and acknowledged by the purchaser, if applicable;

(iii) proof of financial responsibility in the title applicant's name, as required by Transportation Code, §502.153;

(iv) the identification certificate required by Transportation Code, §548.256, and Transportation Code, §501.030, if the vehicle was last registered in another state or country;

(v) release of any liens or, if not released, an out-of-state lien (recorded on out-of-state evidence as described in subsection (b)(2) of this section) cannot be carried forward to a Texas title involving a rebuilt salvage when there is a transfer of ownership, unless a release of lien or authorization from the lienholder is attached. (A lien is not required to be released when there is no transfer of ownership from an out-of-state title and the same lienholder is being recorded on the Texas application as is recorded on the out-of-state title); and

(vi) a written statement signed by a specially trained commissioned officer of the Texas Department of Public Safety certifying to the department that the vehicle identification numbers and parts identification numbers are accurate, the applicant has proof that the applicant owns the parts used to repair the vehicle, the vehicle may be safely operated, and the vehicle complies with all applicable motor vehicle safety standards of this state.

(b) Evidence of salvage motor vehicle ownership.

(1) Evidence of salvage motor vehicle ownership properly assigned to the applicant shall accompany the salvage or nonrepairable motor vehicle certificate of title application. Evidence shall include, but is not limited, to the following documents:

(A) an Original Texas Certificate of Title;

(B) a Certified Texas Certificate of Title;

(C) a Texas Salvage Certificate; or

(D) a comparable ownership document issued by another state or jurisdiction.

(2) Evidence of motor vehicle ownership on a rebuilt salvage properly assigned to the applicant shall accompany the certificate of title application involving the transaction. Evidence shall include the following documents:

(A) a Texas Salvage Certificate;

(B) a Texas Salvage Motor Vehicle Certificate of Title;

(C) a Texas Nonrepairable Motor Vehicle Certificate of Title; or

(D) a comparable ownership document issued by another state or jurisdiction.

(c) Certificate of title issuance for salvaged vehicles.

(1) Upon receipt of a completed salvage and nonrepairable motor vehicle certificate of title application, along with the prescribed fee, the department shall, before the sixth business day after the date of receipt, issue the applicant a salvage or nonrepairable motor vehicle certificate of title, as appropriate. If the condition of salvage is caused exclusively by flood, a "Flood Damage" notation shall be reflected on the face of the document and shall be carried forward upon subsequent title issuance.

(A) Texas Civil Statutes, Article 6687-1, §37A(j) provides that a person who holds a salvage motor vehicle certificate of title is entitled to record a lien on the vehicle. If a salvage or nonrepairable motor vehicle certificate of title application records a lien, such lien is only applicable with the issuance of a salvage motor vehicle certificate of title. Presentation of the application with the lien disclosed therein and surrender of the current salvage motor vehicle certificate of title, along with the applicable fee, to the department shall constitute the notation of a lien on a salvage motor vehicle certificate of title. When a salvage motor vehicle certificate of title recording a lien is issued, the original will be mailed to the lienholder. For proof of ownership purposes, the applicant will be mailed a receipt or printout of the newly established motor vehicle record, which records the lien.

(B) A nonrepairable motor vehicle certificate of title must state on its face that, except as provided by Texas Civil Statutes, Article 6687-1, §37A(n) and (p), the vehicle:

(i) may not be issued a regular certificate of title or registered in this state; and

(ii) may only be used for parts or scrap metal.

(2) Upon receiving a completed certificate of title application for a rebuilt salvage transaction, along with the applicable fees, the department or its designated agent will process and issue a certificate of title, which includes a "Rebuilt Salvage" remark on its face and describes or discloses the vehicle's former condition in a manner that is understandable to a potential purchaser of the vehicle. If the transaction is on a new or late model salvage vehicle that has been assembled from component parts or a new or late model salvage vehicle for which a Texas Salvage Certificate is being surrendered, only the "Rebuilt Salvage" remark will be reflected on the face of the certificate of title.

(3) On proper application by the owner of a vehicle brought into this state from another state or jurisdiction that has on any certificate of title issued by the other state or jurisdiction a "Rebuilt," "Salvage," "Nonrepairable," or analogous notation, the department shall issue the applicant a certificate of title or other appropriate document for the vehicle. A certificate of title or other appropriate document issued under this subsection must, in addition to other information required by the department, show on its face:

(A) the date of issuance;

(B) the name and address of the owner;

(C) any registration number assigned to the vehicle;

(D) a description of the vehicle as determined by the department; and

(E) any notation the department considers necessary or appropriate.

(d) Replacement of certificates of title for salvaged vehicles. The owner or lienholder of a lost or destroyed certificate of title for a salvaged vehicle may obtain a certified copy of that title upon proper application and applicable fee being submitted to the department. The appropriate certificate of title for a salvaged vehicle will be issued and shall reflect "Certified Copy" and the date issued. The appropriate motor vehicle record will be noted accordingly until such time that ownership of the vehicle is transferred, when the notation will be eliminated from the new certificate of title.

(e) Transfer of ownership.

(1) New or late model salvage motor vehicles.

(A) An insurance company may sell a new or late model salvage motor vehicle by assignment of a salvage or nonrepairable motor vehicle certificate of title for the vehicle only to a salvage vehicle dealer, an out-of-state licensed buyer, a buyer in a casual sale at auction, or a person described by Texas Civil Statutes, Article 6687-2b, §(g).

(B) An owner, other than an insurance company, may sell a new or late model salvage motor vehicle by assignment of a salvage or nonrepairable motor vehicle certificate of title for the vehicle only to a salvage vehicle dealer in this state, an out-of-state licensed buyer, a buyer in a casual sale at auction, or a person described by Texas Civil Statutes, Article 6687-2b, §(g).

(2) Motor vehicle other than a new or late model salvage or nonrepairable motor vehicle.

(A) If an insurance company acquires ownership of this type of vehicle through payment of a claim, the company shall, on delivery of the vehicle to a buyer of the vehicle, deliver the buyer a properly assigned certificate of title for the vehicle.

(B) An insurance company or other person who acquires ownership of this type of vehicle may voluntarily and upon proper application obtain a salvage or nonrepairable motor vehicle certificate of title.

(f) Notification required of an insurance company. An insurance company shall submit to the department, before the 31st day after the date of the payment of the claim, on the form prescribed by the department, a report stating that:

(1) the insurance company has paid a total loss claim on the vehicle; and

(2) the insurance company has not acquired ownership of the vehicle.

(g) Noting of motor vehicle record with total loss claim information. Upon receipt of the report described in subsection (f) of this section, the department shall note the appropriate motor vehicle record accordingly to prevent transfer of ownership prior to the issuance of a salvage or nonrepairable motor vehicle certificate of title.

(h) Acquisition of salvaged vehicles for the purpose of dismantling, scrapping, or destruction.

(1) A salvage vehicle dealer that acquires ownership of a new or late model salvage or nonrepairable motor vehicle for such purposes shall, before the 31st day after the date the dealer acquires the vehicle, submit to the department, on the form prescribed by the department, a report stating that the vehicle will be dismantled, scrapped, or destroyed, accompanied by a properly assigned regular certificate of title, salvage or nonrepairable motor vehicle certificate of title, or a comparable ownership document issued by another state or jurisdiction for the vehicle.

(2) A salvage vehicle dealer that acquires an older model vehicle for such purposes shall submit the report addressed in paragraph (1) of this subsection and shall keep on the dealer's business premises a record of the vehicle, until the third anniversary of the date the report on the vehicle is submitted to the department.

(i) Receipt of the report and the ownership documents by the department. On receipt of the report and the ownership documents, the department shall issue the salvage vehicle dealer a receipt for the certificate of title, salvage or nonrepairable motor vehicle certificate of title, or a comparable ownership document issued by another state or jurisdiction.

(j) Noting of motor records on which ownership documents have been surrendered to the department. The department will note applicable motor records on which ownership documents have been surrendered to the department by salvage vehicle dealers with an appropriate notation.

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

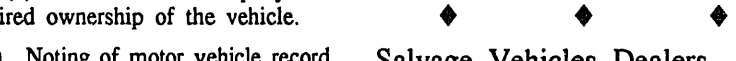
Issued in Austin, Texas, on October 6, 1995.

TRD-9512840

Robert E. Shaddock
General Counsel
Texas Department of Transportation

Earliest possible date of adoption: November 17, 1995

For further information, please call: (512) 463-8630



Salvage Vehicles Dealers

• 43 TAC §§17.60-17.64

The Texas Department of Transportation proposes new §§17.60-17.64, concerning salvage vehicle dealers' and agents' licenses.

House Bill 2599, 74th Legislature, 1995, created Texas Civil Statutes, Article 6687-1a, which empowers the department to issue licenses to salvage vehicle dealers and agents. The bill provides that all dealers and agents must be licensed effective March 1, 1996.

New §17.60 describes the requirements applicable to these sections.

New §17.61 defines the words and terms applicable to these sections.

New §17.62 describes who must obtain a salvage dealer or agent license; classifications of licenses; application procedure; procedures for investigation of the applicant's qualifications; issuance of salvage vehicle dealer and agent licenses; renewal and late fees; the terms of licenses; requirements for the use of agents by salvage vehicle dealers; record keeping procedures; and the entities to whom a new or late model salvage or nonrepairable motor vehicle may be sold, transferred, or released.

New §17.63 provides for registration of business locations; office, sign, and lease requirements for a place of business; a procedure for notification to the department of a change of licensee's status; and a prohibition of offsite sales.

New §17.64 prescribes the procedures for denial, suspension, or revocation of license.

Jerry L. Dike, Director, Vehicle Titles and Registration Division, has determined that for the first five years the new sections are in effect, there will be fiscal implications to the state as a result of enforcing or administering these sections. The anticipated estimated increase in cost to the state is $1.167 million for the first year the proposed sections are in effect, and $1.055 million for each year of the next four years the proposed sections are in effect. The estimated increase in revenue is $1.198 million for the first year the proposed sections are in effect, and $1.264 million for each year of the next four years the purpose sections are in effect. There are no anticipated fiscal implications to local governments as a result of administering or enforcing the sections.

Mr. Dike also has determined that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed sections.

Mr. Dike also has determined that for each year of the first five years the sections are in effect the public benefits anticipated as a result of enforcing the sections will be the proper, efficient, and effective licensing of salvage vehicle dealers and agents in the business of acquiring, selling, or dealing in salvage and nonrepairable vehicles and parts. There may be an effect on small businesses and an economic cost to persons who are required to comply with the requirements for the business operation. This, however, cannot be determined at this time. The department cannot estimate the start-up costs of a new business for office furniture and equipment, office space, signs, or the cost associated with adding any necessary office furniture, equipment, or signs to existing salvage business facilities. The fees associated with each initial application for a salvage vehicle dealer or agent license are expected to be approximately $95 for each of the initial licenses and approximately $95 for annual renewal.

Pursuant to the Administrative Procedure Act, the Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed new sections. The public hearing will be held at 9:00 a.m. on October 27, 1995, 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 person 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 same or similar comments, through a representative member where possible. Presentations must remain pertinent to the issue being discussed. A person may not assign a portion of his or her time to another speaker. A person who disrupts a public hearing must leave the hearing room if ordered to do so by the presiding officer. 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 Eloise Lundgren, Director of the Public Information Office, at 125 East 11th Street, Austin, Texas 78701-2383, (512) 463-8588 at least two work days prior to the meeting so that appropriate arrangements can be made.

Written comments on the proposal may be submitted to Jerry L. Dike, Director, Vehicle Titles and Registration Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701. The deadline for receipt of written comments will be at 5:00 p.m. on November 17, 1995.

The new sections are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically Texas Civil Statutes, Article 6687-1a, which authorizes the department to adopt rules to administer the licensing of salvage vehicle dealers and agents.

No statutes, articles, or codes are affected by these proposed new sections.

§17.60. Purpose and Scope. Texas Civil Statutes, Article 6687-1a, provides that a person may not act as an automobile recycler, salvage vehicle agent, or salvage vehicle dealer, including storing or displaying vehicles as an agent or escrow agent of an insurance company, unless the department issues that person a salvage vehicle dealer or agent license. This undesignated head describes procedures by which a person may obtain a license to act as an automobile recycler, salvage vehicle agent, or salvage vehicle dealer; conditions under which a licensee must operate the facility; and the procedures by which the department will enforce this undesignated head.

§17.61. Definitions. The following words and terms, when used in this undesignated head, shall have the following meanings, unless the context clearly indicates otherwise.

Actual cash value–The market value of a motor vehicle as determined:

(A) from publications commonly used by the automotive and insurance industries to establish the value of motor vehicles; or

(B) if the entity determining the value is an insurance company, by any other procedure recognized by the insurance industry, including market surveys, that is applied by the company in a uniform manner.

Automobile recycler–A person in the business of dealing in salvage motor vehicles for the purpose of dismantling the vehicles to sell used parts and the resulting scrap metal or a person otherwise engaged in the business of acquiring, selling, or dealing in salvage parts. The term includes a dealer in used motor vehicle parts.

Casual sale–The sale at auction of not more than one nonrepairable motor vehicle or new or late model salvage motor vehicle to the same person during a calendar year.

Commission–The Texas Transportation Commission.

Department–The Texas Department of Transportation.

Division director–The director of the department's Vehicle Titles and Registration Division.

Late model motor vehicle–A motor vehicle with a model year equal to the then current calendar year or one of the five preceding calendar years.

Late model salvage vehicle–A late model motor vehicle with a major component part that is damaged or missing to the extent that the total estimated cost of repairs to rebuild or reconstruct the vehicle, including parts and labor, but excluding the cost of repairs to repair hail damage, is equal to or greater than an amount equal to 75% of the actual cash value of the vehicle in its predamaged condition; or a damaged vehicle that comes into this state under a salvage vehicle certificate of title or other comparable certificate of title.

Major component part–One of the following parts of a vehicle:

(A) the engine;

(B) the transmission;

(C) the frame;

(D) the right or left front fender;

(E) the hood;

(F) a door allowing entrance to or egress from the passenger compartment of the vehicle;

(G) the front or rear bumper;

(H) the right or left quarter panel;

(I) the deck lid, tailgate, or hatchback;

(J) the cargo box of a pickup truck;

(K) the cab of a truck; or

(L) the body of a passenger vehicle.

Motor vehicle–Every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

New automobile dealer–A person whose primary business is selling new motor vehicles, but who may also buy salvage and nonrepairable motor vehicles to repair and sell.

New model motor vehicle–A motor vehicle with a year model that is newer than the current calendar year.

New model salvage motor vehicle–A new model motor vehicle (other than a new model vehicle) that is a nonrepairable motor vehicle, that is damaged to the extent that the total estimated cost of repairs, other than repairs related to hail damage but including parts and labor, is equal to or greater than an amount equal to 75% of the actual cash value of the vehicle in its predamaged condition.

Nonrepairable vehicle–A new or late model motor vehicle that is damaged or missing a major component part to the extent that the total estimated cost of repairs to rebuild or reconstruct the vehicle, including parts and labor other than the costs of materials and labor for repainting the vehicle and excluding sales taxes on the total cost of the repairs, and excluding the cost of repairs to repair hail damage, is equal to or greater than an amount equal to 95% of the actual cash value of the vehicle in its predamaged condition; or a vehicle that comes into this state with a nonrepairable vehicle certificate of title or other comparable certificate of title.

Nonrepairable vehicle certificate of title–A document issued by the department that evidences ownership of a nonrepairable vehicle.

Older model motor vehicle–A motor vehicle that was manufactured in a model year before the sixth preceding model year, including the current model year.

Other comparable certificate of title–A document other than a Texas certificate of title or a salvage certificate of title that relates to a motor vehicle that the department considers sufficient to support issuance of a Texas certificate of title for the vehicle.

Out-of-state buyer–A person licensed by another state or jurisdiction in an automotive business if the Texas Department of Transportation has listed the holders of such license as permitted purchasers of salvage motor vehicles or nonrepairable motor vehicles based on substantially similar licensing requirements and on whether salvage vehicle dealers licensed in Texas are permitted to purchase salvage motor vehicles or nonrepairable motor vehicles in the other state or jurisdiction.

Person–An individual, partnership, corporation, trust, association, or other private legal entity.

Salvage part–A major component part of a new or late model salvage vehicle that is serviceable to the extent that it can be reused.

Salvage pool operator–A person who is engaged in the business of selling nonrepairable or salvage vehicles at auction, including wholesale auction.

Salvage vehicle–A new or late model motor vehicle with a major component part that is damaged or missing to the extent that the total estimated cost of repairs to rebuild or reconstruct the vehicle, including parts and labor, but excluding the cost of repairs to repair hail damage, is equal to or greater than an amount equal to 75% of the actual cash value of the vehicle in its predamaged condition; or a damaged vehicle that comes into this state under a salvage vehicle certificate of title or other comparable certificate of title.

Salvage vehicle agent–A person employed by a licensed salvage vehicle dealer to acquire, sell, or otherwise deal in new or late model salvage vehicles or salvage parts in this state.

Salvage vehicle broker–A person who buys, sells, or exchanges salvage and nonrepairable motor vehicles with other license salvage dealers.

Salvage vehicle certificate of title–A document issued by the department that evidences ownership of a salvage vehicle.

Salvage vehicle dealer–A person who is engaged in this state in the business of acquiring, selling, or otherwise dealing in salvage vehicles or vehicle parts of a type required to be covered by a salvage vehicle certificate of title or nonrepairable vehicle certificate of title under a license issued by the department that allows the holder of the license to acquire, sell, dismantle, repair, or otherwise deal in salvage vehicles.

Salvage vehicle pool operator–A person who is engaged in the business of selling nonrepairable vehicles or salvage vehicles at auction, including wholesale auction.

Salvage vehicle rebuilder–A person who acquires and repairs, for operation on public highways, five or more late model salvage motor vehicles in any 12 month period.

Salvage vehicle record–The record of sales and purchases for each salvage vehicle handled by a salvage vehicle dealer.

Used automobile dealer–A person whose primary business is selling used motor vehicles, but who may also buy salvage and nonrepairable motor vehicles to repair and sell.

Used vehicle parts dealer–A person who is engaged in the business of obtaining salvage or nonrepairable motor vehicles for scrap disposal, resale, repairing, rebuilding, demolition, or other form of salvage.

§17.62. Salvage Vehicle Dealer and Agent Licenses.

(a) Applicability. A person who acts as an automobile recycler, salvage vehicle agent, or salvage vehicle dealer, including a person who stores or displays vehicles as an agent or escrow agent of an insurance company, must obtain a salvage vehicle dealer or an agent license in accordance with Texas Civil Statutes, Article 6687-1a, and the provisions of this undesignated head.

(b) Exemptions. The provisions of this undesignated head do not apply to:

(1) a person who purchases a nonrepairable or salvage vehicle from a salvage pool operator in a casual sale;

(2) an insurance company authorized to engage in the business of insurance in this state;

(3) a person predominantly engaged in the business of obtaining ferrous or nonferrous metals;

(4) a person who sells or offers for sale less than five new or late model salvage motor vehicles of the same type in a calendar year when such vehicles are owned, and registered and titled in the name of such person;

(5) a person who sells or offers to sell a new or late model salvage motor vehicle acquired for personal or business use if the person does not sell or offer to sell to a retail buyer and the transaction is not held for the purpose of avoiding the

provisions of Texas Civil Statutes, Article 6687-1a;

(6) an agency of the United States, this state, or local government;

(7) a financial institution or other secured party selling a vehicle in which it holds a security interest, in the manner provided by law for the forced sale of that vehicle;

(8) a receiver, trustee, administrator, executor, guardian, or other person appointed by or acting pursuant to the order of a court;

(9) a person selling an antique passenger car or truck that is at least 25 years old or a collector selling a special interest motor vehicle as defined in the Transportation Code, §683.077, if the special interest vehicle is at least 12 years old; and

(10) a licensed auctioneer who, as a bid caller, sells or offers to sell property to the highest bidder at a bona fide auction if neither legal nor equitable title passes to the auctioneer and if the auction is not held for the purpose of avoiding a provision of Texas Civil Statutes, Article 6687-1a, and this undesignated head; and provided that if an auction is conducted of vehicles owned, legally or equitably, by a person who holds a salvage dealer's license, the auction may be conducted only at a location for which a salvage dealer's license has been issued to that person or at a location approved by the department as provided by this section.

(c) Classification of licenses. The department will classify salvage vehicle dealers according to the type of activity performed by the dealer. A salvage vehicle dealer may not engage in activities of a particular classification as indicated in this subsection unless the salvage vehicle dealer holds a license authorizing business under that classification. An applicant may apply for a salvage vehicle dealer license in one or more of the following classifications:

(1) new automobile dealer;

(2) used automobile dealer;

(3) used vehicle parts dealer;

(4) salvage vehicle pool operator;

(5) salvage vehicle broker; or

(6) salvage vehicle rebuilder.

(d) Application for salvage vehicle dealer or agent license.

(1) Application for salvage vehicle dealer license. An applicant for a salvage vehicle dealer license must apply on a form prescribed by the department. An applicant who will operate as a salvage vehicle dealer under a name other than the name of that applicant shall use the name under which that applicant is authorized to do business, as filed with the secretary of state or county clerk, and the assumed name of such legal entity shall be recorded on the application form using the letters "DBA. "

(A) Form of application. The application form must be signed by the applicant, be accompanied by the application fee of $95, and include:

(i) the name, business address(es), and business telephone number(s) of the applicant;

(ii) the name under which the applicant will do business;

(iii) the location, by number, street, and municipality, of each office from which the applicant will conduct business;

(iv) a statement indicating whether the applicant has previously applied for a salvage vehicle license under this section, the result of the previous application, and whether the applicant has ever been the holder of a salvage vehicle license that was revoked or suspended;

(v) an affidavit containing a statement that the applicant has never been convicted of a felony and three business association references;

(vi) the applicant's federal tax identification number, if any;

(vii) the applicant's state sales tax number;

(viii) the applicant's social security number, if the applicant is an individual; and

(ix) the classification(s) of license(s) for which the form is being submitted.

(B) Verification of assumed name. The department will require verification of the assumed name, if applicable, in the form of an assumed name certificate on file with the secretary of state or county clerk at the time the application form is submitted.

(C) Lease. All applications shall be accompanied by a minimum one-year lease, as prescribed by subsection (g)(3) of this section, or deed for the dealer's location in the name of the applicant.

(D) Photographs. All applications shall be accompanied by photographs clearly showing:

(i) the interior of the dealer's office;

(ii) the exterior of the dealer's office; and

(iii) the dealer's sign.

(2) Application for salvage vehicle agent license. An applicant, who is authorized to operate as an agent for a salvage vehicle dealer must apply on a form prescribed by the department. The application form must be signed by the applicant, be accompanied by the application fee, and include:

(A) the name of the applicant;

(B) the name, business address, and business telephone number of the salvage vehicle dealer authorizing the applicant as a salvage vehicle agent;

(C) the name under which the salvage vehicle dealer will do business;

(D) the location, by number, street, and municipality, of each office from which the applicant will conduct business;

(E) a statement indicating whether the applicant has previously applied for a salvage vehicle dealer or agent license under this section, the result of the previous application, and whether the applicant has ever been the holder of a salvage vehicle dealer or agent license that was revoked or suspended;

(F) an affidavit containing a statement that the applicant has never been convicted of a felony and three business association references;

(G) the applicant's federal tax identification number, if any;

(H) the applicant's state sales tax number; and

(I) the applicant's social security number, if the applicant is an individual.

(3) Application for corporate salvage vehicle dealer license. If a salvage vehicle dealer license applicant intends to engage in business through a corporation, the applicant must apply on a form prescribed by the department.

(A) Form of application. The form must indicate the name of the corporation, as it appears on file with the secretary of state, be signed by the applicant, be accompanied by the application fee, and include:

(i) the name, business address(es), and business telephone number(s) of the corporation;

(ii) the name under which the corporation will do business;

(iii) the location, by number, street, and municipality, of each office from which the corporation will conduct business;

(iv) the state of incorporation;

(v) a statement indicating whether an employee, officer, or director has previously applied for a salvage vehicle license under this section, the result of the previous application, and whether an employee, officer, or director has ever been the holder of a salvage vehicle license that was revoked or suspended;

(vi) an affidavit containing a statement that each officer and director has never been convicted of a felony and three business association references;

(vii) the applicant's federal tax identification number, if any;

(viii) the applicant's state sales tax number;

(ix) the name, address, date of birth, and social security number of each of the principal officers and directors of the corporation;

(x) the classification(s) of license(s) for which the form is being submitted.

(B) Verification of corporate franchise taxes. The corporation must also provide verification that all corporate franchise taxes required under the Texas Business Corporation Act, Article 2.45, have been paid at the time the application form is submitted to the department.

(4) Partnerships. If the license applicant intends to engage in business through a partnership, the applicant must apply on a form prescribed by the department. The form must be signed by the applicant, be accompanied by the application fee, and include:

(A) the name, business address(es), and business telephone number(s) of the partnership;

(B) the name under which the partnership will do business;

(C) the location, by number, street, and municipality, of each office from which the partnership will conduct business;

(D) a statement indicating whether an owner, partner, or employee, has previously applied for a salvage vehicle license under this section, the result of the previous application, and whether an owner, partner, or employee, has ever been the holder of a salvage vehicle license that was revoked or suspended;

(E) an affidavit containing a statement that each owner and partner has never been convicted of a felony and three business association references;

(F) the partnership's federal tax identification number, if any;

(G) the partnership's state sales tax number;

(H) the name, address, date of birth, and social security number of each owner and partner;

(I) the classification(s) of license(s) for which such form is being submitted.

(e) Issuance, investigation, and report by the department. The department will not grant a salvage vehicle dealer or an agent a license until the department completes an investigation of the applicant's qualifications and references in accordance with Texas Civil Statutes, Article 6687-1a. Such investigation shall be conducted not later than the 15th day after the date the application is received by the department. Upon completion of the investigation, the results of the investigation shall be reported to the applicant(s) by written notification from the department. If the applicant is denied, the applicant may appeal the decision as specified in §17.64 of this title (relating to Denial, Suspension, or Revocation).

(f) License issuance. The department will issue a license to an applicant who meets the license qualifications of subsection (d) of this section and pays the required fees described in this subsection.

(1) The license fee for each salvage vehicle dealer or agent license issued for a period of less than one year shall be prorated and only that portion of the $95 license fee allocable to the number of months for which the license is issued shall be payable by the licensee. The amount of such license fees will be rounded off to the nearest dollar.

(2) A license may not be issued in a fictitious name that may be confused with or is similar to that of a governmental entity or that is otherwise deceptive or misleading to the public.

(3) A person whose license has been revoked in accordance with §17.64 of this title (relating to Denial, Suspension, or Revocation) may not be issued a new license before the first anniversary of the date of the revocation.

(g) Use of agents by salvage vehicle dealers. The holder of a salvage vehicle dealer license may authorize not more than five persons to operate as salvage vehicle agents under the dealer's license. An agent may acquire, sell, or otherwise deal in new or late model salvage or nonrepairable vehicles or salvage parts as directed by the dealer. An agent authorized to operate for a salvage vehicle dealer is entitled to a salvage vehicle agent license on application to the department and payment of the required $95 fee as provided by subsection (e) of this section.

(h) License renewal.

(1) A salvage vehicle dealer or agent license expires on the first anniversary of the date of issuance and may be renewed annually on or before the expiration date on payment of the required renewal fee of $85.

(2) If the license is not renewed before the first anniversary of the date on which the license expired, the license holder must apply for a new license in the same manner as an applicant for an initial license.

(3) Thereafter, upon failure to renew the license before its expiration date, the license holder may renew the license on payment of the renewal fee and a late fee of $10.

(i) Licensee duties.

(1) Proper assignment of ownership.

(A) If a salvage vehicle dealer acquires ownership of a new or late model salvage vehicle from an owner, the dealer must receive a properly assigned certificate of title. If the assigned certificate of title is not a salvage or nonrepairable motor vehicle certificate of title or comparable ownership document issued by another state or jurisdiction, the licensed salvage vehicle shall, not later than the 10th day after the date of receipt of the title, surrender the assigned certificate of title to the department and apply for a salvage or nonrepairable motor vehicle certificate, as appropriate as provided by §17.8 of this title (relating to Certificates of Title for Salvaged Vehicles).

(B) If a new or late model salvage or nonrepairable vehicle is to be dismantled, scrapped, or destroyed, the salvage vehicle dealer shall surrender the assigned ownership document to the

department in the manner prescribed by the department not later than the 30th day after the date the vehicle is acquired and report to the department that the vehicle was dismantled, scrapped, or destroyed.

(C) If the holder of a salvage vehicle dealer license acquires ownership of an older model vehicle from an owner and receives an assigned certificate of title and the vehicle is to be dismantled, scrapped, or destroyed, the license holder shall surrender the assigned certificate of title to the department on a form prescribed by the department not later than the 30th day after the date on which the title is received. Evidence that the vehicle was dismantled, scrapped, or destroyed must also be presented.

(D) As required by Texas Civil Statutes, Article 6687-2, a salvage vehicle dealer licensed as a used vehicle parts dealer may not receive a motor vehicle unless the dealer first obtains a certificate of authority, sales receipt, or transfer document in accordance with Transportation Code, Chapter 683, or a certificate of title showing that there are no liens on the vehicle or that all recorded liens have been released.

(2) Unique inventory number.

(A) As required by Texas Civil Statutes, Article 6687-2, a salvage vehicle dealer shall assign a unique inventory number to each transaction in which the dealer purchases or takes delivery of one or more component parts. The unique inventory number shall contain the:

(i) salvage vehicle dealer's license number;

(ii) day, month, and year of the purchase or delivery; and

(iii) sequential log number for that day.

(B) The unique inventory number shall then be attached to each component part the dealer obtains in the transaction. The unique inventory number may not be removed from the component part while the part remains in the inventory of the salvage vehicle dealer.

(C) Each component part shall be retained in its original condition on the business premises of the salvage vehicle dealer who originally purchased the part for at least three calendar days, excluding Sundays, after the date on which the dealer obtains the part.

(j) Record of purchases, sales, and inventory.

(1) Each holder of a salvage vehicle dealer license shall maintain records of each salvage or nonrepairable vehicle and any salvage parts purchased, sold, or being held in inventory by the license holder. Such records, except as specified in paragraph (2)(C) of this subsection, shall be maintained for a five-year period. These records shall include the:

(A) date of purchase;

(B) name and address of the person selling the vehicle or part to the dealer;

(C) a description of the vehicle or part to include the year model, make, and vehicle identification or component part number, if applicable;

(D) ownership document number and state of issuance, if applicable;

(E) copy of the front and back of the ownership document for the vehicle or salvage part purchased by the dealer unless the year model exceeds ten or more years;

(F) date the ownership document was surrendered to the department;

(G) evidence indicating that an older model salvage vehicle was dismantled, scrapped, or destroyed;

(H) date of sale;

(I) name and address of the person purchasing the vehicle or part from the dealer; and

(J) copy of the front and back of the ownership document for the vehicle or salvage part sold by the dealer unless the year model exceeds ten or more years.

(2) As required by Texas Civil Statutes, Article 6687-2, a salvage vehicle dealer licensed as a used vehicle parts dealer shall keep an accurate and legible inventory of each used component part purchased by or delivered to the dealer.

(A) Such parts inventory shall include:

(i) the date of purchase or delivery;

(ii) the name, age, address, sex, and driver's license number of the seller and a legible photocopy of the seller's driver's license;

(iii) the license number of the motor vehicle used to deliver the used component part;

(iv) a complete description of the item purchased, including the type of material and, if applicable, the make, model, color, and size of the item; and

(v) the vehicle identification number of the motor vehicle from which the used component part was removed.

(B) In lieu of the information required in subparagraph (A) of this paragraph, a salvage vehicle dealer may record the name of the business from which the motor vehicle or motor vehicle part is purchased and the Texas certificate of inventory number or federal taxpayer identification number of the business.

(C) A salvage vehicle dealer is not required to keep records under this subsection for:

(i) interior used component parts or special accessory parts on a motor vehicle more than ten years of age; or

(ii) used component parts delivered by commercial freight lines or commercial carriers.

(D) As required by Texas Civil Statutes, Article 6687-2, a salvage vehicle dealer shall maintain two copies of each record for used component parts addressed by paragraph (2) of this subsection on a form prescribed by the department for one year after the date of sale or disposal of the item.

(k) Authorized sale. A salvage vehicle dealer or agent may not sell, transfer, or release a new or late model salvage or nonrepairable motor vehicle to anyone other than:

(1) a governmental entity;

(2) the vehicle's former owner;

(3) a licensed salvage vehicle dealer;

(4) an out-of-state buyer;

(5) a buyer in a casual sale at auction; or

(6) a person described by Texas Civil Statutes, Article 6687-2b, §(g).

(l) Determination of estimated cost of repair.

(1) If it is necessary for a salvage vehicle dealer or agent to determine the estimated cost of repair, which is required upon submission of an application for Texas salvage or nonrepairable motor

vehicle certificate of title, the estimated cost of repair parts shall be determined by using a manual of repair costs or other instrument that is generally recognized and commonly used in the motor vehicle insurance industry to determine those costs or an estimate of the actual cost of the repair parts.

(2) The estimated labor costs, which is required upon submission of an application for Texas salvage or nonrepairable motor vehicle certificate of title, shall be computed by using the hourly rate and time allocations that are reasonable and commonly assessed in the repair industry in the community in which the repairs are performed

§17.63. Place of Business.

(a) Registration of business locations.

(1) A license applicant who intends to operate as a salvage vehicle dealer at more than one location within a county must:

(A) list each location in the application;

(B) notify the department of any additionally acquired locations within that specific county; and

(C) not employ more than five salvage dealer agents at all locations.

(2) A licensed applicant who intends to operate as a salvage vehicle dealer with additional locations within another county will be required to obtain a separate license.

(3) A licensed applicant with additional locations which are operated under a different name will be required to obtain a separate license for each location.

(4) Before moving a place of business or opening an additional place of business, a salvage vehicle dealer must register the new location with the department within ten days of the opening or relocation of the business establishment. Each new location must meet the requirements specified in subsection (b) of this section.

(b) Established and permanent place of business. A dealer must meet the following requirements at each location where salvaged vehicles are rebuilt or sold or salvaged vehicle parts are offered for sale.

(1) Office requirements.

(A) A salvage vehicle dealer's office facility must post the dealer's business hours for each day of the week at the main entrance of the dealer's office. The owner or a licensed agent of the dealer must be at the dealer's location during the posted business hours for the purpose of buying, selling, exchanging, or the rebuilding of salvaged vehicles or parts. In the event the owner or a licensed agent of the dealer is not available to conduct business during the dealer's posted business hours, a separate sign must be posted indicating the date and time such owner or agent will resume dealer operations. The structure of the office must be of sufficient size to accommodate the usual office furniture and equipment, such as a desk or parts counter, file cabinet, and chairs. At a minimum, the office must be equipped with a desk or parts counter from which the dealer transacts his business and contain a working telephone instrument listed in the name under which the dealer does business.

(B) If a dealer's office is located in a residential structure, the office must be completely separated from and have no direct access into the residential quarters and be in compliance with all applicable local zoning ordinances and deed restrictions. Such an office shall not be used as a part of the living quarters and must be readily accessible to the public without having to pass into or through any part of the living quarters.

(C) A portable-type office structure may qualify as an office, provided it meets the minimum requirements of this paragraph.

(D) If a dealer conducts business in conjunction with another business owned by the same person, the same telephone instrument may be used for both businesses. If, however, the name of the dealer differs from that of the other business, a separate telephone listing for the dealer is required.

(E) If a dealer conducts business in conjunction with another business not owned by the same person, the same telephone number may be used by both businesses; however, the dealer shall have a separate desk or parts counter, a separate working telephone instrument, and a separate telephone listing in the name of the dealer. The dealer must either own the property or have a separate lease agreement from the owner in accordance with the requirements of paragraph (3) of this subsection.

(F) If two or more dealers occupy the same business locations and conduct their respective dealer operations under different names, one office structure for all dealers operating from such location is acceptable; provided, however, each dealer must, in addition conspicuously display a qualifying dealer's sign have a:

(i) separate desk or parts counter from which that dealer transacts business;

(ii) separate working telephone instrument and listing in the dealer's name;

(iii) separate lease agreement meeting the requirements of paragraph (3) of this subsection.

(2) Sign requirements.

(A) A dealer shall display a conspicuous sign with letters at least six inches in height showing the name under which the dealer conducts business.

(B) Such sign must be readable from the address listed on the application for the salvage vehicle dealer license.

(3) Lease requirements. If the premises from which a dealer conducts business is not owned by the licensed dealer, such dealer shall maintain a lease continuous for a period of one year. Such lease agreement shall be on a properly executed form containing, but not limited to, the following information:

(A) the names of the lessor and lessee;

(B) the legal description of the property or street address; and

(C) the period of time for which the lease is valid.

(c) Change of licensee's status.

(1) Licensee name change. A licensed salvage vehicle dealer shall notify the department in writing within ten days if there is a licensee name change. Upon notification of a name change, the department shall indicate the change on the dealer's file. The dealer shall retain the same salvage vehicle dealer license number.

(2) Change of ownership. A salvage vehicle dealer shall notify the department in writing within ten days if there is a change of ownership. Upon notification of a complete change of ownership, the department shall cancel the existing salvage vehicle dealer license. The new owner must qualify for a new salvage vehicle dealer license by submission of a completed application for Texas salvage vehicle dealer or agent to the department.

(3) Change of operating status. A salvage vehicle dealer shall notify the

department in writing within ten days of the closing of any dealer location.

(d) Off-site sales. A salvage vehicle dealer or agent is not permitted to sell or offer for sale salvage or nonrepairable vehicles or salvage vehicle parts from a location other than an established and permanent place of business which has been approved by the department.

§17.64. Denial, Suspension, or Revocation.

(a) Denial of salvage vehicle dealers or agent license. The department shall deny issuance of a salvage vehicle dealer or agent license if:

(1) all the information required on the application is not complete;

(2) the requirements of the established and permanent place of business are not met;

(3) the affidavit and business references required by §17.62 of this title (relating to Salvage Vehicle Dealer and Agent License) are inadequate; or

(4) the applicant's previous salvage vehicle dealer or agent license was revoked and the first anniversary of the date of revocation has not occurred.

(b) Suspension or revocation. The department may suspend or revoke a salvage vehicle dealer or agent license if the dealer or agent:

(1) fails to maintain an established and permanent place of business conforming to the department's regulations pertaining to office and sign requirements;

(2) fails to maintain purchase, sales, and inventory records as provided in §17.62(m) of this title (relating to Salvage Vehicle Dealer and Agent Licenses);

(3) refuses to permit or fails to comply with a request by a representative of the department to examine, during normal working hours, the purchase, sales, and inventory records and ownership documents for salvage or nonrepairable vehicles or salvage parts owned by that dealer or under that dealer's control, and evidence of ownership or lease agreement on the property upon which the dealer's business is located;

(4) holds one or more classifications of salvage vehicle dealer or agent license(s) and is found to be dealing in another classification for which a license has not been issued to the dealer or agent;

(5) fails to notify the department of a change of address within 10 days after such change;

(6) fails to notify the department of a dealer's name or ownership change within ten days after such change;

(7) fails to follow the restriction of the sale, transfer, or release of a late model salvage or nonrepairable motor vehicle as provided in §17.62(l) of this title (relating to Salvage Vehicle Dealer and Agent Licenses);

(8) fails to meet the time frames and requirements provided in §17.62(l) of this title (relating to Salvage Vehicle Dealer and Agent Licenses);

(9) fails to remain regularly and actively engaged in the business for which such salvage vehicle dealer or agent license is issued;

(10) sells more than one new or late model salvage or nonrepairable motor vehicle to the same person in a casual sale during a calendar year;

(11) uses or allows use of the dealer's or agent's license or location for the purpose of avoiding the provisions of the salvage vehicle dealer law;

(12) sells or offers for sale salvage or nonrepairable vehicles or salvage vehicle parts from a location other than an established and permanent place of business, which has been approved by the department;

(13) makes a material misrepresentation in any application or other information filed with the department;

(14) fails to remit payment for civil penalties assessed by the department; or

(15) violates any of the provisions of Transportation Code, Chapter 501, or any provisions of this undesignated head.

(c) Suspension due to failure to pay court ordered child support.

(1) On receipt of a final order suspending license, issued under Family Code, §232.008, the department will suspend a dealer or agent's certificate of registration.

(2) The department will charge an administrative fee of $10 to a dealer or agent who is the subject of an order suspending license.

(d) Proceedings relating to the denial, suspension, or revocation of a salvage dealers or agents license.

(1) Upon determination that a dealer or agent license should be denied, suspended, or revoked, the director will mail a notice of the denial, suspension, or revocation to the last known address of the dealer or agent by certified mail.

(A) The notice shall clearly state:

(i) the reason for the denial, suspension, or revocation;

(ii) the effective date of the denial suspension, or revocation;

(iii) the right of the dealer or agent to request an administrative hearing on the question of denial, suspension, or revocation.

(B) A request for an administrative hearing under this section must be made in writing to the director within ten days of the receipt of notice of denial, suspension, or revocation.

(2) If timely requested, an administrative hearing shall be conducted in accordance with §§1.21-1.61 of this title (relating to Contested Case Procedure).

(e) Re-application after revocation of license. A person whose license is revoked may not apply for a new license before the first anniversary of the date of the revocation.

(f) Refund of fees. The department will not refund fees paid by a salvage vehicle dealer or agent, if the license is revoked or suspended.

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

Issued in Austin, Texas, on October 6, 1995.

TRD-9512842 **Robert E. Shaddock**
General Counsel
Texas Department of Transportation

Earliest possible date of adoption: November 17, 1995

For further information, please call: (512) 463-8630

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Chapter 27. Toll Projects

Subchapter C. Private Toll Roads

• 43 TAC §§27.30-27.37

The Texas Department of Transportation proposes new §§27.30-27.37, concerning the private toll roads.

Transportation Code, §§362.101-362.104, authorize the Texas Transportation Commission to adopt procedural and substantive rules and regulations for approval of privately constructed and owned toll projects which connect to a road, bridge, or a highway included in the state highway system.

Adoption of new §§27.30-27.37 is necessary to replace the provisions of §§11.100-11.107, concerning private toll roads which are being contemporaneously proposed for repeal.

Thomas A. Griebel, Assistant Executive Director, Multimodal Transportation, has determined that for the first five-year period the new sections are in effect there will be no fiscal implications for state or local govern-

ment as a result of enforcing or administering the proposed new sections.

Mr. Griebel has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed new sections.

Mr. Griebel 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 implementing the new sections will be an easier access to rules concerning toll roads. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the new sections as proposed.

Written comments on the proposed new sections may be submitted to Thomas A. Griebel, Assistant Executive Director, Multimodal Transportation, Texas Department of Transportation, Dewitt C. Greer Building, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of written comments will be 5:00 p.m. on November 17, 1995.

The new sections are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation and Transportation Code, §§362.101-362.104, which authorizes the Texas Transportation Commission to adopt procedural and substantive rules and regulations for approval of privately constructed and owned toll projects which connect to a road, bridge, or a highway included in the state highway system.

The new sections do not affect other statutes, articles, or codes.

§27.30. Purpose. Texas Civil Statutes, Article 6674v.1a, provides that a private entity or corporation may not construct any privately owned toll project which connects to a road, bridge, or highway included in the state highway system unless the project is approved by the Texas Transportation Commission and the Texas Department of Transportation. The sections under this undesignated head prescribe the procedures and conditions by which a private entity or corporation may obtain the approval of the commission and the department.

§27.31. Definitions. The following words and terms, when used in this undesignated head, shall have the following meanings, unless the context clearly indicates otherwise.

Applicant–A private entity or corporation, authorized by law to construct a toll project, proposing to construct a project which will connect to a road, bridge, or highway included in the state highway system.

Commission–The Texas Transportation Commission.

Department–The Texas Department of Transportation.

Design manuals–The latest editions of the:

(A) operations and procedures manual of the division of highway design;

(B) operation and planning manual of the division of bridges and structures;

(C) hydraulic manual of the division of bridges and structures;

(D) Texas Manual on Uniform Traffic Control Devices;

(E) standard highway sign designs for Texas; and

(F) traffic control standard sheets booklet of the division of maintenance and operations.

Metropolitan planning organization–An organization designated in certain urbanized areas to carry out the transportation planning process as required by 23 United States Code §134.

Project–A road or highway, bridge, ferry, or similar project other than those constructed, operated, maintained, and/or financed under Texas Civil Statutes, Article 6674v, or toll road authorities created by counties, and that is financed in whole or in part through the issuance of revenue bonds payable from toll revenues collected from users.

§27.32. Preliminary Studies.

(a) Studies. Prior to submitting an application to the department for the approval of a project, an applicant shall conduct a feasibility study and a study of the social and environmental impact of the project.

(1) Feasibility study. An applicant shall conduct a feasibility study to determine the financial viability of the proposed project. The study shall include:

(A) the proposed method for financing the planning, design, construction, maintenance, and operation of the project; and

(B) traffic data and projections.

(2) Social and environmental impact. An applicant shall conduct a study of the social and environmental impact of the project, consistent with the spirit and intent of the National Environmental Policy Act, 42 United States Code §§4321 et seq, and 23 United States Code §109(h). The study shall include the following components.

(A) Route and alignment. The applicant shall provide a design geometric layout certified by a registered professional engineer to be in accordance with design manuals that will:

(i) identify the selected route and alignment as well as the alternative routes and alignments which were considered;

(ii) provide evidence of the project's logical termini and independent utility;

(iii) provide the location of interchanges, mainlanes, grade separations, ramps, profiles and horizontal alignment, projected traffic volumes, and right-of-way limits for all routes and alignments considered; and

(iv) identify revisions or changes to state highway system facilities necessitated by the project.

(B) Environmental documentation.

(i) An applicant shall prepare an environmental assessment and/or an environmental impact statement in accordance with §11. 87 of this title (relating to Environmental Assessments) and §11.88 of this title (relating to Environmental Impact Statements).

(ii) The form and content of an environmental assessment and environmental impact statement prepared by an applicant and any decision by an applicant that an environmental impact statement is not necessary must be approved by the department.

(b) Public involvement. An applicant shall provide for public involvement by:

(1) complying with §11.85(b) of this title (relating to Early Coordination and Public Involvement);

(2) holding one or more public hearings following the completion of the studies required by this section as may be necessary to ensure participation by each community affected by the project; and

(3) notifying the department in writing not less than ten days in advance of all public meetings and public hearings held under this section.

(c) Record. An applicant shall provide the department a summary of all public meetings and a summary and analysis of all public hearings held under this section. The summary and analysis for each public hearing shall include:

(1) the verbatim transcript of the hearing;

(2) a summary of comments received, and the response to and analysis of comments;

(3) any proposed changes in project location and design planned as a result of comments; and

(4) certification that the public hearings were held in accordance with §11.85 of this title (relating to Early Coordination and Public Involvement), and the Civil Rights Act of 1964.

(d) Revision to environmental document. Following the public hearing, an applicant shall revise the environmental document for the project to address any issues or concerns identified during the public involvement process.

§27.33. Application.

(a) To secure approval of a project, an applicant must file an application with the department's director of highway design or his or her designee who shall serve as department liaison for the project. The application shall be in a form prescribed by the department, and must be accompanied by the following items:

(1) preliminary studies and the record and analysis of public involvement completed in accordance with §27.32 of this title (relating to Preliminary Studies);

(2) an analysis of project impact, which must include the following:

(A) integration with the state highway system and, if located within the jurisdiction of a metropolitan planning organization in an urbanized area, certification from that organization that the project is compatible with the existing regional transportation plan;

(B) economic impact based on a study assessing the potential impact of the project on the economy of the region in which the project is to be located, including the economies of each county in which the project is to be located and of the municipalities within those counties; and

(C) impact on trade with Mexico, consisting of an assessment of the potential impact of the project on the free flow of trade between the Republic of Mexico and the State of Texas with respect to a project located in whole or in part in a county adjacent to the border between the state and the Republic of Mexico, or in a county adjacent to such a county.

(b) If the department finds that the initial application meets the requirements of subsection (a) of this section, and that the preliminary design is in compliance with the design manuals, it shall notify the applicant of its findings and shall conduct one or more public hearings to receive public comment on the proposed project; and, subsequent to the public hearings, it shall submit the application together with its findings and recommendations to the commission for appropriate action.

§27.34. Project Requirements.

(a) Field changes. Any design field change during the course of construction shall be certified by a registered professional engineer as being in conformance with the department's design standards contained in the design manuals. A design field change relating to the connection of the proposed project with the state highway system must be approved by the department.

(b) As-built plans. Upon completion of construction of the project the applicant shall file with the department a set of the as-built plans incorporating any field changes during construction. These plans with field changes shall be signed, sealed, and dated by a registered professional engineer certifying that the project was constructed in accordance with the plans and specifications.

(c) State and federal law. An applicant shall comply with all federal and state laws and regulations applicable to the project and shall provide or obtain all permits, plans, and other documentation required by a federal, state, or local governmental entity.

(d) Speed limit. Upon completion of the project, posted speed limits for the various categories of vehicles shall be established in accordance with the procedures utilized by the department for the state highway system, but in no case shall such limits exceed the maximum prima facie speed limits prescribed by federal law for a public road having the same characteristics.

(e) Access. For proposed projects which will provide new access to a roadway requiring Federal Highway Administration (FHWA) approval of changes in access control, the applicant shall submit to the department all data necessary to request FHWA approval.

(f) Work on state right-of-way. All work required within the limits of state owned right-of-way shall be accomplished only pursuant to express written agreement with the department and at the sole expense of the applicant. This work will include all connections with, and necessary modifications to, state highways, and any necessary preliminary engineering and construction inspection. The department may, however, allow work to be accomplished by the applicant on appurtenant facilities.

§27.35. Hearing. A public hearing held by the department for the purposes of §27.33(b) of this title (relating to Application) shall be conducted by the executive director or his or her designee. Any persons, including, but not limited to, official representatives of a county, municipality, metropolitan planning organization, or other governmental entity, and any individual, group, or association may provide comment.

§27.36. Commission Action.

(a) Preliminary approval.

(1) The commission may preliminarily approve the construction of a project if it finds that the project:

(A) will be consistent with the state transportation plan and an existing regional transportation plan developed by a metropolitan planning organization, if any, of a municipality within whose municipal limits or extraterritorial jurisdiction the proposed project is to be located;

(B) will have no significant overall adverse impact on the economy of the region in which the project is to be located;

(C) will have no significant overall adverse impact on the free flow of trade between the Republic of Mexico and the State of Texas with respect to a project located in whole or in part in a county adjacent to the border between the state and the Republic of Mexico or in a county adjacent to such a county; and

(D) will produce the revenue sufficient to finance the construction, maintenance, operation, design, and planning of the project based upon accurate traffic data and projections.

(2) Prior to granting preliminary approval of a project, the commission shall consider:

(A) the impact of the project on the economies of each county in which the project is to be located and of the municipalities within those counties; and

(B) the views, comments, and certification, if any, of a metropolitan planning organization submitted under §27.33(a)(2)(A) of this title (relating to Application).

(3) The commission may not grant preliminary approval of a project unless it finds that the project will provide for

all reasonable and feasible measures to avoid, minimize, or mitigate for adverse environmental impacts as well as, when practicable, measures to enhance the environment.

(b) Final approval. Subsequent to preliminary commission approval under subsection (a) of this section, the applicant shall submit plans, specifications, and estimates. If the department finds the plans and specifications to be in compliance with the design manuals and the latest versions of the department's standard specifications for construction of highways, streets, and bridges, the commission will grant final approval for the project. All construction plan sheets shall be signed, sealed, and dated in accordance with the Texas Engineering Practice Act by a registered professional engineer.

(c) Order of approval or disapproval. Preliminary and final approval of the project shall each:

(1) be by written order of the commission;

(2) include the rationale, findings, and conclusions on which approval or disapproval is based; and

(3) if approved, contain any specified conditions deemed by the commission to be necessary and appropriate.

§27.37. Compliance.

(a) If, subsequent to final commission approval and prior to completion of the project, the applicant, for any reason, fails or refuses to satisfy any requirement for commission approval of the project, the applicant may not connect the project to any portion of the state highway system.

(b) If, subsequent to final commission approval and completion of the project, the applicant, for any reason, fails or refuses to satisfy any requirement concerning the operation and maintenance of the project, the department shall sever the connection of the project to any portion of the state highway system and erect such barriers or barricades as may be appropriate for such purpose.

(c) Prior to denying or severing connection to a portion of the state highway system, the department will provide the applicant written notice of noncompliance stating the reasons for denial or severance. The applicant will be granted reasonable notice to bring the project into compliance.

(d) An applicant may appeal a decision under this section to deny or sever connection to a portion of the state highway system by filing a petition for an administrative hearing pursuant to §§1.21-1.26 of this title (relating to Contested Case Procedure).

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

Issued in Austin, Texas, on October 6, 1995.

TRD-9512839

Robert E. Shaddock
General Counsel
Texas Department of Transportation

Earliest possible date of adoption: November 17, 1995

For further information, please call: (512) 463-8630

WITHDRAWN RULES

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the ***Texas Register***. The notice is effective immediately upon filling or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the ***Texas Register***, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the ***Texas Register***.

TITLE 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 23. Substantive Rules

Certification

• 16 TAC §23.31

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.24(b), the proposed amendment to §23.31, submitted by the Public Utility Commission of Texas has been automatically withdrawn, effective October 3, 1995. The amended section as proposed appeared in the March 31, 1995, issue of the *Texas Register* (20 TexReg 2375).

TRD-9512646

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TITLE 22. EXAMINING BOARDS

Part XXI. Texas State Board of Examiners of Psychologists

Chapter 461. General Rulings

• 22 TAC §461.11

The Texas State Board of Examiners of Psychologists has withdrawn from consideration for permanent adoption a proposed amendment to §461.11, which appeared in the April 18, 1995, issue of the *Texas Register* (20 TexReg 2768). The effective date of this withdrawal is October 6, 1995.

Issued in Austin, Texas, on October 5, 1995.

TRD-9512796 Rebecca E. Forkner
Executive Director
Texas State Board of Examiners of Psychologists

Effective date: October 6, 1995

For further information, please call: (512) 305-7700

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 229. Food and Drug

Regulation of Foods, Dietary Supplements and Drugs Containing Ephedrine

• 16 TAC §§229.461-229.464

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.24(b), the proposed new §§229.461-229.464, submitted by the Texas Department of Health has been automatically withdrawn, effective October 3, 1995. The new sections as proposed appeared in the March 31, 1995, issue of the *Texas Register* (20 TexReg 2379).

TRD-9512647

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

Chapter 6. License to Carry Concealed Handgun

• 37 TAC §§6.1, 6.11-6.15, 6.41-6.54

The Texas Department of Public Safety has withdrawn the emergency effectiveness of the new sections to §§6.1, 6.11-6.15, and 6.41-6.54, concerning the license to carry concealed handgun. The text of the emergency new sections appeared in the June 27, 1995, issue of the *Texas Register* (20 TexReg 4611). The effective date of this withdrawal is October 5, 1995.

Issued in Austin, Texas, on October 3, 1995.

TRD-9512682 James R. Wilson
Director
Texas Department of Public Safety

Effective date: October 5, 1995

For further information, please call: (512) 465-2890

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Part III. Texas Youth Commission

Chapter 85. Admission and Placement

Placement Planning

• 37 TAC §85.47

The Texas Youth Commission has withdrawn the emergency effectiveness of new §85.47, concerning admission and placement. The text of the emergency section appeared in the September 8, 1995, issue of the *Texas Register* (20 TexReg 6977). The effective date of this withdrawal is October 4, 1995.

Issued in Austin, Texas, on October 4, 1995.

TRD-9512667 Steve Robinson
Executive Director
Texas Youth Commission

Effective date: October 4, 1995

For further information, please call: (512) 483-5244

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